

Tariff, Part IX, Subpart E

Form of
Upgrade Construction Service Agreement

DRAFT

**FORM OF
UPGRADE CONSTRUCTION SERVICE AGREEMENT
FROM ATTACHMENT GG OF THE PJM TARIFF**

W0033152.DOCX (Upgrade CSA Form Template as of 4-1-2020)

Service Agreement No. []

(~~PJM Queue Position~~ Project Identifier # [])

UPGRADE CONSTRUCTION SERVICE AGREEMENT

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

And

[Name of Eligible Customer, Upgrade Customer, or
~~Interconnection Customer proposing Merchant Network Upgrades~~]

And

[Name of ~~Interconnected~~ Transmission Owner]

UPGRADE CONSTRUCTION SERVICE AGREEMENT

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

And

**[Name of Eligible Customer, Upgrade Customer, or
Interconnection Customer proposing Merchant Network Upgrades]**

And

[Name of Interconnected Transmission Owner]

(PJM Queue Position 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"), [] ("New Service Upgrade Customer" [OPTIONAL: or "[short name]"]) and [] ("Transmission Owner" [OPTIONAL: or "[short name]"]). Transmission Provider, New Service Upgrade Customer and Transmission Owner are referred to herein individually as "Party" and collectively as "the Parties."

WITNESSETH

WHEREAS, ~~New Service Upgrade~~ Customer has requested (1) ~~Long Term Firm Point-To-Point Transmission Service or Network Integration Transmission Service ("Transmission Service") from Transmission Provider pursuant to Transmission Provider's Open Access Transmission Tariff, designated as FERC Electric Tariff, Sixth Revised Volume No. 1 (the "PJM Tariff"); or (2) 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 Part VI of the PJM Tariff; or (3) 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 Part IV and Part VI of the PJM Tariff~~GIP;

WHEREAS, pursuant to ~~New Service Upgrade~~ Customer's ~~Completed Application, Upgrade Request Form or Interconnection~~ 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 ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades that must be constructed in order to provide the service or rights requested by ~~New Service Upgrade~~ Customer;

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

WHEREAS, ~~New Service Upgrade~~ Customer: (i) desires that Transmission Owner construct the required ~~Direct Assignment Facilities and/or~~ Customer-Funded Upgrades; and (ii) agrees to assume cost responsibility for the design, engineering, procurement and construction of such ~~Direct Assignment Facilities 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 ~~Part I of the PJM Tariff 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 ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades

2.0 ~~New Service Upgrade~~ Customer Financial Responsibilities.

~~New Service Upgrade~~ Customer shall pay all Costs for the design, engineering, procurement and construction of the ~~Direct Assignment Facilities or~~ 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.

~~New Service Upgrade~~ Customer shall provide Security to collateralize ~~New Service Upgrade~~ Customer's obligation to pay the Costs incurred by Transmission Owner to construct the ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, less any Costs already paid by ~~New Service Upgrade~~ Customer, in accordance with ~~Sections 16.1, 213.1, and 213.4 of the PJM Tariff. Unless deferred under Section 213.4(e) of the PJM Tariff, New Service 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.

~~[Include the following if New Service Customer requests deferral of the Security as provided for in Section 213.4(e) of the PJM Tariff:~~

~~For any portion of the Security that may be deferred in accordance with Section 213.4(e) of the PJM Tariff, and as requested by New Service Customer, New Service Customer shall provide the Security specified in this Section 2.1 within 120 days after the New Service Customer executes the Upgrade CSA, provided that New Service Customer shall pay a deposit of at least \$200,000 or 125% of the estimated costs that will be incurred during the 120-day period, whichever is greater, to fund continued design work and/or procurement activities, with \$100,000 of such deposit being non-refundable.~~

2.2 Failure to Provide Security.

If the ~~New Service 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 ~~New Service Upgrade~~ Customer's ~~Completed Application, Transmission Interconnection Request, or Upgrade Request, as applicable,~~ shall be deemed terminated and withdrawn.

2.3 Costs.

In accordance with ~~Sections 16.1 and 213.1 of the PJM Tariff, the New Service Tariff, section 16.1 and GIP, section [to be provided],~~ the Upgrade Customer shall pay for the ~~Direct Assignment Facilities or Customer-Funded Upgrades~~ identified in Appendix I to this Upgrade CSA based upon the Costs of the ~~Direct Assignment Facilities or Customer-Funded Upgrades~~ described in Appendix I. ~~The New Service Customer's obligation to pay the Costs for the Direct Assignment Facilities or Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, whether greater or lesser than the amount of the Security specified in Section 2.1, will continue regardless of whether the New Service Customer takes Transmission Service pursuant to the terms of the Transmission Service Agreement as defined in Section 3.0 of this Upgrade CSA, if applicable.~~

2.4 Charges.

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

2.5 Transmission Owner Responsibilities.

If the ~~New Service 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 ~~Direct Assignment Facilities and/or~~ Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, on its transmission system. Transmission Owner shall own the ~~Direct Assignment Facilities and/or~~ Customer-Funded Upgrades it has, or has arranged to have, constructed and shall have ongoing responsibility to maintain such ~~Direct Assignment Facilities and/or~~ 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 ~~New Service Upgrade~~ Customer to take Transmission Service under the PJM Tariff. ~~Transmission Provider shall provide Transmission Service to New Service Customer pursuant to a separate service agreement by and between New Service Customer and Transmission Provider dated as of the same effective date as this Upgrade CSA (the "Transmission Service Agreement"), if applicable.~~

Article 4 – Early Termination

4.0 Termination by ~~New Service Upgrade~~ Customer.

Subject to the terms of Section 14 of Appendix III, ~~New Service Upgrade~~ Customer may terminate this Upgrade CSA at any time by providing written notice of termination to Transmission Provider and Transmission Owner. ~~New Service 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 ~~New Service Upgrade~~ Customer the rights attributable to the ~~Network Upgrades, Local Upgrades, or Merchant Network 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 ~~Subpart C of Part VI of the PJM Tariff GIP~~ and applicable PJM Manuals referenced therein regarding a ~~New Service Upgrade~~ Customer assuming responsibility for ~~Network Upgrades, Local Upgrades, or Merchant Network Customer-Funded Upgrades~~ to accommodate a ~~New Service an Upgrade~~ Request shall apply under this Agreement for the benefit of ~~New Service Upgrade~~ Customer.

5.1 Amount of Rights Granted.

~~New Service 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 ~~Section 231 of the PJM Tariff~~~~GIP~~, ~~New Service~~ ~~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 Available Transfer Capability Revenue Rights.~~ Pursuant to ~~Section 233 of the PJM Tariff~~, ~~New Service~~ Customer shall have ~~Incremental Available Transfer Capability Revenue Rights~~ at ~~_____~~ in the following quantities: ~~_____~~.

~~Incremental Capacity Transfer Rights.~~ Pursuant to ~~Section 234 of the PJM Tariff~~~~GIP~~, ~~New Service~~ ~~section [to be provided], Upgrade~~ Customer shall have Incremental Capacity Transfer Rights in the following quantities into the indicated Locational Deliverability Area:

~~Incremental Deliverability Rights.~~ Pursuant to ~~Section 235 of the PJM Tariff~~, ~~New Service~~ Customer shall have ~~Incremental Deliverability Rights~~ at ~~_____~~ in the following quantities: ~~_____~~.

5.2 Availability of Rights Granted.

~~New Service Upgrade~~ Customer's rights as described in Section 5.1 shall become effective upon the completion of (i) the ~~Network Upgrades, Local Upgrades, or Merchant Network 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.

~~5.3 Credits.~~

~~New Service Customer will not be eligible for any credits against transmission service rates under the PJM Tariff for the value of the Network Upgrades, Local Upgrades, or Merchant Network Upgrades for which it will pay under this Agreement, as described in Section 5.1.~~

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

New Service Upgrade Customer:

Transmission Owner:

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.~~

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.

(~~PJM Queue Position Project Identifier~~ # [redacted])

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

By: _____
Name Title Date

Printed name of signer: _____

~~New Service Upgrade~~ Customer: [Name of New Service Upgrade Customer]

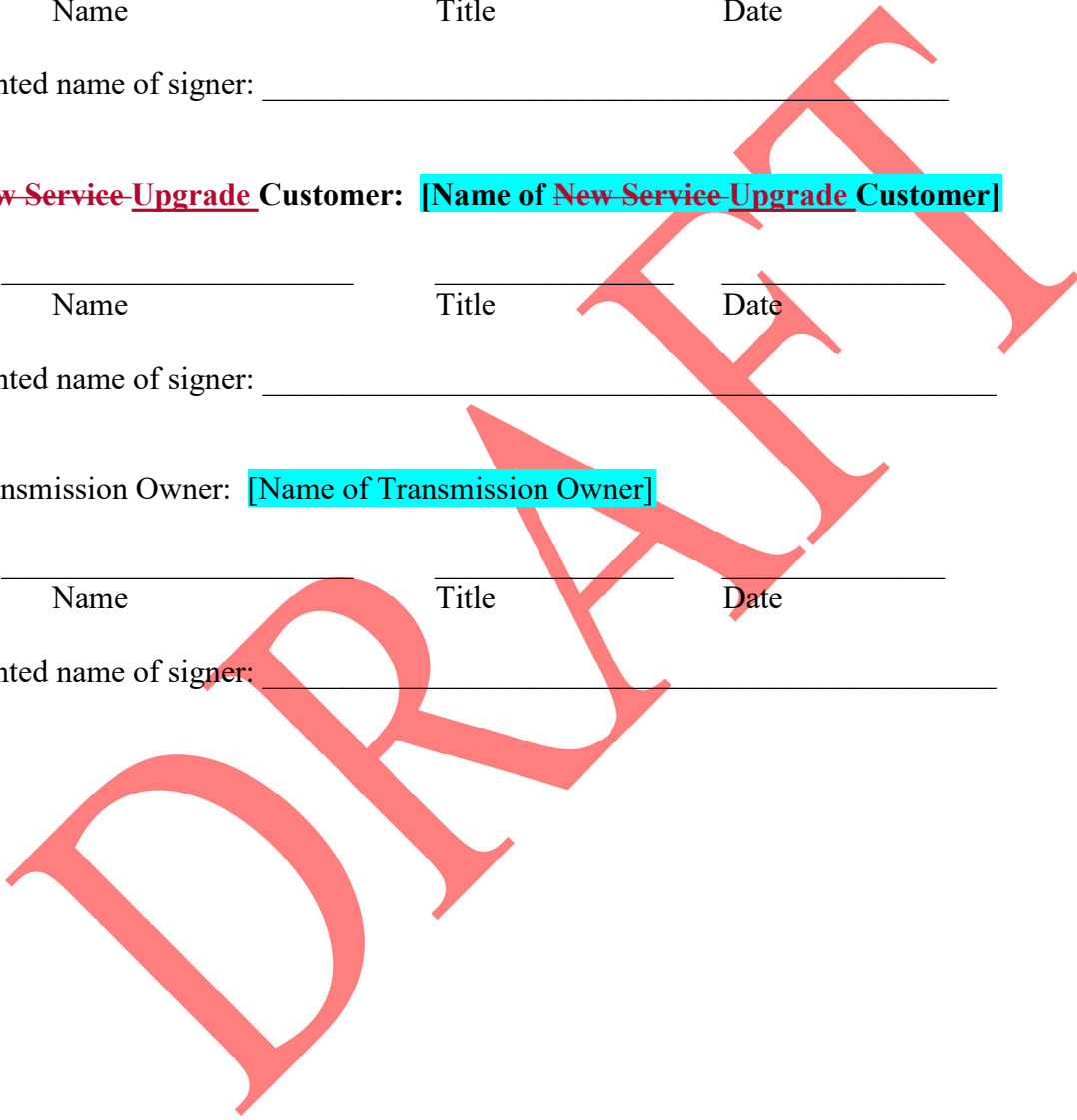
By: _____
Name Title Date

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 ~~DIRECT ASSIGNMENT FACILITIES OR~~
CUSTOMER-FUNDED UPGRADES TO BE BUILT BY TRANSMISSION OWNER

A. Scope of Work

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

[Identify ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades to be constructed]

B. Schedule of Work

[Add schedule for construction work to be completed]

C. Costs.

~~New Service 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.

~~Direct Assignment Facilities Charge:~~ \$ [redacted]

~~Network Upgrades Charge:~~ \$ [redacted]

~~Local Upgrades Charge:~~ \$ [redacted]

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 ~~Direct Assignment Facilities or~~ Customer Funded Upgrades

[include 1 through 3 below only for Upgrade Customers or Interconnection Transmission Customers]

1. The ~~Network Upgrades or~~ Merchant Network Upgrades regarding which ~~Interconnected~~ 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 ~~Network Upgrades or~~ Merchant Network Upgrades that will be built by the ~~Interconnected~~ 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.)

Standard Option.

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.

~~3. Specify whether New Service Customer has exercised the Option to Build in accordance with Section 6.2 of Appendix III to this Upgrade CSA with respect to some or all of the Customer Funded Upgrades:~~

~~Yes~~

~~No~~

~~If Yes is indicated, New Service Customer shall build, in accordance with and subject to the conditions and limitations set forth in section 6.2.3 of Appendix III to this Upgrade CSA, those portions of the Customer Funded Upgrades described below:~~

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

~~Specify whether New Service Customer has exercised the Option to Build in accordance with Section 6.2 of Appendix III to this Upgrade CSA with respect to some or all of the Direct Assignment Facilities:~~

~~Yes~~

~~No~~

~~If Yes is indicated, New Service Customer shall build, in accordance with and subject to the conditions and limitations set forth in section 6.2.3 of Appendix III to this Upgrade CSA, those portions of the Direct Assignment Facilities described below:~~

APPENDIX II

DEFINITIONS

1. Definitions.

The following definitions shall apply to this Agreement.

1.1 “Affiliate”

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

1.2 “Applicable Laws and Regulations”

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, State and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the relevant parties, their respective facilities, and/or the respective services they provide.

1.3 “Applicable Regional Entity”

Applicable Regional Entity shall mean the Regional Entity for the region in which the Transmission Owner or New Service Customer operates.

1.4 “Applicable Standards”

Applicable Standards shall mean the requirements and guidelines of NERC, the Applicable Regional Entity and the Control Area in which the Direct Assignment Facilities or Customer-Funded Upgrades are electrically located, the PJM Manuals and applicable technical requirements and standards.

1.5 “Breach”

Breach shall mean the failure of a Party to perform or observe any material term or condition of the applicable Part of the PJM Tariff or this Upgrade CSA.

1.6 “Breaching Party”

Breaching Party shall mean a Party that is in Breach of the applicable Part of the PJM Tariff and/or this Upgrade CSA.

1.7 “Cancellation Costs”

Cancellation Costs shall mean the Costs and liabilities incurred in connection with: (a) cancellation of supplier and contractor written orders and agreements entered into to design, engineer, construct and install the Direct Assignment Facilities or Customer Funded Upgrades identified in Appendix I to this Upgrade CSA; and/or (b) completion of some or all of the Direct Assignment Facilities or Customer Funded Upgrades identified in Appendix I to this Upgrade CSA, or specific unfinished portions and/or removal of any or all of such Direct Assignment Facilities or Customer Funded Upgrades which have been installed, to the extent required for the Transmission Owner and Transmission Provider to perform their respective obligations under this Upgrade CSA.

1.8 “Commission”

Commission shall mean the Federal Energy Regulatory Commission.

1.9 “Confidential Information”

Confidential Information shall mean any confidential, proprietary, or trade secret information of a plan, specification, pattern, procedure, design, engineering, device, list, concept, policy, or

~~compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed verbally, electronically, in writing, through inspection, or otherwise, and shall include, without limitation, all information relating to the producing Party's technology, research and development, business affairs and pricing, and any information supplied by any Party to another such Party prior to the execution of a Transmission Service Agreement or this Upgrade CSA.~~

~~**1.10 — “Constructing Entity”**~~

~~Constructing Entity shall mean either the Transmission Owner or the New Service Customer, depending on which entity has the construction responsibility pursuant to Part VI and this Upgrade CSA.~~

~~**1.11 — “Control Area”**~~

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

~~**1.12 — “Costs”**~~

~~Costs shall mean all of the actual costs and expenses incurred by the Transmission Owner to complete its obligations under Section 2.5 of this Upgrade CSA, including, but not limited to, capital expenditures, overhead, return, and the costs of financing, equipment, labor, services, taxes, income tax gross-ups and any Incidental Expenses.~~

~~**1.13 — “Default”**~~

~~Default shall mean the failure of a Breaching Party to cure its Breach in accordance with the applicable provisions of this Upgrade CSA and the PJM Tariff.~~

~~**1.14 — “Delivering Party”**~~

~~Delivering Party shall mean the entity supplying capacity and energy to be transmitted at Point(s) of Receipt.~~

~~**1.15 — “Emergency Condition”**~~

~~Emergency Condition shall mean a condition or situation: (i) that in the judgment of any Party is imminently likely to endanger life or property; or (ii) that in the judgment of the Transmission Owner or the Transmission Provider is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Transmission System, a Transmission Owner's transmission system or distribution system to which the Transmission System is directly or indirectly connected; or (iii) that in the judgment of the New Service Customer is imminently likely (as determined in a non-discriminatory manner) to cause damage to the facility.~~

~~**1.16 — “Environmental Laws”**~~

~~Environmental Laws shall mean Applicable Laws or Regulations relating to pollution or protection of the environment, natural resources or human health and safety.~~

~~**1.17 — “Facilities Study”**~~

~~Facilities Study shall mean that certain Facilities Study conducted by Transmission Provider (or at its direction) to determine the design and specification of the Direct Assignment Facilities or Customer Funded Upgrades necessary to accommodate the New Service Request, as applicable.~~

1.18 —“Federal Power Act”

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a, et seq.

1.19 —“FERC”

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

1.20 —“Firm Point To Point Transmission Service”

Firm Point To Point Transmission Service shall mean Transmission Service under the PJM Tariff that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of the PJM Tariff.

1.21 —“Force Majeure”

Force Majeure shall mean any cause beyond the control of the affected Party, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of due diligence such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome. Force Majeure does not include: (i) a failure of performance that is due to an affected Party’s own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike, or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.

1.22 —“Good Utility Practice”

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

1.23 —“Governmental Authority”

Governmental Authority means any federal, State, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, arbitrating body, or other governmental authority having jurisdiction over any Party regarding any matter relating to this Upgrade CSA, as applicable.

1.24 —“Hazardous Substances”

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

1.25 —“Incidental Expenses”

Incidental Expenses shall mean those expenses incidental to the performance of design, engineering, procurement and construction of the Direct Assignment Facilities or Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, including, but not limited to, the

~~expense of temporary construction power, telecommunications charges, Transmission Owner expenses associated with, but not limited to, document preparation, design review, engineering, installation, monitoring, and construction-related operations and maintenance for the Direct Assignment Facilities or Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA.~~

~~1.26 —“Local Upgrades”~~

~~Local Upgrades shall mean modifications or additions of facilities to abate any local thermal loading, voltage, short circuit, stability or similar engineering problem caused by the interconnection and delivery of generation to the Transmission System. Local Upgrades shall include: (i) Direct Connection Local Upgrades which are Local Upgrades that only serve the Customer Interconnection Facility and have no impact or potential impact on the Transmission System until the final tie-in is complete; and (ii) Non-Direct Connection Local Upgrades which are parallel flow Local Upgrades that are not Direct Connection Local Upgrades.~~

~~—— (i) Direct Connection Local Upgrades which are Local Upgrades that only serve the Customer Interconnection Facility and have no impact or potential impact on the Transmission System until the final tie-in is complete; and~~

~~—— (ii) Direct Connection Local Upgrades which are parallel flow Local Upgrades that are not Direct Connection Local Upgrades.~~

~~1.27 —“Long-Term Firm Point-To-Point Transmission Service”~~

~~Long-Term Firm Point-To-Point Transmission Service shall mean Firm Point-To-Point Transmission Service under Part II of the PJM Tariff with a term of one year or more.~~

~~1.28 —“NERC”~~

~~NERC shall mean the North American Electric Reliability Council or any successor thereto.~~

~~1.29 —“Network Upgrades”~~

~~Network Upgrades shall mean modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider’s overall Transmission System for the general benefit of all users of such Transmission System. Network Upgrades shall include:~~

~~—— (i) Direct Connection Network Upgrades which are Network Upgrades that only serve the Customer Interconnection Facility and have no impact or potential impact on the Transmission System until the final tie-in is complete; and~~

~~—— (ii) Non-Direct Connection Network Upgrades which are parallel flow Network Upgrades that are not Direct Connection Network Upgrades.~~

~~1.30 —“Office of the Interconnection”~~

~~Office of the Interconnection shall mean the Office of the Interconnection, as supervised by the Board of Managers of the PJM Interconnection, L.L.C., acting pursuant to the Operating Agreement.~~

~~1.31 —“Operating Agreement of the PJM Interconnection, L.L.C.” or “Operating Agreement”~~

~~Operating Agreement of the PJM Interconnection, L.L.C.” or “Operating Agreement shall mean that agreement dated as of April 1, 1997 and as amended and restated as of June 2, 1997 and as amended from time to time thereafter, among the members of the PJM Interconnection, L.L.C.~~

~~1.32 —“Part I”~~

~~Part I shall mean the PJM Tariff Definitions and Common Service Provisions contained in Sections 2 through 12 of the PJM Tariff.~~

~~1.33 —“Part II”~~

~~Part II shall mean PJM Tariff Sections 13 through 27 pertaining to Point To Point Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments of the PJM Tariff.~~

~~**1.34 — “Part III”**~~

~~Part III shall mean PJM Tariff Sections 28 through 35 pertaining to Network Integration Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments of the PJM Tariff.~~

~~**1.35 — “Part IV”**~~

~~Part IV shall mean PJM Tariff Sections 36 through 112 pertaining to generation or merchant transmission interconnection to the Transmission System in conjunction with applicable Common Service Provision of Part I and appropriate Schedules and Attachments.~~

~~**1.36 — “Part VI”**~~

~~Part VI shall mean PJM Tariff Sections 200 through 237 pertaining to the queuing, study, and agreements relating to New Service Requests, and the rights associated with Customer-Funded Upgrades in conjunction with the applicable Common Service Provision of Part I and appropriate Schedules and Attachments.~~

~~**1.37 — “PJM Interchange Energy Market”**~~

~~PJM Interchange Energy Market shall mean the regional competitive market administered by the Transmission Provider for the purchase and sale of spot electric energy at wholesale interstate commerce and related services, as more fully set forth in Attachment K — Appendix to the PJM Tariff and Schedule 1 to the Operating Agreement.~~

~~**1.38 — “PJM Manuals”**~~

~~PJM Manuals shall mean the instructions, rules, procedures and guidelines established by the Transmission Provider for the operation, planning, and accounting requirements of the PJM Region and the PJM Interchange Energy Market.~~

~~**1.39 — “PJM Region”**~~

~~PJM Region shall have the meaning specified in the Operating Agreement.~~

~~**1.40 — “Point(s) of Delivery”**~~

~~Point(s) of Delivery shall mean the point(s) on the Transmission Provider’s Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Part II of the PJM Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Long Term Firm Point To Point Transmission Service.~~

~~**1.41 — “Point(s) of Receipt”**~~

~~Point(s) of Receipt shall mean the point(s) of interconnection on the Transmission Provider’s Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under Part II of the PJM Tariff. The Point(s) of Receipt shall be specified in the Service Agreement for Long Term Firm Point To Point Transmission Service.~~

~~**1.42 — “Project Financing” means:**~~

~~Project Financing shall mean~~

~~—— (a) — One or more loans, leases, equity and/or debt financings, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Direct Assignment Facilities or Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, any alteration, expansion or improvement to such Direct Assignment Facilities or Customer-Funded Upgrades, the purchase and sale of such Direct Assignment Facilities or Customer-Funded Upgrades or the operation of such Direct Assignment Facilities or Customer-Funded Upgrades;~~

~~_____ (b) _____ Loans and/or debt issues secured by the Direct Assignment Facilities or Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA.~~

~~**1.43 — “Project Finance Entity”**~~

~~Project Finance Entity means: (a) a holder, trustee or agent for holders, of any component of Project Financing; or (b) any purchaser of capacity and/or energy produced by the facility to which New Service Customer has granted a mortgage or other lien as security for some or all of New Service Customer’s obligations under the corresponding power purchase agreement.~~

~~**1.44 — “Reasonable Efforts”**~~

~~Reasonable Efforts shall mean, with respect to any action required to be made, attempted, or taken by Transmission Provider or Transmission Owner, such efforts as are timely and consistent with Good Utility Practice and with efforts that such Party would undertake for the protection of its own interests.~~

~~**1.45 — “Receiving Party”**~~

~~Receiving Party shall mean the entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.~~

~~**1.46 — “Regional Transmission Expansion Plan” or “RTEP”**~~

~~Regional Transmission Expansion Plan or “RTEP” shall mean the plan prepared by the Office of the Interconnection pursuant to Schedule 6 of the Operating Agreement for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region.~~

~~**1.47 — “Schedule and Scope of Work”**~~

~~Schedule and Scope of Work shall mean that schedule and scope of work attached to the Upgrade CSA setting forth the scope and timing of work to be performed by the Transmission Owner, based upon the Facilities Study and subject to modification, as required, in accordance with Transmission Provider’s scope change process for projects set forth in the PJM Manuals.~~

~~**1.48 — “Security”**~~

~~Security shall mean the letter of credit or other reasonable form of security provided by the New Service Customer to the Transmission Provider pursuant to Section 213.4 of the PJM Tariff to secure the New Service Customer’s responsibility for Costs incurred pursuant to this Upgrade CSA.~~

~~**1.49 — “Service Agreement”**~~

~~Service Agreement shall mean the initial agreement and any amendments or supplements thereto entered into by the New Service Customer and the Transmission Provider for service under the PJM Tariff.~~

~~**1.50 — “State”**~~

~~State shall mean a state of the United States or the District of Columbia.~~

~~**1.51 — “Transmission System”**~~

Transmission System shall mean the facilities controlled or operated by the Transmission Provider within the PJM Region that are used to provide transmission service under Part II and Part III of the PJM Tariff.

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

DRAFT

APPENDIX III
GENERAL TERMS AND CONDITIONS

DRAFT

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 ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, ~~prior to the Effective Date 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 ~~New Service Upgrade~~ Customer or Transmission Owner, Transmission Provider shall meet with the ~~New Service 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 ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades.

3.1.1 Generally.

All ~~Direct Assignment Facilities or~~ 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 ~~Direct Assignment Facilities or~~ 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 ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades. Such provisions relating to the design, engineering, procurement, construction and/or installation of such ~~Direct Assignment Facilities or~~ 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 ~~New Service~~ Upgrade Customer Payments Taxable.

The Parties shall treat all payments or property transfers made by ~~New Service Upgrade~~ Customer to Transmission Owner for the installation of the ~~Direct Assignment Facilities or~~ 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 ~~New Service Upgrade~~ Customer and Transmission Owner in connection with the installation of the ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, shall be made on a fully grossed-up basis. This means that ~~New Service 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 ~~New Service Upgrade~~ Customer under this Upgrade CSA in connection with the installation of the ~~Direct Assignment Facilities or~~ 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 ~~New Service 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 ~~New Service 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 ~~New Service Upgrade~~ Customer to Transmission Owner under this Upgrade CSA are subject to federal income taxation. ~~New Service 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 ~~New Service Upgrade~~ Customer's knowledge. The Parties shall cooperate in good faith with respect to the submission of such request. Transmission Owner shall keep ~~New Service 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 ~~New Service Upgrade~~ Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Owner shall allow ~~New Service Upgrade~~ Customer to attend all meetings with IRS officials about the request and shall permit ~~New Service 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 ~~New Service 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 ~~New Service 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 ~~New Service 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 ~~New Service 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 ~~New Service Upgrade~~ Customer the following: (i) any payment made by ~~New Service 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 ~~New Service 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 ~~New Service Upgrade~~ Customer to the date Transmission

Owner refunds such payment to ~~New Service 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 ~~New Service 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 ~~the Direct Assignment Facilities or~~ Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA.

4.5 Contests.

If, following a Favorable Tax Determination, ~~New Service 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 ~~New Service 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 ~~New Service Upgrade~~ Customer and at ~~New Service Upgrade~~ Customer's sole expense, Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon ~~New Service 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 ~~New Service Upgrade~~ Customer informed, shall consider in good faith suggestions from ~~New Service Upgrade~~ Customer about the conduct of the contest, and shall reasonably permit ~~New Service Upgrade~~ Customer or a ~~New Service Upgrade~~ Customer representative to attend contest proceedings. ~~New Service 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 ~~New Service Upgrade~~ Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Owner, but reasonably acceptable to ~~New Service Upgrade~~ Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. ~~New Service Upgrade~~ Customer's obligation shall be based on the amount of the settlement agreed to by ~~New Service 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 ~~New Service Upgrade~~ Customer, and at ~~New Service 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 ~~New Service Upgrade~~ Customer may be required to reimburse Transmission Owner under the terms of this Upgrade CSA. ~~New Service 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. ~~New Service 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 ~~New Service 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 ~~New Service 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 ~~New Service 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 ~~New Service 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 ~~the Direct Assignment Facilities or~~ Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, in accordance with the Schedule and Scope of Work.

6.1.16.2 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 ~~New Service 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 ~~Part VI of the Tariff 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 ~~New Service Upgrade~~ Customer's responsibility for Costs may be affected (~~Section 217 of the Tariff~~). No other terms of the Tariff or this Appendix III shall be subject to modification under the Negotiated Contract Option. The terms and conditions of the Tariff that may be negotiated pursuant to the Negotiated Contract Option shall not be affected by use of the Negotiated Contract Option except as and to the extent that they are modified by the parties' agreement pursuant to such option. All terms agreed upon pursuant to the Negotiated Contract Option shall be stated in full in an appendix to this Upgrade CSA.

~~6.2 — Option to Build.~~

~~6.2.1 — Option.~~

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

~~6.2.2 — General Conditions Applicable to Option.~~

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

~~(a) If New Service Customer assumes responsibility for the design, procurement and construction of Direct Assignment Facilities and Customer Funded Upgrades that are Direct Connection Network Upgrades:~~

~~(i) New Service Customer shall engineer, procure equipment, and construct Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by Interconnected Transmission Owner;~~

~~(ii) New Service Customer's engineering, procurement and construction of Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades shall comply with all requirements of law to which Interconnected Transmission Owner shall be subject in the engineering, procurement or construction of Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades;~~

~~(iii) Interconnected Transmission Owner shall review and approve engineering design, equipment acceptance tests, and the construction of Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades;~~

~~(iv) Prior to commencement of construction, New Service Customer shall provide to Interconnected Transmission Owner a schedule for construction of Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades and shall promptly respond to requests for information from Interconnected Transmission Owner;~~

~~(v) At any time during construction, Interconnected Transmission Owner shall have the right to gain unrestricted access to Direct Assignment Facilities and Customer Funded Upgrades that are Direct Connection Network Upgrades and to conduct inspections of the same;~~

~~(vi) At any time during construction, should any phase of the engineering, equipment procurement, or construction of Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades not meet the standards and specifications provided by Interconnected Transmission Owner, New Service Customer shall be obligated to remedy deficiencies in that portion of Direct Assignment Facilities and Customer Funded Upgrades that are Direct Connection Network Upgrades;~~

~~(vii) New Service Customer shall indemnify Interconnected Transmission Owner and Transmission Provider for claims arising from New Service Customer's construction of Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades under the terms and procedures applicable to this Appendix III, sections 12.1, 12.2, 12.3, and 12.4;~~

~~(viii) New Service Customer shall transfer control of Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades to Interconnected Transmission Owner;~~

~~(ix) Unless Parties otherwise agree, New Service Customer shall transfer ownership of Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades to Interconnected Transmission Owner;~~

~~(x) Interconnected Transmission Owner shall approve and accept for operation and maintenance Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades to the extent engineered, procured, and constructed in accordance with this ICSA, Appendix 2, section 3.2.3.2;~~

~~(xi) New Service Customer shall deliver to Transmission Owner “as-built” drawings, information, and any other documents that are reasonably required by Transmission Provider to assure that the Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades are built to the standards and specifications required by Interconnected Transmission Owner; and~~

~~_____ (xii) If New Service Customer exercises the Option to Build pursuant to section 6.2.1, New Service Customer shall pay Interconnected Transmission Owner the agreed upon amount of [\$] for Interconnected Transmission Owner to execute the responsibilities enumerated to Interconnected Transmission Owner under section 6.2.2. Interconnected Transmission Owner shall invoice New Service Customer for this total amount to be divided on a monthly basis pursuant to Appendix III, section 9.3.~~

~~(b) The New Service Customer must obtain or arrange to obtain all necessary permits and authorizations for the construction and installation of the Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades that it is building, provided, however, that when the Transmission Owner’s assistance is required, the Transmission Owner shall assist the New Service Customer in obtaining such necessary permits or authorizations with efforts similar in nature and extent to those that the Transmission Owner typically undertakes in acquiring permits and authorizations for construction of facilities on its own behalf;~~

~~(c) The New Service Customer must obtain all necessary land rights for the construction and installation of the Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades that it is building, provided, however, that upon New Service Customer’s reasonable request, the Transmission Owner shall assist the New Service Customer in acquiring such land rights with efforts similar in nature and extent to those that the Transmission Owner typically undertakes in acquiring land rights for construction of facilities on its own behalf;~~

~~(d) Notwithstanding anything stated herein, each Transmission Owner shall have the exclusive right and obligation to perform the line attachments (tie in work), and to calibrate remote terminal units and relay settings, required for the interconnection to such Transmission~~

~~Owner's existing facilities of any Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades that the New Service Customer builds; and~~

~~(e) — The Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades built by the New Service Customer shall be successfully inspected, tested and energized pursuant to Sections 19 and 20 of this Appendix III.~~

~~6.2.3 Additional Conditions Regarding Network Facilities.~~

~~To the extent that the New Service Customer utilizes the Option to Build for design, procurement, construction and/or installation of (a) any Merchant Network Upgrades, (b) Direct Connection Network Upgrades to Transmission System facilities that are in existence or under construction by or on behalf of the Transmission Owner on the date that the New Service Customer solicits bids under Section 6.2.7 below, or (c) Direct Assignment Facilities or Customer Funded Upgrades that are Direct Connection Network Upgrades to be located on land or in right of way owned or controlled by the Transmission Owner, and in addition to the other terms and conditions applicable to the design, procurement, construction and/or installation of facilities under this Appendix III, all work shall comply with the following further conditions:~~

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

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

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

~~(iv) — The New Service Customer and its contractors, employees and agents shall comply with the Transmission Owner's safety, security and work rules, environmental guidelines and training requirements applicable to the area(s) where construction activity is occurring and shall provide all reasonably required documentation to the Transmission Owner, provided that the Transmission Owner previously has provided its safety, security and work rules and training requirements applicable to work on its facilities to Transmission Provider and the New Service~~

~~Customer within 20 business days after a request therefore made by New Service Customer following its receipt of the Facilities Study;~~

~~(v) — The New Service Customer shall be responsible for controlling the performance of its contractors, employees and agents; and~~

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

~~6.2.4 Administration of Conditions:~~

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

~~6.2.5 Approved Contractors:~~

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

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

~~6.2.6 Construction by Multiple New Service Customers:~~

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

~~6.2.7 Option Procedures~~

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

~~(b) Any additional costs arising from the bidding process or from the final bid of the successful Approved Contractor shall be the sole responsibility of the New Service Customer.~~

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

~~(d) In the absence of a qualifying bid acceptable to the New Service Customer in response to its solicitation, the Transmission Owner(s) shall be responsible for the design, procurement, construction and installation of the Direct Assignment Facilities or Customer Funded Upgrades in accordance with the Standard Option described in Section 6.2.1 of this Appendix III.~~

~~6.2.8 New Service Customer Drawings.~~

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

~~6.2.9 Effect of Review.~~

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

6.3 Revisions to Schedule and Scope of Work.

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

~~6.4 Suspension.~~

~~The following provision applies to New Service Requests which have entered the New Services Queue prior to February 1, 2011:~~

~~New Service Customer shall have the right, upon written notice to Transmission Provider and Transmission Owner, to suspend at any time all work by the Transmission Owner associated with the construction and installation of the Direct Assignment Facilities and/or Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, required under this Upgrade CSA, with the condition that, notwithstanding such suspension, the Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Provider's safety and reliability criteria. This suspension right permits the New Service Customer to request one or more suspensions of work for a cumulative period of up to three years. New Service Customer's notice of suspension shall include an estimated duration of the suspension and other information related to the suspension.~~

~~The following provision applies to New Service Requests which have entered the New Services Queue on or after February 1, 2011:~~

~~New Service Customer shall have the right, upon written notice to Transmission Provider and Transmission Owner, to suspend at any time all work by the Transmission Owner associated with the construction and installation of the Direct Assignment Facilities and/or Customer-~~

~~Funded Upgrades, identified in Appendix I to this Upgrade CSA, required under this Upgrade CSA, with the condition that, notwithstanding such suspension, the Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Provider's safety and reliability criteria. This suspension right permits the New Service Customer to request one or more suspensions of work for a cumulative period of up to (i) three years if the Transmission Provider determines that such suspension would not be deemed a Material Modification, or (ii) one year if the Transmission Provider determines that such suspension would be deemed a Material Modification. New Service Customer's notice of suspension shall include an estimated duration of the suspension and other information related to the suspension.~~

~~6.4.1 Costs.~~

~~In the event of a suspension under this section, New Service Customer shall be responsible for all reasonable and necessary Cancellation Costs which the Transmission Owner or Transmission Provider: (i) has incurred pursuant to this Upgrade CSA prior to the suspension; and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and/or labor contracts which Transmission Owner or Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, the Transmission Owner or Transmission Provider, as the case may be, shall obtain New Service Customer's authorization to do so. Upon the request of the New Service Customer, the Transmission Owner shall provide an estimate of the Cancellation Costs. Transmission Provider shall invoice New Service Customer for Cancellation Costs for which the customer is liable under this section. Transmission Owner and Transmission Provider shall use due diligence to minimize Cancellation Costs in the event of a suspension of work.~~

~~6.4.2 Duration of Suspension.~~

~~If the Transmission Owner suspends work on the Direct Assignment Facilities and/or Customer-Funded Upgrades required under this Upgrade CSA pursuant to this Section 6.4.2, and the New Service Customer has not requested Transmission Provider and the Transmission Owner to recommence the work required under the applicable agreement(s) on or before the expiration of the time period allowed under this Section 6.4 following commencement of such suspension, then this Upgrade CSA shall terminate. The suspension time period shall begin on the date of the New Service Customer's written notice of suspension to Transmission Provider and Transmission Owner.~~

7.0 Suspension of Work Upon Default.

Upon the occurrence of a Default by New Service Upgrade Customer, the Transmission Provider or the Transmission Owner may, by written notice to New Service Upgrade Customer, suspend further work associated with the Direct Assignment Facilities and/or 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 ~~New Service 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 ~~Direct Assignment Facilities or~~ 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 ~~Direct Assignment Facilities or~~ 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. ~~Such acceptance does not modify and shall not limit the Interconnection Customer's indemnification obligations set forth in Tariff, Attachment P, Appendix 2, section 3.2.3(e).~~

8.0 Transmission Outages

8.1 Outages; Coordination.

The Transmission Provider and Transmission Owner acknowledge and agree that certain outages of transmission facilities owned by the Transmission Owner, as more specifically detailed in the Scope of Work, may be necessary in order to complete the process of constructing and installing the ~~Direct Assignment Facilities and/or~~ 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 ~~New Service Upgrade~~ Customer is responsible.

~~9.1 Recurring Charges Pursuant to Section 26:~~

~~The following provisions shall apply with respect to recurring charges applicable to a Merchant Network Upgrade pursuant to Section 26 of this Appendix III.~~

~~9.1.1 General:~~

~~Except as, and to the extent, otherwise provided in this Upgrade CSA, billing and payment of any recurring charges applicable to the Merchant Network Upgrade pursuant to Section 26 of this Appendix III shall be in accordance with Section 7 of the Tariff. Transmission Owner shall provide Transmission Provider with all necessary information and supporting data that Transmission Provider may reasonably require to administer billing for and payment of applicable~~

~~charges under this Appendix III. Transmission Provider shall remit to Transmission Owner revenues received in payment of Transmission Owner's charges to Interconnection Customer under this Appendix III upon Transmission Provider's receipt of such revenues. At Transmission Provider's reasonable discretion, charges to Interconnection Customer and remittances to Transmission Owner under this Appendix III may be netted against amounts owed by or to such parties under the Tariff.~~

9.29.1 Adjustments to Security.

The Security provided by ~~New Service Upgrade~~ Customer at or before the Effective Date of this Upgrade CSA shall be: (a) reduced as portions of the work on ~~Direct Assignment Facilities or~~ 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 ~~New Service 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.

9.39.2 Invoice.

~~Interconnected~~ Transmission Owner shall provide Transmission Provider a quarterly statement of its scheduled expenditures during the next three months for, as applicable, ~~(a) the design, engineering and construction of, and/or for other charges related to, construction of the Direct Assignment Facilities and/or Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, or (b) in the event that the New Service Customer exercises the Option to Build pursuant to Section 6.2.1 of this Appendix III, for the Interconnected Transmission Owner's oversight costs (i.e. costs incurred by the Transmission Owner when engaging in oversight activities to satisfy itself that the New Service Customer is complying with the Transmission Owner's standards and specifications for the construction of facilities) associated with the New Service Customer's building Direct Assignment Facilities and Customer-Funded Upgrades that are Direct Connection Network Upgrades, including but not limited to Costs for tie-in work and Cancellation Costs. Interconnected Transmission Owner's oversight costs shall be consistent with Attachment GG, Appendix III, section 6.2.2(a)(12). If New Services Customer exercises the Option to Build pursuant to Appendix III, section 6.2.1, New Services Customer shall pay Interconnected Transmission Owner costs associated with its responsibilities pursuant to section 6.2.1 and in accordance with the amount agreed to by the Interconnected Transmission Owner and New Services Customer pursuant to Appendix III, section 6.2.1(a)(12) Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA. Transmission Provider shall bill New Service Upgrade Customer, on behalf of Interconnected Transmission Owner, for Interconnected Transmission Owner's expected costs during the subsequent three months. New Service Upgrade Customer shall pay each bill within twenty (20) days after receipt thereof. Upon receipt of each of New Service Upgrade Customer's payments of such bills, Transmission Provider shall reimburse the Interconnected Transmission Owner. New Service 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 ~~Direct Assignment Facilities and/or~~ Customer-Funded Upgrades under this Upgrade CSA, Transmission Provider shall provide ~~New Service 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) ~~New Service Upgrade~~ Customer's responsibility under the PJM Tariff for the Costs of the ~~Direct Assignment Facilities and/or~~ Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA; and (b) ~~New Service 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 ~~New Service 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 ~~New Service 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 ~~New Service 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 ~~New Service Upgrade~~ Customer pays to Transmission Provider, or into an independent escrow account established by the ~~New Service Upgrade~~ Customer, the portion of the invoice in dispute, pending resolution of such dispute. If the ~~New Service 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 ~~New Service 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 ~~New Service 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 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 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 ~~New Service Upgrade~~ Customer.

~~New Service 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 ~~New Service 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 ~~New Service Upgrade~~ Customer arising under this Upgrade CSA. However, any assignment described herein shall not relieve or discharge the ~~New Service 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 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 may assign this Upgrade CSA without the Transmission Provider's or New Service Customer's prior consent to any Affiliate or person that purchases or otherwise acquires, directly or indirectly, all or substantially all of the Transmission Owner'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 Provider and New Service Customer all rights, duties, and obligations of Transmission Owner arising under this Upgrade CSA. However, any assignment described herein shall not relieve or discharge the Transmission Owner from any of its obligations hereunder absent the written consent of the New Service Customer, such consent not to be unreasonably withheld, conditioned or delayed.~~

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.

~~New Service 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 ~~New Service Upgrade~~ Customer's duties and obligations under this Upgrade CSA. If ~~New Service 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, ~~New Service 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 ~~New Service 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 ~~Direct Assignment Facilities or~~ 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 ~~Direct Assignment Facilities or~~ 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 ~~Direct Assignment Facilities or~~ 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 ~~Direct Assignment Facilities or~~ 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 Owing.

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

12.5 Limitation on Damages.

Except as otherwise provided in this Section 12, the liability of a Party shall be limited to direct actual damages, and all other damages at law are waived. Under no circumstances shall any Party or its Affiliates, directors, officers, employees and agents, or any of them, be liable to another Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits. The limitations on damages specified in this Section 12.5 are without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. This limitation on damages shall not affect any Party's rights to obtain equitable relief as otherwise provided in this 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 ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, the Transmission System, or Transmission Service, or associated with damage to the ~~Direct Assignment Facilities or~~ 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, ~~New Service 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 ~~New Service Upgrade~~ Customer, Transmission Provider ~~and or~~ the Transmission Owner agree to provide notice of such Breach, ~~at the same time and~~ in the same manner as its or their notice to ~~New Service Upgrade~~ Customer, to any Project Finance Entity, provided that the ~~New Service 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.

~~The 13.3.1.1~~ Except for the event of Breach set forth in section 13.1(a) above, the Breaching Interconnection Party may: (a) may cure the Breach within thirty (30) days from the receipt of 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.

~~Upon Notwithstanding the foregoing, upon the occurrence of an event of a Default, a non-Defaulting Interconnection Party shall be entitled to: (a) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; (b) withhold payments; (c) suspend performance hereunder; and (d) 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

~~This 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 later of 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 Direct Assignment Facilities and/or 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.~~

~~14.1.2 By New Service Customer.~~

~~Subject to its payment of Cancellation Costs as explained in Section 14.2 of this Appendix III, the New Service Customer may be relieved of its obligations hereunder upon written notice to Transmission Provider and the Transmission Owner.~~

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 New Service 14.2 Cancellation By Upgrade Customer

14.2.1 Applicability.

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

14.2.2 Cancellation Cost Responsibility.

Upon the cancellation of this Upgrade CSA by the New Service Upgrade Customer, the New Service Upgrade Customer shall be liable to pay to the Transmission Owner or Transmission Provider all Cancellation Costs in connection with ~~this Upgrade CSA~~ 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 New Service Upgrade Customer, with a written demand for payment and with reasonable documentation of such Cancellation Costs. The New Service Upgrade Customer shall pay ~~to 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 New Service Upgrade Customer of written demand ~~therefore~~ therefor, provided that such demand includes reasonable documentation of the Cancellation Costs that the invoicing Party ~~party~~ seeks to collect. Upon receipt of each of New Service 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 ~~Direct Assignment Facilities or~~ Customer-Funded Upgrades Upon Cancellation.

Upon cancellation of this Upgrade CSA by the New Service Upgrade Customer, Transmission Provider, after consulting with the Transmission Owner, may, at the sole cost and expense of the New Service 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 ~~the Direct Assignment Facilities and/or~~ Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, provided, however, that New Service 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 ~~Direct Assignment Facilities and/or~~ Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, built by the Transmission Owner; (c) partially or entirely complete the ~~Direct Assignment Facilities and/or~~ 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 ~~New Service 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 ~~New Service Upgrade~~ Customer has fully paid for equipment that is unused upon cancellation or which is removed pursuant to this Section, the ~~New Service Upgrade~~ Customer shall have the right to take back title to such equipment; alternatively, in the event that the ~~New Service Upgrade~~ Customer does not wish to take back title, the Transmission Owner may elect to pay the ~~New Service Upgrade~~ Customer a mutually agreed amount to acquire and own such equipment.

14.2.4 Termination Upon Default.

In the event that New Service Upgrade Customer exercises its right to terminate under this Section notwithstanding any other provision of this Upgrade CSA, the New Service Upgrade Customer shall be liable for payment of the Transmission Owner's Costs incurred up to the date of New Service Upgrade Customer's notice of termination pursuant to this Section and the costs of completion of some or all of the ~~Direct Assignment Facilities and/or~~ Customer-Funded Upgrades, or specific unfinished portions thereof, and/or removal of any or all of such ~~Direct Assignment Facilities and/or~~ 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 New Service 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 New Service 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 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.

~~New Service Upgrade~~ Customer and the Transmission Owner shall coordinate the timing and schedule of all inspection and testing of the ~~Direct Assignment Facilities and~~ 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 ~~Direct Assignment Facilities and/or~~ 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.

~~19.2.1 Of New Service Customer-Built Facilities.~~

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

~~19.2.2 Of Transmission Owner-Built Facilities.~~

~~Upon the completion of the construction and installation, but prior to energization, of any Direct Assignment Facilities and/or~~ 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 ~~New Service Upgrade~~ Customer and Transmission Provider shall have the right to attend and observe, and to obtain the written results of, such testing.

~~19.3 Review of Inspection and Testing by Transmission Owner.~~

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

19.4 Notification and Correction of Defects

~~19.4.1 If the Transmission Owner, based on inspection or testing pursuant to Section 19.2 or 19.3 of this Appendix III, identifies any defects or failures to comply with Applicable Standards in the Direct Assignment Facilities and/or Customer Funded Upgrades constructed by the New Service Customer, the Transmission Owner shall notify the New Service Customer and Transmission Provider of any identified defects or failures within 20 days after the Transmission Owner's receipt of the results of such inspection or testing. The New Service Customer shall take appropriate actions to correct any such defects or failure at its sole cost and expense, and shall obtain the Transmission Owner's acceptance of the corrections, which acceptance shall not be unreasonably delayed, withheld or conditioned.~~

19.4.2 In the event that inspection and/or testing of any ~~Direct Assignment Facilities and/or~~ 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.

~~19.5 Notification of Results.~~

~~Within 10 days after satisfactory inspection and/or testing of Direct Assignment Facilities and/or Customer Funded Upgrades built by the New Service Customer (including, if applicable, inspection and/or testing after correction of defects or failures), the Transmission Owner shall confirm in writing to the New Service Customer and Transmission Provider that the successfully inspected and tested facilities are acceptable for energization.~~

20.0 Energization of Completed Facilities [Reserved]

~~(A) Unless otherwise provided in the Schedule of Work, energization, when applicable as determined by Transmission Provider, of the Direct Assignment Facilities and/or Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, shall occur in two stages. Stage One energization shall consist of energization of the Direct Assignment Facilities and may occur prior to initial energization of the Customer Funded Upgrades. Stage Two energization shall~~

~~consist of energization of the remainder of the Direct Assignment Facilities and/or Customer-Funded Upgrades, identified in Appendix I, to the Upgrade CSA.~~

~~—— (B) — In the case of Direct Assignment Facilities and/or Customer-Funded Upgrades for which the Transmission Provider determines that two stage energization is inapplicable, energization shall occur in a single stage, consisting of energization of the Direct Assignment Facilities and/or Customer-Funded Upgrades. Such a single stage energization shall be regarded as Stage Two energization for the purposes of the remaining provisions of this Section 20.9 and of Section 22.0 of this Appendix III.~~

~~20.1 — Stage One energization of the Direct Assignment Facilities may not occur prior to the satisfaction of the following additional conditions:~~

~~—— (a) — The New Service Customer shall have delivered to the Transmission Owner and Transmission Provider a writing transferring to the Transmission Owner and Transmission Provider operational control over any Direct Assignment Facilities that New Service Customer has constructed; and~~

~~—— (b) — The New Service Customer shall have provided a mark-up of construction drawings to the Transmission Owner to show the “as-built” condition of all Direct Assignment Facilities that New Service Customer has constructed.~~

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

~~20.3 — Stage Two energization of the remainder of the Direct Assignment Facilities and/or Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, may not occur prior to the satisfaction of the following additional conditions:~~

~~—— (a) — The New Service Customer shall have delivered to the Transmission Owner and Transmission Provider a writing transferring to the Transmission Owner and Transmission Provider operational control over any Direct Assignment Facilities and/or Customer-Funded Upgrades that New Service Customer has constructed and operational control of which it has not previously transferred pursuant to Section 20.1 of this Appendix III; and~~

~~—— (b) — The New Service Customer shall have provided a mark-up of construction drawings to the Transmission Owner to show the “as-built” condition of all Direct Assignment Facilities and/or Customer-Funded Upgrades that New Service Customer has constructed and which were not included in the Stage One energization, but are included in the Stage Two energization.~~

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

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

~~**21.0 Transmission Owner's Acceptance of Facilities Constructed by New Service Customer.**~~

~~Within five days after determining that Direct Assignment Facilities and/or Customer-Funded Upgrades have been successfully energized, the Transmission Owner shall issue a written notice to the New Service Customer accepting the Direct Assignment Facilities and/or Customer-Funded Upgrades built by the New Service Customer that were successfully energized. Such acceptance shall not be construed as confirming, endorsing or providing a warranty by the Transmission Owner as to the design, installation, construction, fitness, safety, durability or reliability of any Direct Assignment Facilities and/or Customer-Funded Upgrades built by the New Service Customer, or their compliance with Applicable Standards.~~

~~**22.0 Transfer of Title to Certain Facilities Constructed By New Service Customer.**~~

~~Within thirty (30) days after the New Service Customer's receipt of notice of acceptance under Section 21.0 of this Appendix III following Stage Two energization of the Direct Assignment Facilities and/or Customer-Funded Upgrades, the New Service Customer shall deliver to the Transmission Owner, for the Transmission Owner's review and approval, all of the documents and filings necessary to transfer to the Transmission Owner title to any Direct Assignment Facilities and/or Customer-Funded Upgrades constructed by the New Service Customer, and to convey to the Transmission Owner any easements and other land rights to be granted by New Service Customer that have not then already been conveyed. The Transmission Owner shall review and approve such documentation, such approval not to be unreasonably withheld, delayed, or conditioned. Within 30 days after its receipt of the Transmission Owner's written notice of approval of the documentation, the New Service Customer, in coordination and consultation with the Transmission Owner, shall make any necessary filings at the FERC or other governmental agencies for regulatory approval of the transfer of title. Within twenty (20) days after the issuance of the last order granting a necessary regulatory approval becomes final (i.e., is no longer subject to rehearing), the New Service Customer shall execute all necessary documentation and shall make all necessary filings to record and perfect the Transmission Owner's title in such facilities and in the easements and other land rights to be conveyed to the Transmission Owner. Prior to such transfer to the Transmission Owner of title to the Direct Assignment Facilities and/or Customer-Funded Upgrades built by the New Service Customer, the risk of loss or damages to, or in connection with, such facilities shall remain with the New~~

~~Service Customer. Transfer of title to facilities under this section shall not affect the New Service Customer's receipt or use of the rights related to the Customer-Funded Upgrades for which it otherwise may be eligible as provided in Subpart C of Part VI of the Tariff.~~

~~23.0 Liens.~~

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

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 Interconnection Upgrade Customer shall operate and maintain such Merchant Network Upgrades at the expense of the Interconnection 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, Interconnection 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. ~~Transmission Owner shall provide Transmission Provider and Interconnection Customer with appropriate cost data, schedules and/or written testimony in support of any charges under this section in such manner and at such time as to allow Transmission Provider to include such materials in its filing of the Upgrade CSA with the FERC. Transmission Provider will deliver a copy of such filing to Interconnection Customer.~~ 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 Interconnection 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 Interconnection Upgrade Customer's Merchant Network Upgrade owned by the Transmission Owner.

(c) Other Charges - Any other charges applicable to the Interconnection Upgrade Customer, as mutually agreed upon by the Interconnection 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

**~~TRANSMISSION OWNER INTERCONNECTION FACILITIES TO BE BUILT BY
NEW SERVICE CUSTOMER PURSUANT TO OPTION TO BUILD~~**

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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