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MONTICELLO – ST. CLOUD TRANSMISSION PROJECT PUBLIC SERVICE COMMISSION

PROJECT PARTICIPATION AGREEMENT

Dated as of August 18, 2010

79 PU-09-678 Filed 09/23/2010 Pages: 167
Project participation agreement Monticello - St. Cloud Transmission Project
Northern States Power Company

Execution Version

80 PU-09-676 Filed 09/23/2010 Pages: 167
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PROJECT PARTICIPATION AGREEMENT

THIS PROJECT PARTICIPATION AGREEMENT is entered into and effective at 12:01 a.m. Central Time as of August 18, 2010 (the “**Effective Time**”) by and among **Great River Energy**, a cooperative corporation incorporated under the laws of Minnesota, **ALLETE, Inc.**, d/b/a **Minnesota Power**, a Minnesota corporation, **Western Minnesota Municipal Power Agency**, a municipal corporation and political subdivision of the State of Minnesota, **Otter Tail Power Company**, a corporation organized and existing under the laws of the State of Minnesota, and **Northern States Power Company**, a Minnesota corporation.

RECITALS

A. The Owners have determined that the Project is necessary to: (i) enhance service reliability for electric customers in Minnesota and the surrounding region; (ii) strengthen the transmission network to meet additional demands for electric power; and (iii) enhance transmission system capacity to support the installation of renewable energy resources;

B. The Owners have further determined that because the project is regional in nature, it is most efficient and effective for the Owners to enter into this Agreement to provide for the construction and operation of the Project in a collaborative manner and set forth their rights, duties and obligations with respect to their ownership of the Project.

C. The Owners or their Affiliates have entered into the Project Development Agreement pursuant to which (i) they have directly and through the Development Manager previously undertaken Development Work; (ii) they have elected to participate in the Project; (iii) the Management Committee established under the Project Development Agreement has approved this Agreement; and (iv) the Project Development Agreement has terminated effective at the Effective Time (except for certain sections therein that will survive its termination);

D. Contemporaneously herewith, the Owners have entered into: (i) the Construction Management Agreement; (ii) the Transmission Capacity Exchange Agreement; (iii) the Operation and Maintenance Agreement; and (iv) such other agreements as the Owners have deemed necessary;

E. The Project is one of the CapX Projects; and

F. Each of the Owners has a Percentage Interest and Asset Ownership Percentage, all as more particularly described in this Agreement.

AGREEMENT

In consideration of the foregoing Recitals, the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Owner agrees as follows.

ARTICLE 1 DEFINITIONS, SCHEDULES AND EXHIBITS

1.1 Definitions. In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein, in **Schedule 1 - Generally Applicable Provisions**, in the exhibits attached hereto, or in notices given under this Agreement and initially capitalized, have the meanings specified below:

“Abandoning Owners” has the meaning given in **Section 8.4.1.1**.

“Acceptable Credit Bank” means a bank: (i) the long term senior debt obligations of which are rated “A-” or better by S&P or “A3” or better by Moody’s or whose obligations are guaranteed, insured, or otherwise credit enhanced by a bank or financial institution, the long term senior unsecured debt obligations of which are so rated and (ii) that has an office in the continental United States at which the Acceptable Letter of Credit may be drawn or the Escrow Funds may be accessed, as applicable.

“Acceptable Escrow Arrangement” means an escrow agreement among the transferring Owner, the other Owners and an Acceptable Credit Bank that: (i) establishes a separate and distinct account into which the transferring Owner deposits cash in an amount equal to one hundred and fifty percent (150%) of the Discretely Owned Substation Costs attributable to (a) the Discretely Owned Substation Assets that are not being transferred by the transferring Owner as part of the same Permitted Transfer of its Asset Ownership Percentage in the case of a Remaining AOP Without DOSA Transfer, or (b) the Discretely Owned Existing Substations that are being transferred by the transferring Owner in the case of a DOES Without AOP Transfer, in each case that are necessary to achieve Final Completion of the Facilities and the Discretely Owned Substation Assets based on the then-current Project Budget (such cash, together with any interest earned thereon, the **“Escrow Funds”**); (ii) has a stated expiration date of the then expected Final Completion Date, as such date may be extended upon written notice from an authorized representative of the non-transferring Owners stating that the Final Completion Date of the Facilities and the Discretely Owned Substation Assets has not yet occurred and setting forth the new expected Final Completion Date of the Facilities and the Discretely Owned Substation Assets; (iii) provides for the investment of the Escrow Funds in an interest bearing money market deposit account of the Acceptable Credit Bank payable in U.S. Dollars in immediately available funds; (iv) requires the transferring Owner (and not the other Owners) to pay any and all fees, costs or expenses due to the Acceptable Credit Bank and to provide any indemnification required by the Acceptable Credit Bank; (v) provides that the Escrow Funds will be disbursed (a) to the non-transferring Owners upon receipt of a written instruction letter signed by an authorized representative of the non-transferring Owners stating that the transferring Owner (in the case of a Remaining AOP Without DOSA Transfer) or the transferee (in the case of a DOES Without AOP Transfer) failed to pay, when due, any Discretely Owned Substation

Costs required to be paid by it under the DOSA Construction Agreements to which it is a party within fifteen (15) days after the date such payment was due or (b) otherwise only upon receipt of a written instruction letter signed by an authorized representative of the non-transferring Owners and the transferring Owner; and (vi) provides that, from time to time, upon receipt of a written instruction letter signed by an authorized representative of the transferring Owner and a written certificate from the Construction Manager (or if the Construction Manager is the same Person as the transferring Owner, the Independent Engineer) stating the remaining amount of Discretely Owned Substation Costs required to complete the applicable Discretely Owned Substation Assets, Escrow Funds in an amount equal to the difference between (a) the Escrow Funds and (b) one hundred and fifty percent (150%) of the amount set forth in such certificate, may be distributed to the transferring Owner.

“Acceptable Letter of Credit” means an irrevocable, unconditional standby letter of credit issued by an Acceptable Credit Bank to which the non-transferring Owners are the beneficiary: (i) having a stated expiration date of not less than three hundred sixty four (364) days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof; (ii) that automatically renews or permits the non-transferring Owners, on the signature of an authorized representative of the non-transferring Owners, to draw on sight all or any portion of the stated amount if not renewed on or prior to the thirtieth (30th) day prior to any expiration date of the letter of credit; (iii) that is payable in U.S. Dollars in immediately available funds; (iv) that is governed by the International Standby Practices, International Chamber of Commerce Publication No. 590 (ISP 98), and any amendments or revisions thereto, and, to the extent not governed thereby, the laws of the State of New York; (v) in an amount equal to one hundred and fifty percent (150%) of the Discretely Owned Substation Costs attributable to (a) the Discretely Owned Substation Assets that are not being transferred by the transferring Owner as part of the same Permitted Transfer of its Asset Ownership Percentage in the case of a Remaining AOP Without DOSA Transfer, or (b) the Discretely Owned Existing Substations that are being transferred by the transferring Owner in the case of a DOES Without AOP Transfer, in each case that are necessary to achieve Final Completion of the Facilities and the Discretely Owned Substation Assets based on the then-current Project Budget; (vi) that is drawable upon issuance of a drawing certificate signed by an authorized representative of the non-transferring Owners stating that the transferring Owner (in the case of a Remaining AOP Without DOSA Transfer) or the transferee (in the case or a DOES Without AOP Transfer) failed to pay, when due, any Discretely Owned Substation Costs required to be paid by it under the DOSA Construction Agreements to which it is a party within fifteen (15) days after the date such payment was due; and (vii) provides that, from time to time, upon receipt of a written instruction letter signed by an authorized representative of the transferring Owner and a written certificate from the Construction Manager (or if the Construction Manager is the same Person as the transferring Owner, the Independent Engineer) stating the remaining amount of Discretely Owned Substation Costs required to complete the applicable Discretely Owned Substation Assets, the amount of the letter of credit may be reduced to an amount equal to one hundred and fifty percent (150%) of the amount set forth in such certificate.

“Administrative Agent Agreement” has the meaning given in **Section 4.5**.

“Advance” has the meaning given in **Section 14.2.3**.

“**Advance Default**” has the meaning given in **Section 14.1.2**.

“**Advance Default Accrued Interest**” has the meaning given in **Section 14.3.2.3**.

“**Advance Default Late Fee**” has the meaning given in **Section 14.3.2.2**.

“**Advance Default OPCs**” has the meaning given in **Section 14.3.2.1**.

“**Advancing Owners**” has the meaning given in **Section 14.2.4.3**.

“**Affiliate**” means any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, an Owner. For purposes of this Agreement, Missouri Basin Municipal Power Agency, an intergovernmental entity organized under Chapter 28E of the Code of Iowa and existing under the intergovernmental corporation statutes of the States of Iowa, Minnesota, North Dakota and South Dakota, d/b/a Missouri River Energy Services, is deemed to be an “Affiliate” of Western Minnesota Municipal Power Agency.

“**Affiliate Contracts**” has the meaning given in **Section 4.3.1.2**.

“**Affiliated Owners**” has the meaning given in **Section 3.2.3.1**.

“**Agency Authority**” has the meaning given in **Section 2.3.2** of the **Construction Management Agreement**.

“**Agreement**” means this Project Participation Agreement, as it may be supplemented or amended.

“**Alternate**” has the meaning given in **Section 3.2.3.1.2**.

“**Applicable Energy Regulations**” means the rules, Orders, regulations, practices, procedures and protocols established in compliance with Applicable Law by applicable Transmission Providers (such as the Midwest Independent Transmission System Operator, Inc.), electric reliability organizations (such as the North American Electric Reliability Corporation and the Midwest Reliability Organization) and comparable Persons that are applicable to the Services, the Maintenance Services, the Control Center Services, the Construction Work, the USI Work, the Facilities or the Discretely Owned Substation Assets (or their operations) or the performance of the obligations of the parties hereunder.

“**Applicable Law**” means (i) any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, treaties, rules, codes, standards, Governmental Approvals, requirements and Orders that: (a) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Body having jurisdiction over a specified Person (or the Properties of such Person); and (b) are applicable to the Services, the Maintenance Services, the Control Center Services, the Facilities, the Discretely Owned Substation Assets, the Construction Work, the USI Work, other portions of the Project or the performance of the obligations of the

parties under this Agreement (each in its respective capacities); and (ii) Applicable Energy Regulations.

“**Applicable Segments**” means the Segment(s) for which a Maintenance Provider or a Control Center Authority is responsible under the **Operation and Maintenance Agreement**, as more particularly set forth in **Appendix A** thereto.

“**Appointing Owner**” means each Owner that has granted Agency Authority to the Construction Manager pursuant to **Section 2.3.1** of the **Construction Management Agreement**.

“**Arbitrator**” has the meaning given in **Section 18.2** of this Agreement or **Section 3.4.1** of **Schedule 1**, as applicable.

“**Asset Ownership Percentage**” has the meaning given in **Section 3.1.3.1.2**.

“**Asset Ownership Percentage Formula**” has the meaning given in **Section 3.1.3.2.2**.

“**Authorized Owner Representatives**” has the meaning given in **Section 3.2.3.1.2**.

“**Automatic Extension Period - BFTPT**” has the meaning given in **Section 10.4.1.9.1**.

“**Automatic Extension Period – No BFTPT**” has the meaning given in **Section 10.4.1.8.1**.

“**Automatic Freeze**” has the meaning given in **Section 14.2.5**.

“**Bona Fide Third Party Transaction**” has the meaning given in **Section 10.4.1.9**.

“**Books and Records**” has the meaning given in **Section 6.5**.

“**Budget Deadlock**” has the meaning given in **Section 6.2.3**.

“**Budgets**” means one or more of the Project Budget and Capital Budget, including the Initial Project Budget.

“**Business Day**” means any day other than a Saturday, Sunday or federal holiday.

“**Business Purpose Transaction**” has the meaning given in **Section 10.2.4**.

“**Call Option**” has the meaning given in **Section 14.2.7**.

“**Call Option Assignment Agreement**” means the Call Option Assignment, Assumption, Novation and Joinder Agreement substantially in the form attached hereto as **Exhibit M**.

“**Call Option Closing Date**” has the meaning given in **Section 14.2.7.4.1**.

“**Call Option Determination Date**” has the meaning given in **Section 14.2.7**.

“**Call Option Exercise Period**” has the meaning given in **Section 14.2.7**.

“**Call Option Notice**” has the meaning given in **Section 14.2.7.4.1**.

“**Call Option Transferees**” has the meaning given in **Section 14.2.7.4.1**.

“**Call Price**” has the meaning given in **Section 14.2.7.4.2(iii)**.

“**Call Price Default**” has the meaning given in **Section 14.1.3**.

“**Call Price Default Accrued Interest**” has the meaning given in **Section 14.4.2.3**.

“**Call Price Default Late Fee**” has the meaning given in **Section 14.4.2.2**.

“**Call Price Default OPCs**” has the meaning given in **Section 14.4.2.1**.

“**Capital Budget**” has the meaning given in **Section 6.2.1**.

“**Capital Expenses**” means expenses incurred in connection with Capital Improvements.

“**Capital Improvements**” means capital additions or modifications to the Facilities that are undertaken after the applicable Phase In-Service Date for such Facilities in accordance with the Capital Budget and at the direction of the Management Committee for the purpose of maintaining Facility Capacity or the reliability of the Facilities in accordance with CapX Design Criteria, as applicable, and Good Utility Practice. Capital Improvements exclude: (a) work undertaken pursuant to the Construction Management Agreement or the Construction Agreements in accordance with the Project Plan; and (b) Upgrades.

“**CapX 2020 Substation Design Criteria**” means the criteria established in: (i) Control and Protective Design Criteria for Substations, Revision 0, dated December 12, 2006; (ii) Physical Design Criteria for Substations, Revision 0, dated December 12, 2006; and (iii) Civil Performance Criteria for Substations, Revision 0, dated December 12, 2006; copies of which are set forth in **Appendix C-1** of the **Construction Management Agreement**, as such criteria are amended by the Management Committee.

“**CapX 2020 Transmission Capacity Expansion Initiative**” means the cooperative efforts of the Owners and other Persons to engage in electric transmission projects designed to reliably serve load and meet the projected growth of electricity requirements in the Transmission Grid in Minnesota and the immediately surrounding region, which efforts are anticipated to include, in the aggregate over a long-term period, the study, planning, coordination, development, construction and ownership of electric transmission facilities.

“**CapX 2020 Transmission Line Design Criteria Guidelines**” means the requirements established in the CapX 2020 Transmission Line Design Criteria Guidelines, Revision 3, dated April 19, 2010, a copy of which is set forth in **Appendix C-2** of the **Construction Management Agreement**, as such requirements are amended by the Management Committee.

“**CapX 2020 Trust**” means that certain Delaware statutory trust, dated August 30, 2007, named the “CapX 2020 Transmission Capacity Expansion Initiative Trust” that holds by assignment the Intellectual Property and Proprietary Rights (as defined in the CapX 2020 Trust)

created under and pursuant to the CapX 2020 Transmission Capacity Expansion Initiative Participation Agreement dated as of January 1, 2007, as amended.

“CapX 2020 Trust License” means that certain Master CapX 2020 Intellectual Property License Agreement of the CapX 2020 Trust, to be entered into after the Effective Time, pursuant to which the Owners will be granted a limited, non-exclusive, non-transferable, royalty free, perpetual right and license to use such intellectual property and proprietary rights solely for permitted purposes in connection with, and for the benefit of, the CapX 2020 Transmission Capacity Expansion Initiative and the CapX Projects, including the Project.

“CapX Design Criteria” means: (i) CapX 2020 Substation Design Criteria and (ii) CapX 2020 Transmission Line Design Criteria Guidelines.

“CapX Project” means any of the several transmission projects arising from the CapX 2020 Transmission Capacity Expansion Initiative planning process, including the Project.

“Casualty” means damage or destruction to Property.

“CEII” has the meaning given in **Section 17.5**.

“Chair” means the Owner Representative who is acting as the chair of the Management Committee, which Owner Representative may change from time to time in accordance with **Section 3.2.3.5**.

“Change in Law” means any change in, or enactment of, any Applicable Law or official published policy regarding the interpretation or enforcement of any Applicable Law by a Governmental Body that takes place after the Effective Time and affects or relates to the performance of the obligations of the Owners (individually or collectively) under this Agreement, including the imposition of any new Governmental Approval requirements; **provided, however**, a change in Applicable Law affecting only a tax payable or any other cost of performance hereunder will not constitute a Change in Law.

“Change of Control” means for any Person, (i) a change in any Person or Persons that directly or indirectly possess the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, or (ii) the creation of a Person or Persons that directly or indirectly possess the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, in each case where no such Person or Persons existed before, or (iii) if such Person is a cooperative or a joint action agency, the merger or consolidation of such Person with or into another Person in accordance with Applicable Law.

“CM Costs” means, except as otherwise provided in the Construction Management Agreement, the cost of the Construction Work (including the Project’s allocable share of Joint

Project Activities as determined by the Management Committee) and all costs incurred in the performance of the Services specifically including, without duplication, the following:

(i) amounts incurred by the Construction Manager in connection with the performance of the Services, as determined in accordance with **Appendix D** to the **Construction Management Agreement**;

(ii) amounts due to Contractors (including Subcontractors), CM Subcontractors, consultants, legal counsel and other Persons performing portions of the Services or Construction Work in connection and in accordance with the Construction Management Agreement or the Project Construction Contracts, as applicable, and approved by the Construction Manager;

(iii) costs related to the acquisition of Procured Materials;

(iv) costs related to the acquisition of Project Real Property;

(v) costs of insurance procured in accordance with **Appendix I** to the **Construction Management Agreement**, as it may be amended by the Management Committee, except as otherwise therein provided;

(vi) costs of the Construction Manager attributable to the Services or Construction Work and relating to discharging and paying any liability, loss, damage, or expense, including attorneys' fees and other costs of defending, settling or otherwise administering Third Party CMA Claims or Third Party Environmental Claims, except to the extent the Construction Manager is obligated to indemnify the Owners pursuant to **Section 13.1.2** of the **Construction Management Agreement**;

(vii) Sales Taxes and other Taxes arising from and payable to any Governmental Body, payments in lieu of taxes, and fees related to Governmental Approvals arising out of the performance of the Services or Construction Work under the Construction Management Agreement, the Construction Agreements, Real Property Agreements or otherwise attributable to the performance of the Services or Construction Work, excluding income, gross receipts, franchise or taxes similarly imposed or assessed on the results of operations of the Construction Manager, any Owner, Discretely Owned Substation Owner, Contractor, CM Subcontractor or any Subcontractor;

(viii) any other costs incurred by the Construction Manager in connection with the performance of the Services, including (net of any reductions or adjustments received with respect thereto) rental charges, royalties and fees, field office costs, travel and relocation costs, professional services fees and costs incurred in connection with, or arising out of, performance bonds, security, utilities, safety, transport, storage and telecommunications;

(ix) costs that are (a) stated to be CM Costs pursuant to the Construction Management Agreement or (b) determined by the Management Committee to be CM Costs;

(x) costs of insurance deductibles and self-insured retentions as provided in **Appendix I**, as it may be amended by the Management Committee;

(xi) costs incurred in connection with the termination of the Construction Management Agreement as described in **Section 15.2.3.4** thereof;

(xii) Discretely Owned Substation Costs; **provided, however**, the costs so incurred by a Discretely Owned Substation Owner will not be reimbursed to such Discretely Owned Substation Owner because such Discretely Owned Substation Owner will receive a credit therefor pursuant to **Sections 3.1.3.1.1** and **3.1.3.2.1**; and

(xiii) costs expended prior to the Effective Time (a) under Development Period Contracts directly related to the engineering, procurement or construction of the Facilities or the Discretely Owned Substation Assets; (b) in connection with the acquisition of Project Real Property, in each case as specifically determined by the Management Committee to be a CM Cost; or (c) that are ROW Authorized Costs (as defined in the Project Development Agreement).

“CM Subcontract” means each contract, agreement or arrangement with the Construction Manager or a CM Subcontractor on the one hand, and any CM Subcontractor on the other hand, establishing the terms of performance of any part of the Services.

“CM Subcontractor” means each and every supplier, subcontractor, vendor, consultant or contractor of any tier performing any part of the Services, directly or indirectly, for the Construction Manager. Reference to an Owner as a “CM Subcontractor” excludes any reference to such Owner in any other capacity.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral Assignment” has the meaning given in **Section 10.2.2**.

“Commission” (or any derivation thereof) means the process of verifying the safety, reliability and performance (including testing) of the Facilities and the Discretely Owned Substation Assets in accordance with the applicable Construction Agreements and Good Utility Practice.

“Complete Taking” has the meaning given in **Section 9.1**.

“Condemnation Action” means a taking by any Governmental Body (or other Person with power of eminent domain) by exercise of any right of eminent domain or by appropriation and an acquisition by any Governmental Body (or other Person with power of eminent domain) through a negotiated purchase in lieu thereof.

“Condemnation Awards” has the meaning given in **Section 9.5**.

“Confidential Information” has the meaning given in **Section 17.1**.

“Consequential Damages” has the meaning given in **Section 15.5.2.1**.

“Construction Agreements” means all contracts, agreements or arrangements establishing the terms of performance of any part of the Construction Work, including Project

Construction Contracts, Subcontracts and Development Period Contracts, but specifically excluding the Construction Management Agreement and the Real Property Agreements.

“Construction Management Agreement” means that certain Construction Management Agreement, by and among the Owners and the Construction Manager, effective as of the Effective Time.

“Construction Management Services” means the services furnished by the Construction Manager to the Owners, at no charge in excess of its actual cost as provided in **Section 5.4** of the **Construction Management Agreement**, to coordinate, manage, administer, oversee and enforce the performance of Construction Work through Final Completion of all of the Facilities, Discretely Owned Substation Assets, the USI Work, and to perform its obligations under the Administrative Agent Agreement.

“Construction Manager” means Northern States Power Company, a Minnesota corporation, in its capacity as Construction Manager under the Construction Management Agreement. Reference to the Construction Manager excludes any reference to the Construction Manager in any other capacity.

“Construction Period Payment Default” has the meaning given in **Section 14.1.1.1**.

“Construction Period Voting Percentage” means the Post Cost Offering CP Voting Percentage or the Post Freeze CP Voting Percentage, as applicable.

“Construction Work” means all activities that are necessary, desirable or incidental to placing all of the Facilities and the Discretely Owned Substation Assets in service, and achieving Final Completion of all of the Facilities and the Discretely Owned Substation Assets in accordance with Good Utility Practice and the Project Plan, other than: (i) the Services and (ii) the obligations of the Owners (individually or collectively through the Management Committee) under the Construction Management Agreement.

“Construction Work Schedule” has the meaning given in **Section 3.2.2.2(xv)**.

“Consumables” means items such as compressed chemicals, oils, lubricants, cleaning supplies, gaskets, valve packing, light bulbs, and comparable items which, by normal industry practices, are considered consumables and are replaced on a regular basis, required for cleaning or preparing the Facilities or the Discretely Owned Substation Assets to be placed in service.

“Contractor” means any Person with whom some or all of the Owners enter into a Project Construction Contract. Reference to an Owner as a “Contractor” excludes any reference to such Owner in any other capacity.

“Contractor Procured Materials” means all Equipment and Materials that are not designated as Owner Procured Materials.

“Control Center Authority” means a Person designated as a “Control Center Authority” in the Operation and Maintenance Agreement. Reference to a Control Center Authority excludes any reference to a Control Center Authority in any other capacity.

“**Control Center Costs**” means the actual unreimbursed costs expended by a Control Center Authority to perform the Control Center Services allocable to the Applicable Segments, determined and calculated in a manner agreed to by the parties to the Operation and Maintenance Agreement that fairly allocates to the Owners the actual cost of the percentage effort expended by the Control Center Authority to perform the unreimbursed Control Center Services as compared with the actual cost of the entire Control Center Authority effort to perform similar services without regard to the Persons for whom such services are performed.

“**Control Center Services**” means the services to be provided by a Control Center Authority as set forth in **Article 4** of the **Operation and Maintenance Agreement** and the other provisions thereof as applicable to Control Center Authorities with respect to the Applicable Segments set forth in **Appendix A** of the **Operation and Maintenance Agreement**.

“**Cost Offering**” has the meaning given in **Section 13.3**.

“**Cost Offering Effective Date**” has the meaning given in **Section 13.4.3(i)**.

“**Cost Offering Final Round Subscription Date**” has the meaning given in **Section 13.5.2**.

“**Cost Offering Initial Round Subscription Date**” has the meaning given in **Section 13.4.1**.

“**Cost Offering Remaining Amount**” has the meaning given in **Section 13.5.2**.

“**Covenant Default**” has the meaning given in **Section 15.1.3**.

“**CP Insolvency Default**” has the meaning given in **Section 14.1.4**.

“**CPP Default Accrued Interest**” has the meaning given in **Section 14.2.4.5**.

“**CPP Default Cure Period**” has the meaning given in **Section 14.2.4.1**.

“**CPP Default Late Fee**” has the meaning given in **Section 14.2.4.4**.

“**CPP Default OPCs**” has the meaning given in **Section 14.2.4.3**.

“**Credited USIs**” has the meaning given in the definition of Underlying System Improvements.

“**Creditworthiness Loss Advance Default**” has the meaning given in **Section 12.2.9**.

“**Creditworthiness Loss Triggered Advance**” has the meaning given in **Section 12.2.9**.

“**Creditworthy**” means, as of the date of a proposed Transfer, a credit rating (determined without regard to any Third Party credit enhancement) obtained during the twelve (12) Month period immediately preceding such date, of at or above the Minimum Rating. For purposes of this definition, “**Minimum Rating**” means at least two of S&P BBB-, Moody’s Baa3, Fitch BBB-, or the equivalent for another nationally recognized rating agency of similar standing to

S&P, Moody's and Fitch (provided that at least one of such ratings must be from S&P or Moody's) on: (i) the long term unsecured obligations of a transferee or its guarantor; (ii) in the absence of a rating under **clause (i)**, the most recent long-term fixed rate Debt instrument issued by or on behalf of a tax-exempt transferee or its guarantor during the twelve (12) Month period preceding the date of a proposed Transfer payable from the same source of payment from which such transferee's obligations under the Project Agreements are to be paid; or (iii) in the absence of a rating under **clause (i) or (ii)**, the most recent long-term fixed rate Debt instrument issued by or on behalf of a tax-exempt transferee or its guarantor during the twelve (12) Month period preceding the date of a proposed Transfer. A rating of BBB- (S&P or Fitch) or Baa3 (Moody's), or equivalent for another agency, where the rating agency has publicly announced that such rating is currently on review for a possible downgrade, cannot be used to qualify as Creditworthy.

"Damages" means any loss, charge, deficiency, tax, fine, interest, assessment, judgment, award, demand, liability, penalty or costs and expenses, including amounts paid in settlement, reasonable attorneys and other professional fees and reasonable costs of investigation.

"Debt" means for any Person, without duplication:

- (i) indebtedness of such Person for borrowed money;
- (ii) obligations of such Person evidenced by bonds, debentures, notes, mortgages or other similar instruments;
- (iii) obligations of such Person to pay (a) amounts due under financing leases, (b) the deferred purchase price of Property or services (other than accounts payable in the ordinary course of business), or (c) amounts due under capitalized or operating leases;
- (iv) obligations of such Person under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) of such Person to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of another Person;
- (v) obligations of such Person under interest rate or currency protection agreements or other hedging instruments;
- (vi) obligations of such Person to purchase securities (or other Property) that arise out of, or in connection with, the sale of the same or substantially similar securities (or Property); or
- (vii) deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument.

"Default" has the meaning given in **Section 15.1.4**.

"Defaulting CPP Owner" has the meaning given in **Section 14.2.2**.

“**Defaulting Owner**” has the meaning given in **Section 15.1.5**.

“**Defaulting Owner Advance Amounts**” has the meaning given in **Section 14.2.4.6.2**.

“**Defaulting Owner Initial Advance Amount**” has the meaning given in **Section 14.2.4.6.1**.

“**Defaulting Owner Supplemental Advance Amount**” has the meaning given in **Section 14.2.4.6.2**.

“**Deficiency Amount**” has the meaning given in **Section 14.2.3**.

“**Development Manager**” means the Owner that, at the Effective Time, was designated as such under the Project Development Agreement.

“**Development Period Assets**” has the meaning given in **Section 3.1.2**.

“**Development Period Contracts**” has the meaning given in **Section 3.1.2**.

“**Development Work**” means the matters, actions and activities undertaken by the parties to the Project Development Agreement in furtherance of the development of the Project.

“**Disclosing Party**” has the meaning given in **Section 17.3**.

“**Discretely Owned Existing Substation**” has the meaning given in the definition of Discretely Owned Substation Assets.

“**Discretely Owned New Substation**” has the meaning given in the definition of Discretely Owned Substation Assets.

“**Discretely Owned Substation Assets**” means: (i) a new substation to be constructed in accordance with the Project Plan (a “**Discretely Owned New Substation**”); (ii) improvements to be constructed in accordance with the Project Plan to an existing substation (a “**Discretely Owned Existing Substation**”); (iii) the Credited USIs; and (iv) all Property interests that arise from the work performed under any DOSA Construction Agreement and all Real Property Agreements providing for the acquisition of real property interests for Discretely Owned New Substations, in all cases, the Discretely Owned Substation Costs of which will be paid or credited as provided herein, but title to which will vest in one or more but less than all of the Owners. Discretely Owned Substation Assets will not constitute part of the Facilities.

“**Discretely Owned Substation Costs**” means the sum of: (i) the costs incurred by a Discretely Owned Substation Owner and approved by the Construction Manager or the Independent Engineer as provided in **Section 2.5** of the **Construction Management Agreement**, under a Project Construction Contract for the engineering, procurement, construction or commissioning of a Discretely Owned Substation Asset (a “**DOSA Construction Agreement**”); and (ii) the costs paid by a Discretely Owned Substation Owner at the direction of the Construction Manager for Project Real Property and associated costs necessary for a Discretely Owned New Substation.

“Discretely Owned Substation Owner” means an Owner that owns a Discretely Owned Substation Asset.

“Discretionary Upgrade” means an Upgrade undertaken by one or more of the Owners without investment by a Third Party. Improvements resulting from Maintenance Services or Capital Improvements are not Discretionary Upgrades.

“Disproportionate Adverse Effect” has the meaning given in Sections 4.1.2.4 and 4.2.2.4, as applicable.

“Dispute” has the meaning given in Section 3.1 of Schedule 1.

“Disqualified Affiliate Matters” has the meaning given in Section 4.3.2.

“Distributable Cash” has the meaning given in Section 19.3.1.2.

“DOES Without AOP Transfer” has the meaning given in Section 10.3.2.

“DO’s Future Payment Obligations” has the meaning given in Section 14.2.5.2.

“DOSA Assignment and Assumption Agreement” has the meaning given in Section 10.3.2.1.

“DOSA Completion Security” has the meaning given in Section 10.2.11.

“DOSA Construction Agreement” has the meaning given in the definition of Discretely Owned Substation Costs.

“E&O Committee” has the meaning given in Section 3.2.3.8.3.

“Effective Time” has the meaning given in the first paragraph of this Agreement.

“Electric Line Easement” has the meaning give in Section 3.2.2.2(xii).

“Eligible Owners” has the meaning given in Section 14.2.7.1.1.

“Emergency” means any circumstance or condition that will or could imminently be expected to materially harm the safe and reliable operation of all or a portion of the Facilities, the Discretely Owned Substation Assets, or the Transmission Grid or otherwise endanger public safety, Property or the environment.

“Equipment” means any product that: (i) is to be incorporated into the Facilities or Discretely Owned Substation Assets; (ii) is an assembly of operational or non-operational parts, whether motorized or manually operated; and (iii) requires service connections such as wiring.

“Escrow Agreement” has the meaning given in Section 14.2.7.5(iii).

“Escrow Funds” has the meaning given in the definition of Acceptable Escrow Arrangement.

“Excluded Matter” means Percentage Calculation Disputes, Project Continuation LD Amount Calculation Disputes and Project Termination LD Amount Calculation Disputes.

“Facilities” means: (i) as more particularly identified in **Appendix A** to the **Construction Management Agreement**, as it may be updated with respect to each Phase upon its Phase In-Service Date, all of the Equipment and Materials, installations and facilities, including associated site improvements, appurtenances and structures procured, installed or constructed as part of the Project that are located on Project Real Property (other than real property owned separately by the Discretely Owned Substation Owners or the easements granted to the other Owners by the Discretely Owned Substation Owners pursuant to the Transmission Easement Agreement); (ii) Capital Improvements, Upgrades in which all of the Owners have Asset Ownership Percentages, Discretionary Upgrades if the Management Committee has decided pursuant to **Section 4.4.2(iii)** that such Discretionary Upgrade will become part of the Facilities; and (iii) all Property interests that arise in connection with the Project from any Project Agreement or related to any of the foregoing. The Facilities do not include Underlying System Improvements, Discretely Owned Substation Assets, Non-Project Upgrades, and Discretionary Upgrades except as otherwise provided in the immediately preceding sentence.

“Facility Capacity” means the then current maximum power that can be transmitted over the Facilities and the Discretely Owned Substation Assets, as built, without consideration of constraints imposed by the balance of the Transmission Grid.

“Fair Market Value” means the value that would be obtained for the Asset Ownership Percentage of an Owner in an arms-length transaction between an informed and willing buyer and an informed and willing seller, taking into account the then applicable facts and circumstances.

“FERC” means the Federal Energy Regulatory Commission, a regulatory Governmental Body of the United States, or any successor thereto.

“FERC Standards of Conduct” has the meaning given in **Section 17.4**.

“Final Completion” with respect to the Facilities and the Discretely Owned Substation Assets (or applicable Phase) means the determination by the Management Committee that “Final Completion” thereof has been achieved in accordance with **Section 11.4** of the **Construction Management Agreement**.

“Final Completion Date” means the date determined in accordance with **Section 11.4** of the **Construction Management Agreement** as the date on which Final Completion of all of the Facilities and the Discretely Owned Substation Assets (or applicable Phase) occurs.

“Final Maximum Default Interest Percentage” has the meaning given in **Section 14.2.7.1.4**.

“Final Offered Terms” has the meaning given in **Section 10.4.1.4**.

“Final Order” means an Order as to which: (i) no request for stay is pending before the issuing Governmental Body, no such stay is in effect, and, if any deadline for filing any such

request is designated by Applicable Law, such deadline has passed; (ii) no petition for rehearing or reconsideration of such action is pending before the issuing Governmental Body, and if any deadline for filing any such petition is designated by Applicable Law, such deadline has passed; (iii) the issuing Governmental Body does not have the action under reconsideration on its own motion; and (iv) no appeal to a court, or request for stay by a court, of the issuing Governmental Body's action is pending or in effect, and, if any deadline for filing any such appeal or request is designated by Applicable Law, such deadline has passed.

"Final Round Call Option Notice" has the meaning given in **Section 14.2.7.3.2**.

"Final Round Call Option Period" has the meaning given in **Section 14.2.7.3.2**.

"Final Round Notice" has the meaning given in **Section 14.2.7.3.1**.

"Final Round Offerees" has the meaning given in **Section 14.2.7.3.1**.

"Financing" means (i) Debt on terms acceptable to an Owner, the proceeds of which are intended to be used, in whole or in part, to finance the costs of construction of the Facilities (including Capital Improvements and Upgrades that become part of the Facilities) or the Discretely Owned Substation Assets, (ii) Debt as to which the Liens (including Permitted Owner Liens) of one or more Financing Parties have previously been perfected and which Liens will attach to or encumber that Owner's Asset Ownership Percentage, (iii) Debt heretofore or hereafter secured under a mortgage, deed of trust or security agreement or instrument which grants a lien on substantially all of the tangible property of any Owner, or (iv) any refinancing, renewal, or continuation, in whole or in part, of any of the foregoing.

"Financing Instrument" means a mortgage, deed of trust or security agreement or instrument, and any amendment or supplement thereto entered into at any time, pursuant to which a Lien of one or more Financing Parties has been granted prior to, at or after the Effective Time, and will attach to, cover and encumber an Owner's Asset Ownership Percentage or any other interest of such Owner in the Project to secure Debt of such Owner. Financing Instrument includes a Pre-Existing Facilities Mortgage.

"Financing Parties" means any and all lenders, bondholders, underwriters and financing institutions, including credit enhancers and institutional investors, providing or facilitating a Financing and any trustee(s) or agent(s) acting on any of their behalf, and any successors, assigns or other transferees of any of the foregoing.

"First Phase In-Service Date" means the Phase In-Service Date for the first Phase.

"First Round Call Option Notice" has the meaning given in **Section 14.2.7.1.1**.

"First Round Call Option Period" has the meaning given in **Section 14.2.7.1.1**.

"Fiscal Year" means the period of January 1 through December 31, unless otherwise determined by a Level B Vote of the Management Committee.

"Fitch" means Fitch, Inc., Fitch Ratings Ltd. and their subsidiaries.

“Force Majeure” means the occurrence of an event or series of events that is beyond the reasonable control of the Person affected that hinders the performance under contract of such Person and does not result from the fault, negligence, intentional misconduct or willful misconduct of the affected Person or such Person’s failure to comply with Applicable Law or Good Utility Practice; and such event or series of events could not have been avoided by the affected Person through the exercise of reasonable diligence, including the expenditure of reasonable monies and/or taking reasonable precautionary measures, including (to the extent that such events satisfy the foregoing criteria), the following:

- (i) acts of God or the public enemy;
- (ii) war, terrorism, rebellion, sabotage, civil unrest or riot;
- (iii) fires, explosions, hurricanes, floods, tornadoes, microbursts, other abnormally severe weather events or other natural catastrophes;
- (iv) actions or inaction of a Governmental Body affecting performance required in connection with the obligations of the parties under this Agreement;
- (v) a Change in Law; and
- (vi) strikes and other labor disturbances.

Under no circumstance will an event of Force Majeure excuse a Person’s obligations to make payments when due under this Agreement, unless such Force Majeure event results in a failure of the Federal Reserve wire system or other failure of the banking system that deprives a Person of access to otherwise available funds.

“Formulas” mean the Percentage Interest Formula and the Asset Ownership Percentage Formula.

“Freeze” has the meaning given in **Section 14.2.5**.

“General Insolvency Default” has the meaning given in **Section 15.1.2**.

“Good Utility Practice” means any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry in the region 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 in a manner that: (i) is consistent with Applicable Law; (ii) makes due consideration for reliability, safety and protection of Equipment and Materials and the Facilities and the Discretely Owned Substation Assets; and (iii) is consistent with manufacturer’s recommendations and warranties. 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 a range of acceptable practices, methods or acts generally accepted in the region.

“Governmental Approval(s)” means all waivers, franchises, variances, permits, authorizations, certificates, licenses and Orders of or from any Governmental Body having jurisdiction over any Owner, the Construction Manager, CM Subcontractor, Contractor, Subcontractor, Maintenance Provider, Control Center Authority, the Services, the Maintenance Services, the Control Center Services, the Construction Work or any portion of the Facilities or Discretely Owned Substation Assets, as may be in effect from time to time.

“Governmental Body” means any: (i) nation, state, county, city, town, village, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; or (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, board, commission, department, instrumentality, office or other entity, and any court), in any such case exercising, or entitled to exercise, administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature over this Agreement, any part of the Project, the performance of the Services, the Construction Work, the USI Work, the Project Real Property, the Construction Manager, or any of the Owners. For purposes of this definition, a Person that establishes Applicable Energy Regulations will be deemed to be a Governmental Body; **provided, however**, an Owner will never be deemed to be a Governmental Body except when an Owner is a Transmission Provider establishing Applicable Energy Regulations in its capacity as a Person entitled to exercise functional control over a portion of the Transmission Grid in accordance with Applicable Law established by other Governmental Bodies that have jurisdiction over such Owner.

“Hazardous Substance” means petroleum hydrocarbons, including crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane and all other substances which now are or in the future may be defined by Applicable Law as “hazardous substances,” “hazardous wastes,” “extremely hazardous wastes,” “toxic substances,” “infectious wastes,” “biohazardous wastes,” “medical wastes,” “radioactive wastes” or which are otherwise listed, defined or regulated in any manner pursuant to any Applicable Law that pertains to the protection of human health and safety or the environment.

“Incremental Cost Offering CP Percentage” has the meaning given in **Section 13.4.3(ii) or 13.5.3(v)**, as applicable.

“Incremental Freeze CP Percentage” has the meaning given in **Section 14.2.5.5(i)**.

“Incremental Percentage” means the Incremental Cost Offering CP Percentage or Incremental Freeze CP Percentage, as applicable.

“Indemnified Persons” has the meaning given in **Section 16.1.1**.

“Indemnifying Owner” has the meaning given in **Section 16.1.1**.

“Independent Engineer” means a Person designated by the Management Committee to provide independent consulting services, including the services described in **Section 2.5** of the **Construction Management Agreement**.

“Individually Enforceable Obligations” has the meaning given in **Section 15.1.3.2**.

“**Inflation Factor**” means the percentage obtained by determining the change in the unadjusted, non-seasonal Consumer Price Index/All Urban Consumers (1982-84=100), published in the National Income and Product Account by the U. S. Department of Commerce, Bureau of Labor Statistics during the period in question. To the extent available on a timely basis, the percentage change will be calculated using the final adjusted value for the applicable date of determination. If such final adjusted value is unavailable on a timely basis, then the preliminary value for the date of determination will be used and subsequently adjusted when the final adjusted value for such date is published. If such final adjusted value is subsequently determined to be incorrect, then it will be adjusted when the corrected final adjusted value for such date is published.

“**Initial Project Budget**” has the meaning given in **Section 6.1.1**.

“**Insurance Plan**” means the plan for Project insurance set forth in **Exhibit F**, as it may be changed by the Management Committee from time to time.

“**Insurance Proceeds**” has the meaning given in **Section 8.3**.

“**Interconnection Agreement**” means an agreement providing for the terms and conditions pursuant to which the Facilities or any portion thereof, are interconnected with the Transmission Grid.

“**Interconnection Coordinator**” has the meaning given in **Section 4.4.1(iii)**.

“**Joint Project Activities**” means certain joint activities related to the Project and other CapX Projects, including the development of technical criteria, a Governmental Approval application process, the drafting and negotiation of CapX Project template agreements (including templates for this Agreement and certain of the other Project Agreements), procurement planning and bidding, and general CapX Project planning, coordination and execution activities undertaken after the Effective Time by the Owners, as participants in the CapX 2020 Transmission Capacity Expansion Initiative, and similar activities that the Owners may desire, from time to time, to engage in on a joint and cooperative basis, the scope of which may be adjusted by the Management Committee, after consultation with the Construction Manager.

“**Late Payment Rate**” means the lesser of: (i) the Prime Rate plus two percent (2%) per annum or (ii) the highest per annum interest rate allowed by Applicable Law.

“**Level A Vote**” has the meaning given in **Section 3.2.4.1.2**.

“**Level B Vote**” has the meaning given in **Section 3.2.4.1.3**.

“**Level C Vote**” has the meaning given in **Section 3.2.4.1.4**.

“**Lien**” means any lien (including mechanic’s liens, materialmen’s liens and supplier’s liens), security interest, option, easement, restriction on transferability, defect of title or other claim, demand, charge or encumbrance of any nature whatsoever, including any restriction on the use, voting, Transfer, receipt of income or other exercise of any attributes of ownership.

“Lien Waiver” means a waiver of Liens substantially in the applicable form as set forth in **Appendix F-1** to the **Construction Management Agreement**.

“Main Trust Account” means an account established by the Owners pursuant to the Trust Agreement for the purpose of receiving funds for the payment or reimbursement of Project Costs.

“Maintenance Costs” means the costs incurred by a Maintenance Provider in the performance of the Maintenance Services.

“Maintenance Provider” means, with respect to a Phase (or portion thereof), the Person designated as the “Maintenance Provider” for such Phase (or portion thereof) in the Operation and Maintenance Agreement. Reference to a Maintenance Provider excludes any reference to a Maintenance Provider in any other capacity.

“Maintenance Services” means the services set forth in **Article 3** of the **Operation and Maintenance Agreement** and the other provisions thereof as applicable to a Maintenance Provider with respect to the Applicable Segments set forth in **Appendix A** of the **Operation and Maintenance Agreement**.

“Majority” means with respect to any action of the Management Committee, a vote (including proxies) of the Authorized Owner Representatives of the Owners that are entitled to vote and, with respect to any action of the Owners, a vote (including proxies) of the Owners that are entitled to vote, in each case representing more than fifty percent (50%) of the (i) Percentage Interests, or (ii) the Construction Period Voting Percentages from and after the Cost Offering Initial Round Subscription Date or the Cost Offering Final Round Subscription Date, as applicable, and the date of a Freeze until the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets.

“Management Committee” means the Management Committee established pursuant to this Agreement.

“Management Committee Powers” has the meaning given in **Section 3.2.2.2**.

“Materials” means any products, supplies or materials that are to be incorporated into the Facilities or Discretely Owned Substation Assets, whether or not substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated or processed. The term “Materials” is intended to include any item that is to be incorporated into the Facilities or Discretely Owned Substation Assets and which is not an item of Equipment or a Consumable.

“Maximum CM Cost Amount” means Ninety Four Million Five Hundred Ninety Seven Thousand Eight Hundred Dollars (\$94,597,800).

“Maximum Cost Offering Amount” has the meaning given in **Section 13.4.1**.

“Maximum Cost Offering Remaining Amount” has the meaning given in **Section 13.5.2**.

“Maximum Default Interest Percentage” has the meaning given in **Section 14.2.7.1.2.**

“Maximum Remaining Default Interest Percentage” has the meaning given in **Section 14.2.7.3.2.**

“Maximum Unelected Default Interest Percentage” has the meaning given in **Section 14.2.7.2.2.**

“Minimum Rating” has the meaning given in the definition of Creditworthy.

“Month” means a calendar month.

“Moody’s” means Moody’s Investors Service, Inc.

“New Maximum CM Cost Amount” has the meaning given in **Section 13.4.3(i).**

“Ninety Percent Completed Phase” has the meaning given in **Section 14.2.5.3.**

“Ninety Percent Completed Project” has the meaning given in **Section 14.2.5.2.**

“Non-Credited USIs” has the meaning given in the definition of Underlying System Improvements.

“Non-Defaulting CPP Owner” has the meaning given in **Section 14.2.3.**

“Non-Defaulting Owner” has the meaning given in **Section 15.1.6.**

“Non-Exclusive Defaults” has the meaning given in **Section 15.5.1.**

“Non-Performing Owner” has the meaning given in **Section 15.1.3.1(i).**

“Non-Prevailing Party” has the meaning given in **Section 18.5.**

“Non-Project Upgrade” means an Upgrade undertaken by some, but not all, of the Owners with the investment of a Third Party. Improvements resulting from Maintenance Services or Capital Improvements are not Non-Project Upgrades. A Non-Project Upgrade will not constitute part of the Facilities.

“Non-Pro Rata Upgrade” has the meaning given in **Section 4.4.1(ix)(a)(ii).**

“Objecting Owner(s)” has the meaning given in **Sections 3.1.3.3.3, 4.1.2.4 and 4.2.2.4,** as applicable.

“Objection Notice” has the meaning given in **Sections 3.1.3.3.3, 14.2.6.2.2 and 14.2.8.2.2,** as applicable.

“Offered Percentage” has the meaning given in **Section 10.4.**

“Offered Terms” has the meaning given in **Section 10.4.**

“Offering Owner” has the meaning given in **Section 10.4**.

“Operating Expenses” means all expenses of the Project, without duplication, including: all amounts payable under Project Agreements (other than the Construction Management Agreement), expenses of obtaining and maintaining Governmental Approvals, expenses of performance of obligations under the Project Agreements (other than the Construction Management Agreement); Capital Expenses; Maintenance Costs; the Project Real Property and other Project assets; insurance premiums, deductibles, and self-insured retentions as provided in **Exhibit F**; Taxes; utilities; licenses; impositions; general, administrative and management expenses; consulting and professional fees; and all other fees, costs and expenses, in each case necessary for the operation and maintenance of the Project and the conduct of the business of the Owners as tenants-in-common. The following do not constitute Operating Expenses: (i) expenses of any Financing sought or obtained by an Owner; (ii) amounts paid by any Owner to a Transmission Grid operator or a regional transmission organization; (iii) expenses of any Owner that are not related to the Project; (iv) expenses of any Owner that are related to the Project but are not due and owing to such Owner pursuant to a written contract among the Owner in its capacity as a provider of goods or services to some or all of the Owners and such Owners in their capacity as Owners; (v) expenses of any Owner that are related to the Project but have not been approved by the Management Committee; (vi) expenses for which an individual Owner, the Construction Manager, a Discretely Owned Substation Owner, a Maintenance Provider or a Control Center Authority is solely responsible under a Project Agreement (other than in respect of its Asset Ownership Percentage); (vii) expenses incurred by a Discretely Owned Substation Owner (a) to comply with its obligations in **Section 3.1.6**, or (b) in connection with improvements to any Discretely Owned Substation Asset, except as otherwise set forth in any applicable Interconnection Agreement; or (viii) CM Costs.

“Operating Standard” means the requirements, as applicable, for the operation and management of the Facilities, in all material respects, in accordance with:

- (i) (a) requirements of Governmental Approvals and Applicable Law; (b) Good Utility Practice; (c) additional requirements adopted by the Management Committee; and (d) the requirements of applicable insurance policies then in effect; and
- (ii) the warranties, operating manuals and procedures for the Facilities and applicable portions thereof.

“Operating Year” means the twelve (12) Month calendar year; **provided, however**, the first Operating Year will begin on the First Phase In-Service Date of the Project and end on December 31 of that year.

“Operation and Maintenance Agreement” means that certain Operation and Maintenance Agreement, by and among the Owners and the Maintenance Providers and Control Center Authorities, effective as of the Effective Time.

“Operations Payment Default” has the meaning given in **Section 15.1.1**.

“OP Default OPCs” has the meaning given in **Section 15.2.2.3**.

“Optional Freeze” has the meaning given in **Section 14.5.3.1**.

“Order” means any judgment, award, decision, directive, consent decree, injunction (whether temporary, preliminary or permanent), ruling, writ or order adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Body or Arbitrator (but as to an Arbitrator, with respect to injunctive and other equitable relief, only to the extent permitted by this Agreement) that is binding on any Person or its Property under Applicable Law.

“Original Maximum CM Cost Amount” means the Maximum CM Cost Amount immediately preceding the applicable Proposed Increase in the Maximum CM Cost Amount.

“Original Owner” means an Owner that has signed this Agreement at the Effective Time.

“Owner” means each Person that is a party to this Agreement; **provided, however**, the term **“Owner”**: (i) excludes any Person whose Asset Ownership Percentage becomes zero (without regard to any Residual Interest) in accordance with the terms of this Agreement from and after the effective date when its Asset Ownership Percentage became zero (without regard to any Residual Interest); **provided, further**, that any such Person whose Asset Ownership Percentage becomes zero is not released from its obligations under (a) the Construction Management Agreement to the extent the same arose, accrued or first became performable prior to the effective date when its Asset Ownership Percentage became zero (without regard to any Residual Interest) and (b) the Transmission Capacity Exchange Agreement and (ii) includes a Person that later executes a Transfer Agreement in accordance with the provisions of this Agreement from and after the date set forth in such Transfer Agreement. Reference to an **“Owner”** means an owner of an Asset Ownership Percentage under this Agreement and excludes reference to any other capacity of such Person, including serving as a Construction Manager, Contractor, CM Subcontractor, Subcontractor, Maintenance Provider, Control Center Authority or Discretely Owned Substation Owner (except for purposes of **Articles 14** or **15** of this Agreement).

“Owner Claiming Contribution” has the meaning given in **Section 16.2.3.2**.

“Owner Procured Materials” means the items of Equipment and Materials proposed in the procurement plan other than such items that the Management Committee, after consultation with the Construction Manager, directs the Construction Manager not to procure.

“Owner Representative” has the meaning given in **Section 3.2.3.1**.

“Owner Subject To Contribution” has the meaning given in **Section 16.2.3.2**.

“Partial Taking” has the meaning given in **Section 9.2**.

“Percentage Calculation” has the meaning given in **Section 3.1.3.3.1**.

“Percentage Calculation Dispute” has the meaning given in **Section 18.1**.

“Percentage Interest” has the meaning given in **Section 3.1.3.1.1**.

“Percentage Interest Formula” has the meaning given in **Section 3.1.3.2.1**.

“Percentages” means the Percentage Interests, the Asset Ownership Percentages, the Construction Period Voting Percentages and the Incremental Percentages.

“Performing Owners” has the meaning given in **Section 15.1.3.1**.

“Permitted Owner Lien” means a Lien against (i) the Asset Ownership Percentage of any Owner that such Owner grants, or has granted, to a Financing Party or (ii) a Discretely Owned Substation Asset owned by a Discretely Owned Substation Owner that such Discretely Owned Substation Owner grants, or has granted, to a Financing Party.

“Permitted PA Encumbrance” has the meaning given in **Section 11.2**.

“Permitted Purpose” has the meaning given in **Section 17.1**.

“Permitted Transfer” has the meaning given in **Section 10.2**.

“Person” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, Governmental Body or other entity with legal constitution under Applicable Law.

“Personal Taxes” has the meaning given in **Section 7.1.1**.

“Phase” means each Segment of the Facilities and, as applicable, the Discretely Owned Substation Assets (including, without duplication and as appropriate, the associated rights to Project Real Property appurtenant thereto) that the Project Plan specifies is (or is designed to be) separately constructed, Commissioned, energized and placed into service.

“Phase Destruction Event” has the meaning given in **Section 8.4.1.1**.

“Phase In-Service Date” means the date on which a Phase is placed in service and the Construction Manager turns over responsibility for the Phase to the applicable Maintenance Providers and the Control Center Authorities for the performance of the Maintenance Services and the Control Center Services, respectively.

“Phase Windup Plan” has the meaning given in **Section 8.4.1.1**.

“Post Cost Offering CP Voting Percentage” has the meaning given in **Section 13.4.3(iii)** or **13.5.3(vi)**, as applicable.

“Post Freeze CP Voting Percentage” has the meaning given in **Section 14.2.5.5(ii)**.

“Pre-Construction Estimated Project Budget” means the budget for Construction Work developed by the Construction Manager to update, refine and revise the preliminary estimates of CM Costs for the Project set forth in the Initial Project Budget that it has submitted

to the Management Committee as a Project Change Request and that the Management Committee has approved.

“Pre-existing Facilities Mortgage” means a Financing Instrument entered into and in existence at the Effective Time pursuant to which a Financing Party has obtained a lien on substantially all of the Property of an Owner and that will attach to, cover and encumber an Owner’s Property, including such Owner’s Asset Ownership Percentage and Discretely Owned Substation Assets, as the same may be amended or supplemented on or after the Effective Time.

“Prime Rate” means the per annum (365 or 366 days, as appropriate) prime rate as published on the last banking day of the applicable Month in the “Money Rates” table of *The Wall Street Journal*; **provided, however**, if more than one such prime rate is published, the mean will be used for purposes of this Agreement, until the Management Committee specifies a different reference publication or equivalent bank rate.

“Proceeding” means any suit, litigation, arbitration, hearing, audit, investigation or other action (whether civil, criminal, administrative or investigative) commenced, brought, conducted, heard by or before, or otherwise involving, any Governmental Body or Arbitrator.

“Procured Materials” means Owner Procured Materials and Contractor Procured Materials, in the aggregate.

“Project” means the Facilities, the Discretely Owned Substation Assets, the Project Real Property and all other Property related to or associated therewith in which any Owner has any right, title or interest, including the Governmental Approvals, the Project Agreements, the Procured Materials, the Construction Agreements, and the Real Property Agreements.

“Project Account” means the Main Trust Account and any sub-accounts thereof established by or at the direction of the Management Committee under the **Trust Agreement**.

“Project Agreements” means this Agreement, the Construction Management Agreement, the Operation and Maintenance Agreement, the Transmission Capacity Exchange Agreement, the Transmission Easement Agreement and any other contract or agreement designated as a “Project Agreement” by the Management Committee, which in no event may include Construction Agreements, Real Property Agreements or any other contract, agreement, instrument or arrangement providing for the acquisition of any Property (except for the Transmission Easement Agreement).

“Project Budget” means the refined Pre-Construction Estimated Project Budget developed by the Construction Manager to accurately forecast the cost to complete the Project that it has submitted to the Management Committee as a Project Change Request and that the Management Committee has approved.

“Project Change Request” means a submittal by the Construction Manager to the Chair and the Vice Chair substantially in the form set forth in **Appendix F-3** to the **Construction Management Agreement**.

“Project Construction Contract” means each contract, agreement or arrangement between some or all of the Owners, on the one hand, and any Person, on the other hand, establishing the terms of performance of any part of the Construction Work, but specifically excluding the Construction Management Agreement and the Real Property Agreements.

“Project Continuation LD Amount” has the meaning given in **Section 14.2.6.2.1**.

“Project Continuation LD Amount Calculation” has the meaning given in **Section 14.2.6.2.2**.

“Project Continuation LD Amount Calculation Dispute” has the meaning given in **Section 18.1**.

“Project Continuation Liquidated Damages” has the meaning given in **Section 14.2.6.1**.

“Project Costs” means the CM Costs, Operating Expenses, costs of the Independent Engineer as provided in **Section 2.5** of the **Construction Management Agreement**, and any other amounts related to the Project incurred at the direction of the Management Committee; **provided, however**, costs incurred by an Owner, Construction Manager, Maintenance Provider or Control Center Authority in negotiation of the commercial terms of: (i) the Project Agreements; (ii) the Construction Agreements or any CM Subcontracts; or (iii) any contract regarding the operation or maintenance of the Facilities does not constitute a Project Cost unless the counterparty is a Third Party.

“Project Design Book” means the compilation, both in electronic and hard copy, of documents, drawings, GPS coordinates, route maps, access routes and associated contact information, and information that reflects the final specifications and design of the Facilities and the Discretely Owned Substation Assets (or applicable Phase), including “as built” design, engineering and construction documents, required to be delivered by any Contractor in accordance with the provisions of the applicable Project Construction Contract.

“Project Development Agreement” means that certain Project Development Agreement, dated March 7, 2007, establishing the terms and conditions pursuant to which Development Work was undertaken prior to the Effective Time.

“Project Plan” has the meaning given in **Section 3.2.2.2(xv)**, a copy of which as of the Effective Time is attached as **Appendix A** to the **Construction Management Agreement**, which may be revised from time to time pursuant to **Section 4.1.2** of the **Construction Management Agreement**.

“Project Real Property” means (i) the fee interests, licenses, rights-of-way, easements and other real property interests on which the Facilities and the Discretely Owned New Substations are to be located, including any licenses, rights-of-way, easements and other real property interests necessary for access to the Facilities, and (ii) the easements granted by the Discretely Owned Substation Owners pursuant to the Transmission Easement Agreement.

“Project Termination LD Amount” has the meaning given in **Section 14.2.8.2.1**.

“Project Termination LD Amount Calculation” has the meaning given in **Section 14.2.8.2.2.**

“Project Termination LD Amount Calculation Dispute” has the meaning given in **Section 18.1.**

“Project Termination Liquidated Damages” has the meaning given in **Section 14.2.8.1.**

“Property” means any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Proposed Capital Budget” means a three-year capital expense budget describing Capital Improvements that each Maintenance Provider recommends and the Maintenance Costs anticipated to be incurred by it to effect such Capital Improvements.

“Proposed Increase in the Maximum CM Cost Amount” means a Project Change Request provided by the Construction Manager to all Owners and the Chair and Vice Chair estimating the amount of an increase in the Maximum CM Cost Amount which, based on estimates and information then known to the Construction Manager, reasonably would be necessary to achieve Final Completion.

“Pro Rata Upgrade” has the meaning given in **Section 4.4.1(ix)(a)(i).**

“Real Property Agreements” means contracts, agreements, instruments or arrangements providing for the acquisition of Project Real Property described in clause (i) of the definition thereof.

“Real Property Management Services” means the services furnished by the Construction Manager to the Owners, at no charge in excess of its actual cost as described in **Section 6.1 of the Construction Management Agreement**, to acquire the Project Real Property required to complete the Project, including all services associated therewith.

“Rebuild Election Notice” has the meaning given in **Section 8.4.1.1.**

“Rebuilding Owners” has the meaning given in **Section 8.4.1.1.**

“Recalculation Notice” has the meaning given in **Section 3.1.3.3.1.**

“Remaining AOP Without DOSA Transfer” has the meaning given in **Section 10.2.11.**

“Remaining Default Interest” has the meaning given in **Section 14.2.7.3.1.**

“Replacement Construction Management Agreement” has the meaning given in **Section 4.1.2.1.**

“Replacement Construction Manager” has the meaning given in **Section 4.1.2.1.**

“Replacement Maintenance Provider” has the meaning given in **Section 4.2.2.1.**

“**Replacement Operation and Maintenance Agreement**” has the meaning given in **Section 4.2.2.1**.

“**Representatives**” has the meaning given in **Section 17.1**.

“**Residual Interest**” has the meaning given in **Section 14.2.7.4.2(i)**.

“**Response Notice**” has the meaning given in **Section 3.1.3.3.4**.

“**Responsible Entity**” means those Maintenance Providers and Control Center Authorities with assigned responsibility for maintenance or operation of a Segment in a Phase as set forth in **Appendix A** to the **Operation and Maintenance Agreement**.

“**ROFN**” has the meaning given in **Section 10.4**.

“**ROFN Administrator**” has the meaning given in **Section 10.4**.

“**ROFN Closing**” has the meaning given in **Section 10.4.1.8**.

“**ROFN Electing Owners**” has the meaning given in **Section 10.4.1.6**.

“**ROFN Election Notice**” has the meaning given in **Section 10.4.1.5**.

“**ROFN Extension Payments**” has the meaning given in **Section 10.4.1.9.2**.

“**ROFN Negotiating Owners**” has the meaning given in **Section 10.4.1**.

“**ROFN Offeree Owners**” has the meaning given in **Section 10.4**.

“**ROFN Option Period**” has the meaning given in **Section 10.4.1**.

“**ROFN Trigger Notice**” has the meaning given in **Section 10.4**.

“**S&P**” means Standard & Poor’s Ratings Group, a division of McGraw-Hill Inc.

“**Sales Taxes**” has the meaning given in **Section 7.1.2**.

“**Scope of Work**” has the meaning given in **Section 3.2.2.2(xv)**.

“**Second Round Call Option Notice**” has the meaning given in **Section 14.2.7.2.2**.

“**Second Round Call Option Period**” has the meaning given in **Section 14.2.7.2.2**.

“**Second Round Notice**” has the meaning given in **Section 14.2.7.2.1**.

“**Second Round Offerees**” has the meaning given in **Section 14.2.7.2.1**.

“**Secretary**” means the Owner Representative who will act as the secretary of the Management Committee, which Owner Representative may change from time to time in accordance with **Section 3.2.3.7**.

“**Segment**” means a line segment that is a portion of the Facilities and is specified in **Appendix A to the Operation and Maintenance Agreement** (including, without duplication and as appropriate, the corresponding Project Real Property appurtenant thereto).

“**Senior Executive**” means a representative of an Owner who is authorized to settle the applicable dispute and who is not an Authorized Owner Representative.

“**Services**” means the Construction Management Services and the Real Property Management Services.

“**Services Plan Reviews**” means meetings of the Responsible Entities convened by the E&O Committee periodically, but not less frequently than annually, to, among other things, review the performance of Maintenance Services, Control Center Services, compliance with Applicable Law, opportunities for efficiencies, and cost saving in connection therewith.

“**Shared Liability**” has the meaning given in **Section 16.2.1**.

“**Shared Liability Claim**” has the meaning given in **Section 16.2.1**.

“**Step-Up Owners**” has the meaning given in **Section 14.2.6.1**.

“**Subcontract**” means each contract, agreement or arrangement between any Contractor or Subcontractor, on the one hand, and any Subcontractor, on the other hand, establishing the terms of performance of any part of the Construction Work.

“**Subcontractor**” means each and every supplier, subcontractor, vendor, consultant or contractor of any tier performing any part of the Construction Work including providing any studies, reports, plans, evaluations or Procured Materials, in connection with the Construction Work, directly or indirectly, for or to any Contractor. Reference to an Owner as a “Subcontractor” excludes any reference to such Owner in any other capacity.

“**Substantial Completion**” means the achievement of the following conditions as to the Facilities and the Discretely Owned Substation Assets (or applicable Phase): (i) completion of Construction Work to the extent required for the safe, reliable and continuous operation of the Facilities and the Discretely Owned Substation Assets (or applicable Phase) consistent with Good Utility Practice and Applicable Law; (ii) completion of Commissioning of the Facilities and the Discretely Owned Substation Assets (or applicable Phase); (iii) vendor and construction documentation (including start-up procedures and copies of applicable portions of the Project Design Book) and any special tools necessary to support continuous, safe and reliable operation of the Facilities and the Discretely Owned Substation Assets (or applicable Phase) have been delivered to the applicable Maintenance Providers or Discretely Owned Substation Owners; (iv) the Facilities and the Discretely Owned Substation Assets (or applicable Phase) have been energized and placed in service (unless otherwise specified by the Management Committee); and (v) unless waived by the Construction Manager as to any Lien or indemnity agreement (such

waiver only to be effective as to establishing the existence of Substantial Completion and for no other purpose), the Construction Manager has received from each Contractor under a Project Construction Contract and Subcontractor under a Subcontract, in each case, with a contract value equal to or greater than One Hundred Thousand Dollars (\$100,000), duly executed Lien Waivers.

“Substantial Completion Date” means the date that Substantial Completion has occurred.

“Successor Owner” has the meaning given in **Section 10.3.1.2(ii)**.

“Taxes” has the meaning given in **Section 7.1.1**.

“Third Party” means any Person that is neither a party nor an Affiliate of a party to this Agreement.

“Third Party Claim” has the meaning given in **Section 16.1.1**.

“Third Party Claim Damages” has the meaning given in **Section 16.1.1**.

“Third Party CMA Claim” means any claim asserted by a Third Party in connection with the Construction Management Agreement, other than a Third Party Environmental Claim, and resulting Damages, including claims arising from: (i) personal injury to Persons, including death; (ii) theft or loss of or damage to Property; or (iii) violations of Applicable Law.

“Third Party Environmental Claim” means any claim asserted by a Third Party, and resulting Damages, arising from: (i) the spill, discharge or other release of a Hazardous Substance into the environment or (ii) conditions related to Hazardous Substances that give rise to strict or vicarious liability, in each case, that give rise to personal injury to individuals, including death, loss of or damage to property, or other liability under Applicable Law.

“Transfer” has the meaning given in **Section 10.1**.

“Transfer Agreement” has the meaning given in **Section 10.3.1.3**.

“Transfer Capability” means the transfer capability of the Transmission Grid after incorporating the Facilities and the Discretely Owned Substation Assets, as such transfer capability may change from time to time.

“Transfer Effective Date” has the meaning given in **Section 12.2.9**.

“Transmission Capacity Exchange Agreement” means that certain Transmission Capacity Exchange Agreement, by and among the Owners, effective as of the Effective Time.

“Transmission Easement Agreement” has the meaning given in **Section 3.1.6.3**.

“Transmission Grid” means the electric transmission system to which the Facilities and the Discretely Owned Substation Assets will be directly interconnected and of which they will become a part.

“Transmission Information” has the meaning given in **Section 17.4**.

“Transmission Provider” means any Person, including an Owner, that exercises functional control over the operation of a portion of the Transmission Grid as necessary to effectuate transmission transactions that it administers and provides transmission service under a tariff, rate schedule or other agreement.

“Trust Agreement” means that certain Trust Agreement, by and among the Owners and the Trustee, effective as of the Effective Time.

“Trustee” means Wells Fargo Bank, N.A.

“Underlying System Improvements” means improvements to the Transmission Grid specified in **Appendices J-1** (the **“Non-Credited USIs”**) and **J-2** (the **“Credited USIs”**) to the **Construction Management Agreement** as of the Effective Time that are required to accommodate the Project, title to which will vest in the Owner that procures, constructs, installs and places such Underlying System Improvement in service. Underlying System Improvements do not constitute part of the Facilities. The Non-Credited USIs do not constitute part of the Discretely Owned Substation Assets. The Credited USIs do constitute part of the Discretely Owned Substation Assets.

“Unelected Default Interest” has the meaning given in **Sections 14.2.7.1.4** and **14.2.7.2.1**, respectively.

“Uniform System of Accounts” means the FERC’s “Uniform System of Accounts Prescribed for Public Utilities and Licensees (Class A and Class B),” in effect as of the Effective Time, as such Uniform System of Accounts may be modified from time to time.

“Upgrade” means a capital addition or modification to a Phase undertaken after the Phase In-Service Date that increases Facility Capacity or is required because of an interconnection request, whether such Upgrade is a Discretionary Upgrade or a Non-Project Upgrade.

“USI Work” means all activities that are necessary, desirable or incidental to placing the Non-Credited USIs in service in accordance with Good Utility Practice, other than: (i) the Services and (ii) the obligations of the Owners (individually or collectively through the Management Committee) under the Construction Management Agreement (other than the obligations set forth in **Section 9.14** thereof).

“Vice Chair” means the Owner Representative who is acting as the vice chair of the Management Committee, which Owner Representative may change from time to time in accordance with **Section 3.2.3.6**.

“Windup Plan” has the meaning given in **Section 19.3.1**.

1.2 Schedules and Exhibits. This Agreement consists of this document itself and the following Schedules and Exhibits that are specifically made a part hereof and incorporated herein by reference:

SCHEDULE 1	Generally Applicable Provisions
SCHEDULE 3.2.3.1.8	Authorized Owner Representatives as of the Effective Time
SCHEDULE 11.2	Permitted PA Encumbrances
SCHEDULE 12.1.5	Required Approvals and Consents
EXHIBIT A	Development Period Assets
EXHIBIT B	Percentages
EXHIBIT C	Discretely Owned Substation Assets and Discretely Owned Substation Owners
EXHIBIT D	Initial Project Budget
EXHIBIT E-1	Form of Assignment, Assumption, Partial Novation and Joinder Agreement
EXHIBIT E-2	Form of Assignment, Assumption, Novation and Joinder Agreement
EXHIBIT F	Insurance Plan
EXHIBIT G	Form of Administrative Agent Agreement
EXHIBIT H	Intentionally Reserved
EXHIBIT I	Form of DOSA Assignment and Assumption Agreement
EXHIBIT J	Intentionally Reserved
EXHIBIT K	Voting with Respect to Construction Management Agreement Matters
EXHIBIT L	Voting with Respect to Operation and Maintenance Agreement Matters
EXHIBIT M	Form of Call Option Assignment, Assumption, Novation and Joinder Agreement
EXHIBIT N-1	Form of Transmission Easement Agreement
EXHIBIT N-2	Form of Electric Line Easement
EXHIBIT O	Form of Escrow Agreement
EXHIBIT P	Methodology for Recalculating Interests for Upgrades
EXHIBIT Q	Termination Allocations and Cash Distributions for Project or Phase Termination

ARTICLE 2 TERM

- 2.1 **Term.** The term of this Agreement will commence at the Effective Time and will continue until this Agreement has been terminated pursuant to **Section 19.1.2.**

ARTICLE 3 PROJECT OWNERSHIP, INTERESTS AND GOVERNANCE

- 3.1 **Nature of Ownership; Asset Ownership Percentages; Percentage Interests.**

3.1.1 **Nature of Ownership Interest.**

- 3.1.1.1 **Facilities Held as Tenancy-in-Common.** The Facilities will be owned by the Owners as tenants-in-common in undivided

ownership interests. Such ownership interests will be (i) in accordance with the Asset Ownership Percentages described in **Section 3.1.3.1.2**, and (ii) computed and adjusted by the Asset Ownership Percentage Formula set forth in **Section 3.1.3.2.2**.

3.1.1.2 Discretely Owned Substation Assets. The Discretely Owned Substation Assets are owned individually by the Owners set forth on **Exhibit C**. The Discretely Owned Substation Assets are not part of the Facilities and the CM Costs associated with the same are not used to determine the Asset Ownership Percentages. The Discretely Owned Substation Costs are included in the calculation to determine the Percentage Interest of the Owners, including each Owner that is a Discretely Owned Substation Owner.

3.1.1.3 Other Rights. Based upon, and in furtherance of **Sections 3.1.1.1** and **3.1.1.2**, except insofar as such Owner's interests are established in this Agreement or in any other Project Agreement, each Owner acknowledges and agrees that it does not have and will not claim, either through itself or any other Person (including any of its Financing Parties or any trustee of its bankruptcy estate), any right, title or other interest in or to any Property interests that may arise as a result of this Agreement or any other Project Agreement. Each Owner further acknowledges and agrees that any assertion by any Owner, or any Person claiming interests through an Owner (including any of its Financing Parties or any trustee of its bankruptcy estate), of any right, title or other interest in another Owner's Asset Ownership Percentage or Percentage Interest or such other Owner's Property interests inconsistent with the preceding sentence will be null and void *ab initio*.

3.1.2 Property Interests Created Prior to the Effective Time. The Owners acknowledge and agree that, except for the intellectual property and proprietary rights held in the CapX 2020 Trust (which will be licensed to the Owners pursuant to the CapX 2020 Trust License), all Property interests created under the Project Development Agreement (the "**Development Period Assets**"), including (i) those Property interests set forth on **Exhibit A** and (ii) the contracts entered into prior to the Effective Time by the Development Manager under the Project Development Agreement pursuant to a grant of agency authority that remain, in whole or in part, executory as of the Effective Time, each of which is set forth in **Exhibit A** (the "**Development Period Contracts**"), have been or are hereby transferred to and are to be utilized by, in and as part of the Project, in the name of the Owners, free and clear of any and all Liens other than Permitted Owner Liens.

3.1.3 Percentage Interest and Asset Ownership Percentage.

3.1.3.1 Exhibit B.

3.1.3.1.1 Percentage Interest. **Exhibit B** sets forth the Percentage Interest of each Owner (the “**Percentage Interest**”) under the column entitled “Percentage Interest.” The Percentage Interest of each Owner at the Effective Time reflects (i) the percentage that each Owner elected pursuant to the election procedures set forth in **Section 6.3** of the **Project Development Agreement** and (ii) the percentage that results from dividing (a) the sum of (1) all Discretely Owned Substation Costs set forth in the Initial Project Budget (as described in **Section 6.1.1**) allocated to such Owner in its capacity as a Discretely Owned Substation Owner (if any), plus (2) all CM Costs in respect of the Facilities set forth in the Initial Project Budget allocated to such Owner based on the application of the percentage for such Owner referenced in **clause (i)** of this **Section 3.1.3.1.1**, by (b) all CM Costs set forth in the Initial Project Budget. The Percentage Interests of the Owners may be increased or decreased from time to time after the Effective Time in accordance with the Percentage Interest Formula (set forth in **Section 3.1.3.2.1**) as a result of (x) the occurrences set forth in **Section 3.1.3.3** (Calculation after Final Completion Date, Upon Project Termination or Upon a Recalculation Notice) or **Articles 10** (Transfers), or **13** (Maximum CM Costs) or **14** (Defaults Related to Construction Activities) or **19** (Termination) or (y) a Non-Pro Rata Upgrade or a Pro Rata Upgrade. Upon any such increase or decrease, the Secretary will revise **Exhibit B** and **Schedule 2** to the **Transmission Capacity Exchange Agreement** to reflect the then current Percentage Interest of each Owner and promptly provide a copy of revised **Exhibit B** and **Schedule 2** to the **Transmission Capacity Exchange Agreement** to each Owner. By way of clarification, if an Owner of a Discretely Owned Substation Asset Transfers all or a portion of its Discretely Owned Substation Asset in accordance with **Section 10.3.2** and, as part of the same transaction and to such transferee, it is not also transferring all or a portion of its Asset Ownership Percentage, then such Owner’s Percentage Interest will not be adjusted as a result of the Transfer of its Discretely Owned Substation Asset.

3.1.3.1.2 Asset Ownership Percentage. **Exhibit B** sets forth the Asset Ownership Percentage of each Owner (the “**Asset Ownership Percentage**”) under the column entitled “Asset Ownership Percentage.” The Asset Ownership Percentage of each Owner at the Effective Time reflects the percentage that results from dividing (i) all CM Costs in respect of the Facilities set forth in the Initial Project Budget (as described in **Section 6.1.1**) allocable to such Owner, by (ii) all CM Costs in respect of the Facilities set forth in the Initial Project Budget. The Asset Ownership Percentages of the Owners may be increased or decreased from time to time after the Effective Time in accordance with the Asset Ownership Percentage Formula (set forth in **Section 3.1.3.2.2**) as a result of (x) the occurrences set forth in **Section 3.1.3.3** (Calculation after the Final Completion Date, Upon Project Termination or Upon a Recalculation Notice) or **Articles 10** (Transfers), or **13** (Maximum CM Costs) or **14** (Defaults Related to Construction Activities) or **Article 19** (Termination) or (y) a Non-Pro Rata Upgrade or a Pro Rata Upgrade. Upon any such increase or decrease, the Secretary will revise **Exhibit B** to reflect the then current Asset Ownership Percentage of each Owner and promptly provide a copy of revised **Exhibit B** to each Owner.

3.1.3.2 Formulas.

3.1.3.2.1 Percentage Interest Formula. After the Effective Time, the Percentage Interest of each Owner is the percentage that results from (i) dividing (a) all CM Costs paid by an Owner as of the date of such calculation by (b) all CM Costs paid by all Owners as of such date, or (ii) utilizing the applicable formula set forth in **Exhibit P** in the event of a Non-Pro Rata Upgrade or a Pro Rata Upgrade ((i) and (ii) are collectively, the “**Percentage Interest Formula**”). The foregoing calculation will be made (i) without taking into account any Defaulting Owner Advance Amounts until such amounts are applied against CM Costs (if at all) through the Final Completion Date in accordance with **Section 14.2.4.6**, and (ii) taking into account all Advances and any ROFN Extension Payments.

3.1.3.2.2 Asset Ownership Percentage Formula. After the Effective Time, the Asset Ownership Percentage of each Owner is the percentage that results from (i) dividing (a) CM Costs with respect to the Facilities paid by such Owner as of the date of such calculation, by (b) all CM Costs with respect

to the Facilities paid by all Owners as of such date, or (ii) utilizing the applicable formula set forth in **Exhibit P** in the event of a Non-Pro Rata Upgrade or a Pro Rata Upgrade ((i) and (ii) are collectively, the “**Asset Ownership Percentage Formula**”). The foregoing calculation will be made (i) without taking into account any Defaulting Owner Advance Amounts until such amounts are applied in accordance with **Section 14.2.4.6**, and (ii) taking into account all Advances and any ROFN Extension Payments.

3.1.3.3 Calculation after the Final Completion Date, Upon Project Termination or Upon a Recalculation Notice.

3.1.3.3.1 Recalculation of Percentages. (i) As soon as practicable after (A) the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets, or (B) termination of the Project and completion of the Windup Plan, and (ii) if, within sixty (60) days after receipt by an Owner of a revised **Exhibit B** as a result of the occurrences set forth in **Section 4.4.1(xi)(a)** (Upgrade Principles) or **Articles 10** (Transfers), **13** (Maximum CM Costs), **14** (Defaults Related to Construction Activities) or **19** (Termination), an Owner provides notice to the Management Committee and the other Owners that Management Committee’s calculation of any of the Percentages as shown on the most recent **Exhibit B** is incorrect (which notice must include such Owner’s Percentage Calculation, which is defined below), (each under clauses (i) and (ii) a “**Recalculation Notice**”), the Management Committee and a Senior Executive of the Owner that sent a Recalculation Notice will meet in good faith during the twenty (20) day period following the Management Committee’s receipt of the Recalculation Notice to determine whether the Percentages set forth on the most recent **Exhibit B** are correct. If, at the end of such period, the Management Committee and such Senior Executive do not agree on whether the Percentages set forth on the most recent **Exhibit B** are correct, then the Management Committee will (i) engage a certified public accountant of its choice to determine whether the Percentages set forth on the most recent **Exhibit B** are correct based on the Formulas as of the applicable date (Final Completion Date of all Facilities and Discretely Owned Substation Assets; the date of completion of the Windup Plan, or the last Business Day of the respective calendar quarter) or as set forth in the Recalculation Notice, as applicable, and (ii) deliver a copy of such accounting

firm's determination and calculation (the "**Percentage Calculation**") to each Owner no later than (a) ninety (90) days following (i) the Final Completion Date of all Facilities and Discretely Owned Substation Assets, or (ii) the date of completion of the Windup Plan, or (b) thirty (30) days following the receipt of the Recalculation Notice, as applicable. Each Owner may deliver no more than two (2) Recalculation Notices within one (1) calendar year. At a minimum, an Owner must include in each Recalculation Notice, and the Management Committee must forward to the accountant, information identifying which Percentages the Owner believes are erroneous, the adjustments the Owner believes are necessary to correct the errors, and an explanation of the basis of Owner's beliefs concerning errors in and necessary adjustments to such Percentages.

3.1.3.3.2 Accounting Firm Determination. If such accounting firm determines that a Percentage set forth on the most recent **Exhibit B** is incorrect as of the applicable calculation date, (i) the Percentage Calculation of the accounting firm will take effect immediately on the date of the accounting firm's determination and **Exhibit B**, as revised, will be retroactively adjusted to be effective as of the applicable measurement date (Final Completion Date, the date of completion of the Windup Plan or the last Business Day of the respective calendar quarter), and (ii) promptly thereafter the Secretary will revise **Schedule 2** to the **Transmission Capacity Exchange Agreement** if there is a change to the Percentage Interests and **Exhibit B** to reflect the Percentage Calculation (retroactively effective as of the applicable date) and deliver a copy of revised **Schedule 2** to the **Transmission Capacity Exchange Agreement**, if applicable, and **Exhibit B** to each Owner. Each Owner may inspect, copy and audit the Books and Records, including those Books and Records that are relevant to the Percentage Calculation, pursuant to **Section 6.5**.

3.1.3.3.3 Conclusiveness of Accounting Firm Determination Absent Objection. The Percentage Calculation will be deemed to be accepted by each Owner and will be conclusive for the purpose of determining the Percentage Interest of each Owner as of (i) the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets, (ii) the date of completion of the Windup Plan, or (iii) the last Business Day of the respective calendar quarter, as the case may be, unless an Owner (such Owner for purposes of this **Section 3.1.3.3** and **Article 18**, an "**Objecting**

Owner") delivers a notice to the Management Committee and the other Owners specifying its objections thereto in reasonable detail within ten (10) Business Days following the delivery of the Percentage Calculation to such Objecting Owner (an "**Objection Notice**").

- 3.1.3.3.4 Response to Objection Notice. Within five (5) Business Days after the Management Committee's receipt of the Objection Notice, the Management Committee will notify the Objecting Owner whether it agrees or disagrees with the change to the Percentage Calculation proposed in the Objection Notice (a "**Response Notice**"). If the Response Notice states that the Management Committee agrees with the change to the Percentage Calculation proposed in an Objection Notice, then (i) such change will take effect immediately on the date of the Response Notice and **Exhibit B**, as revised, will be retroactively adjusted to be effective as of the applicable measurement date (Final Completion Date, the date of completion of the Windup Plan or the last Business Day of the respective calendar quarter), and (ii) promptly thereafter the Secretary will revise **Exhibit B** to reflect the same and deliver a copy of revised **Exhibit B** to each Owner. If the Response Notice states that the Management Committee disagrees with the change to the Percentage Calculation proposed in an Objection Notice, the Management Committee and a Senior Executive of each Objecting Owner will negotiate in good faith to resolve such dispute during the twenty (20) day period following the Management Committee's delivery of the Response Notice.
- 3.1.3.3.5 Dispute Resolution Concerning Percentage Calculation. If, after a period of twenty (20) days following the receipt of the last Response Notice by an Objecting Owner, any proposed change to the Percentage Calculation remains disputed between the Management Committee and any Objecting Owner, the Management Committee and each Objecting Owner will resolve the dispute in accordance with **Article 18** (Dispute Resolution for Excluded Matters).
- 3.1.3.3.6 No Effect on Prior Decisions. If any Percentage Interests or Construction Period Voting Percentages are changed pursuant to this **Section 3.1.3.3** or **Article 18**, actions requiring a vote of and actions by the Management Committee that were taken based on the vote levels established by such Percentage Interests or Construction Period Voting Percentages reflected in **Exhibit B** prior to

any such change will remain in full force and effect and will not be subject to challenge as a result of any such change; **provided, however**, the foregoing will not apply to Management Committee actions that apply to and affect the proper allocation of CM Costs or Distributable Cash or pro rata allocations related thereto, among and between the Owners, and any such change(s) to **Exhibit B** will be retroactively effective and adjusted.

3.1.4 **Intentionally Reserved.**

3.1.5 **Waiver of Right to Partition.** The Owners recognize that the physical partition of the Project or any part thereof would be impossible and impractical and wholly inconsistent with the purposes for which this Agreement is made. Each of the Owners agrees that it will not take any action at any time by a Proceeding or otherwise exercise any right available under Applicable Law to partition the Project or any part thereof in any way, whether by partition in kind or by sale and division of the proceeds thereof. Each of the Owners further irrevocably waives the right of partition and the benefit of all Applicable Law (including statutory and common law) that may now or hereafter authorize such partition of the Project or any part thereof. If any such right of partition accrues, after the Effective Time, each Owner will from time to time, upon the written request of the other Owners, execute and deliver such further instruments as may be necessary to confirm the foregoing waiver and release of its right to partition. The provisions of this **Section 3.1.5** will be binding upon and inure to the benefit of the Owners, their respective successors and assigns, including Financing Parties and their respective successors and assigns, and will run with the Project. Each Owner agrees to insert a similar covenant in any contract with any Person (other than another Owner) that acquires all or any portion of its Asset Ownership Percentage, which covenant will be enforceable by any Owner or by the Management Committee. This Agreement, including the waiver of the right of partition, in the form of the Transmission Easement Agreement attached hereto as **Exhibit N-1**, will be recorded in all relevant jurisdictions.

3.1.6 **Discretely Owned Substation Assets.**

3.1.6.1 **Discretely Owned Substation Assets and Owners.** **Exhibit C** sets forth the Discretely Owned Substation Assets and the Discretely Owned Substation Owners. If, at any time after the Effective Time, any Governmental Approvals result in the description of the real property set forth in **Exhibit C** being incorrect, the Secretary will revise **Exhibit C** to reflect the correct description and promptly provide a copy of revised **Exhibit C** to each Owner.

3.1.6.2 **Consideration.** In consideration for the Owners' agreement to allow each Discretely Owned Substation Owner to obtain sole title to each of its Discretely Owned Substation Assets and to count the

Discretely Owned Substation Costs thereof in the calculation of its Percentage Interest and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Discretely Owned Substation Owner, with respect to each of its Discretely Owned Substation Assets, will grant the easement described in **Section 3.1.6.3** subject to the terms and conditions contained in **Section 3.1.6.4**.

3.1.6.3 Creation of Transmission Easement and Survival of Rights. Each Discretely Owned Substation Owner will grant the other Owners a perpetual, irrevocable, non-fee or royalty bearing (i) non-exclusive easement over the real property described in **Exhibit C**, as revised from time to time after the Effective Time pursuant to **Section 3.1.6.1**, and (ii) exclusive easement for the transmission of energy and data through the Discretely Owned Substation Assets (excluding the Credited USIs), in each case pursuant to the Transmission Easement Agreement in the form attached hereto as **Exhibit N-1** (the "**Transmission Easement Agreement**"). All Owners, including each Discretely Owned Substation Owner, acknowledge and agree that the proportional rights and benefits of all Owners to the Facilities in conjunction with the Discretely Owned Substation Assets, as contemplated by the Transmission Capacity Exchange Agreement, constitutes an integral part of the Project, and that such rights and benefits will run with the land are irrevocable for any reason, and survive the termination of this Agreement with respect to a Discretely Owned Substation Owner notwithstanding the fact that such Discretely Owned Substation Owner will no longer be an Owner under this Agreement.

3.1.6.4 Discretely Owned Substation Owner Obligations. In connection with the easements granted pursuant to **Section 3.1.6.3** and the Transmission Easement Agreement, each Discretely Owned Substation Owner agrees as follows:

- (i) to construct (or permit the Construction Manager to construct or arrange for the construction of) its Discretely Owned Substation Assets identified in **Exhibit C** in accordance with the provisions of the Construction Management Agreement, including any DOSA Construction Agreement, and to pay for the Discretely Owned Substation Costs thereof;
- (ii) to maintain, repair, restore, and replace (at least in kind) its Discretely Owned Substation Assets, at its sole cost and expense, in accordance with Good Utility Practice and in a manner consistent with the care it exercises over other

transmission assets it owns and maintains so as to at least maintain (and not degrade) Facility Capacity;

- (iii) not to retire, abandon, or, in the event of a Casualty, fail to repair, restore, and replace (at least in kind) affected Discretely Owned Substation Assets unless it first replaces such Discretely Owned Substation Assets to the extent necessary to permit all of the Owners to enjoy benefits of the Transfer Capability created by the Facilities in conjunction with the Discretely Owned Substation Asset (as originally constructed or subsequently improved), as contemplated by the Transmission Capacity Exchange Agreement;
- (iv) to the extent permitted by Applicable Law, to use its reasonable efforts to coordinate with the Owners and applicable Maintenance Providers and Control Center Authorities in advance of the time required by Applicable Energy Regulations, scheduled maintenance, repair, or replacement activities related to its Discretely Owned Substation Assets that may adversely affect the Facilities or their operation, including any outage thereof;
- (v) to provide prompt notice to the Owners of any Casualty to any of its Discretely Owned Substation Assets and, to the extent permitted by Applicable Law, reasonably update information concerning its efforts to restore, repair or replace its Discretely Owned Substation Assets;
- (vi) to participate in Services Plan Reviews to be conducted pursuant to **Section 5.7** of the Operation and Maintenance Agreement; and
- (vii) that its obligations contained in this **Section 3.1.6** and in the Transmission Capacity Exchange Agreement are perpetual and irrevocable and run with the land on which the Discretely Owned Substation Asset is built, **provided, however,** in the event of a Transfer as a result of or upon exercise of a Collateral Assignment, the monetary obligations of the transferring Owner accrued prior to the date of Transfer will not be deemed for purposes of this **Section 3.1.6.4(vii)**, to run with the land and will remain the obligation of the transferring Owner; that it will execute and record in all relevant jurisdictions, the Transmission Easement Agreement setting forth all of the easements described in this **Section 3.1.6**; and that such Discretely Owned Substation Asset cannot be Transferred (except by

Collateral Assignment) without binding the transferee to such obligations, **provided, however**, in the event of a Transfer as a result of or upon exercise of a Collateral Assignment, the monetary obligations of the transferring Owner that accrued prior to the date of Transfer will not be included in such Transfer and will remain the obligation of the transferring Owner.

(viii) Easement to Enter Property to Cure Discretely Owned Substation Owner Default. Each Discretely Owned Substation Owner will grant the other Owners a perpetual, non-exclusive easement pursuant to the Transmission Easement Agreement in the form attached hereto as **Exhibit N-1** to enter upon the real property described in **Exhibit C**, as amended from time to time after the Effective Time pursuant to **Section 3.1.6.1**, at all reasonable times for the purposes of undertaking any of the obligations set forth in this **Section 3.1.6.4**, including the maintenance of the Discretely Owned Substation Assets, if the Discretely Owned Substation Owner fails to satisfy any such obligations, pursuant to the Transmission Easement Agreement.

3.1.6.5 Right to Use Development Period Assets. Each Discretely Owned Substation Owner will have the right to use the Development Period Assets set forth on **Exhibit A** to the extent it reasonably determines that it needs such Development Period Assets to fulfill its obligations with respect to its Discretely Owned Substation Assets as set forth in (i) this **Section 3.1.6**, (ii) the Construction Management Agreement, (iii) the Transmission Capacity Exchange Agreement, or (iv) any separate agreement between the Owners and a Discretely Owned Substation Owner for the construction and operation of the Discretely Owned Substation Assets.

3.2 Management Committee.

3.2.1 Establishment. The Owners hereby establish the Management Committee which will consist of the representatives appointed by the Owners in accordance with **Section 3.2.3.1**.

3.2.2 Powers.

3.2.2.1 No Unilateral Owner Action. No Owner will have any right to unilaterally exercise control or management powers over the Project or any portion thereof or otherwise enter into any legally binding commitment of any kind or nature with respect to the

Project that is legally binding on any other Owner solely by virtue of being a party to this Agreement, in each case other than the Discretely Owned Substation Assets; **provided, however**, this **Section 3.2.2.1** will not prevent an Owner from entering into a legally binding commitment of any kind or nature with respect to the Project or a Discretely Owned Substation Asset that binds only such Owner.

3.2.2.2 Management Committee Powers. The Owners hereby grant the Management Committee all authority, right and power to exercise the Management Committee Powers in accordance with the terms of this Agreement. Subject to **Section 3.2.2.3**, all decisions in respect of constructing, equipping, designing, operating, maintaining and administering the Project, other than Discretely Owned Substation Assets, will be made by the Owners, acting through the Management Committee (the “**Management Committee Powers**”), including:

- (i) oversight, management and administration (including enforcement and termination) of and compliance with, all Project Agreements, all Project Construction Contracts, all Real Property Agreements, and all other contracts that relate to the Project to which the Owners or Appointing Owners, as applicable, are parties or by which they are bound;
- (ii) exercising all rights and fulfilling all duties and responsibilities granted to, and taking all action required of, the Management Committee as set forth in or contemplated by any Project Agreement;
- (iii) compliance with Applicable Law, including the establishment of an Operating Standard and the taking of such other action as the Management Committee deems necessary or that may be required under Applicable Law with respect to the development, construction, acquisition and completion of the Facilities for commercial service; the procurement, replacement, modification, or renewal of all or any part thereof; the making of Capital Improvements thereto; the operation and maintenance thereof; and the retirement or salvaging of all or any part thereof;
- (iv) applications for the modification, extension or renewal of, and compliance with, all Governmental Approvals relating to the Project or any portion thereof, other than those specifically related to the Discretely Owned Substation Assets, provided that any modification or surrender of any such Governmental Approvals that would impair any Owners Asset Ownership Percentage will require a Level C Vote;

- (v) except as delegated to the Construction Manager or a Maintenance Provider, the adjustment of losses and settlement of any losses covered by insurance obtained under this Agreement and obtaining and maintaining insurance and performing risk management activities relating to the Project, other than Discretely Owned Substation Assets after Final Completion of the Discretely Owned Substation Assets, all as set forth in the Insurance Plan;
- (vi) except as delegated to the Construction Manager or a Maintenance Provider, the pursuit and defense of claims and causes of action of any kind relating to the Project, other than Discretely Owned Substation Assets to the extent not arising from a DOSA Construction Agreement, but including the filing or defense of suits or appeals thereof, and settlement of claims and suits, all of which will require a Level B Vote;
- (vii) the establishment of such committees and subcommittees as it believes appropriate in accordance with **Section 3.2.3.8** and the provision for meetings, voting procedures of committees appointed pursuant to **Section 3.2.3.8.2** and such other rules of procedure as it deems appropriate consistent with the provisions of this **Article 3**;
- (viii) the approval of all Budgets and any amendments or modifications thereto, all of which will require a Level B Vote;
- (ix) acting upon any matter relating to the Project brought before the Management Committee by an Owner;
- (x) the establishment of accounting, inventory, auditing and other operating procedures as it deems appropriate and which are consistent with the requirements of this Agreement;
- (xi) the sale, replacement or other disposition of Property of the Project, which will require a Level C Vote for any dispositions outside of the ordinary course of business (other than pursuant to the Windup Plan), except that a Maintenance Provider may sell, replace or otherwise dispose of Property in the ordinary course of business in accordance with Good Utility Practice, **provided** that if such Property has a value in excess of Twenty-Five Thousand Dollars (\$25,000), it may only so upon thirty (30) days' prior notice to the Owners;
- (xii) the appointment of an administrative agent to administer easement agreements with Third Parties substantially in the form attached hereto as **Exhibit N-2** (the "**Electric Line Easement**"); **provided**,

however, that the appointment of a Third Party administrative agent will require a Level C Vote;

- (xiii) the use of the composite fiber optic overhead ground wire that is to be incorporated into the Facilities or the Discretely Owned Substation Assets for any purpose other than electric utility communications by the Owners in connection with the Project, which will require a Level C Vote;
- (xiv) subject to **Section 12.2.7** and compliance with all Governmental Approvals, the use of any Property in which the Owners have an Asset Ownership Percentage for any purpose other than electric utility purposes by the Owners in connection with the Project, which will require a Level C Vote;
- (xv) approval of the (i) schedule for the execution of the Construction Work (the "**Construction Work Schedule**") and (ii) scope of work for the Facilities and the Discretely Owned Substation Assets (the "**Scope of Work**"). The Scope of Work together with the Construction Work Schedule are collectively, the "**Project Plan**"; and
- (xvi) performing such other duties as set forth in this Agreement.

3.2.2.3 Individual Owner Responsibility; Right to Amend this Agreement; and Individually Enforceable Obligations. Notwithstanding anything to the contrary contained in this **Section 3.2.2** or elsewhere in this Agreement, each Owner acting in its individual capacity and not the Management Committee or any other Owner, will have the exclusive (i) obligation to obtain, maintain and comply with all Governmental Approvals required for it to be an Owner or a party to this Agreement or any of the other Project Agreements, (ii) responsibility to comply with its obligations under this Agreement and the other Project Agreements, (iii) right to agree to amend this Agreement and the other Project Agreements, and (iv) right and responsibility to enforce the Individually Enforceable Obligations.

3.2.3 Composition, Attendance, Meetings, Etc.

3.2.3.1 Authorized Owner Representatives. The Management Committee will be composed of a representative from each Owner (each such representative being an "**Owner Representative**"); **provided, however**, if two (2) or more Owners are Affiliates ("**Affiliated Owners**"), then they collectively will be entitled to only one Owner Representative. By way of clarification, if an Owner Transfers all of its Asset Ownership Percentage (excluding a

Residual Interest), it will no longer be an Owner and will not be entitled to appoint an Owner Representative or an Alternate. Also by way of clarification, if an Owner of a Discretely Owned Substation Asset Transfers all or a portion of its Discretely Owned Substation Asset and, as part of the same transaction and to such transferee, it does not Transfer all or a portion of its Asset Ownership Percentage, then the transferee will not be an Owner and will not be entitled to appoint an Owner Representative or an Alternate.

- 3.2.3.1.1 Basis for Voting. Except as provided in **Section 3.2.4.1**, each Owner Representative will be entitled to vote a percentage of the total votes of the Management Committee that reflects the Percentage Interest held by the Owner or Affiliated Owners that designated the Owner Representative to the Management Committee.
- 3.2.3.1.2 Alternates. Each Owner or Affiliated Owners will also designate an alternate for its or their Owner Representative (each such alternate for either an Owner or for Affiliated Owners, an “**Alternate**” and together with the respective Owner Representative, the “**Authorized Owner Representatives**”). Notwithstanding anything to the contrary in this Agreement, an Alternate may exercise the powers of the Owner Representative of an Owner or of Affiliated Owners, as the case may be, at a meeting only if such Owner Representative is not in attendance at the meeting.
- 3.2.3.1.3 Removal and Replacement. Each Owner or Affiliated Owners may remove and replace its or their Authorized Owner Representative at any time with or without cause and without the approval of the other Owners upon prior notice to the other Owners and the Chair and Secretary of the Management Committee.
- 3.2.3.1.4 Contact Information. Each Owner or Affiliated Owners will promptly give notice to the other Owners (and the Chair and Secretary of the Management Committee) of any change in the business address, business telephone or business facsimile number of any of its or their Authorized Owner Representatives.
- 3.2.3.1.5 Agent of Appointing Owner. Each Authorized Owner Representative will be the agent of the Owner or Affiliated Owners that designated such Authorized Owner Representative and will not be the agent of any other

Owner. Accordingly, (i) the vote or other act of an Authorized Owner Representative in respect of any matter will be deemed to be the vote or act of the Owner or Affiliated Owners that designated such Authorized Owner Representative and may be conclusively relied upon by the Management Committee and the other Owners and (ii) no Authorized Owner Representative will owe (or be deemed to owe) any duty (fiduciary or otherwise) to any Owner other than the Owner or Affiliated Owners that designated such Authorized Owner Representative.

3.2.3.1.6 New Owner Designation. If all or any part of the Asset Ownership Percentage of an Owner is Transferred in accordance with **Article 10** to a Person that is not at the time of Transfer an Owner or an Affiliate of an Owner, such Person will promptly designate an Owner Representative and an Alternate to serve on the Management Committee. By way of clarification, a Percentage Interest may be transferred only as part of the same transaction in which and to the same transferee to which an Asset Ownership Percentage is transferred.

3.2.3.1.7 Expenses. Each Owner or Affiliated Owners will be responsible for the expenses of its or their Authorized Owner Representatives.

3.2.3.1.8 Authorized Owner Representatives as of the Effective Time. **Schedule 3.2.3.1.8** identifies the duly appointed Authorized Owner Representatives of each Owner and their contact information as of the Effective Time.

3.2.3.2 Attendance. Each Owner will use reasonable efforts to cause one of its Authorized Owner Representatives to attend each meeting of the Management Committee and no Owner will withhold the presence of its Authorized Owner Representatives to prevent, delay or forestall decisions on matters under consideration by the Management Committee. A reasonable number of other employees, representatives or agents (in each case, after execution of an appropriate non-disclosure agreement) of the Owners may attend meetings. Meetings may be conducted in person, by telephone, or by other means acceptable to the Management Committee acting by a Level B Vote. Attendees who are not an Authorized Owner Representative will be identified at the commencement of each meeting, will have no power to vote on any matters, but may participate in discussions in accordance with the Management Committee's rules of order that may limit the

amount of time that the employees, representatives or other agents may participate.

3.2.3.3 Meetings.

3.2.3.3.1 Frequency. The Management Committee will meet (i) at least once each Month until the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets unless otherwise determined by the Management Committee; (ii) at least annually thereafter unless otherwise determined by the Management Committee; and (iii) at any other time that a meeting is called by the Chair. Any Owner may request a meeting by notifying the Chair and the Chair will honor any such request of an Owner if it is reasonable under the circumstances or if the meeting is requested by two (2) or more Owners that are not Affiliated Owners.

3.2.3.3.2 Notice of Meetings. The Chair will give notice to each Authorized Owner Representative stating the place (or means if by telephone conference or other means), date and hour of each meeting of the Management Committee, together with an agenda for the meeting, not fewer than five (5) days before the date of the meeting (or as far in advance as is practicable under the circumstances if the meeting is called on shorter notice due to an Emergency or other exigent circumstance as determined in the discretion of the Chair) unless such notice is waived by all Authorized Owner Representatives either at the meeting by a Level C Vote or by written consent.

3.2.3.3.3 Agenda. At least five (5) days before each meeting (or as far in advance as is practicable under the circumstances if the meeting is called on shorter notice due to an Emergency or other exigent circumstance as determined in the discretion of the Chair), the Chair will prepare detailed information on the matters to be considered by the Management Committee and will provide such information to each Authorized Owner Representative.

3.2.3.3.4 Waiver of Notice. Attendance of one Authorized Owner Representative at a meeting of the Management Committee will constitute a waiver of notification of the meeting by both Authorized Owner Representatives, except where such Authorized Owner Representative attends for the express purpose of objecting to (i) the transaction of any business on the ground that the meeting is not called or convened in

accordance with the requirements of this Agreement or (ii) the consideration of matters required to be included in the notification of the meeting but not so included, and any such objection is expressly made at the meeting.

- 3.2.3.4 Rules; Bylaws. From time to time after the Effective Time, the Management Committee may, by a Level B Vote, adopt rules of order or by-laws, amend such rules of order or by-laws, or adopt policy statements and directives, in each case that are consistent with this Agreement and as it considers necessary or appropriate for the conduct of its business and the exercise of the Management Committee Powers.
- 3.2.3.5 Chair. Promptly after the Effective Time and thereafter as provided in any by-laws adopted pursuant to **Section 3.2.3.4**, the Management Committee will select an Owner Representative to act as Chair. If an Owner removes its Owner Representative who is serving as Chair, the Management Committee will select a new Chair from among the Owner Representatives. No Owner Representative of an Owner affiliated with the Construction Manager prior to the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets may serve as the Chair without the affirmative vote of all of the other Owners. The Chair will call and preside over all meetings of the Management Committee at which he or she is present. The Chair will have no powers or duties other than those specifically conferred by this Agreement or in any by-laws adopted by the Management Committee pursuant to **Section 3.2.3.4**, and will have no voting or veto power in addition to the right to vote as an Owner Representative.
- 3.2.3.6 Vice Chair. Promptly after the Effective Time and thereafter as provided in any by-laws adopted pursuant to **Section 3.2.3.4**, the Management Committee will select an Owner Representative to act as Vice Chair. If an Owner removes its Owner Representative who is serving as Vice Chair, the Management Committee will select a new Vice Chair from among the Owner Representatives. No Owner Representative of an Owner affiliated with the Construction Manager prior to the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets may serve as the Vice Chair without the affirmative vote of all of the other Owners. The Vice Chair will perform the duties of the Chair in his or her absence and will have such other duties as may be provided for in any by-laws adopted by the Management Committee pursuant to **Section 3.2.3.4**. In the absence of the Chair and Vice Chair at any Management Committee meeting, the Authorized Owner Representatives will, by a Level A Vote,

appoint an Authorized Owner Representative who is present at such meeting to serve as Chair at such meeting.

3.2.3.7 Secretary. Promptly after the Effective Time and thereafter as provided in any by-laws adopted pursuant to **Section 3.2.3.4**, the Management Committee will select an Owner Representative to act as Secretary. If an Owner removes its Owner Representative who is serving as Secretary, the Management Committee will select a new Secretary from among the Owner Representatives. The Secretary will keep, or cause to be kept, written minutes of all meetings, copies of which will be promptly provided to all Authorized Owner Representatives after each meeting and will have such other duties as may be provided for in any by-laws adopted by the Management Committee pursuant to **Section 3.2.3.4**. In the absence of the Secretary at any Management Committee meeting, the Chair will appoint an Authorized Owner Representative who is present at such meeting to serve as Secretary at such meeting.

3.2.3.8 Committees.

3.2.3.8.1 Consensus Committees. The Management Committee may, from time to time, appoint one or more committees of one or more individuals who may, but need not, be Authorized Owner Representatives, who will serve at the Management Committee's pleasure, have such duties as the Management Committee determines and make recommendations to the Management Committee with respect to the matters requested of them by the Management Committee. Each committee appointed pursuant to this **Section 3.2.3.8.1** will operate by consensus, and not by vote, and will promptly report any inability to reach consensus on an issue to the Management Committee and seek direction from the Management Committee with respect to such issue. Such committee will also follow such rules of order, policy statements and instructions for the conduct of its business as directed by the Management Committee.

3.2.3.8.2 Committees or Persons with Delegated Powers. The Management Committee may, by a Level C Vote, delegate the right to undertake any actions that require a vote of the Management Committee to one or more committees of one or more individuals who may, but need not, be Authorized Owner Representatives or to any other Person by contract or agreement. The Management Committee will prescribe the voting procedures that each committee appointed

pursuant to this **Section 3.2.3.8.2** must use to take any action. Such committee will follow the voting procedures, rules of order, policy statements and instructions for the conduct of its business as directed by the Management Committee.

3.2.3.8.3 E&O Committee. The Management Committee hereby establishes an Engineering and Operating Committee (the “**E&O Committee**”) and delegates to it the authority to undertake the obligations and exercise the rights accorded to it in the Operation and Maintenance Agreement or as otherwise determined by the Management Committee. Each Owner Representative may appoint one individual to serve on the E&O Committee, which individual may, but need not, be such Owner Representative or his or her Alternate. The individual appointed to serve on the E&O Committee may, from time to time, appoint a designee to attend an E&O Committee meeting in his stead, and such designee will be deemed to be the member at such meeting. The E&O Committee will take action only with the affirmative vote of all members of the E&O Committee. If any member of the E&O Committee does not vote in favor of an action, any member of the E&O Committee may submit the proposed action to the Chair of the Management Committee and the Chair will present the proposed action to the Management Committee. The Management Committee decision will become the decision of the E&O Committee and the E&O Committee will implement such decision. The E&O Committee will follow the voting procedures, rules of order, policy statements and instructions for the conduct of its business as directed by the Management Committee.

3.2.4 Voting.

3.2.4.1 Basis for Voting and Required Voting Levels.

3.2.4.1.1 Basis for Voting. Each Authorized Owner Representative is entitled to vote at meetings of the Management Committee, by written consent of the Management Committee in accordance with **Section 3.2.4.3**, by written proxy in accordance with **Section 3.2.4.2**, or by any other means adopted by the Management Committee by a Level B Vote, in each case based on the Percentage Interest of the Owner or Affiliated Owners that appointed him or her; **provided, however**, from and after any Cost Offering Initial Round Subscription Date, any Cost Offering Final

Round Subscription Date and the date of any Freeze until the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets, each Authorized Owner Representative is entitled to vote based on the Construction Period Voting Percentage of the Owner or Affiliated Owners that appointed him or her; **provided, further, however,** Authorized Owner Representatives will not be entitled to vote (i) on Disqualified Affiliate Matters, or (ii) if the Owner or any Affiliated Owner that appointed him or her (a) is a Defaulting Owner, on any matter, (b) is an Objecting Owner pursuant to **Section 4.1.2** or **4.2.2**, on whether a Replacement Construction Management Agreement or Replacement Operation and Maintenance Agreement, as applicable, will have a Disproportionate Adverse Effect on such Objecting Owner, or (c) desires to Transfer its Asset Ownership Percentage, on any matter related to such Transfer or request to Transfer.

3.2.4.1.2 Level A Vote Defined. For purposes hereof a “**Level A Vote**” will mean the affirmative vote of (i) one or more Authorized Owner Representatives representing a Majority and (ii) a total of at least two (2) Authorized Owner Representatives, in each case entitled to vote; **provided, however,** if at any time there are fewer than two (2) Authorized Owner Representatives entitled to vote, then a “**Level A Vote**” will mean the affirmative vote of one or more Authorized Owner Representatives representing a Majority.

3.2.4.1.3 Level B Vote Defined. For purposes hereof, a “**Level B Vote**” will mean the affirmative vote of (i) one or more Authorized Owner Representatives representing a Majority and (ii) a total of at least three Authorized Owner Representatives, in each case entitled to vote; **provided, however,** if at any time there are fewer than four (4) Authorized Owner Representatives entitled to vote, then a “**Level B Vote**” will mean the affirmative vote of (a) one or more Authorized Owner Representatives representing a Majority and (b) a total of at least two (2) Authorized Owner Representatives, in each case entitled to vote; **provided, further,** if at any time there are fewer than two (2) Authorized Owner Representatives entitled to vote, then a “**Level B Vote**” will mean the affirmative vote of one or more Authorized Owner Representatives representing a Majority.

- 3.2.4.1.4 Level C Vote Defined. For purposes hereof, a “**Level C Vote**” will mean the affirmative vote of the Authorized Owner Representative of each Owner entitled to vote.
- 3.2.4.1.5 Level A Vote Matters. Except as otherwise provided in this Agreement or another Project Agreement, all actions taken by the Management Committee will be by a Level A Vote.
- 3.2.4.2 Proxies. An Authorized Owner Representative may give the Authorized Owner Representative of another Owner a proxy to vote on behalf of such Authorized Owner Representative at any meeting of the Management Committee. All proxies must be in writing. Any Authorized Owner Representative holding the proxy of another Authorized Owner Representative will vote such proxy in the manner required by the Authorized Owner Representative giving such proxy.
- 3.2.4.3 Action by Written Consent. Any action which may be taken by the Management Committee under this Agreement may be taken without a meeting if each Owner Representative is given prior notice and a copy of the proposed consent, and a consent setting forth the action taken is executed by Authorized Owner Representatives representing sufficient Percentage Interests and numbers of Owners (directly or through proxy) to have approved the action by the vote required for such action under this Agreement, **provided** that a meeting on the matter has been held if requested in accordance with **Section 3.2.3.3**. The Secretary will promptly notify each Owner Representative of actions taken by the Management Committee pursuant to written consent.

ARTICLE 4

CONSTRUCTION; OPERATION AND MAINTENANCE; AND UPGRADES

4.1 Construction.

- 4.1.1 Delegation of Authority Pursuant to the Construction Management Agreement. The Owners hereby acknowledge, approve and ratify the Construction Management Agreement for all purposes under this Agreement, including the delegation of authority to the Construction Manager pursuant to the terms and conditions of the Construction Management Agreement. The actions and omissions of the Construction Manager exercised under the Agency Authority granted to it pursuant to the Construction Management Agreement will not relieve the non-Appointing Owners from the payment and other obligations under the Construction Management Agreement, the Construction Agreements or this Agreement, including such Owner’s obligations to the other Owners under this Agreement. Notwithstanding any other provision of this Agreement, the rights

and duties of the Construction Manager will be as set forth in the Construction Management Agreement. In the event of any conflict between this Agreement and the Construction Management Agreement with respect to the authority, rights and obligations of the Construction Manager, the Construction Management Agreement will control.

4.1.2 **Replacement Construction Management Agreement.**

4.1.2.1 **Approval and Execution of Replacement Construction Management Agreement.** If the Construction Management Agreement terminates in accordance with its terms (except if a Windup Plan has been adopted) or would terminate but for the operation of **Section 4.1.2.2**, then, unless the Management Committee approves an Owner's request to assume all rights and obligations of the Construction Manager under the Construction Management Agreement as provided in **Section 4.1.2.2**, and subject to **Sections 4.1.2.3** and **4.1.2.4**, the Management Committee will manage the construction of the Project by approving a replacement Construction Manager (the "**Replacement Construction Manager**") and a replacement Construction Management Agreement (a "**Replacement Construction Management Agreement**") by a Level B Vote, in which case all Owners must execute and deliver the Replacement Construction Management Agreement; **provided, however**, no Objecting Owner will be obligated to enter into the Replacement Construction Management Agreement if to do so would have a Disproportionate Adverse Effect on such Objecting Owner; and **provided, further**, the provisions of **Section 4.1.2.5** will apply with respect to the determination of Disproportionate Adverse Effect and the resulting obligations of any Objecting Owner.

4.1.2.2 **Owner Option to Request Assumption of All Rights and Obligations of Construction Manager under Construction Management Agreement.** If the Construction Management Agreement would otherwise terminate due to the resignation or removal of the Construction Manager in accordance with the terms of the Construction Management Agreement, any Owner may ask the Management Committee, instead of permitting the Construction Management Agreement to terminate, to approve the assumption by such Owner of all rights and obligations of the Construction Manager under the Construction Management Agreement. The Management Committee may approve any such request by a Level B Vote (excluding the Owner requesting approval to become the Replacement Construction Manager). If more than one Owner asks the Management Committee to approve its assumption of all rights and obligations of the Construction Manager under the Construction Management

Agreement, then the Management Committee may, by a Level B Vote (excluding all Owners requesting approval to become the Replacement Construction Manager), either select among the requesting Owners or decline to approve assumption by any of the requesting Owners.

4.1.2.3 Terms of Replacement Construction Management Agreement. If no Owner asks the Management Committee to approve the assumption by such Owner of all rights and obligations of the Construction Manager under the Construction Management Agreement or the Management Committee does not approve assumption of all rights and obligations of the Construction Manager under the Construction Management Agreement by any of the requesting Owners, in each case as provided in **Section 4.1.2.2**, then the Management Committee, in developing a Replacement Construction Management Agreement, will make commercially reasonable efforts to obtain terms in the Replacement Construction Management Agreement comparable to those in the Construction Management Agreement (except for terms related to payment of the Replacement Construction Manager and the Replacement Construction Manager's standard of liability) and to preserve the balance of benefits and burdens between the Owners and the Replacement Construction Manager.

4.1.2.4 Determination of Disproportionate Adverse Effect of Replacement Construction Management Agreement and Resulting Obligations. If at the Management Committee meeting at which the Management Committee approves the Replacement Construction Management Agreement, one or more Owners (for purposes of this **Section 4.1.2** and **Article 18**, the "**Objecting Owners**") give notice to the Management Committee and the Owners that the Replacement Construction Management Agreement changes the terms of the existing Construction Management Agreement, which change will cause the Objecting Owner to (i) pay more than its Asset Ownership Percentage (or, if applicable, Incremental Percentage) of CM Costs, or (ii) bear more than its Asset Ownership Percentage (or, if applicable, Incremental Percentage) of liabilities arising under the Replacement Construction Management Agreement (for purposes of this **Section 4.1.2**, (i) and (ii) are collectively referred to as a "**Disproportionate Adverse Effect**") and the Management Committee concludes, after giving reasonable consideration to the Objecting Owners' concerns, that the Replacement Construction Management Agreement will not have a Disproportionate Adverse Effect on the Objecting Owners, then the Dispute will be promptly resolved pursuant to **Section 3** of **Schedule 1**.

4.1.2.5 Effect of Dispute and Resolution of Dispute. No Owner may refuse to pay any CM Cost pending resolution of such Dispute, except as otherwise provided in this Agreement or the Replacement Construction Management Agreement. If, as a result of the resolution of the Dispute, the Replacement Construction Management Agreement is found not to have a Disproportionate Adverse Effect on the Objecting Owners, then the Objecting Owners must enter into the Replacement Construction Management Agreement effective as of the effective time of the Replacement Construction Management Agreement. If, as a result of the resolution of the Dispute, the Replacement Construction Management Agreement is found to have a Disproportionate Adverse Effect on the Objecting Owners, then the Objecting Owners will not be obligated to execute the Replacement Construction Management Agreement, but it will be obligated to the other Owners under this Agreement to satisfy all of the payment obligations under the Replacement Construction Management Agreement based on its Asset Ownership Percentage or, if applicable, Incremental Percentage, and all of the other obligations under the Replacement Construction Management Agreement based on its Asset Ownership Percentage or, if applicable, Incremental Percentage.

4.1.2.6 Conflict Between Agreements. In the event of any conflict between this Agreement and the Replacement Construction Management Agreement with respect to the authority, rights and obligations of the Replacement Construction Manager, the Replacement Construction Management Agreement will control.

4.1.3 Voting with Respect to Construction Management Agreement Matters. The matters set forth in the Construction Management Agreement as requiring action by the Management Committee, a list of which is attached hereto as **Exhibit K**, will require the vote of the Management Committee set forth in **Exhibit K**.

4.2 Operation and Maintenance.

4.2.1 Delegation of Authority Pursuant to the Operation and Maintenance Agreement. The Owners hereby acknowledge, approve and ratify the Operation and Maintenance Agreement for all purposes under this Agreement. Notwithstanding any other provision of this Agreement, the rights and duties of the Maintenance Providers and Control Center Authorities will be as set forth in the Operation and Maintenance Agreement. In the event of any conflict between this Agreement and the Operation and Maintenance Agreement with respect to the authority, rights and obligations of the Maintenance Providers or Control Center Authorities, the Operation and Maintenance Agreement will control.

4.2.2 Replacement Operation and Maintenance Agreement.

4.2.2.1 Approval and Execution of Replacement Operation and Maintenance Agreement. If the Operation and Maintenance Agreement terminates in accordance with its terms (except if a Windup Plan has been adopted) or would terminate but for the operation of **Section 4.2.2.2**, then, unless the Management Committee approves an Owner's request to assume all rights and obligations of all Maintenance Providers under the Operation and Maintenance Agreement as provided in **Section 4.2.2.2**, and subject to **Sections 4.2.2.3** and **4.2.2.4**, the Management Committee will manage the operation and maintenance of the Project by approving replacement Maintenance Providers (the "**Replacement Maintenance Provider**") and a replacement Operation and Maintenance Agreement (a "**Replacement Operation and Maintenance Agreement**") by a Level B Vote, in which case all Owners must execute and deliver the Replacement Operation and Maintenance Agreement; **provided, however**, no Objecting Owner will be obligated to enter into the Replacement Operation and Maintenance Agreement if to do so would have a Disproportionate Adverse Effect on such Objecting Owner; and **provided, further**, the provisions of **Section 4.2.2.5** will apply with respect to the determination of Disproportionate Adverse Effect and the resulting obligations of any Objecting Owner.

4.2.2.2 Owner Option to Request Assumption of All Rights and Obligations of Maintenance Providers Under Operation and Maintenance Agreement. If an Operation and Maintenance Agreement would otherwise terminate due to the resignation or removal of all Maintenance Providers in accordance with the terms of the Operation and Maintenance Agreement, any Owner may ask the Management Committee, instead of permitting the Operation and Maintenance Agreement to terminate, to approve the assumption by such Owner of all rights and obligations of all Maintenance Providers under the Operation and Maintenance Agreement. The Management Committee may approve any such request by a Level B Vote (excluding the Owner requesting approval to become the Replacement Maintenance Providers). If more than one Owner asks the Management Committee to approve its assumption of all rights and obligations of all Maintenance Providers under the Operation and Maintenance Agreement, then the Management Committee may, by a Level B Vote (excluding all Owners requesting approval to become all Replacement Maintenance Providers), either select among the requesting Owners or decline to approve assumption by any of the requesting Owners.

- 4.2.2.3 Terms of Replacement Operation and Maintenance Agreement. If no Owner asks the Management Committee to approve the assumption by such Owner of all rights and obligations of all Maintenance Providers under the Operation and Maintenance Agreement or the Management Committee does not approve assumption of all rights and obligations of all Maintenance Providers under the Operation and Maintenance Agreement by any of the requesting Owners, in each case as provided in **Section 4.2.2.2**, then the Management Committee, in developing a Replacement Operation and Maintenance Agreement, will make commercially reasonable efforts to obtain terms in the Replacement Operation and Maintenance Agreement comparable to those in the Operation and Maintenance Agreement (except for terms related to payment of all Replacement Maintenance Providers and all Replacement Maintenance Provider's standard of liability) and to preserve the balance of benefits and burdens between the Owners and all Replacement Maintenance Providers.
- 4.2.2.4 Determination of Disproportionate Adverse Effect of Replacement Operation and Maintenance Agreement and Resulting Obligations. If at the Management Committee meeting at which the Management Committee approves the Replacement Operation and Maintenance Agreement, one or more Owners (for purposes of this **Section 4.2.2** and **Article 18**, the "**Objecting Owners**") gives notice to the Management Committee that the Replacement Operation and Maintenance Agreement changes the terms of the existing Operation and Maintenance Agreement, which change will cause the Objecting Owner to (i) pay more than its Asset Ownership Percentage of Operating Expenses, or (ii) bear more than its Asset Ownership Percentage of liabilities arising under the Replacement Operation and Maintenance Agreement (for purposes of this **Section 4.2.2**, (i) and (ii) are collectively referred to as a "**Disproportionate Adverse Effect**") and the Management Committee concludes, after giving reasonable consideration to the Objecting Owners' concerns, that the Replacement Operation and Maintenance Agreement will not have a Disproportionate Adverse Effect on the Objecting Owners, then the Dispute will be promptly resolved pursuant to **Section 3** of **Schedule 1**.
- 4.2.2.5 Effect of Dispute and Resolution of Dispute. No Owner may refuse to pay any Operating Expenses pending resolution of such Dispute, except as otherwise provided in this Agreement or the Replacement Operation and Maintenance Agreement. If, as a result of the resolution of the Dispute, the Replacement Operation and Maintenance Agreement is found not to have a Disproportionate Adverse Effect on the Objecting Owners, then

the Objecting Owners must enter into the Replacement Operation and Maintenance Agreement effective as of the effective time of the Replacement Operation and Maintenance Agreement. If, as a result of the resolution of the Dispute, the Replacement Operation and Maintenance Agreement is found to have a Disproportionate Adverse Effect on the Objecting Owners, then the Objecting Owners will not be obligated to execute the Replacement Operation and Maintenance Agreement but will be obligated to the other Owners under this Agreement to satisfy all payment and other obligations under the Replacement Operation and Maintenance Agreement based on its Asset Ownership Percentage.

4.2.2.6 Conflict Between Agreements. In the event of any conflict between this Agreement and the Replacement Operation and Maintenance Agreement with respect to the authority, rights and obligations of the Replacement Maintenance Providers, the Replacement Operation and Maintenance Agreement will control.

4.2.3 Voting with Respect to Operation and Maintenance Agreement. The matters set forth in the Operation and Maintenance Agreement as requiring action by the Management Committee, a list of which is attached hereto as **Exhibit L**, will require the vote of the Management Committee set forth in **Exhibit L**.

4.3 Business with Affiliates.

4.3.1 Affiliate Contracts.

4.3.1.1 Construction Management Agreement: Operation and Maintenance Agreement. The Owners acknowledge that the Construction Management Agreement and the Operation and Maintenance Agreement are among the Owners in their capacity as Owners and, as applicable, the Construction Manager in its capacity as Construction Manager or each Maintenance Provider in its capacity as Maintenance Provider or Control Center Authority, and, as to such Construction Manager and such Owner, constitute Affiliate Contracts. Each Owner hereby irrevocably waives any right to object to the terms of the Construction Management Agreement or the Operation and Maintenance Agreement on the grounds of lack of arm's-length negotiations or the presence of terms not at least as favorable to the Owners as those available in the market from unaffiliated Third Parties.

4.3.1.2 Affiliate Contracts. After the Effective Time, the Owners and their Affiliates will not be precluded from providing goods or services to the Project or entering into Construction Agreements, a Replacement Construction Management Agreement, a

Replacement Operation and Maintenance Agreement or other contracts or arrangements where an Owner or an Affiliate thereof is a party thereto in a capacity other than as an Owner or may benefit therefrom in a capacity other than as an Owner (together with the Construction Management Agreement and the Operation and Maintenance Agreement, “**Affiliate Contracts**”); **provided, however,** that except as provided in the Construction Management Agreement, all Affiliate Contracts will be (i) negotiated and administered in good faith on an arm’s-length basis by the Management Committee and (ii) approved by the Management Committee, acting by a Level A Vote of the non-disqualified Owners, except no such approval is needed for the Construction Management Agreement or the Operation and Maintenance Agreement. Upon execution of any Affiliate Contract so approved by the Management Committee, each Owner will be deemed to have irrevocably waived any right to object to the terms of such Affiliate Contract on the grounds of the lack of arm’s-length negotiations or the presence of terms not at least as favorable to the Owners as those available in the market from unaffiliated Third Parties.

4.3.2 **Disqualified Affiliate Matters.** If an Owner or any of its Affiliates is (or is proposed to be) a party to an Affiliate Contract, then (i) such Owner’s Authorized Owner Representatives will be disqualified from participating in the decisions and actions of the Management Committee (and any committee established by the Management Committee) with respect to Disqualified Affiliate Matters relating to the subject Affiliate Contract and (ii) such disqualified Authorized Owner Representatives on the Management Committee will be disqualified from voting on decisions or actions involving a Disqualified Affiliate Matter; **provided, however,** that the disqualified Authorized Owner Representatives must receive notice of the intent to vote on the Disqualified Affiliate Matter and the Owner whose Authorized Owner Representatives were disqualified must have had an opportunity to be heard on the matter by the Management Committee prior to any vote by the Management Committee on such Disqualified Affiliate Matter. “**Disqualified Affiliate Matters**” consist of actions by the Management Committee in approving, entering into, amending, interpreting, or exercising any option under an Affiliate Contract, waiving any material provision thereof or in response to a breach of or default (or alleged breach or default) under the subject Affiliate Contract (such as a waiver of the breach or default, notice of breach or event of default, or notice of termination for breach in accordance with the terms of the Affiliate Contract) or enforcement or exercise of any rights or remedies in respect to such breach or default (or alleged breach or default).

4.4 **Upgrade Principles.** The Owners recognize that the Transmission Grid is dynamically evolving and, during the Term, requests for Upgrades are likely to occur. The Owners further recognize that Applicable Energy Regulations applicable to such requests will continue to evolve as the transmission needs of the region and the country are addressed

by Governmental Bodies. Accordingly, the Owners, at the Effective Time, wish to set forth certain agreed upon principles to guide the actions of the Owners and the decision making of the Management Committee as Upgrade requests are proposed and considered. The Owners agree that the Management Committee has the authority to delete, amend or replace the principles set forth in **Sections 4.4.1(iv) and (ix)** and **Sections 4.4.3(i) and (ii)** below by a Level B Vote.

4.4.1 **General Principles**. The following are general principles applicable to all Upgrades however arising, including Third Party interconnection requests for generation, transmission to transmission, or transmission to load:

- (i) With respect to an Upgrade decision, each Owner and the Management Committee must comply with Applicable Energy Regulations.
- (ii) The Owners will work cooperatively to resolve seams issues arising as a result of an Upgrade.
- (iii) Interconnection requests are to be directed to the Owner specified in **Appendix A** to the **Operation and Maintenance Agreement** ("**Interconnection Coordinator**"). The Interconnection Coordinator, on behalf of the Owners, will lead the negotiation of the terms of any interconnection or other Upgrade-related agreement that affects the Facilities. The Management Committee, by a Level B Vote, may change the Interconnection Coordinator from time to time.
- (iv) Subject to CapX Design Criteria, the then-current technical interconnection guidelines required by the Control Center Authority at the point of interconnection will be applicable to Upgrades of the Facilities. The then-current financial interconnection guidelines of the Interconnection Coordinator relating to the financing of or payment for an Upgrade, if any, will be the starting basis of the negotiations with the party requesting interconnection; **provided, however**, except as otherwise required by Applicable Energy Regulations, the Management Committee will coordinate with the Owners to determine the extent and payment method(s) that will govern the financial obligations of the Owners applicable to such Upgrades.
- (v) Issues arising among the Owners and between the Interconnection Coordinator and the Owners related to Upgrades will be resolved by the Management Committee by a Level B Vote and not pursuant to the dispute resolution provisions set forth in **Section 3** of **Schedule 1** to this Agreement. Notwithstanding the foregoing, the Owners recognize that the Management Committee does not have authority to (a) modify or require a Transmission Provider to

modify or violate the terms of any provision contained in such Transmission Provider's open access tariff, (b) require an Owner to sign an Interconnection Agreement, or (c) change a Control Center Authority's technical interconnection guidelines that are applicable to an Upgrade, subject to CapX Design Criteria.

- (vi) In agreements between Third Parties and all of the Owners, the Interconnection Coordinator will use its commercially reasonable efforts to severally (and not jointly) bind each Owner only to the extent its interests appear in this Agreement.
- (vii) An Owner or the Management Committee may not reduce the Facility Capacity or the minimum physical capacity of Discretely Owned Substation Assets. Without limiting an Owner's right to take actions in respect of its non-Facilities related operations that may affect Transfer Capability, no Owner may take any action that would impair any other Owner's rights or benefits attributable to the Facilities and the Discretely Owned Substation Assets as provided in this Agreement or the Transmission Capacity Exchange Agreement.
- (viii) Transmission-related revenues arising from an Owner's proportionate investment in the Facilities and the Discretely Owned Substation Assets are the individual Property of the Owner.
- (ix) At any time the Facilities are subject to an Upgrade, if financing is to be provided in whole or in part by one or more Owners and:
 - (a) all of the Owners participate in the financing of the Upgrade
 - (i) in accordance with their then current respective Percentage Interests, then the Percentage Interests of the Owners will not be adjusted to reflect the additional capital investment made by the Owners (a "**Pro Rata Upgrade**")
 - or (ii) in percentages that differ from their then current respective Percentage Interests (a "**Non-Pro Rata Upgrade**"), then the Percentages of the Owners will be recalculated in accordance with the method set forth in **Exhibit P** to reflect the additional investment; and
 - (b) except as decided by a Level B Vote of the Management Committee, the Interconnection Coordinator, on behalf of the Owners, will lead the negotiation of the terms and conditions applicable to a Discretionary Upgrade or a Non-Project Upgrade.
- (x) Non-Project Upgrades are not governed by the Project Agreements.

4.4.2 **Principles Applied to Discretionary Upgrades.** The following principles are applicable to all Upgrades proposed by any Owner acting in its individual capacity and not as an Owner:

- (i) Any Owner will have the right to pursue a Discretionary Upgrade and neither any other Owner nor the Management Committee, subject to Section 4.4.1(vii) above, will have the right to block an Owner's construction and financing of a Discretionary Upgrade.
- (ii) All Owners will have the right to participate in the financing of and ownership of an interest in a Discretionary Upgrade proposed by any Owner based on each Owner's then-current Percentage Interest or as the Owners may otherwise agree.
- (iii) Except as otherwise decided by the Management Committee by a Level B Vote, a Discretionary Upgrade does not constitute part of the Facilities and is not governed by the Project Agreements.

4.4.3 **Principles Applicable to Generator Interconnection Requests.** The following are principles applicable to generator interconnection requests:

- (i) The Interconnection Coordinator, on behalf of the Owners, will arrange for the construction of the network upgrades required as a result of the generator interconnection request on terms and conditions acceptable to the Management Committee.
- (ii) With respect to Upgrades to the Facilities required to accommodate a generator interconnection request, the Interconnection Coordinator will coordinate with the Owners to determine; (a) the party or parties responsible for construction of the Upgrades; (b) the percentage of the cost of constructing the Upgrades that will be financed by the Owners; (c) the timing of any payments to the interconnection customer; and (d) if one or more of the Owners elects to finance some or all of the costs of constructing the Upgrades, the percentages of each Owner in financing the costs.
- (iii) No Owner, as a result of entering into the Project Agreements, will be obligated to participate in the financing of the costs of constructing Upgrades to the Facilities required to accommodate a generator interconnection request unless otherwise required by Applicable Energy Regulations.
- (iv) If all of the Owners agree to finance a portion of the cost of constructing an Upgrade in accordance with their then current Percentage Interests, the Percentage Interests of the Owners will not be adjusted to reflect the additional capital investment made by the Owners.

4.5 Administrative Agent Agreement. The Owners hereby acknowledge, approve and ratify the Administrative Agent Agreement in the form attached hereto as **Exhibit G** (the “**Administrative Agent Agreement**”).

4.5.1 **Administrative Agent.** The Owners will enter into the Administrative Agent Agreement with (i) the Construction Manager and (ii) each Maintenance Provider with respect to its Applicable Segments or as otherwise determined by the Management Committee, by a Level A Vote, if an easement with a Third Party covers Segments that are Applicable Segments to more than one Maintenance Provider.

4.5.2 **Authority of Administrative Agent.** The authority of the Administrative Agent (as defined in the Administrative Agent Agreement) is set forth in **Section 2** of the **Administrative Agent Agreement**. Any costs incurred by the Administrative Agent in connection with the activities authorized under the Administrative Agent Agreement will be reimbursed by the Owners as set forth in **Section 5.1.1**. The Administrative Agent will not be authorized to act on behalf of the Owners in any of the following matters relating to the Easements (as defined in the Administrative Agent Agreement):

- (i) Undertake non day-to-day or non-ministerial operational activities or make operational decisions relating to the Easements not in the ordinary course of business, including making decisions following damage or destruction to or condemnation of any Easements or Transmission Facilities (as defined in the Easements);
- (ii) Cancel, grant amendments to, or make changes or alterations to the Easements, except the amendments referenced in **Section 2(a)(ii)** of the **Administrative Agent Agreement**;
- (iii) Mortgage, grant liens against, or otherwise encumber the Easements;
- (iv) Transfer, assign, sell or otherwise dispose of any interests in the Easements; or
- (v) Appear on behalf of the Owners in litigation relating to the Easements.

4.5.3 **Appointment of Successor Administrative Agent.** If the Administrative Agent resigns or is removed, then the Management Committee may appoint a new Administrative Agent by a Level A Vote; **provided, however**, that the appointment of a Third Party administrative agent will require a Level C Vote.

4.5.4 **Removal of Administrative Agent.** The Management Committee may remove the Administrative Agent by a Level B Vote for any reason or no reason.

- 4.5.5 **Amendment of Administrative Agent Agreement.** The Administrative Agent Agreement may be amended or modified by a Level B Vote, except that the scope of authority granted to the Administrative Agent may not be amended or modified to increase the authority of the Administrative Agent except with a Level C Vote.

ARTICLE 5 PAYMENT PROCEDURES

5.1 Payment/Invoices.

- 5.1.1 **General.** Each Owner will pay to the Main Trust Account (or to such other account(s) as provided in the Operation and Maintenance Agreement with respect to funds to be paid under the Operation and Maintenance Agreement), within the time frame set forth in the applicable Project Agreement, its Asset Ownership Percentage of all Project Costs, except (i) for Discretely Owned Substation Costs which will be paid solely by the applicable Discretely Owned Substation Owner or (ii) as otherwise provided in **Sections 5.1.1.1** through **5.1.1.3**. Each Owner of a Discretely Owned Substation Asset will pay all Discretely Owned Substation Costs within the time frame set forth in, and otherwise in accordance with, any DOSA Construction Agreement to which it is a party.

5.1.1.1 **Full Subscription by Owners of Cost Offering.** If a Cost Offering is fully subscribed by the Owners, then commencing with the first dollar after which CM Costs exceed the Original Maximum CM Cost Amount, all Owners that subscribed to the Cost Offering will pay their Incremental Cost Offering CP Percentage of all CM Costs in lieu of the non-subscribing and subscribing Owners paying their Asset Ownership Percentage of CM Costs.

5.1.1.2 **Full Subscription by Owners and Third Parties of Cost Offering.** If a Cost Offering is fully subscribed by the Owners and one or more Third Parties, then commencing on the Cost Offering Final Round Subscription Date, all Owners and Third Parties that subscribed to the Cost Offering will pay their Incremental Cost Offering CP Percentage of all CM Costs in lieu of the non-subscribing and subscribing Owners paying their Asset Ownership Percentage of CM Costs.

5.1.1.3 **Freeze.** If a Freeze occurs, then effective from and after the last Advance required to be made pursuant to **Section 14.2.3** until all CM Costs have been paid in full, all Owners and Third Parties that assumed the DO's Future Payment Obligations will pay their Incremental Freeze CP Percentage of all CM Costs, and the Defaulting Owner with respect to which the Freeze occurred will not pay its Asset Ownership Percentage of CM Costs.

5.1.1.4 **Payment Adjustment.** On a semi-annual basis commencing approximately one hundred eighty (180) days after the date on which the Effective Time occurs, the Construction Manager will provide the Management Committee with a comparison of actual aggregate CM Costs incurred in connection with the construction of the Facilities and the Discretely Owned Substation Assets as compared with the Initial Project Budget. If, in the determination of the Management Committee, (i) based on any such periodic report of the Construction Manager, or at any other time, there is a variance in the amounts deposited in the Main Trust Account in respect of the Facilities or the amounts incurred by any Discretely Owned Substation Owner in respect of its Discretely Owned Substation Assets from the projected amounts based on the Initial Project Budget; (ii) such variance is likely to be permanent and not, for example, based on timing differences; and (iii) any such variance warrants adjustment to the relative amounts to be invoiced to the Owners in accordance with this Agreement in respect of future CM Costs, then the Management Committee may direct the Construction Manager to adjust the amounts to be invoiced to each Owner in accordance with this Agreement in respect of future CM Costs, with the goal of causing each Owner to have expended its Percentage Interest of aggregate CM Costs as promptly as is practicable, giving due consideration to such factors as are deemed relevant to the Management Committee, including (a) the progression of Construction Work to the point of adjustment, and (b) the projected expenditures for CM Costs after the point of adjustment. Upon Final Completion of all of the Phases, the Construction Manager will reconcile the aggregate amount of CM Costs paid by each Owner and incurred by each Discretely Owned Substation Owner. Upon completion of such reconciliation, the Construction Manager will provide a copy of such reconciliation together with reasonable supporting documentation to each Owner and the Management Committee and the Owners that have expended less than their Percentage Interest of CM Costs will make such payments to other Owners as are necessary to cause each Owner to have expended for CM Costs an amount equal to the aggregate sum of CM Costs for the Project multiplied by its Percentage Interest.

5.1.2 **Invoice and Payment Procedures.** The Management Committee will enforce the obligation of the Construction Manager to comply with the invoice and payment procedures set forth in the Construction Management Agreement and the obligation of the Maintenance Providers and Control Center Authorities to comply with the invoice and payment procedures set forth in the Operation and Maintenance Agreement.

- 5.1.3 **Main Trust Account.** The Chair may from time to time send an invoice to all Owners for Project Costs that are not CM Costs or Operating Expenses for deposit into the Main Trust Account. Such invoices will not require payment thereof by an Owner more than thirty (30) days prior to the date on which funds are required to be paid by the Management Committee. The Owners will make full payment of the amounts invoiced by the Chair to the Main Trust Account by the date set forth in the invoice.
- 5.1.4 **Manner of Payment.** All payments under this Agreement will be made by electronic funds transfer or wire transfer in immediately available funds for receipt by the due date (i) in the case of payments by an Owner, either to the applicable Project Account specified in the applicable invoice pertaining to such payment or to such other Person as the Management Committee may designate to the Owners and (ii) in the case of payments to an Owner, to the bank account or Person designated by such Owner to the Secretary. Each Owner may change its account for receiving a payment or delivery by giving notice to the other Owners and the Secretary at least five (5) Business Days prior to the scheduled date for the payment or delivery to which such change applies.
- 5.1.5 **No Counterclaim; No Set-Off.** Subject to any good faith disputes regarding payment addressed pursuant to **Section 6.4**, each Owner will make, to the applicable Project Account, all payments required under this **Article 5** as and when due, without demand, counterclaim, setoff, deduction or defense, and each Owner waives, to the extent permitted by Applicable Law, all rights now or hereafter conferred by statute or otherwise with respect to any such demand, counterclaim, setoff, deduction or defense.

ARTICLE 6 BUDGETS, ACCOUNTING

6.1 Construction Phase.

- 6.1.1 **Project Budgets.** Attached hereto as **Exhibit D** is the initial budget setting forth the Project Costs anticipated as of the Effective Time to be incurred through Final Completion of all of the Facilities and the Discretely Owned Substation Assets ("**Initial Project Budget**"). The Pre-Construction Estimated Project Budget and all adjustments thereto and the Project Budget and all adjustments thereto, must be approved from time to time by a Level B Vote.
- 6.1.2 **CM Costs.**
- 6.1.2.1 **Obligation to Pay CM Costs.** Until all CM Costs have been paid, all invoices for such CM Costs submitted by the Contractors or other Persons for payment will be reviewed and approved in accordance with the terms of the Construction Management Agreement. The Owners will pay such costs in accordance with

Section 5.1 hereof and **Section 6.4** of the **Construction Management Agreement**.

6.1.2.2 Payment of CM Costs. To the extent funds are available in the Main Trust Account, the Management Committee will enforce the obligation of the Construction Manager to pay all CM Costs due and payable under the Construction Management Agreement. For purposes of this Agreement, the Owners will pay the CM Costs to the extent they are: (i) identified and included in the Initial Project Budget or in any subsequently approved Project Budget; (ii) authorized to be paid pursuant to the terms of the Construction Management Agreement; (iii) approved as CM Costs by the Management Committee; or (iv) required to be expended in response to an Emergency or are otherwise due and owing under any Project Agreement or other legal obligation respecting the Project.

6.2 Operating Phase.

6.2.1 Capital Budgets. The Management Committee will include provisions in the Operation and Maintenance Agreement requiring the E&O Committee to prepare, in cooperation with the Maintenance Providers, and deliver to the Management Committee not later than August 1 of each Operating Year, a consolidated Proposed Capital Budget broken down by Applicable Segments, for the subsequent three (3) Operating Years. The Management Committee will review and vote on the Proposed Capital Budget, which must be approved by a Level B Vote. If the Management Committee does not vote to approve a consolidated Proposed Capital Budget, the E&O Committee will work with the Maintenance Providers to promptly re-submit a revised consolidated Proposed Capital Budget to the Management Committee for its approval. Once the Management Committee approves a consolidated Proposed Capital Budget, it will become the capital budget (the "**Capital Budget**"), which may only be amended by a Level B Vote.

6.2.2 Operating Expenses and Capital Expenses.

6.2.2.1 Obligation to Pay Operating Expenses and Capital Expenses. The Owners will pay, in accordance with **Section 5.1**, all invoices for Operating Expenses and Capital Expenses submitted by the Maintenance Providers, Control Center Authorities or other Persons for payment in accordance with the terms of the Operation and Maintenance Agreement. Each Owner agrees that it will pay its Asset Ownership Percentage of all Operating Expenses and Capital Expenses, regardless of whether such Operating Expenses are within the approved Capital Budget.

6.2.2.2 Payment of Operating Expenses and Capital Expenses. For purposes of this Agreement, Operating Expenses and Capital Expenses will be paid to the extent they are: (i) Operating Expenses or Capital Expenses identified and included in the applicable Capital Budget; (ii) Operating Expenses or Capital Expenses authorized to be paid pursuant to the terms of the Operation and Maintenance Agreement; (iii) additional expenses approved as Operating Expenses or Capital Expenses by the Management Committee; or (iv) required to be expended in response to an Emergency or that are otherwise due and owing under any Project Agreement or other legal obligation respecting the Project.

6.2.3 **Budget Deadlock.** If by December 1 prior to any Operating Year after the Effective Time, the Management Committee does not vote to approve a Capital Budget for the next Operating Year (a “**Budget Deadlock**”), then for the forthcoming Operating Year, until the Management Committee votes to approve such budget, the unapproved budget proposed will not be implemented, but the Capital Budget for such Operating Year previously approved by the Management Committee as part of the three (3) year rolling Capital Budget process will remain in full force and effect until the Management Committee votes to approve a new Capital Budget. If the applicable Operating Year is not covered by a Capital Budget, then to the extent necessary, until a new Capital Budget is approved, the Capital Budget currently in effect will be adjusted by changes in the Inflation Factor from the commencement of the then-current Operating Year plus the cost of Capital Improvements that are required for the Facilities to be maintained so as to meet the requirements of Applicable Law.

6.3 **Interest.** Upon establishment of the Project Accounts and from time to time thereafter, the Management Committee will direct the Trustee how to invest the funds in the Project Accounts established and maintained by it. All interest accrued on the amounts in any Project Account will accrue to the benefit of the Owners collectively and will be used as an offset against Project Costs.

6.4 **Disputed Contributions.** If an Owner in good faith disputes whether an appropriate call for any payment or contribution (or any portion of a payment or contribution) has been made by the Management Committee, the Construction Manager, the Maintenance Providers or the Control Center Authorities pursuant to the Project Budget or Capital Budget then in effect, or otherwise in accordance with this Agreement, such Owner may, after making such payment or contribution, as its exclusive remedy, promptly notify the Management Committee of such dispute, including the amount in dispute, and invoke the provisions of **Section 3 of Schedule 1**. If, upon resolution of the Dispute, it is determined that the disputed amount was not due, the Management Committee, Construction Manager, Maintenance Providers or Control Center Authorities, as the case may be, will correct the original invoice and refund (without interest) any disputed amounts paid by an Owner pursuant to such invoice.

6.5 Inspection and Audit Rights. Any Construction Management Agreement and Operation and Maintenance Agreement must include provisions requiring the Construction Manager, the Maintenance Providers and Control Center Authorities to keep, in conformity with all requirements of Applicable Law and the requirements of **Section 6.7**, proper books, records, accounts, ledgers, time cards, estimates, invoices, schedules, correspondence and other documents (whether in physical or electronic form) related to the Project (collectively, "**Books and Records**"). Unless otherwise agreed by a Level C Vote of the Management Committee, prior to the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets, the Management Committee will, and after the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets, the Management Committee may, select and engage a public accounting firm to conduct a review of agreed accounting procedures and render its independent opinion with respect to the accuracy and appropriateness of the financial information and accounting practices relating to the Project in respect of each Fiscal Year (or partial year). Any costs and expenses related to the independent financial review, including payment for the time of the Construction Manager, Maintenance Providers or Control Center Authorities, will be Project Costs. The independent financial review, together with the accounting firm's opinion, will be delivered promptly to each Owner no later than one hundred twenty (120) days following the end of the Fiscal Year that is the subject of such audit. During ordinary business hours and upon reasonable notice to the Management Committee, each Owner, or its designee, may inspect, copy and audit (directly or through certified public accountants of its choice), at its expense (including payment for the time of the Construction Manager, Maintenance Providers, Control Center Authorities or other custodian of the Books and Records), the Books and Records. The Owners that desire to audit the Books and Records may coordinate their efforts and use common firms or personnel in order to ease the administrative burden on the Construction Manager, Maintenance Providers, Control Center Authorities or other custodian of such Books and Records. Books and Records of the Management Committee and the Owners are subject to the confidentiality requirements of this Agreement and are considered Confidential Information governed by **Article 17**. During ordinary business hours and upon reasonable notice to the Management Committee, each Owner or its designee may inspect the Facilities.

6.6 Reporting.

6.6.1 Under Construction Management Agreement. The Management Committee will include provisions in any Construction Management Agreement requiring the Construction Manager to provide all of the reports required by the Construction Management Agreement to the Persons and in the time frames set forth therein.

6.6.2 Under Operation and Maintenance Agreement. The Management Committee will include provisions in any Operation and Maintenance Agreement requiring (i) each Responsible Entity to deliver to the E&O Committee on a quarterly basis (a) a summary of actual Maintenance Costs or Control Center Costs, as appropriate, that have been incurred during the Operating Year and which are to be reimbursed by the Owners, (b) a comparison of actual costs to date to the then current forecast and updated forecasted costs to the then current forecast, and (c) the amount of and explanation for any funds

deposited in accordance with **Section 6.9** of the **Operation and Maintenance Agreement**, and (ii) each Maintenance Provider, when applicable, to deliver to the E&O Committee on a quarterly basis similar data to the data set forth in this **Section 6.6.2(i)** with respect to Capital Improvements and the Capital Budget.

- 6.7 Records.** The Management Committee will record or cause to be recorded accounting information in accordance with the Uniform System of Accounts, as modified by the requirements or permitted practices of Governmental Bodies applicable to one or more of the Owners. In the event of any changes in FERC's accounting procedures that might result in charges different from those contemplated by this Agreement, the Owners will agree upon the appropriate changes to this Agreement to achieve the original intent of the Owners, unless otherwise agreed by the Owners. If the Owners cannot so agree, the Management Committee will decide the issue by a Level B Vote.

ARTICLE 7 TAXES AND ASSESSMENTS

7.1 Management of Tax Matters.

- 7.1.1 Taxes Other Than Personal Taxes.** Except for any payments of Personal Taxes and except for any rulings that an Owner might require in connection with the issuance of tax-exempt bonds or its tax-exempt status, the Management Committee will have the authority and responsibility for administering, coordinating, filing returns, making Property tax declarations, paying, seeking official tax rulings or determinations, and other related functions pertaining to all taxes, payments in lieu of taxes, assessments, impositions, charges, and related costs of every kind and nature, ordinary, or extraordinary, general or special, foreseen or unforeseen, settled or pending settlement connected with or arising out of the development, construction, ownership, operation, maintenance, alteration, repair, rebuilding, use or retirement of the Project or any part thereof (collectively "**Taxes**") that are or may be imposed by any Governmental Body, **provided, however**, unless specifically authorized in writing by an Owner, such authority will not extend to any act or action affecting any exemption from Taxes or special tax treatment arising out of the Project to which an Owner may be entitled on a basis that is different from the other Owners. As used herein, the term "**Taxes**" will not include real property taxes, tangible personal property taxes, income taxes, franchise taxes, license fees, payments in lieu of taxes, Sales Taxes or excise taxes assessed against each Owner, relating to the Project or any assets of an Owner other than the Project, or relating to the Discretely Owned Substation Assets (collectively "**Personal Taxes**"), the payment of which is and will remain the responsibility of each Owner so assessed. Each Owner may contest the validity or amount of any Personal Taxes, in each case provided that the contested Personal Taxes will not remain unpaid for such length of time as will permit any part or all of the Project to be sold or foreclosed or any interest of any Owner therein to be subject to a Lien for the nonpayment of the same.

- 7.1.2 **Sales, Consumer and Use Taxes.** The Management Committee will cause the Construction Manager to perform the obligations set forth in **Appendix L** of the **Construction Management Agreement** in connection with the sales, consumer and use tax obligations of the Owners arising from the procurement of Equipment and Materials for the Facilities (collectively "**Sales Taxes**"). Except as otherwise directed by the Management Committee, the Construction Manager will be responsible for securing any refund of any such sales and use taxes to which each Owner may be entitled in accordance with Applicable Law, which refunds may be retained by each such Owner as its individually owned Property.
- 7.2 **Payment of Taxes.** The Management Committee will take all necessary actions to pay and discharge all Taxes that are imposed by any Governmental Body before the same become delinquent, except (i) those that are directly billed to an Owner by any taxing authority and that an Owner is responsible to pay directly and (ii) those subject to a good faith contest by an appropriate Proceeding approved by the Management Committee.
- 7.3 **Sharing of Taxes and Related Payments.** All Taxes will be Operating Expenses, which will be shared and paid by the Owners in proportion to their respective Asset Ownership Percentage; **provided, however**, to the extent that the aggregate amount of the Taxes are reduced because one or more Owners are entitled to specific tax benefits resulting from its status apart from the Project, such Owners will be entitled to the entire benefit, to the extent of actual realization, of any exemptions from and reductions of Taxes connected with or arising out of the development, construction, ownership, operation, maintenance, alteration, repair, rebuilding, use, or retirement of the Project or any part thereof.
- 7.4 **Tax Credits or Other Tax Benefits.** If one Owner is entitled to Tax credits or other Tax benefits from a Governmental Body that are unrelated to its status as an Owner, the Owner that is entitled to such credits or benefits will be entitled to seek such credits or benefits and to retain any proceeds arising from such credits or benefits. Except as otherwise provided in **Section 7.1.2**, if one or more Owners (but fewer than all Owners) are entitled to Tax credits or other Tax benefits from a Governmental Body that are related to their status as Owners, then each such Owner will be entitled to seek such credits or benefits individually and to retain any proceeds resulting therefrom, in each case in an amount equal to the proportion that its Percentage Interest bears to the Percentage Interest of all of the other Owners that are entitled to such credits or benefits. Except as otherwise provided in **Section 7.1.2**, if all Owners are entitled to Tax credits or other Tax benefits from a Governmental Body that are related to their status as Owners, then each such Owner will be entitled to seek such credits or benefits individually in an amount equal to the proportion that its Percentage Interest bears to the Percentage Interest of all of the other Owners and to retain any proceeds resulting therefrom.
- 7.5 **Non-creation of Taxable Entity.** Notwithstanding any other provision of this Agreement, the Owners do not intend to create hereby at law any joint venture, partnership, association taxable as a corporation, trust, limited liability company or other entity for the conduct of any business for profit. The Owners agree to elect under Section 761(a) of the Code, to exclude the transactions created by this Agreement from the application of Subchapter K, Chapter 1 of the Code, and the Owners agree to revise

the terms of this Agreement to the extent and in a manner necessary to permit such election.

ARTICLE 8 INSURANCE AND CASUALTY DAMAGE

- 8.1 Insurance.** The Management Committee will maintain, or include provisions in any Construction Management Agreement and Operation and Maintenance Agreement, as applicable, requiring the Construction Manager, Maintenance Providers or Control Center Authorities to maintain insurance of the types, in the amounts and with the deductibles specified in **Exhibit F** attached hereto ("**Insurance Plan**"), as it may be amended from time to time by a Level B Vote; **provided** that if, prior to the time of any such vote, an Owner informs the Management Committee that such amendment would violate the terms of an Owner's **Financing Instrument**, then such amendment will require the approval of such Owner. Prior to the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets, premiums payable under the Insurance Plan will constitute a CM Cost, and on and after such date, an Operating Expense.
- 8.2 Casualty.** Promptly after any material Casualty to the Facilities (other than a Phase Destruction Event that will be handled in accordance with **Section 8.4**), the applicable Maintenance Providers will determine a course of action with respect to such material Casualty in accordance with Good Utility Practice and promptly notify the Management Committee. As soon as practicable after receipt of such notice, the Management Committee will meet to determine, by a Level B Vote, whether to take any additional actions. If a Casualty to the Facilities occurs, the Management Committee will diligently pursue available rights to compensation in respect of such Casualty that it determines are in the best interest of all of the Owners. If, as the result of a Casualty to the Facilities, one Owner is entitled to benefits or assistance from a Governmental Body that are unrelated to its status as an Owner, the Owner that is entitled to such benefits or assistance will be entitled to seek such benefits or assistance and to retain any proceeds arising from such benefits or assistance. If one or more Owners (but fewer than all Owners) are entitled to benefits or assistance from a Governmental Body that are related to their status as Owners, then each such Owner will be entitled to seek such benefits or assistance individually and to retain any proceeds resulting therefrom, in each case in an amount equal to the proportion that its Asset Ownership Percentage bears to the Asset Ownership Percentage of all of the other Owners that are entitled to such benefits or assistance. If all Owners are entitled to benefits or assistance from a Governmental Body that are related to their status as Owners, then each such Owner will be entitled to seek such benefits or assistance individually in an amount equal to the proportion that its Asset Ownership Percentage bears to the Asset Ownership Percentage of all of the other Owners and to retain any proceeds resulting therefrom.
- 8.3 Insurance Proceeds.** All insurance proceeds paid pursuant to the Insurance Plan in respect of the Facilities (herein sometimes referred to as the "**Insurance Proceeds**") will be (i) deposited in a Project Account specified by the Management Committee, except as otherwise agreed by all of the Owners, for use as directed by the Management Committee

in accordance with this **Article 8**; **provided** that if an Owner informs the Management Committee prior to its receipt of Insurance Proceeds that one of such Owner's Financing Parties requires that its Asset Ownership Percentage of the Insurance Proceeds be paid to such Financing Party, then such Insurance Proceeds will be so paid; **provided, however**, within ten (10) Business Days after such payment, such notifying Owner must either (a) deposit its Asset Ownership Percentage of the Insurance Proceeds into a Project Account specified by the Management Committee or (b) deliver to the Chair (or Vice-Chair if the Chair is the Owner Representative of the informing Owner) a letter of credit in such amount and otherwise in form and substance reasonably acceptable to the Chair (or, if applicable, Vice-Chair), for the benefit of each of the other Owners. Except as provided for in the provisos to the preceding sentence, if an Owner receives Insurance Proceeds with respect to a Casualty to the Facilities, such Owner will deliver such proceeds as directed by the Management Committee. In the case of repair of the Facilities pursuant to this **Article 8**, all Insurance Proceeds will first be applied to restoration of the affected Facilities, with any excess being deposited in a Project Account specified by the Management Committee for the benefit of the Owners in accordance with their Asset Ownership Percentages.

8.4 Phase Destruction Event.

8.4.1 Damage or Destruction of Substantially All of a Phase.

8.4.1.1 Phase Windup Plan. If all or substantially all of a Phase (without taking into account the Discretely Owned Substation Assets) is destroyed during the term of this Agreement (a "**Phase Destruction Event**") and the Insurance Proceeds covering the insured portion of the Phase (other than the Discretely Owned Substation Assets) are sufficient and available to cover the full cost of restoration of such insured portion of the Phase (excluding the amount of any deductible or self-insured retention as specified in the applicable insurance policy), the Management Committee will undertake to rebuild such Phase (other than the Discretely Owned Substation Assets, which will be the responsibility of the Discretely Owned Substation Owners), unless the Management Committee determines, by a Level C Vote, not to rebuild such Phase. If the Insurance Proceeds covering the insured portion of the Phase (other than the Discretely Owned Substation Assets) are not sufficient and available to cover the full cost of restoration of the insured portion of the Phase (excluding the amount of any deductible or self-insured retention as specified in the applicable insurance policy), the Management Committee will institute any process it deems appropriate to determine whether the Owners are willing to cover such cost pro rata based on their Asset Ownership Percentages. If, as a result of such process, all Owners are willing to cover such cost pro rata based on their Asset Ownership Percentages, the Management Committee will rebuild such Phase. If, as a result of such process, all Owners are not willing to cover

such cost pro rata based on their Percentage Interests, then the Management Committee will give notice to each Owner that the Management Committee will not rebuild such Phase. For a period of thirty (30) days following the date of such notice, any Owner(s) desiring to rebuild the Phase (other than the Discretely Owned Substation Assets) (the “**Rebuilding Owners**”) will have the right to purchase all, but not fewer than all, of the rights and assets that constitute the Phase (other than the Discretely Owned Substation Assets) and assume all, but not fewer than all, of the obligations and liabilities related to the Phase (other than the Discretely Owned Substation Assets) from all other Owners not willing to rebuild the Phase (the “**Abandoning Owners**”) for the Fair Market Value (determined pursuant to the procedures set forth in **Section 8.4.1.2**) of the Abandoning Owners’ Asset Ownership Percentage in such rights, assets, obligations and liabilities, and upon the consummation of such purchase, the Phase will no longer be part of the Project. Unless such right is irrevocably exercised by the Owner(s) providing notice of such election within the aforementioned thirty (30) day period (the “**Rebuild Election Notice**”), such election will be deemed irrevocably waived. If no Owner or group of Owners has exercised such right within the aforementioned thirty (30) day period, then the Management Committee will, by a Level B Vote, adopt and implement a plan for winding up the applicable Phase, which plan will include the following (the “**Phase Windup Plan**”):

8.4.1.1.1 Termination and Modification Costs are Operating Expenses. Termination of all Project Agreements, Construction Agreements, Real Property Agreements, and all other contracts that relate exclusively to the Phase in accordance with the terms thereof, and any cancellation costs, termination costs and damages payable thereunder will constitute Operating Expenses. Modification of all Project Agreements, Construction Agreements, Real Property Agreements, and all other contracts that relate in part to the Phase in accordance with the terms thereof, and any costs and damages payable thereunder will constitute Operating Expenses.

8.4.1.1.2 Required Steps to Implement the Phase Windup Plan. The (i) timely disposition of the assets that constitute the Phase (other than the Discretely Owned Substation Assets) by sale, auction, division of assets, or otherwise; (ii) deposit of any proceeds of the disposition in the Project Account(s) specified by the Management Committee (which proceeds will be for the benefit of the Owners based on their Asset Ownership Percentage); (iii) undertaking of other

necessary steps for the winding up of the Phase (other than the Discretely Owned Substation Assets); (iv) taking of all action required by Good Utility Practice to provide for the retirement from service of any part of the Phase (other than the Discretely Owned Substation Assets) that is not sold or disposed of, including any remediation, restoration or other actions required by Applicable Law or necessary or desirable for the protection of the Owners from liability; and (v) periodic reporting to the Owners on the status of the Phase Windup Plan.

8.4.1.2 Determination of Fair Market Value. To determine the Fair Market Value, the Rebuilding Owners (by Majority vote of the Rebuilding Owners) will designate one (1) qualified appraiser in the Rebuild Election Notice and, within fifteen (15) days from the date of the Rebuild Election Notice, the Abandoning Owners (by Majority vote of the Abandoning Owners) will designate a second (2nd) qualified appraiser. A qualified appraiser must have at least five (5) years' experience in the appraisal of properties similar to the Project. Each of the two (2) appraisers will be directed to determine the Fair Market Value of the Phase (excluding the Discretely Owned Substation Assets) within thirty (30) days of his/her appointment and to notify the Rebuilding Owners, the Abandoning Owners and the Management Committee of his/her determination in writing. If the lower of the two (2) determinations is not less than ninety-five percent (95%) of the higher of the two (2) determinations, then the Fair Market Value will be the average of the two (2) determinations. If the lower of the two (2) determinations is less than ninety-five percent (95%) of the higher of the two (2) determinations, then the two (2) appraisers will, within fifteen (15) days thereafter, appoint a third appraiser with similar qualifications (who must not have performed any work for any of the Rebuilding Owners or the Abandoning Owners within the five (5) year period prior to his/her appointment) and will each furnish to such appraiser a written report of his/her respective determination. Within thirty (30) days of his/her appointment, the third appraiser will select the Fair Market Value of one or the other of the original appraisers and will notify the Rebuilding Owners, the Abandoning Owners and the Management Committee of his/her determination in writing, which determination will be final and binding upon the Rebuilding Owners and the Abandoning Owners. The third appraiser must select one of the two (2) appraisals and will not have the right to establish a different Fair Market Value determination. The Rebuilding Owners and the Abandoning Owners will bear the cost of the appraiser appointed by each of them, and the Rebuilding Owner and the Abandoning Owner will

each pay one-half of the cost of the third appraiser. The closing of the Transfer of the Asset Ownership Percentages of the Abandoning Owners will occur within twenty (20) days following the final determination by the appraisers of the Fair Market Value.

8.4.2 Payment of Restoration Costs. If the Management Committee does not determine to terminate the operations of a Phase pursuant to **Section 8.4.1**, the Management Committee, acting by a Level B Vote, will direct the E&O Committee to promptly prepare a revised Capital Budget and present them to the Management Committee for action. Upon approval, the Management Committee will proceed to cause the repair of the Phase (other than the Discretely Owned Substation Assets, which will be the responsibility of the Discretely Owned Substation Assets Owners) in accordance with the approved Capital Budget. Each Owner will pay its Asset Ownership Percentage of the net restoration cost in accordance with the Capital Budget and invoice procedures established by the Management Committee.

ARTICLE 9 CONDEMNATION

- 9.1 Condemnation of Substantially All of a Phase.** If, at any time during the term of this Agreement, title to the whole or such portion of a Phase (other than the Discretely Owned Substation Assets) as will render its continued operation by the Owners infeasible is taken in any Condemnation Action (or conveyed in lieu of any such Condemnation Action), other than for a temporary use or occupancy that is for one (1) year or less in the aggregate ("**Complete Taking**"), then the Management Committee will rebuild the Phase (other than the Discretely Owned Substation Assets, which will be the responsibility of the Discretely Owned Substation Owners) unless (i) the Management Committee decides with reasonable promptness in the circumstances, but in all events within ninety (90) days after such Complete Taking, by a Level C Vote, not to rebuild or (ii) the Condemnation Award is not sufficient and available to cover the cost of Phase restoration (without regard to the Discretely Owned Substation Assets). If the Management Committee elects not to rebuild or the Condemnation Award is not sufficient and available to cover the cost of Phase restoration (without regard to the Discretely Owned Substation Assets), it will adopt and implement the Phase Windup Plan.
- 9.2 Condemnation of Part of a Phase.** If a Condemnation Action does not give rise to a Complete Taking, and is not for a temporary use or occupancy that is for one (1) year or less in the aggregate (in which case it will constitute a "**Partial Taking**"), the Management Committee will rebuild the Phase (other than the Discretely Owned Substation Assets, which will be the responsibility of the Discretely Owned Substation Asset Owners).
- 9.3 Condemnation Proceedings.** Each Owner will have the right, at its own expense, to appear in any Condemnation Action and to participate in any and all hearings, trials and appeals therein. In the event of the commencement of any Complete Taking or Partial Taking, (i) the Management Committee will undertake commercially reasonable efforts to defend against, and maximize the Condemnation Awards from, any such

Condemnation Action; (ii) the Management Committee will not accept or agree to any conveyance in lieu of any condemnation or taking except upon a Level C Vote, and no Owner will accept or agree to any conveyance in lieu of any condemnation or taking of its Asset Ownership Percentage in the absence of written approval of the Management Committee by a Level B Vote; and (iii) each Owner will cooperate with each other in any such Condemnation Action and provide each other with such information and assistance as each will reasonably request in connection with such Condemnation Action and is consistent with achieving the objectives described in **clause (i)** above.

9.4 Notice of Condemnation. If an Owner receives notice of any proposed or pending Condemnation Action affecting all or a portion of the Facilities or Discretely Owned Substation Assets, such Owner receiving such notice will promptly notify the other Owners and the Management Committee.

9.5 Condemnation Awards. All sums, amounts or other compensation for any portion of the Facilities as a result of, or in connection with, any Condemnation Action, whether or not such award includes compensation for other Property (“**Condemnation Awards**”) will be deposited in a Project Account specified by the Management Committee, except as otherwise agreed by all of the Owners, for use as directed by the Management Committee in accordance with this **Article 9**. If an Owner receives a Condemnation Award, such Owner will deliver such Condemnation Award as directed by the Management Committee. In the case of rebuilding of the Phase pursuant to this **Article 9**, all net Condemnation Awards will first be applied to rebuilding of the affected Phase, with any excess being deposited in a Project Account specified by the Management Committee for the benefit of the Owners in accordance with their Asset Ownership Percentages.

ARTICLE 10 TRANSFERS

10.1 General Transfer Rule. Except for (i) Permitted Transfers or (ii) a Transfer of Discretely Owned Substation Assets made in accordance with **Section 10.3.2**, no Owner may directly or indirectly (including by operation of law) sell, assign, transfer, pledge, lease, mortgage or otherwise encumber (individually and collectively, a “**Transfer**”) all or any part of its Asset Ownership Percentage, its other Percentages or any other interest in the Project. Any Transfer, other than a Transfer pursuant to **Section 10.2.9** (Exercise of Collateral Assignment), that is made in violation of this Agreement will be void *ab initio*. By way of clarification, (a) a Percentage Interest cannot be transferred other than in connection with a Transfer of all or any part of an Owner’s Asset Ownership Percentage and (b) the Transfer of an Owner’s Discretely Owned Substation Asset cannot include the Transfer of all or any part of such Owner’s Percentage Interest unless all or a portion of such Owner’s Asset Ownership Percentage is transferred as part of the same transaction and to the same transferee.

10.2 Permitted Transfers. The circumstances set forth in **Sections 10.2.1** through **10.2.11** will each be deemed a “**Permitted Transfer**”. For purposes of this **Section 10.2**, an Owner is a Non-Defaulting Owner even if such Owner has an existing Covenant Default,

if such Covenant Default could not reasonably be expected to have a material adverse effect on the Project.

- 10.2.1 **Transfer to Affiliate(s)**. A Transfer by a Non-Defaulting Owner to one or more of its Affiliates, **provided** that such Affiliate(s) are Creditworthy (after taking into account any guarantee or other credit enhancement); **provided, however**, if the Transfer is a Remaining AOP Without DOSA Transfer, then the transferring Owner must have provided DOSA Completion Security;
- 10.2.2 **Collateral Assignment**. A Transfer by collateral assignment, mortgage, hypothecation, pledge or other Lien, including pursuant to a **Financing Instrument**, in favor of any of such Owner's Financing Parties (each, a "Collateral Assignment");
- 10.2.3 **Transfer to Another Owner**. If the transferring Owner has first complied with **Section 10.4** (Right of First Negotiation), then a Transfer by a Non-Defaulting Owner to another Non-Defaulting Owner; **provided, however**, if the Transfer is a Remaining AOP Without DOSA Transfer, then the transferring Owner must have provided DOSA Completion Security;
- 10.2.4 **Business Purpose Transaction Transfer to Another Owner**. A Transfer by a Non-Defaulting Owner to another Non-Defaulting Owner of an Asset Ownership Percentage of one percent (1%) or less of the aggregate Asset Ownership Percentages as of the date of Transfer to facilitate (i) a transaction between such Owners that involves the swap of assets or (ii) any other transaction between such Owners that has a bona fide business purpose (each, a "**Business Purpose Transaction**"); **provided, however**, in no event will any Owner be entitled to engage in more than two (2) Business Purpose Transactions in any consecutive sixty (60) Month period; **provided, further, however**, if the Transfer is a Remaining AOP Without DOSA Transfer, then the transferring Owner must have provided DOSA Completion Security;
- 10.2.5 **Transfer to a Third Party**. If the transferring Owner has first complied with **Section 10.4** (Right of First Negotiation), then (i) a Transfer by a Non-Defaulting Owner to any Third Party that (a) is Creditworthy and (b) is, or has an Affiliate that is, a transmission owner or operator or any entity that has undertaken an obligation by statute, franchise, regulatory requirement or contract for load to provide electric energy for end use customers, in each case if the Transfer occurs prior to the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets, or (ii) a Transfer by a Non-Defaulting Owner to any Third Party if the Transfer occurs on or after the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets; **provided, however**, if the Transfer is a Remaining AOP Without DOSA Transfer, then the transferring Owner must have provided DOSA Completion Security if required by **Section 10.2.11**;

- 10.2.6 **Management Committee Approval.** A Transfer by an Owner that has been approved by the Management Committee acting by a Level B Vote (excluding the Authorized Owner Representative of the Owner requesting the Transfer and, if the proposed Transfer is to one or more other Owners, the Authorized Owner Representative(s) of such other Owner(s));
- 10.2.7 **Change of Control.** A Transfer by a Change of Control but not if such Change of Control, directly or indirectly or after having effected one or more transactions which constituted a Permitted Transfer, would result in a Third Party becoming an Owner where a Transfer to such Third Party would not constitute a Permitted Transfer under another provision of **Section 10.2;**
- 10.2.8 **Freeze or Call Option.** A Transfer that occurs as the result of (i) a Freeze pursuant to a process instituted by the Management Committee in accordance with **Section 14.2.5.4,** or (ii) the exercise of a Call Option by the Management Committee pursuant to **Section 14.2.7;**
- 10.2.9 **Exercise of a Collateral Assignment.** A Transfer as a result of or upon exercise of a Collateral Assignment;
- 10.2.10 **Discretely Owned New Substation.** A Transfer of all of a Discretely Owned Substation Owner's right, title and interest in and to a Discretely Owned New Substation that is part of the same Permitted Transfer in which all or a portion of such Owner's Asset Ownership Percentage and other Percentages are transferred and both Transfers are to the same transferee; and
- 10.2.11 **Remaining Asset Ownership Percentage Without Discretely Owned Substation Assets.** Prior to the Final Completion Date of the Facilities and the Discretely Owned Substation Assets, a Transfer by an Owner that owns a Discretely Owned Substation Asset of one hundred percent (100%) of the Asset Ownership Percentage owned by it at such time such that immediately after such Transfer such Owner will no longer have an Asset Ownership Percentage and such Transfer is not part of the same Permitted Transfer in which all of such Owner's right, title and interest in and to its Discretely Owned Substation Assets are transferred to the same transferee (a "**Remaining AOP Without DOSA Transfer**"), only if such Owner has delivered to the other Owners (including the transferee): (i) an Acceptable Letter of Credit; (ii) an Acceptable Escrow Arrangement; or (iii) a surety bond or other security (a) in an amount equal to one hundred and fifty percent (150%) of the Discretely Owned Substation Costs attributable to the Discretely Owned Substation Assets that are not being transferred by the transferring Owner as part of the same Permitted Transfer of its Asset Ownership Percentage that are necessary to achieve Final Completion of the Facilities and the Discretely Owned Substation Assets based on the then-current Project Budget, (b) which can be drawn upon or otherwise accessed if the transferring Owner fails to pay, when due, any Discretely Owned Substation Costs required to be paid by it under the DOSA Construction Agreements to which it is a party within fifteen (15) days after the date such payment was due,

and (c) that is otherwise in form and substance satisfactory to the Management Committee acting by a Level B Vote (excluding the Authorized Owner Representative of the Owner requesting the Transfer and, if the proposed Transfer is to one or more other Owners, the Authorized Owner Representative(s) of such other Owner(s)) (the security described in **clauses (i), (ii) and (iii)** of this **Section 10.2.11** is hereinafter referred to as the “**DOSA Completion Security**”).

10.3 Rules and Conditions to Transfer.

10.3.1 **For Permitted Transfers.** An Owner may only engage in a Permitted Transfer specified in **Section 10.2.1, Sections 10.2.3 through 10.2.8 and Section 10.2.11** if the rules of and conditions to Transfer set forth in **Sections 10.3.1.1 through 10.3.1.7** are satisfied or, if waiver is permitted therein, waived. An Owner may only engage in a Permitted Transfer specified in **Section 10.2.9** if the rules of and conditions to Transfer set forth in **Section 10.3.1.1 and Sections 10.3.1.3 through 10.3.1.7** are satisfied or, if waiver is permitted therein, waived. An Owner may engage in a Permitted Transfer specified in **Section 10.2.2** without satisfying the rules of and conditions to Transfer set forth in **Sections 10.3.1.1 through 10.3.1.7**.

10.3.1.1 **Transfer of Associated Rights and Obligations.** The Transfer of: (i) an Asset Ownership Percentage must include a corresponding and equivalent Transfer of all associated rights, obligations and interests of the transferring Owner in and to the Project with respect to the Asset Ownership Percentage transferred, including its other Percentages, except that such Transfer may, but need not, include the Transfer of title to (a) Discretely Owned Existing Substations of the transferring Owner or (b) Discretely Owned New Substations of the transferring Owner after the Substantial Completion Date of the Facilities and the Discretely Owned Substation Assets; **provided, however,** in the event of a Transfer of one hundred percent (100%) of a Discretely Owned Substation Owner’s Asset Ownership Percentage that does not, as part of the same transaction, include a Transfer of all of its right, title and interest in and to all of its Discretely Owned Substation Assets, the transferring Owner must retain and may not Transfer its Residual Interest; and (ii) a Discretely Owned Substation Asset must include a corresponding and equivalent Transfer of all associated rights, obligations and interests of the transferring Owner in and to such Discretely Owned Substation Asset; **provided, however,** in the case of **clause (i) and (ii)** of this **Section 10.3.1.1**, in the event of a Transfer as a result of or in connection with the exercise of a Collateral Assignment, all monetary obligations of the transferring Owner that accrued prior to the date of Transfer will not be included in such Transfer and will remain the obligation of the transferring Owner.

- 10.3.1.2 Partial Transfers. An Owner may not Transfer:
- (i) less than one hundred percent (100%) of its Asset Ownership Percentage unless the Transfer is a Permitted Transfer pursuant to **Section 10.2.1** (Transfer to Affiliate(s)), **10.2.4** (Business Purpose Transaction Transfer to Another Owner), **10.2.6** (Management Committee Approval) or **10.2.8** (Freeze or Call Option);
 - (ii) less than one hundred percent (100%) of its Asset Ownership Percentage unless (a) the Owner is (1) an Original Owner or an Affiliate thereof or (2) a Person that acquired one hundred percent (100%) of the Original Owner's Asset Ownership Percentage at the Effective Time (a "**Successor Owner**") or an Affiliate thereof, (b) the Asset Ownership Percentage to be Transferred is equal to or exceeds fifty percent (50%) of the Original Owner's Asset Ownership Percentage at the Effective Time and after such Transfer such Original Owner together with its Affiliates, or such Successor Owner together with its Affiliates, as applicable, will retain a Asset Ownership Percentage equal to at least four percent (4%), and (c) the Original Owner or the Successor Owner has not previously Transferred less than one hundred percent (100%) of its Asset Ownership Percentage pursuant to this **Section 10.3.1.2(ii)**;
or
 - (iii) less than one hundred percent (100%) of its right, title and interest in and to a Discretely Owned New Substation.

10.3.1.3 Delivery of Transfer Documents. The transferee or transferor of the Asset Ownership Percentage must deliver to the Management Committee an assignment, assumption, partial novation and joinder agreement substantially in the form attached hereto as **Exhibit E-1**, assignment, assumption, novation and joinder agreement substantially in the form attached hereto as **Exhibit E-2**, or a Call Option Assignment Agreement, as applicable (each, a "**Transfer Agreement**") executed by the transferee and transferor (which the Owners that are not the transferor or transferee agree to promptly execute), in each case terms of which may be waived by the Management Committee acting by a Level B Vote (excluding the Authorized Owner Representatives of the Owners that are the transferor or transferee);

10.3.1.4 Transfer Will Not Result in Default. The Transfer will not result in (i) a default that is immediate under this Agreement or any other Project Agreement, or (ii) a violation of Applicable Law, in each case unless satisfaction of this condition is waived by the Management Committee acting by a Level C Vote (excluding the Authorized Owner Representatives of the Owners that are the transferor or transferee);

10.3.1.5 Transfer Will Not Cause Certain Events. The Transfer will not cause the Project or any Owner (other than the Owners that are the transferor or transferee) to be subject to any Applicable Law to which it was not previously subject which could reasonably be expected to adversely affect (i) the ability of the Project to proceed in accordance with the Project Budget or Project Plan or (ii) any Governmental Approvals previously obtained or to be obtained by the Project or any Owner, in each case unless satisfaction of this condition is waived by the Management Committee acting by a Level C Vote (excluding the Authorized Owner Representatives of the Owners that are the transferor or transferee);

10.3.1.6 Delivery of Opinion of Counsel. The transferee delivers an opinion of counsel in form and substance and from a law firm or in-house counsel reasonably satisfactory to the Management Committee with respect to the transferee's (i) organization and good standing in its jurisdiction of organization, (ii) legal authority to conduct its business in each jurisdiction in which the Facilities (or, in the case of a transferee of any right, title or interest in or to a Discretely Owned New Substation, such Discretely Owned New Substation) are or will be located, (iii) authorization to enter into this Agreement and the other Project Agreements and to perform its obligations hereunder and thereunder (or, in the case of a transferee of any right, title or interest in or to a Discretely Owned New Substation, to assume and perform the obligations in **Section 3.1.6** and the **Transmission Capacity Exchange Agreement**), and (iv) compliance with its organizational and other governing instruments and documents and its financing contracts, commitments and arrangements in connection with its assumption, to the extent required by **Section 10.3.1.1**, of the transferor's rights, obligations and interests under this Agreement and the other Project Agreements (or, in the case of a transferee of any right, title or interest in or to a Discretely Owned New Substation, its assumption of the transferor's obligations in **Section 3.1.6** and the **Transmission Capacity Exchange Agreement**), in each case subject to qualifications of legal opinions of the kind and nature used in comparable transactions; and

10.3.1.7 Delivery of Final Orders for Governmental Approvals. The transferee and the transferring Owner deliver to the Management Committee Final Orders for all Governmental Approvals required for the Transfer and assumption of the related rights, obligations, liabilities and interests under this Agreement and the other Project Agreements, unless receipt of a Final Order is waived by the Management Committee acting by a Level B Vote (excluding the Authorized Owner Representatives of the Owners that are the transferor or transferee); **provided, however,** in no event may the

Management Committee waive receipt of the Final Orders for all required Governmental Approvals.

10.3.2 **For Discretely Owned Substation Assets.** An Owner of a Discretely Owned New Substation may engage in a Transfer of all or a portion of its right, title and interest in and to a Discretely Owned New Substation prior to the Substantial Completion Date of the Facilities and the Discretely Owned Substation Assets, only if it is a Permitted Transfer set forth in **Section 10.2.10** and the rules of and conditions to Transfer (including the exceptions thereto) set forth in **Section 10.3** are satisfied or, if waiver is permitted therein, waived. An Owner of a Discretely Owned Existing Substation may engage in a Transfer of all of its right, title and interest in and to a Discretely Owned Existing Substation prior to the Final Completion Date of the Facilities and the Discretely Owned Substation Assets separate and apart from a Permitted Transfer in which all or a portion of such Owner's Asset Ownership Percentage and other Percentages are transferred to the same transferee (a "**DOES Without AOP Transfer**"), only if (i) such Owner has delivered to the other Owners: (a) an Acceptable Letter of Credit; (b) an Acceptable Escrow Arrangement; or (c) a surety bond or other security (1) in an amount equal to one hundred and fifty percent (150%) of the Discretely Owned Substation Costs attributable to the Discretely Owned Existing Substations that are being transferred by the transferring Owner as part of a DOES Without AOP Transfer and that are necessary to achieve Final Completion of the Facilities and the Discretely Owned Substation Assets based on the then-current Project Budget, (2) which can be drawn upon or otherwise accessed if the transferee fails to pay, when due, any Discretely Owned Substation Costs required to be paid by it under the DOSA Construction Agreements to which it is a party within fifteen (15) days after the date such payment was due, and (3) that is otherwise in form and substance satisfactory to the Management Committee acting by a Level B Vote (excluding the Authorized Owner Representative of the Owner requesting the Transfer and, if the proposed Transfer is to one or more other Owners, the Authorized Owner Representative(s) of such other Owner(s)) and (ii) the rules of and conditions to Transfer set forth in **Sections 10.3.2.1** through **10.3.2.3** are satisfied or, if waiver is permitted therein, waived. An Owner of a Discretely Owned Substation Asset may engage in a Transfer of all or a portion of its right, title and interest in and to a Discretely Owned Substation Asset on or after the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets, only if the rules of and conditions to Transfer set forth in **Sections 10.3.2.1** through **10.3.2.3** are satisfied or, if waiver is permitted therein, waived. Notwithstanding anything to the contrary contained in this **Section 10.3.2**, an Owner may engage in a Transfer specified in this **Section 10.3.2** by the grant of a Collateral Assignment without satisfying the rules of and conditions to Transfer set forth in **Sections 10.3.2.1** and **10.3.2.3**.

10.3.2.1 **Delivery of Transfer Documents.** The transferee or transferor of the Discretely Owned Substation Asset must deliver to the Management Committee (i) an assignment and assumption agreement substantially in the form attached hereto as **Exhibit I** (the "**DOSA**

Assignment and Assumption Agreement”) if the transferor is not also transferring to the transferee all or a portion of its Asset Ownership Percentage, or (ii) a Transfer Agreement if the transferor is also transferring to the transferee all or a portion of its Asset Ownership Percentage, in each case executed by the transferee and transferor (which the Owners that are not the transferor or transferee agree to promptly execute), terms of which may be waived by the Management Committee acting by a Level B Vote (excluding the Authorized Owner Representatives of the Owners that are the transferor or transferee);

10.3.2.2 Transfer Will Not Result in Violation of Applicable Law. The Transfer will not result in a violation of Applicable Law, unless satisfaction of this condition is waived by the Management Committee acting by a Level C Vote (excluding the Authorized Owner Representatives of the Owners that are the transferor or transferee); and

10.3.2.3 Delivery of Opinion of Counsel. The transferee delivers an opinion of counsel in form and substance and from a law firm or in-house counsel reasonably satisfactory to the Management Committee with respect to the transferee’s (i) organization and good standing in its jurisdiction of organization, (ii) legal authority to conduct its business in each jurisdiction in which the Discretely Owned Substation Assets are or will be located, (iii) authorization to enter into the DOSA Assignment and Assumption Agreement and to perform its obligations thereunder, and (iv) compliance with its organizational and other governing instruments and documents and its financing contracts, commitments and arrangements in connection with its assumption of the transferor’s obligations as set forth in the DOSA Assignment and Assumption Agreement, in each case subject to qualifications of legal opinions of the kind and nature used in comparable transactions.

10.4 Right of First Negotiation. If an Owner (the “**Offering Owner**”) desires to engage in a Permitted Transfer pursuant to **Section 10.2.3** (Transfer to Another Owner) or **Section 10.2.5** (Transfer to a Third Party) of all or, to the extent permitted by **Section 10.3.1.2(ii)**, a portion of its Asset Ownership Percentage, then it will give the other Owners that are Non-Defaulting Owners (the “**ROFN Offeree Owners**”) and the Management Committee written notice of (i) the Asset Ownership Percentage it desires to Transfer (which may only be a portion to the extent permitted by **Section 10.3.1.2(ii)**) (the “**Offered Percentage**”), (ii) the terms on which the Offering Owner desires to Transfer the Offered Percentage, including the aggregate purchase price and payment terms for the Offered Percentage (collectively, the “**Offered Terms**”), and (iii) if the Offering Owner has a proposed transferee, (a) the name, address and description of the proposed transferee, (b) any terms of Transfer agreed upon by the Offering Owner and the proposed transferee, even if such terms are not binding on either party, and (c) if the proposed transferee is a Third Party, evidence that the Third Party satisfies the conditions

in **Section 10.2.5** (the “**ROFN Trigger Notice**”). If the Offering Owner is a Discretely Owned Substation Owner of a Discretely Owned New Substation and desires to engage in a Permitted Transfer prior to the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets pursuant to **Section 10.2.3** (Transfer to Another Owner) or **Section 10.2.5** (Transfer to a Third Party) of all of its Asset Ownership Percentage, then the Offered Terms must include the terms for Transfer of the Discretely Owned New Substation and the Offered Percentage will be deemed to include one hundred percent (100%) of the Offering Owner’s right, title and interest in and to the Discretely Owned New Substation. Upon receipt of the ROFN Trigger Notice, the (1) the Management Committee must, by a Level A Vote, elect an Owner Representative (other than the Owner Representative of the Offering Owner) to administer the ROFN process as provided in this **Section 10.4** (the “**ROFN Administrator**”) and (2) ROFN Owners will have the following right of first negotiation with regard to the Offered Percentage (the “**ROFN**”):

10.4.1 **ROFN Offeree Owners’ Option**. For a period of sixty (60) days beginning with the receipt of the ROFN Trigger Notice by the ROFN Offeree Owners (the “**ROFN Option Period**”), the ROFN Offeree Owners will have the right to negotiate with the Offering Owner for the purchase of all but not less than all of the Offered Percentage. If a ROFN Offeree Owner desires to negotiate with the Offering Owner for such purchase, then it will give written notice to the ROFN Administrator within five (5) Business Days after its receipt of the ROFN Trigger Notice. Within ten (10) Business Days after the Management Committee’s receipt of the ROFN Trigger Notice, the ROFN Administrator will provide written notice to the Offering Owner and all ROFN Offeree Owners of whether any ROFN Offeree Owners provided a notice to the ROFN Administrator in accordance with the immediately preceding sentence and, if so, their names (the “**ROFN Negotiating Owners**”) and schedule an initial meeting among the ROFN Negotiating Owners and Offering Owner.

10.4.1.1 **Meetings Among ROFN Negotiating Owners and Offering Owner**. The ROFN Administrator will attend all meetings between the ROFN Negotiating Owners and the Offering Owner. At the initial meeting, the ROFN Administrator will establish a schedule for future meetings during the ROFN Option Period.

10.4.1.2 **Good Faith Negotiation**. During the ROFN Option Period, the Offering Owner must negotiate in good faith with the ROFN Negotiating Owners collectively and not individually to sell to them the Offered Percentage; **provided, however**, the Offering Owner’s unwillingness to accept economic terms that are not as beneficial to it as the Offered Terms will not be deemed to mean that the Offering Owner did not negotiate in good faith.

10.4.1.3 **Exclusivity**. During the ROFN Option Period, the Offering Owner must negotiate exclusively with the ROFN Negotiating Owners collectively to sell to them the Offered Percentage and may not,

directly or indirectly, through any shareholder, representative or otherwise, discuss, solicit, entertain or negotiate with any Third Party or any Owner other than the ROFN Negotiating Owners collectively any arrangement for the sale or disposition of some or all of the Offered Percentage. During the five (5) Business Days after the last day of the ROFN Option Period and, if the ROFN Electing Owners collectively elect to purchase one hundred percent (100%) of the Offered Percentage, then until the later of (i) the date that is thirty-five (35) days after the end of the ROFN Option Period and (ii) the date the Offering Owner files with the applicable Governmental Bodies any documentation necessary for it to obtain any Governmental Approvals required for it to sell the Offered Percentage, the Offering Owner will not, directly or indirectly, through any shareholder, representative or otherwise, discuss, solicit, entertain or negotiate with any Third Party or any Owner other than the ROFN Electing Owners collectively any arrangement for the sale or disposition of some or all of the Offered Percentage.

- 10.4.1.4 Notice of Final Offered Terms. On the last day of the ROFN Option Period, the Offering Owner must provide written notice to the ROFN Administrator and the ROFN Negotiating Owners of any changes to the Offered Terms and any other terms and conditions for the sale of the Offered Percentage that the Offering Owner has agreed to (the “**Final Offered Terms**”).
- 10.4.1.5 ROFN Election Notice. The ROFN Negotiating Owners will have the right to elect to purchase the Offered Percentage on the Final Offered Terms by delivering to the Offering Owner, all other ROFN Negotiating Owners (with an optional courtesy copy to any non-ROFN Negotiating Owners) and the ROFN Administrator within five (5) Business Days after the last day of the ROFN Option Period, written notice specifying the maximum amount of the Offered Percentage such ROFN Negotiating Owner elects to purchase (which may exceed such ROFN Negotiating Owner’s pro rata share) (the “**ROFN Election Notice**”).
- 10.4.1.6 Allocation Among ROFN Electing Owners. If the ROFN Negotiating Owners that delivered ROFN Election Notices (the “**ROFN Electing Owners**”) collectively elected to purchase one hundred percent (100%) of the Offered Percentage, then the ROFN Administrator will allocate the Offered Percentage among the ROFN Electing Owners in proportion to their Percentage Interests (calculated without giving effect to the Percentage Interests of the non-ROFN Electing Owners) as follows unless the ROFN Electing Owners unanimously agree to a different allocation: (i) first to all ROFN Electing Owners in an amount equal to the lesser of (a) the maximum amount of the Offered Percentage specified in their ROFN Election

Notice or (b) their pro rata share based on their Percentage Interests; and (ii) then to all ROFN Electing Owners whose maximum amount exceeded their pro rata share based on their Percentage Interests, in an amount up to their maximum amount. If the ROFN Electing Owners unanimously agree to a different allocation of the Offered Percentage, they will provide written notice of such allocation to the Offering Owner and the ROFN Administrator.

10.4.1.7 ROFN Purchase Price. The aggregate purchase price for the Offered Percentage set forth in the Final Offered Terms will be paid by the ROFN Electing Owners in accordance with the allocation of the Offered Percentage determined pursuant to **Section 10.4.1.6**. Unless otherwise set forth in the Final Offered Terms, such purchase price will be payable at the ROFN Closing.

10.4.1.8 ROFN Closing if No Bona Fide Third Party Transaction. If the ROFN Trigger Notice did not include a Bona Fide Third Party Transaction, then the closing for the sale of the Offered Percentage to the ROFN Electing Owners (the “**ROFN Closing**”) will occur as set forth in **Section 10.4.1.10.4** below and within thirty-five (35) days after the end of the ROFN Option Period, unless extended pursuant to **Section 10.4.1.8.1** or **10.4.1.8.2**.

10.4.1.8.1 Automatic Extension if No Bona Fide Third Party Transaction. If one or more ROFN Electing Owners needs one or more Governmental Approvals to purchase its desired portion of the Offered Percentage or the Offering Owner needs one or more Governmental Approvals to sell the Offered Percentage, then such thirty-five (35) days will be extended for the greater of (the “**Automatic Extension Period – No BFTPT**”) (i) an additional one hundred and eighty (180) days or (ii) the number of days the Offering Owner needs to obtain its required Governmental Approvals to sell the Offered Percentage; **provided, however,** if the Offering Owner has not received Orders granting its required Governmental Approvals to sell the Offered Percentage within three hundred and sixty-five days (365) after the end of the ROFN Option Period, then commencing on the date that is three hundred and sixty-six days (366) after the end of the ROFN Option Period and ending on the date that is three hundred and ninety-five days (395) after the end of the ROFN Option Period (a) any ROFN Electing Owner may terminate its election to purchase its desired portion of the Offered Percentage or (b) the Offering Owner may terminate its offer to sell the Offered Percentage to the ROFN Electing Owners.

10.4.1.8.2 Discretionary Extension. If any of the ROFN Electing Owners have not received their necessary Governmental Approvals by the last day of the Automatic Extension Period – No BFTPT, then the Offering Owner may, but will not be obligated to, extend the Automatic Extension Period – No BFTPT upon the request of an ROFN Electing Owner, for an additional number of days determined by the Offering Owner, which additional extension may be conditioned upon the ROFN Electing Owner agreeing to certain terms and conditions.

10.4.1.9 ROFN Closing if Bona Fide Third Party Transaction. If the ROFN Trigger Notice (i) stated that the Offering Owner has a proposed Third Party transferee, (ii) attached a term sheet or letter of intent signed by the Offering Owner and such proposed Third Party transferee which included the material terms and conditions of the proposed Transfer, and (iii) included evidence that the proposed Third Party transferee satisfies the conditions in **Section 10.2.5** (collectively, a “**Bona Fide Third Party Transaction**”), then the ROFN Closing will occur as set forth in **Section 10.4.1.10.4** below and within thirty-five (35) days after the end of the ROFN Option Period, unless extended pursuant to **Section 10.4.1.9.1** or **10.4.1.9.2**.

10.4.1.9.1 Automatic Extension if Bona Fide Third Party Transaction. If one or more ROFN Electing Owners needs one or more Governmental Approvals to purchase its desired portion of the Offered Percentage or the Offering Owner needs one or more Governmental Approvals to sell the Offered Percentage, then such thirty-five (35) days will be extended for the greater of (the “**Automatic Extension Period - BFTPT**”) (i) an additional ninety (90) days or (ii) the number of days the Offering Owner needs to obtain its required Governmental Approvals to sell the Offered Percentage; **provided, however**, if the Offering Owner has not received Orders granting its required Governmental Approvals to sell the Offered Percentage within three hundred and sixty-five days (365) after the end of the ROFN Option Period, then commencing on the date that is three hundred and sixty-six days (366) after the end of the ROFN Option Period and ending on the date that is three hundred and ninety-five days (395) after the end of the ROFN Option Period (a) any ROFN Electing Owner may terminate its election to purchase its desired portion of the Offered Percentage or (b) the Offering Owner may terminate its offer to sell the Offered Percentage to the ROFN Electing Owners and the proposed Third Party transferee.

10.4.1.9.2 Conditional Extension. If any of the ROFN Electing Owners have not received their necessary Governmental Approvals by the last day of the Automatic Extension Period - BFTPT, then the Automatic Extension Period - BFTPT will be extended for an additional ninety (90) days upon the request of an ROFN Electing Owner, if all of the ROFN Electing Owners agree to pay the Offering Owner's Offered Percentage of Project Costs during such additional ninety (90) day period based on the allocation determined pursuant to **Section 10.4.1.6** (any such payments actually made are referred to as "**ROFN Extension Payments**"). If at the end of such additional ninety (90) day period, any of the ROFN Electing Owners have not received their necessary Governmental Approvals, then their obligation to pay the Offering Owner's Project Costs will terminate and **Section 10.4.2** will apply.

10.4.1.9.3 Reallocation of Percentages if Conditional Extension.
(i) The Percentages of the Offering Owner will be reduced in accordance with the Formulas on the day of each ROFN Extension Payment made pursuant to **Section 10.4.1.9.2**,
(ii) the Percentages of the ROFN Electing Owners will be increased in accordance with the Formulas on the day of each such reduction in the Percentages of the Offering Owner and (iii) the Secretary will revise **Exhibit B** to reflect the new Percentages of the Offering Owner and the ROFN Electing Owners.

10.4.1.10 Common ROFN Closing Provisions. Regardless of whether the ROFN Trigger Notice included a Bona Fide Third Party Transaction, the following provisions will apply:

10.4.1.10.1 Efforts to Obtain Governmental Approvals. If any of the ROFN Electing Owners or the Offering Owner needs any Governmental Approvals to purchase or sell the Offered Percentage, each of the Offering Owner and the ROFN Electing Owners agrees to (i) use its commercially reasonable and good faith efforts to cooperate with each other in seeking all such Governmental Approvals, (ii) use its commercially reasonable and good faith efforts to expeditiously seek and obtain all such Governmental Approvals, and (iii) keep each other reasonably informed about the status of its efforts to obtain such Governmental Approvals.

10.4.1.10.2 Effect of Conditions Imposed in Governmental Approvals.
If the Offering Owner receives one or more Orders granting

its required Governmental Approvals to sell the Offered Percentage, but one or more of such Orders imposes material unsatisfactory conditions on the Offering Owner (as determined in the sole discretion of the Offering Owner), then the Offering Owner may terminate its offer to sell the Offered Percentage within thirty (30) days after its receipt of any such Order. If an ROFN Electing Owner receives one or more Orders granting its required Governmental Approvals to purchase the Offered Percentage, but one or more of such Orders imposes material unsatisfactory conditions on such ROFN Electing Owner (as determined in the sole discretion of such ROFN Electing Owner), then such ROFN Electing Owner may terminate its election to purchase its desired portion of the Offered Percentage within thirty (30) days after its receipt of any such Order.

10.4.1.10.3 ROFN Closing Date. The ROFN Closing may occur earlier than contemplated by the time periods specified in **Section 10.4.1.8.1**, **Section 10.4.1.8.2**, **10.4.1.9.1** or **Section 10.4.1.9.2** if agreed by the Offering Owner and all of the ROFN Electing Owners.

10.4.1.10.4 ROFN Closing Location and Documentation. The ROFN Closing will be held at a location mutually agreed upon by the Offering Owner and the ROFN Electing Owners. The Offering Owner will deliver documentation representing the Offered Percentage, duly endorsed for transfer, will represent and warrant that it has good and marketable title and interest to such Offered Percentage and that such Offered Percentage is free and clear from all Liens and interests of any Person at the time of the ROFN Closing and will take all other actions necessary or appropriate to Transfer the Offered Percentage as the ROFN Electing Owners may reasonably request

10.4.1.10.5 Reallocation of Percentages. At the ROFN Closing, (i) the Asset Ownership Percentage of each ROFN Electing Owner will be increased to equal the sum of (a) its Asset Ownership Percentage immediately prior to the ROFN Closing (after giving effect to **Section 10.4.1.9.3**) plus (b) the Asset Ownership Percentage purchased by it from the Offering Owner at the ROFN Closing, (ii) the Asset Ownership Percentage of the Offering Owner will be decreased to equal the difference between (a) the Offering Owner's Asset Ownership Percentage immediately prior to the ROFN Closing (after giving effect to **Section**

10.4.1.9.3) minus (b) the Asset Ownership Percentage sold by it to the ROFN Electing Owners at the ROFN Closing, and (iii) the Secretary will revise **Exhibit B** to reflect the same.

10.4.2 **Right of Offering Owner to Sell to Another Owner or Third Party.** If (i) no ROFN Offeree Owner provides notice pursuant to **Section 10.4.1** indicating that it desires to negotiate with the Offering Owner, (ii) the ROFN Negotiating Owners do not deliver ROFN Election Notices to collectively purchase one hundred percent (100%) of the Offered Percentage in accordance with **Section 10.4.1.5**, or (iii) (a) the ROFN Electing Owners have not received their necessary Governmental Approvals on or prior to the last day of the applicable period in **Section 10.4.1.8.1, 10.4.1.8.2, 10.4.1.9.1 or 10.4.1.9.2** and (b) the Offering Owner has not terminated its offer to sell the Offered Percentage pursuant to **Section 10.4.8.1(b), 10.4.9.1(b) or 10.4.1.10.2**, then the Offering Owner will be free to engage in a Permitted Transfer pursuant to **Section 10.2.3** (Transfer to Another Owner) or **Section 10.2.5** (Transfer to a Third Party) of all of the Offered Percentage as follows:

10.4.2.1 **No ROFN Negotiating Owners.** If no ROFN Offeree Owner provides notice pursuant to **Section 10.4.1** indicating that it desires to negotiate with the Offering Owner, then the closing for the sale of the Offered Percentage must occur within ninety-five (95) days after receipt of notice from the ROFN Administrator stating such fact, if the terms of such sale are not less favorable for the Offering Owner than the Offered Terms.

10.4.2.2 **No Bona Fide Third Party Transaction.** If the ROFN Trigger Notice did not include a Bona Fide Third Party Transaction, then the closing for the sale of the Offered Percentage must occur within ninety-five (95) days after the end of the ROFN Option Period if the terms of such sale are not less favorable for the Offering Owner than (i) the terms of the last written counter-offer, if any, made by the ROFN Negotiating Owners to the Offering Owner or, if no such counter-offer was made, the Final Offered Terms, in either case if **Section 10.4.2(ii)** is applicable or (ii) the Final Offered Terms if **Section 10.4.2(iii)** is applicable; **provided, however**, if such proposed transferee needs one or more Governmental Approvals to purchase the Offered Percentage, then such ninety-five (95) days will be extended by an additional one hundred and twenty (120) days; **provided, further, however**, that the Offering Owner may, but will not be obligated to, extend such one hundred and twenty days (120) upon the request of the proposed transferee, for an additional number of days determined by the Offering Owner (which number of days may not be greater than the number of days granted to an ROFN Electing Owner pursuant to **Section 10.4.1.8.2**, if applicable, and if not applicable, which number of days may not exceed thirty (30)), which additional

extension may be conditioned upon the proposed transferee agreeing to certain terms and conditions (which terms and conditions may not be more favorable to the proposed transferee than the terms and conditions imposed by the Offering Owner on an ROFN Electing Owner pursuant to **Section 10.4.1.8.2**, if applicable). If the Offering Owner does not sell all of its Offered Percentage on such terms within such ninety-five (95) day period or extension thereof pursuant to this **Section 10.4.2.2**, then any subsequent offer of all or a portion of the Offering Owner's Asset Ownership Percentage will again be subject to the ROFN.

10.4.2.3 **Bona Fide Third Party Transaction.** If the ROFN Trigger Notice included a Bona Fide Third Party Transaction, then the closing for the sale of the Offered Percentage must occur within one hundred and eighty (180) days after the end of (i) the ROFN Option Period if **Section 10.4.2(ii)** is applicable or (ii) last day of the applicable period if **Section 10.4.2(iii)** is applicable, in each case on the terms and conditions of and to the transferee identified in the Bona Fide Third Party Transaction. If the Offering Owner does not sell all of its Offered Percentage on such terms and to such transferee within such one hundred and eighty (180) day period, then any subsequent offer of all or a portion of the Offering Owner's Asset Ownership Percentage will again be subject to the ROFN.

ARTICLE 11 FINANCING; FINANCING INSTRUMENTS

- 11.1 Pledge of Separate Property.** No Owner or any Affiliate thereof will have the right to create any Lien on the Asset Ownership Percentage or any other Property of any other Owner, or suffer to exist any such Lien that is created by an Owner or its Affiliate or arises through such Owner or its Affiliates and any such Lien will be null and void and the affected Owner may take such measures as are necessary to remove such Lien at the expense of the Owner that created the Lien or through which the Lien arose. The preceding sentence does not apply to or limit the contractual rights of the Owners contained in this Agreement, including the restrictions on Transfer contained in **Article 10** and the rights and remedies contained in **Articles 14** and **15**.
- 11.2 Financing Instruments.** Each Owner may grant or may continue to suffer to exist (and may file or record as appropriate, or continue to maintain such filing or recordation), a Lien or Liens to Financing Parties to secure Financing against or with respect to, among other things, its Asset Ownership Percentage or the Discretely Owned Substation Assets. The grant or existence of such a Lien or Liens by an Owner is permissible under this Agreement; **provided, however**, that (i) no such Lien will confer on a Financing Party any greater rights under this Agreement than those of the Owner that granted such Lien to such Financing Party, except (a) where such Financing Party is granted, directly or by implication, an exemption pursuant to the provisions of this Agreement related to Collateral Assignments or (b) as otherwise provided under Applicable Law, and (ii) any

judicial or non-judicial foreclosure sales under any such Liens and any conveyances in lieu of foreclosure under any such Liens will constitute a Transfer to which the terms and conditions of **Section 10.2.9** (Exercised of a Collateral Assignment) and **10.3.1** (Rules and Conditions for Permitted Transfers) are applicable. For purposes of clarification, (a) a “Transfer as a result of or upon exercise of a Collateral Assignment” is a transaction that is within the contemplation of **clause (ii)** of this **Section 11.2** and (b) this **Section 11.2** applies to all **Financing Instruments**. To the extent that an Owner has a Pre-existing Facilities Mortgage, and any Lien is created (or deemed created) by or pursuant to any Project Agreement on such Owner’s Asset Ownership Percentage or any other interests of such Owner in Property that is not a “permitted encumbrance,” “permitted exception” or “excepted encumbrance” (as the case may be) as defined in such Owner’s Pre-existing Facilities Mortgage and as set forth in **Schedule 11.2** (the “**Permitted PA Encumbrance**”), then any such Lien will be subordinate to the lien of such Owner’s Pre-existing Facilities Mortgage. Nothing in this **Section 11.2** will prejudice the right of any Owner to assert that any Lien in Property of another Owner created (or deemed created) by or pursuant to the Project Agreements is a Permitted PA Encumbrance under that other Owner’s Pre-existing Facilities Mortgage.

- 11.3 Financing Party Cure Rights.** Any Financing Party has the right (but not the obligation), after receipt of a notice pursuant to **Article 14** or **Article 15**, to cure any failure to pay by and on behalf of an Owner to which it has provided Financing, on the same terms and conditions that such Owner may cure such failure to pay.

ARTICLE 12 REPRESENTATIONS, WARRANTIES AND COVENANTS

- 12.1 Representations and Warranties.** Each Owner, severally and not jointly, as of the Effective Time makes the following representations and warranties to the other Owners, which representations and warranties survive the execution and delivery of this Agreement:

- 12.1.1 Organization and Good Standing.** Such Owner is, as set forth in the preamble to this Agreement, an agency, non-profit corporation, cooperative, association, municipal corporation, political subdivision, limited liability company, corporation or a similar Person organized, existing and in good standing under the laws of the state of its formation and authorized to conduct business in each state in which authorization may be required to perform its obligations under this Agreement.
- 12.1.2 Power and Authority.** Such Owner has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 12.1.3 Authorization.** Such Owner has taken all action required by Applicable Law and its governing documents in order to approve, execute and deliver this Agreement.

- 12.1.4 **No Violation.** The execution and delivery of this Agreement by such Owner, the performance by such Owner of its obligations hereunder and the consummation by such Owner of the transactions contemplated herein do not and will not: (i) contravene any Applicable Law in effect at the Effective Time or any Order in effect at the Effective Time of any Governmental Body or Arbitrator having jurisdiction over such Owner or its Property, (ii) result in a breach or violation of any of the terms and provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement in effect at the Effective Time and to which such Owner is a party or by which it or its Property is bound, or (iii) result in the creation or imposition of any Lien upon the Asset Ownership Percentage or any other Property of any other Owner, other than Liens arising from the contractual rights of the Owners contained in this Agreement, including the restrictions on Transfer contained in **Article 10** and the rights and remedies contained in **Articles 14** and **15**.
- 12.1.5 **Approvals and Consents.** No approval, consent or authorization of any Governmental Body or other Person is required for the execution and delivery by such Owner of this Agreement, the Construction Management Agreement, the Operation and Maintenance Agreement or the Transmission Capacity Exchange Agreement or the performance by such Owner of its obligations hereunder or thereunder, except such approvals, consents or authorizations that (i) have been given or obtained by such Owner and are in full force and effect or (ii) are set forth in **Schedule 12.1.5**.
- 12.1.6 **Binding Effect.** This Agreement has been executed and delivered by such Owner. Assuming that the other Owners have all the requisite power and authority, and have taken all necessary action to execute and deliver this Agreement, this Agreement is the legal, valid and binding obligation of such Owner enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights (e.g., bankruptcy, insolvency, moratorium) or by the exercise of judicial discretion in accordance with general principles of equity.
- 12.1.7 **Joint Use.** Such Owner is acquiring its interest in the Project for the purpose of joint or common use of the Project as provided in the Project Agreements.
- 12.1.8 **No Material Impairment.** The restriction on the partition of the Project as provided in this Agreement, the rights of each other Owner to their proportional share of the Facility Capacity of the Project as provided in the Project Agreements, and the easements, including the right of physical access to and the transmission of energy and data through the Project for the purposes provided in the Project Agreements, do not materially impair the use of such representing Owner's interest in the Project in the normal operation of such representing Owner's business or for the purposes for which such interest is being acquired and will be held by such representing Owner. Such Owner's obligations under the Project Agreements do not materially impair the use of such representing Owner's interest in the Project in the normal operation of such representing

Owner's business or for the purposes for which such interest is being acquired and will be held by such representing Owner. The rights of each other Owner under the Project Agreements, taken individually and collectively with all other Owners, do not materially impair the use of such representing Owner's interest in the Project in the normal operation of such representing Owner's business or for the purposes for which such interest is being acquired and will be held by such representing Owner.

12.2 Covenants.

12.2.1 **Compliance with Project Agreements.** Each Owner will comply with the terms and conditions of all of the Project Agreements and all Construction Agreements to which it is a party.

12.2.2 **Compliance with CapX 2020 Trust License.** From and after the effective date of the CapX 2020 Trust License, each Owner will comply with the terms and conditions of the CapX 2020 Trust License and, in connection therewith, will use the Properties licensed thereunder solely to benefit the Facilities, the Discretely Owned Substation Assets and the Project. If any Owner is or becomes aware of any breach or default under the CapX 2020 Trust License, such Owner will promptly report such breach or default to the Management Committee. The Management Committee will promptly report the matter to the trustees of the CapX 2020 Trust for remedial action. The foregoing does not serve to limit or waive any of the duties and obligations of the Owners under the CapX 2020 Trust License.

12.2.3 **Governmental Approvals.**

12.2.3.1 **Efforts Required to Obtain and Maintain Governmental Approvals.** Each Owner will use commercially reasonable efforts to obtain and maintain any Governmental Approvals required to (i) perform its obligations under this Agreement and the other Project Agreements and (ii) develop, design, engineer, permit, construct, test, commission and operate the Facilities and the Discretely Owned Substation Assets.

12.2.3.2 **Efforts Required of Other Owners That Participate in Proceedings for Governmental Approvals.** If an Owner participates in any Proceedings relating to Governmental Approvals being sought by (i) one or more other Owners pursuant to **Section 12.2.3.1**, such Owner will use commercially reasonable efforts to support the issuance of such approval(s) that are consistent with this Agreement and the other Project Agreements, and will oppose the efforts of any other Person to adversely affect any Owners' rights under this Agreement or the other Project Agreements, or (ii) another Owner in order for such other Owner to engage in a Permitted Transfer, the Owner participating in any such Proceedings will bear any internal and Third Party costs

incurred by it unless such Third Party costs are incurred in connection with a Third Party Claim, in which case all Third Party costs incurred by it will be governed by **Section 16.1.1**.

12.2.3.3 **Right to Object to a Permitted Transfer.** If an Owner is required to obtain any Governmental Approvals in order to engage in a Permitted Transfer, nothing in **Section 12.2.3.2** or elsewhere in this Agreement will preclude one or more other Owners from participating in any Proceeding relating to such Governmental Approvals, including opposition to, the Permitted Transfer on grounds other than an alleged violation of this Agreement.

12.2.4 **Project Real Property.** Each Owner will cooperate in the acquisition of the Project Real Property.

12.2.5 **Availability of Personnel and Resources.** Each Owner will make available, at reasonable times and locations, the personnel and resources necessary to complete such Owner's responsibilities under this Agreement and the other Project Agreements to which it is a party.

12.2.6 **Risk of Loss and Damage.** All risk, loss and damage arising out of the ownership, construction, operation, maintenance or improvement of all or any portion of the Facilities will be several and not joint, and will be incurred in proportion to each Owner's Asset Ownership Percentage. If an Owner, by reason of joint liability, is required to make any payment or incur any obligation that is not its own but that of another Owner, the provisions of **Section 16.2.3** will apply.

12.2.7 **Restrictions Related to Tax Exempt Status.** The Management Committee will not take any action or omit to take any action or require any Owner to take any action or omit to take any action: (i) that would result in private business use within the meaning of Section 141 of the Code; or (ii) that would result in non-member income that would jeopardize the tax-exempt status of any Owner under Section 501(c)(12) of the Code. If the Management Committee proposes to take any such action or omit to take any such action pursuant to this Agreement that an Owner reasonably believes would have an adverse impact on its tax-exempt status or the tax status of any of its tax-exempt Debt instruments, such Owner will provide the Management Committee with a reasonable description of why such actions or inactions must be avoided and how such actions or inactions must be modified in order for such Owner to obtain the opinion of counsel that its tax-exempt status and the tax status of its tax-exempt Debt instruments will not be adversely affected. The Management Committee and the other Owners will cooperate in a commercially reasonable manner with such Owner in structuring their actions to avoid such adverse impact.

12.2.8 **Agency Authority.** Except as otherwise expressly provided in any other Project Agreement, for so long as an Owner (in its individual capacity) remains a party to this Agreement, it will not withdraw any agency authority granted by it under any

Project Agreement, including Agency Authority granted under **Section 2.3.3** of the **Construction Management Agreement**.

12.2.9 **Deposit by Assignee if No Longer Creditworthy**. If a Person becomes an Owner after the Effective Time as the result of a Permitted Transfer pursuant to **Section 10.2.1** (Transfer to Affiliate) or **10.2.5(i)** (Transfer to a Third Party), and it no longer qualifies as Creditworthy at any time during the twelve (12) Months immediately following the effective date of the Transfer Agreement to which it is a party (the "**Transfer Effective Date**"), such Owner must (i) promptly notify the Management Committee and (ii) if the date of such determination of loss of Creditworthy status occurs prior to the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets, pay to the Main Trust Account by wire transfer in immediately available funds, in addition to any Defaulting Owner Advance Amounts owed by such Owner, an amount equal to one hundred percent (100%) of such Owner's estimated payment obligations for CM Costs for the two (2) Months immediately following the Transfer Effective Date (the "**Creditworthiness Loss Triggered Advance**"). The Creditworthiness Loss Triggered Advance will be determined by the Management Committee based on the most recent Project Budget and will be held in the Main Trust Account as an advance payment of such Owner's payment obligations for CM Costs. The order of application for a Creditworthiness Loss Triggered Advance will be the same as for Defaulting Owner Advance Amounts under **Section 14.2.4.7**. The failure to pay the Creditworthiness Loss Triggered Advance (a "**Creditworthiness Loss Advance Default**") will be deemed to be an Advance Default for all purposes of this Agreement.

ARTICLE 13 MAXIMUM CM COSTS

- 13.1 **Meeting to Consider Proposed Increase in the Maximum CM Cost Amount**. If the Management Committee meets to consider a Proposed Increase in the Maximum CM Cost Amount pursuant to the request of the Construction Manager under the Construction Management Agreement or otherwise, and after discussion at such meeting regarding the Proposed Increase in the Maximum CM Cost Amount, an Authorized Owner Representative requests that the meeting be adjourned for up to seven (7) days to permit each Owner to further consider the Proposed Increase in the Maximum CM Cost Amount prior to a Management Committee vote thereon, then the meeting will be adjourned for up to seven (7) days to a date specified by the Chair. If no such adjournment request is made, then at such meeting, or if an adjournment request is made, then at the adjourned meeting, the Management Committee will vote on the Proposed Increase in the Maximum CM Cost Amount.
- 13.2 **Failure to Approve**. If the Management Committee does not approve the Proposed Increase in the Maximum CM Cost Amount, at the meeting or adjourned meeting referred to in **Section 13.1** it will determine, by a Level B Vote, whether there should be a revision in the size, character or capacity of the Project. If the Management Committee

does not approve such a revision, then the Management Committee will adopt and implement the Windup Plan.

13.3 Approval. If the Management Committee approves the Proposed Increase in the Maximum CM Cost Amount, then as soon as practicable thereafter, the Management Committee will give a notice to all Owners of an offering to fund the Proposed Increase in the Maximum CM Cost Amount (the “Cost Offering”) that states: (i) the amount of the Cost Offering; (ii) each Owner’s right to elect to increase its payment obligation for CM Costs in any amount up to the total Proposed Increase in the Maximum CM Cost Amount; (iii) the offering process described in **Section 13.4** (including required response dates); and (iv) the mandatory termination of the Project if the Cost Offering is not fully subscribed by the Owners or otherwise subscribed under **Section 13.5.2** (Final Round Offer and Notice), unless the Management Committee determines pursuant to **Section 13.5.1** to revise the size, character or capacity of the Project.

13.4 Initial Round of the Cost Offering.

13.4.1 **Election Notice.** On or prior to the date specified in the Cost Offering notice (the “**Cost Offering Initial Round Subscription Date**”), each Owner will give written notice to the Chair indicating either that the Owner elects not to increase its CM Cost payment obligation or that it elects to increase its CM Cost payment obligation pursuant to the Cost Offering. In the latter case, the Owner will include in its notice the maximum amount of the Cost Offering it elects to accept (which may exceed such Owner’s pro rata share)(the “**Maximum Cost Offering Amount**”).

13.4.2 **Allocation Among Owners.** The Cost Offering amount will be allocated among the electing Owners in proportion to their Percentage Interests (calculated without giving effect to the Owners not electing to subscribe to the Cost Offering) as follows: (i) first to all electing Owners in an amount equal to the lesser of (a) their Maximum Cost Offering Amount or (b) their pro rata share based on their Percentage Interests and (ii) then to all electing Owners whose Maximum Cost Offering Amount exceeded their pro rata share based on their Percentage Interests, in an amount up to their Maximum Cost Offering Amount.

13.4.3 **Effect of Full Subscription by Owners.** If the Cost Offering is fully subscribed by the Owners, then:

- (i) the Proposed Increase in the Maximum CM Cost Amount (the “**New Maximum CM Cost Amount**”) will take effect immediately and automatically at such time as the CM Costs exceed the Original Maximum CM Cost Amount (the “**Cost Offering Effective Date**”);
- (ii) from and after the Cost Offering Effective Date, each Owner that subscribed to the Cost Offering will be obligated to pay a percentage of all CM Costs equal to the amount of the Cost

Offering allocated to such Owner divided by the aggregate amount of the Cost Offering (the “**Incremental Cost Offering CP Percentage**”) and the Secretary will revise **Exhibit B** to reflect the same and the resulting change in the Percentages after application of the Formulas; and

- (iii) from and after the Cost Offering Initial Round Subscription Date until the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets, the voting rights of each Authorized Owner Representative under this Agreement will be based on a percentage equal to the quotient of (a) the sum of all Project Costs actually paid by an Owner as of the Cost Offering Initial Round Subscription Date and the dollar amount of the Cost Offering allocated to such Owner, divided by (b) the New Maximum CM Cost Amount (the “**Post Cost Offering CP Voting Percentage**”) and the Secretary will revise **Exhibit B** to reflect the same.

13.4.4 **Effect of Partial Subscription by Owners.** If the Cost Offering is not fully subscribed by the Owners, the amount of the Cost Offering will be reduced by the aggregate amount of the Cost Offering subscribed by the Owners in such initial round, the Chair will advise all Owners of the results of the initial round Cost Offering and the Management Committee will implement the final round of Cost Offering as set forth in **Section 13.5**.

13.5 Final Round of the Cost Offering.

13.5.1 **Determination of Revised Scope.** If there are unsubscribed amounts of the Cost Offering after the initial round pursuant to **Section 13.4**, the Management Committee will determine by a Level B Vote, within thirty (30) days after expiration of the initial round, whether there should be a revision in the size, character or capacity of the Project.

13.5.2 **Final Round Offer and Notice.** If the Management Committee does not approve such a revision within such thirty (30) day period, the Management Committee will offer the outstanding unsubscribed amounts of the Cost Offering (the “**Cost Offering Remaining Amount**”) to such Persons with such terms and such required response date as determined by the Management Committee (the last day of the response period being referred to as the “**Cost Offering Final Round Subscription Date**”). The notice to such Persons will require them to include in their Response Notice the maximum amount of the Cost Offering Remaining Amount they elect to accept (the “**Maximum Cost Offering Remaining Amount**”).

13.5.3 **Effect of Full Subscription.** If the Cost Offering Remaining Amount is fully subscribed, then:

- (i) the Cost Offering amount subscribed by the Owners in the initial round will be allocated among such Owners in accordance with **Section 13.4.2**;
- (ii) the Cost Offering Remaining Amount will be allocated in proportion to the Maximum Cost Offering Remaining Amount of each Person that subscribed in the final round;
- (iii) the New Maximum CM Cost Amount will take effect immediately and automatically on the Cost Offering Final Round Subscription Date;
- (iv) the Third Parties which subscribed to the Cost Offering pursuant to **Section 13.5.2** will become Owners under this Agreement in accordance with the terms of the Cost Offering specified by the Management Committee pursuant to **Section 13.5.2** provided that they comply with the provisions of **Section 10.3** (other than **Section 10.3.1.2**);
- (v) from and after the Cost Offering Final Round Subscription Date, each Owner and Third Party that subscribed to the Cost Offering will be obligated to pay a percentage of all CM Costs equal to the amount of the Cost Offering allocated to such Owner or Third Party divided by the aggregate amount of the Cost Offering (the “**Incremental Cost Offering CP Percentage**”) and the Secretary will revise **Exhibit B** to reflect the same and the resulting change in the Asset Ownership Percentages after application of the Asset Ownership Percentage Formula; and
- (vi) from and after the Cost Offering Final Round Subscription Date until the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets, the voting rights of each Authorized Owner Representative under this Agreement will be based on a percentage equal to the quotient of (a) for an Owner, the sum of all Project Costs actually paid by such Owner as of the Cost Offering Final Round Subscription Date and the dollar amount of the Cost Offering allocated to such Owner, and for a Third Party, the dollar amount of the Cost Offering allocated to such Third Party, divided by (b) the New Maximum CM Cost Amount (the “**Post Cost Offering CP Voting Percentage**”) and the Secretary will revise **Exhibit B** to reflect the same.

13.5.4 **Effect of Partial Subscription.** If the Cost Offering Remaining Amount is not fully subscribed, (i) the Cost Offering will be deemed to have failed and (ii) the

Management Committee will determine by a Level B Vote, within thirty (30) days after expiration of the Cost Offering of the Cost Offering Remaining Amount, whether there should be a revision in the size, character or capacity of the Project or to take other action. If the Management Committee does not approve such a revision within such thirty (30) day period or vote to take other action, the Management Committee will adopt and implement the Windup Plan upon the expiration of such thirty (30) day period.

ARTICLE 14 DEFAULTS RELATED TO CONSTRUCTION ACTIVITIES

14.1 Definitions for Defaults Related to Construction Activities.

14.1.1 Definition of Construction Period Payment Default.

14.1.1.1 General Definition of Construction Period Payment Default. A “**Construction Period Payment Default**” is the failure of an Owner, at any time on or prior to the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets, to pay, when due, any CM Costs required to be paid by it under this Agreement or any DOSA Construction Agreement if payment is not (i) received in the Main Trust Account within fifteen (15) days after the date such payment was due or (ii) with respect to Discretely Owned Substation Costs required to be paid to a Third Party, received by such Third Party when due unless such payment is being disputed in good faith by such Discretely Owned Substation Owner; **provided, however**, that failure to make an Advance pursuant to **Section 14.2.3** will not be deemed to be a Construction Period Payment Default but instead will be an Advance Default (defined in **Section 14.1.2**). For purposes of this **Article 14**, all references to Owner include an Owner in its capacity as a Discretely Owned Substation Owner.

14.1.1.2 Definition for Purposes of Second, Third, and Subsequent Construction Period Payment Defaults. At any time on or prior to the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets, a Construction Period Payment Default will be deemed to occur (i) upon the second (2nd) occurrence during any twelve (12) Month period of a particular Owner failing to pay, when due, (a) any CM Costs required to be paid by it under this Agreement or any DOSA Construction Agreement or (b) with respect to Discretely Owned Substation Costs required to be paid to a Third Party, received by such Third Party when due unless such payment is being disputed in good faith by such Discretely Owned Substation Owner, if payment of the due and outstanding amount is not received within five (5) days after the date such payment was due and (ii)

immediately upon the third (3rd) or any subsequent occurrence during any twelve (12) Month period of a particular Owner failing to pay, when due, (a) any CM Costs required to be paid by it under this Agreement or any DOSA Construction Agreement or (b) with respect to Discretely Owned Substation Costs required to be paid to a Third Party, received by such Third Party when due unless such payment is being disputed in good faith by such Discretely Owned Substation Owner.

14.1.2 **Definition of Advance Default.** An “Advance Default” is the failure of an Owner to make an Advance pursuant to **Section 14.2.3** or a Creditworthiness Loss Advance Default.

14.1.3 **Definition of Call Price Default.** A “Call Price Default” is the failure of an Owner to pay the Call Price pursuant to **Section 14.2.7.4**.

14.1.4 **Definition of CP Insolvency Default.** A “CP Insolvency Default” occurs with respect to a Person if, at any time prior to the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets, (i) such Person makes a general assignment for the benefit of creditors; (ii) any Proceeding is instituted by or against such Person seeking (a) to adjudicate it as bankrupt or insolvent, (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its Debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property and, in the case of any such Proceeding instituted against such Person, either such Proceeding remains undismissed for a period of thirty (30) days or any of the actions sought in such Proceeding occur; or (iii) such Person takes any action to authorize any of the actions set forth above in this definition.

14.1.5 **Definitions of Covenant Default, Default, Defaulting Owner, and Non-Defaulting Owner.** The terms “Covenant Default,” “Default,” “Defaulting Owner,” and “Non-Defaulting Owner” have the meanings set for in **Section 15.1**.

14.2 Provisions Governing Construction Period Payment Defaults.

14.2.1 **Notice of Overdue Construction Period Payment.**

14.2.1.1 **Notice to Other Owners of Overdue Construction Period Payment.** If an Owner fails to pay, when due, any CM Costs required to be paid by it under this Agreement or any DOSA Construction Agreement, the Chair will give notice to each other Owner on the day immediately following the day on which such payment is due, which notice will include, with respect to a Discretely Owned Substation Owner, the amount of Discretely Owned Substation

Costs that the Construction Manager reasonably expected should have been expended by the Discretely Owned Substation Owner. The Chair may give a copy of such notice to the Owner that has failed to pay, but will have no obligation to do so.

14.2.1.2 Notice to Financing Parties of Overdue Construction Period Payment. If the Chair elects to give notice under **Section 14.2.1.1** to the Owner that has failed to pay, the Chair will make commercially reasonable efforts to give contemporaneous notice to those Financing Parties (i) that have provided Financing to the Owner that has failed to pay, and (ii) of which the Management Committee has actual knowledge.

14.2.2 **Suspension of Defaulting CPP Owner Voting Rights Upon Construction Period Payment Default.**

At such time as an Owner becomes a Defaulting Owner as the result of a Construction Period Payment Default (a “**Defaulting CPP Owner**”), it will cease to be entitled to have an Authorized Owner Representative serve on the Management Committee and it will cease to be entitled to exercise any voting rights under this Agreement. The rights of the Defaulting CPP Owner removed pursuant to the first sentence of this **Section 14.2.2** will immediately and automatically be reinstated on the first to occur of (i) the Defaulting CPP Owner’s cure of the Construction Period Payment Default within the applicable CPP Default Cure Period in accordance with **Section 14.2.4** or (ii) the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets if the Defaulting CPP Owner remains an Owner as of such date. For the avoidance of doubt, if more than one Construction Period Payment Default has occurred with respect to the same Defaulting CPP Owner, then the rights of the Defaulting CPP Owner removed pursuant to the first sentence of this **Section 14.2.2** will not be reinstated until the first to occur of (a) the Defaulting CPP Owner’s cure of all such Construction Period Payment Defaults within the applicable CPP Default Cure Period in accordance with **Section 14.2.4** or (b) the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets if the Defaulting CPP Owner remains an Owner as of such date.

14.2.3 **Non-Defaulting CPP Owner Advance Obligations Following Construction Period Payment Default.**

On or prior to the first (1st) Business Day of the Month immediately succeeding the Month in which a Construction Period Payment Default occurs, each Owner other than the Defaulting CPP Owner (the “**Non-Defaulting CPP Owners**”), must pay, as an advance of CM Costs that will become due from such Non-Defaulting CPP Owners in the future (an “**Advance**”), to the applicable Project Account their pro rata share of the total amount owed by the Defaulting CPP Owner based on (i) the most recent invoice from the Construction Manager and (ii) the amount of Discretely Owned Substation Costs that the Construction Manager reasonably determines should have been expended by the Discretely Owned Substation Owner, including the amount set forth in the notice given to the Non-Defaulting CPP Owners pursuant

to **Section 14.2.1.1** (in each case excluding any amounts owed in respect of CPP Default Accrued Interest, CPP Default OPCs, the CPP Default Late Fee or Defaulting Owner Advance Amounts pursuant to **Section 14.2.4**) (the “**Deficiency Amount**”) and will make additional Advances on or prior to the first (1st) Business Day of the second, third and fourth Months immediately following the Month in which the initial Advance for such Construction Period Payment Default occurs, of all Deficiency Amounts of such Defaulting CPP Owner for such three (3) succeeding Months subsequent to the Month in which the initial Advance for such Construction Period Payment Default occurs. The amount of any Deficiency Amount that each such Non-Defaulting CPP Owner will be required to pay as an Advance is such Non-Defaulting CPP Owner’s pro rata share (considering only the Percentage Interests of the Non-Defaulting CPP Owners) of the Defaulting CPP Owner’s Percentage Interest based on such Non-Defaulting CPP Owner’s Percentage Interest. The Deficiency Amount is the obligation of the Defaulting CPP Owner and the Advances do not relieve the Defaulting CPP Owner of its obligation to make all payments when due hereunder.

- 14.2.3.1 Obligation Limited to First Construction Period Payment Default. The Non-Defaulting CPP Owners are required under **Section 14.2.3** to make only the Advances triggered by the first Construction Period Payment Default of the first Defaulting CPP Owner following the Effective Time (unless such Construction Period Payment Default has been cured on or prior to the last day of the CPP Default Cure Period in accordance with **Section 14.2.4**).
- 14.2.3.2 Obligation Applies After Use of Defaulting CPP Owner Advance Amounts. No Non-Defaulting CPP Owner is required under **Section 14.2.3** to make any Advances until all Defaulting Owner Advance Amounts previously deposited into the Main Trust Account by the Defaulting CPP Owner have been applied to the Deficiency Amount.
- 14.2.3.3 Reallocation of Percentages. (i) The Percentages of the Defaulting CPP Owner and any Non-Defaulting CPP Owner that is not an Advancing Owner will be reduced in accordance with the Formulas on the day of each Advance made pursuant to **Section 14.2.3** or **14.2.3.4**, (ii) the Percentages of the Advancing Owners will be increased in accordance with the Formulas on the day of each such reduction in the Percentages of the Defaulting CPP Owner and any Non-Defaulting CPP Owner that is not an Advancing Owner and (iii) the Secretary will revise **Exhibit B** to reflect the new Percentages of the Owners. By way of clarification, all Advances made by an Advancing Owner for Discretely Owned Substation Costs will increase its Percentage Interest and not its Asset Ownership Percentage since such

Advances relate to CM Costs that are not in respect of the Facilities.

14.2.3.4 Management Committee Meeting Upon Second Construction Period Payment Default or Failure of Non-Defaulting CPP Owner to Make Advances. If, during the continuance of a Construction Period Payment Default, a Construction Period Payment Default occurs with respect to a second Owner or if any Non-Defaulting CPP Owner fails to comply with its obligation to make an Advance pursuant to **Section 14.2.3**, the Chair will call a Management Committee meeting immediately after he or she becomes aware of such additional Construction Period Payment Default or such failure to make an Advance. At such meeting, the Management Committee, acting by a Level C Vote, will determine how to proceed, including whether to provide the Advancing Owners with the option, but not the obligation, to increase the amount of their Advances pro rata based on their Percentage Interests, whether there should be a revision in the size, character or capacity of the Project, or subject to **Section 14.2.5.3**, whether to proceed under **Article 19** to terminate the Project and adopt and implement a Windup Plan, or otherwise.

14.2.3.5 Project Termination Liquidated Damages Applicable if Windup Plan Adopted Pursuant to Section 14.2.3.4. If, at the meeting held in accordance with **Section 14.2.3.4**, the Management Committee elects to proceed under **Article 19** to terminate the Project and adopt and implement a Windup Plan, the provisions of **Section 14.2.8** will apply.

14.2.4 Requirements for and Effect of Cure of Construction Period Payment Default. A Defaulting CPP Owner may cure the Construction Period Payment Default only by satisfying, within the period specified in **Section 14.2.4.1**, the requirements of **Sections 14.2.4.2, 14.2.4.3, 14.2.4.4, 14.2.4.5, 14.2.4.6.1** and, if applicable, **14.2.4.6.2**.

14.2.4.1 Cure Period for Construction Period Payment Default. A Defaulting CPP Owner will have a period of forty-five (45) days after the occurrence of a Construction Period Payment Default (the “**CPP Default Cure Period**”) within which to take all actions required to cure the Construction Period Payment Default.

14.2.4.2 Deficiency Amount for Construction Period Payment Default. The Defaulting CPP Owner must pay to the Main Trust Account the total amount of all CM Costs that the Defaulting CPP Owner has not paid when due under this Agreement, any DOSA Construction Agreement.

- 14.2.4.3 Out-of-Pocket Costs for Construction Period Payment Default. The Defaulting CPP Owner must pay to the Main Trust Account, for the benefit of each Non-Defaulting CPP Owner that has made an Advance pursuant to **Section 14.2.3** (the “**Advancing Owners**”), all out-of-pocket costs incurred by such Advancing Owner as a result of it making an Advance (the “**CPP Default OPCs**”).
- 14.2.4.4 Default Late Fee for Construction Period Payment Default. The Defaulting CPP Owner must pay to the Main Trust Account, for the benefit of all Advancing Owners, a late fee equal to five percent (5%) of the amount of the Construction Period Payment Default (the “**CPP Default Late Fee**”).
- 14.2.4.5 Interest for Construction Period Payment Default. The Defaulting CPP Owner must pay to the Main Trust Account, for the benefit of each Advancing Owner, interest at the Late Payment Rate calculated on the basis of annual compounding and the actual number of days elapsed on (i) the Advance made by such Advancing Owner from the day such Advance was made by such Advancing Owner through and including the date that the Defaulting CPP Owner cures the Construction Period Payment Default, and (ii) the CPP Default OPCs from the day the related Advance was made by such Advancing Owner through and including the date that the Defaulting CPP Owner cures the Construction Period Payment Default ((i) and (ii) are collectively referred to as the “**CPP Default Accrued Interest**”).
- 14.2.4.6 Defaulting CPP Owner Advance Amounts.
- 14.2.4.6.1 First Default. The Defaulting CPP Owner, upon its first (1st) Construction Period Payment Default, must pay to the Main Trust Account an amount equal to one-sixth (1/6th) of such Defaulting CPP Owner’s estimated payment obligations for CM Costs under this Agreement and any DOSA Construction Agreement, for the twelve (12) Months immediately following the Month in which such Construction Period Payment Default occurred or, if less, the number of Months immediately following the Month in which such Construction Period Payment Default occurred until the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets (the “**Defaulting Owner Initial Advance Amount**”).
- 14.2.4.6.2 Second Default. The Defaulting CPP Owner, upon its second (2nd) Construction Period Payment Default, must pay to the Main Trust Account an amount that, collectively

with any portion of the Defaulting Owner Initial Advance Amount that remains in the Main Trust Account, equals one-third (1/3rd) of such Defaulting CPP Owner's estimated payment obligations for CM Costs under this Agreement and any DOSA Construction Agreement, for the twelve (12) Months immediately following the Month in which such Construction Period Payment Default occurred or, if less, the number of Months immediately following the Month in which such Construction Period Payment Default occurred until the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets (the "**Defaulting Owner Supplemental Advance Amount**") and together with the Defaulting Owner Initial Advance Amount, the "**Defaulting Owner Advance Amounts**").

14.2.4.6.3 Basis for Determining and Treatment of Defaulting Owner Advance Amounts. Any Defaulting Owner Advance Amounts will be determined by the Management Committee based on the most recent Project Budget. Any Defaulting Owner Advance Amounts will be held in the Main Trust Account as an advance payment of such Defaulting CPP Owner's payment obligations for CM Costs under this Agreement or, to the extent the Defaulting Owner Advance Amounts relate to Discretely Owned Substation Costs, advance payment of such Defaulting CPP Owner's payment obligations for Discretely Owned Substation Costs under any DOSA Construction Agreement.

14.2.4.7 Order of Application of Defaulting CPP Owner Payments. All amounts paid by the Defaulting CPP Owner pursuant to **Sections 14.2.4.2 through 14.2.4.6**, will be applied in the following order: (i) to the repayment of CPP Default OPCs; (ii) to the payment of the CPP Default Accrued Interest; (iii) to the payment of the CPP Default Late Fee; and (iv) to the payment of the Defaulting Owner Advance Amounts, which will be applied first in satisfaction of the Discretely Owned Substation Costs component thereof, if any. The Defaulting Owner Advance Amounts, and any interest accrued thereon, will be applied (a) first to any payments due by such Defaulting CPP Owner under this Agreement upon the occurrence of a subsequent Construction Period Payment Default by such Defaulting CPP Owner, (b) to Discretely Owned Substation Costs required to be paid by such Defaulting CPP Owner pursuant to any DOSA Construction Agreement, then (c) to the last payments due by such Defaulting CPP Owner under this Agreement in respect of CM Costs other than Discretely

Owned Substation Costs. For the avoidance of doubt, the application of the Defaulting Owner Advance Amounts pursuant to **clause (a)** of this **Section 14.2.4.7** will not constitute a cure of any subsequent Construction Period Payment Default by the Defaulting CPP Owner.

14.2.4.8 Restoration of Voting Rights Upon Cure of Construction Period Payment Default. If a Defaulting CPP Owner cures its Construction Period Payment Default in accordance with **Sections 14.2.4.1** through **14.2.4.6**, the rights removed pursuant to **Section 14.2.2** will be restored as provided in **Section 14.2.2**.

14.2.4.9 Effect of Prior Cured Construction Period Payment Default on Subsequent Construction Payment Period Defaults. A Defaulting CPP Owner's cure of a Construction Period Payment Default will not suspend or modify the application of the terms set forth in **Section 14.1.1.2** with respect to any subsequent Construction Period Payment Default by that same Owner.

14.2.5 **Automatic Freeze of Defaulting CPP Owner's Interest if Construction Period Payment Default Not Cured; Provisions Applicable to Automatic and Optional Freeze.** If the Defaulting CPP Owner fails to cure a Construction Period Payment Default on or prior to the last day of the CPP Default Cure Period in accordance with **Section 14.2.4**, then the Defaulting CPP Owner's right to make any further payments in respect of all or a portion of the Deficiency Amount or any CM Costs (including Discretely Owned Substation Costs pursuant to a DOSA Construction Agreement or otherwise) immediately and automatically will be revoked on the day immediately succeeding the last day of the CPP Default Cure Period (an "**Automatic Freeze**"). In the event of an Automatic Freeze as provided in this **Section 14.2.5** or an Optional Freeze as provided in **Section 14.5.3.1** (collectively, a "**Freeze,**") the following will apply:

14.2.5.1 Intentionally Reserved.

14.2.5.2 Ninety Percent of All CM Costs Committed. If, on the date of a Freeze, the Project is a Ninety Percent Completed Project (as defined below), then, effective from and after the last Advance required to be made pursuant to **Section 14.2.3**, each Non-Defaulting CPP Owner must assume its pro rata portion based on its Percentage Interest of the obligation that the Defaulting CPP Owner would have had to make in respect of all future payments of CM Costs if the Freeze had not occurred based on the Maximum CM Cost Amount or, if and when applicable, the New Maximum CM Cost Amount (other than the Defaulting CPP Owner's obligation to make future payments of Operating Expenses based on its Asset Ownership Percentage at the time such Operating Expenses are due and owing) minus all Advances

made by the Advancing Owners pursuant to **Section 14.2.3** (the “**DO’s Future Payment Obligations**”), calculated without giving effect to the Percentage Interest of the Defaulting CPP Owner on the date of the Freeze but after giving effect to **Section 14.2.3.3**. For purposes of this Agreement, the Project is a “**Ninety Percent Completed Project**” if the sum of all CM Costs that have been paid plus all CM Costs that are currently due plus all CM Costs that would become due as a termination liability if the Project were terminated on the date of a Freeze equals or exceeds ninety percent (90%) of all CM Costs (based on the then-current Project Budget).

- 14.2.5.3 Ninety Percent of All CM Costs for a Phase Committed. If, on the date of a Freeze, the Project is not a Ninety Percent Completed Project, but there is at least one Ninety Percent Completed Phase (as defined below), then, effective from and after the last Advance required to be made pursuant to **Section 14.2.3**, each Non-Defaulting CPP Owner must assume its pro rata portion based on its Percentage Interest of the DO’s Future Payment Obligations that are necessary to achieve Final Completion of such Phase(s), calculated without giving effect to the Percentage Interest of the Defaulting CPP Owner on the date of the Freeze but after giving effect to **Section 14.2.3.3**. For purposes of this Agreement, a Phase is a “**Ninety Percent Completed Phase**” if (i) such Phase can be placed into commercial operation without completion of any other Phase and (ii) the sum of all CM Costs that have been paid plus all CM Costs that are currently due plus all CM Costs that would become due as a termination liability if such Phase were terminated on the date of a Freeze equals or exceeds ninety percent (90%) of the CM Costs of such Phase (based on the then-current Project Budget).
- 14.2.5.4 Management Committee Meeting in Absence of Ninety Percent Completed Project. If, on the date of a Freeze, the Project is not a Ninety Percent Completed Project, then as soon as practicable after the occurrence of a Freeze, the Chair will call a Management Committee meeting to determine how the DO’s Future Payment Obligations (other than any assumed pursuant to **Section 14.2.5.3**) will be paid. The Management Committee may institute any process it deems appropriate to make such determination. In any such process, the Non-Defaulting CPP Owners must be given the opportunity to subscribe to the DO’s Future Payment Obligations pro rata based on their Percentage Interests.
- 14.2.5.5 Full Subscription to DO’s Future Payment Obligations. If, as a result of the process instituted by the Management Committee after a Freeze, any one or more Persons agree to assume the

entirety of the DO's Future Payment Obligations, then effective from and after the last Advance required to be made pursuant to **Section 14.2.3** until all CM Costs have been paid in full:

- (i) each Non-Defaulting CPP Owner and Third Party that assumes the DO's Future Payment Obligations will be obligated to pay a percentage of all CM Costs equal to the Incremental Freeze CP Percentage calculated as follows:

For a Non-Defaulting CPP Owner,

"Incremental Freeze CP Percentage" =

$$((PI \times MAX) - (PCO) + (DOFPO)) \div (MAX - PCAO)$$

For a Third Party,

"Incremental Freeze CP Percentage" =

$$DOFPO \div (MAX - PCAO)$$

PI is the Percentage Interest of the Non-Defaulting CPP Owner.

MAX is the Maximum CM Cost Amount or, if applicable, New Maximum CM Cost Amount.

PCO is all CM Costs actually paid by the Non-Defaulting CPP Owner as of the date of the last Advance required to be made pursuant to **Section 14.2.3**.

DOFPO is the dollar amount of the DO's Future Payment Obligations assumed by the Non-Defaulting CPP Owner or the Third Party, as applicable.

PCAO is all CM Costs actually paid by all Owners (including the Defaulting CPP Owner) as of the date of the last Advance required to be made pursuant to **Section 14.2.3**.

In each case, the Secretary will revise **Exhibit B** to reflect the same and any resulting changes to the Percentages determined in accordance with **Section 3.1.3**; and

- (ii) the voting rights of each Authorized Owner Representative under this Agreement will be based on the Post Freeze CP Voting Percentage calculated as follows:

For an Owner that assumes the DO's Future Payment Obligations,

“Post Freeze CP Voting Percentage” =

$$((PI \times MAX) + (DOFPO)) \div (MAX - PCO)$$

For a Third Party,

“Post Freeze CP Voting Percentage” =

$$(DOFPO) \div (MAX - PCO)$$

PI is the Percentage Interest of such Owner.

MAX is the Maximum CM Cost Amount or, if applicable, New Maximum CM Cost Amount.

DOFPO is the dollar amount of the DO’s Future Payment Obligations assumed by the Owners or the Third Party, as applicable.

PCO is all CM Costs actually paid by the Defaulting CPP Owner as of the date of the last Advance required to be made pursuant to **Section 14.2.3**.

In each case, the Secretary will revise **Exhibit B** to reflect the same; and

- (iii) if any Third Parties agree to assume any of the DO’s Future Payment Obligations, they must comply with the provisions of **Section 10.3.1** (other than **Section 10.3.1.2**) in order to become an Owner.

14.2.5.6 Partial Subscription to DO’s Future Payment Obligations. If, as a result of the process instituted by the Management Committee as the result of a Freeze, the entirety of the DO’s Future Payment Obligations has not been assumed by any one or more Persons, then the Management Committee will promptly meet to determine, by a Level B Vote, whether there should be a revision in the size, character or capacity of the Project or to take other action. If the Management Committee does not approve such a revision or vote to take other action, the Management Committee will terminate the Project and proceed in accordance with **Article 19** to adopt and implement the Windup Plan; **provided, however, if Section 14.2.5.3** was applicable, then (i) the Management Committee will adopt and implement the Windup Plan only with respect to the Phase(s) that are not Ninety Percent Completed Phases and (ii) this Agreement and the other Project Agreements will continue with respect to the Ninety Percent Completed Phase (with the exception of the Construction

Management Agreement following Final Completion of such Phase(s)).

14.2.5.7 Project Termination Liquidated Damages Applicable if Windup Plan Adopted Pursuant to Section 14.2.5.6. If, at the meeting held in accordance with **Section 14.2.5.6**, the Management Committee elects to proceed under **Article 19** to adopt and implement a Windup Plan, the provisions of **Sections 14.2.8** will apply.

14.2.6 **Non-Defaulting CPP Owners' Right to Project Continuation Liquidated Damages if Construction Period Payment Default Not Cured and Windup Plan Not Adopted.**

14.2.6.1 Application of Project Continuation Liquidated Damages. The Owners have extensively reviewed the issue of potential Damages arising from a Defaulting CPP Owner's failure to cure a Construction Period Payment Default within the time and in the manner set forth in **Section 14.2.4** if, within three hundred and sixty five (365) days after the CPP Default Cure Period, the Management Committee does not adopt a Windup Plan pursuant to **Section 14.2.3.4** or **14.2.5.6**. The Owners have in good faith determined that such Damages cannot be accurately ascertained or measured and would be extremely impracticable or impossible to calculate. Based on the foregoing, the Owners have agreed (i) to establish liquidated damages as the basis for Damages to be paid by a Defaulting CPP Owner to the Advancing Owners and such other Owners that assume the DO's Future Payment Obligations (collectively, the "**Step-Up Owners**") if such an uncured Construction Period Payment Default occurs and the Project continues (the "**Project Continuation Liquidated Damages**"), (ii) that the Project Continuation Liquidated Damages constitute a fair and reasonable approximation of the amount of actual damage that would be suffered by all Owners under such circumstances, (iii) that the Project Continuation Liquidated Damages are not, do not constitute and will not be deemed a penalty for such uncured Construction Period Payment Default under such circumstances, and (iv) that unless it is a Step-Up Owner it will not be entitled to participate in the award of Project Continuation Liquidated Damages and, in accordance with **Section 14.2.9**, will have no recourse against the Defaulting CPP Owner with respect to such Construction Period Payment Default except as provided in **Section 15.6**.

14.2.6.2 Project Continuation LD Amount.

14.2.6.2.1 Formula for Project Continuation LD Amount. The Defaulting CPP Owner must pay to each Step-Up Owner in

proportion to the aggregate amount of the DO's Future Payment Obligations assumed by and Advances made by each such Step-Up Owner, Project Continuation Liquidated Damages calculated as follows with respect to the first Construction Period Payment Default that has not been cured on or prior to the last day of the CPP Default Cure Period in accordance with **Section 14.2.4**:

"Project Continuation LD Amount" = .10 ((PI x MAX) - (CM)).

PI is the Percentage Interest of the Defaulting CPP Owner immediately prior to the date of the Automatic Freeze.

MAX is the Maximum CM Cost Amount as of the date immediately prior to the date of the Automatic Freeze.

CM is all CM Costs paid by the Defaulting CPP Owner as of date immediately prior to the date of the Automatic Freeze (i) to a Project Account, or (ii) pursuant to any DOSA Construction Agreement.

14.2.6.2.2 Notice of Project Continuation LD Amount Calculation.

Promptly after the last day of the CPP Default Cure Period if the Construction Period Payment Default remains uncured, the Management Committee will send written notice to the Defaulting CPP Owner setting forth its calculation of the Project Continuation LD Amount ("**Project Continuation LD Amount Calculation**"), which will be deemed to be accepted by the Defaulting CPP Owner unless the Defaulting CPP Owner delivers a notice to the Management Committee and the other Owners specifying its objections thereto in reasonable detail within five (5) Business Days following the delivery of the Project Continuation LD Amount Calculation to the Defaulting CPP Owner (an "**Objection Notice**"). If the Defaulting CPP Owner delivers an Objection Notice, the Management Committee and the Defaulting CPP Owner will resolve the dispute in accordance with **Article 18**.

14.2.6.3 Payment of Project Continuation LD Amount. The Defaulting CPP Owner will pay the Project Continuation LD Amount to the Main Trust Account for the benefit of the Step-Up Owners on the fifth (5th) Business Day after its receipt of the Project Continuation LD Amount Calculation. The Project Continuation LD Amount will be credited against the next payment of Project Costs required of the Step-Up Owners. The Project Continuation

LD Amount will accrue interest at the Late Payment Rate beginning on the day after the last day of the CPP Default Cure Period until the Project Continuation LD Amount has been paid in full. Neither the failure of the Defaulting CPP Owner to receive notice from the Management Committee of its Project Continuation LD Amount Calculation promptly after the last day of the CPP Default Cure Period nor the delivery of an Objection Notice by the Defaulting CPP Owner will relieve the Defaulting CPP Owner from paying the Project Continuation LD Amount or any interest thereon in accordance with this **Section 14.2.6.3**.

14.2.6.4 Effect of Finding of Unenforceability of Project Continuation LD Amount. If the Project Continuation LD Amount is found by a court of competent jurisdiction not to be enforceable for any reason whatsoever, the Owners agree that for any uncured Construction Period Payment Default, the Step-Up Owners will be entitled to Damages, including Consequential Damages. In no event will the Step-Up Owners be entitled to Damages, including Consequential Damages, in an amount greater than (i) one hundred and fifty percent (150%) of the applicable Project Continuation LD Amount if such finding is the result of a direct assertion by a Step-Up Owner that the Project Continuation LD Amount should be unenforceable, (ii) one hundred percent (100%) of the applicable Project Continuation LD Amount if such finding is the result of a direct assertion by a Step-Up Owner that the Project Continuation LD Amount should not be enforceable, or (iii) one hundred and twenty-five percent (125%) of the applicable Project Continuation LD Amount in all other cases.

14.2.6.5 Reallocation of Project Continuation LD Amount Upon Termination. Notwithstanding anything to the contrary contained in this Agreement, if the Project or a Phase of the Project (i) is terminated pursuant to **Section 19.1.1** and the Management Committee has adopted a Windup Plan, and (ii) Project Continuation Liquidated Damages have previously accrued against the Defaulting CPP Owner pursuant to this **Section 14.2.6**, then such Project Continuation Liquidated Damages and the provisions of **Section 14.2.6** will be replaced in their entirety by the accrual of Project Termination Liquidated Damages pursuant to **Section 14.2.8** and such Project Continuation Liquidated Damages will be reallocated in accordance with **Section 19.3.2.5**.

14.2.7 Non-Defaulting Owners' Right to Exercise Call Option if Construction Period Payment Default Not Cured or Upon CP Insolvency Default. At any time and from time to time after the occurrence of a Construction Period Payment Default or a CP Insolvency Default, the Management Committee may meet to determine whether it desires to require the Defaulting Owner (pursuant to a

Construction Period Payment Default or a CP Insolvency Default) to Transfer, or cause to be Transferred, all of such Defaulting Owner's Asset Ownership Percentage and other Percentages to such Persons and in the manner described in this **Section 14.2.7** (the "**Call Option**"). The date on which the Management Committee decides that it desires to exercise the Call Option is hereinafter referred to as the "**Call Option Determination Date.**" If (i) the Defaulting Owner does not cure the Construction Period Payment Default pursuant to **Section 14.2.4** on or prior to the last day of the CPP Default Cure Period and (ii) the Management Committee has determined the Non-Defaulting Owners or Third Parties that will purchase all of the Defaulting Owner's Asset Ownership Percentage, on the Call Option Closing Date in accordance with **Sections 14.2.7.1, 14.2.7.2 and 14.2.7.4**, then the Management Committee, by a Level A Vote, may exercise the Call Option by following the procedures set forth in **Section 14.2.7.4** (a) at any time on or prior to the first to occur of (1) the date that is three hundred and sixty-five (365) days after the last day of the CPP Default Cure Period or (2) the date on which the Management Committee decides to terminate the Project pursuant to **Section 14.2.3.4** or **14.2.5.6**, (b) if a CP Insolvency Default has occurred, then at any time prior to the date that is three hundred and sixty-five (365) days after such occurrence (the time periods in this **Section 14.2.7** (a) and (b) are hereinafter referred to as the "**Call Option Exercise Period**").

14.2.7.1 First Round Call Option Period.

14.2.7.1.1 First Round Call Option Notice. Within a number of days after the Call Option Determination Date determined by the Management Committee (the "**First Round Call Option Period**"), each Owner other than the Defaulting Owner ("**Eligible Owners**") will give the Management Committee and each other Owner, including the Defaulting Owner, notice (the "**First Round Call Option Notice**") of whether such Eligible Owner elects to acquire all or a portion of the Defaulting Owner's Asset Ownership Percentage on the Call Option Closing Date in accordance with the terms of **Section 14.2.7.4**.

14.2.7.1.2 Maximum Default Interest Percentage. Each First Round Call Option Notice will set forth the maximum percentage of the Defaulting Owner's Asset Ownership Percentage desired by such Eligible Owner (the "**Maximum Default Interest Percentage**") to be acquired on the Call Option Closing Date.

14.2.7.1.3 Effect of First Round Call Option Notice. The First Round Call Option Notice will irrevocably bind the Owner giving such notice to purchase its Maximum Default Interest Percentage on the Call Option Closing Date in accordance

with the terms of **Section 14.2.7.4**. If an Eligible Owner fails to give a First Round Call Option Notice, it will have irrevocably waived its right to elect to acquire all or a portion of the Defaulting Owner's Asset Ownership Percentage on the Call Option Closing Date.

14.2.7.1.4 Final Maximum Default Interest Percentage. If at the end of the First Round Call Option Period the electing Eligible Owners have not elected to acquire all of the Defaulting Owner's Asset Ownership Percentage (for purposes of **Section 14.2.7.1**, the unelected portion then remaining being the "**Unelected Default Interest**"), then the Management Committee will give notice of such fact to each electing Eligible Owner as soon as practicable following the end of the First Round Call Option Period, which notice will ask if such Eligible Owner is interested in increasing its Maximum Default Interest Percentage to purchase all or a portion of the Unelected Default Interest (such portion of the Unelected Default Interest together with such Eligible Owner's Maximum Default Interest Percentage is hereinafter referred to as the "**Final Maximum Default Interest Percentage**") on the Call Option Closing Date in accordance with **Section 14.2.7.4**. Within the time period specified by the Management Committee in such notice, such Eligible Owner will give notice to the Management Committee and each Owner, including the Defaulting Owner and any Eligible Owner that did not elect to deliver a First Round Call Option Notice, of such Eligible Owner's Final Maximum Default Interest Percentage.

14.2.7.1.5 Allocation of Defaulting Owner's Asset Ownership Percentage. On the Call Option Closing Date, the Defaulting Owner's Asset Ownership Percentage and other Percentages will be allocated among the electing Eligible Owners in proportion to their Percentage Interests (calculated without giving effect to the Defaulting Owner's Percentage Interest or the Percentage Interest of the Non-Defaulting Owners not electing to purchase any of the Defaulting Owner's Asset Ownership Percentage) as follows: (i) first to all electing Non-Defaulting Owners in an amount equal to the lesser of (a) their Final Maximum Default Interest Percentage or (b) their pro rata share based on their Percentage Interests and (ii) then to all electing Non-Defaulting Owners whose Final Maximum Default Interest Percentage exceeded their pro rata share based on

their Percentage Interest, in an amount up to their Final Maximum Default Interest Percentage.

14.2.7.2 Second Round Call Option Period.

14.2.7.2.1 Second Round Notice. If at the end of the First Round Call Option Period the Eligible Owners have not elected to acquire all of the Defaulting Owner's Asset Ownership Percentage (for purposes of **Section 14.2.7.2**, the unelected portion then remaining being the "**Unelected Default Interest**"), then the Management Committee will give notice of such fact to each of the owners of any CapX Project other than the Owners (the "**Second Round Offerees**"), and to each Owner, including the Defaulting Owner (and it will make commercially reasonable efforts to give contemporaneous notice to those Financing Parties (i) that have provided Financing to the Defaulting Owner, and (ii) of which the Management Committee has actual knowledge), which notice will ask the Second Round Offerees if they are interested in purchasing all or a portion of the Unelected Default Interest on the Call Option Closing Date in accordance with the terms of **Section 14.2.7.4** (the "**Second Round Notice**").

14.2.7.2.2 Maximum Unelected Default Interest Percentage. Within the time period specified by the Management Committee (the "**Second Round Call Option Period**"), each Second Round Offeree will give the Management Committee and each Owner, including the Defaulting Owner, notice (the "**Second Round Call Option Notice**") of whether it elects to acquire all or a portion of the Unelected Default Interest on the Call Option Closing Date in accordance with the terms of **Section 14.2.7.4**. Each Second Round Call Option Notice will set forth the maximum percentage of the Unelected Default Interest desired by such Second Round Offeree (the "**Maximum Unelected Default Interest Percentage**").

14.2.7.2.3 Effect of Second Round Call Option Notice. The Second Round Notice will provide that the Second Round Call Option Notice will irrevocably bind the Second Round Offeree giving such notice to purchase the Maximum Unelected Default Interest Percentage on the Call Option Closing Date in accordance with the terms of **Section 14.2.7.4**. The Second Round Notice will provide that if a Second Round Offeree fails to give a Second Round Call Option Notice, it will have irrevocably waived its right to

elect to acquire all or a portion of the Unelected Default Interest on the Call Option Closing Date.

14.2.7.2.4 Allocation of Unelected Default Interest. On the Call Option Closing Date, the Unelected Default Interest will be allocated among the Second Round Offerees that have given a Second Round Call Option Notice as determined by the Management Committee.

14.2.7.3 Final Round Call Option Period.

14.2.7.3.1 Final Round Notice. If at the end of the Second Round Call Option Period, the Second Round Offerees and the Non-Defaulting Owners collectively have not elected to acquire all of the Defaulting Owner's Asset Ownership Percentage (the unelected portion then remaining being the "**Remaining Default Interest**"), then the Management Committee will give notice of such fact to such Persons as determined by the Management Committee (the "**Final Round Offerees**"), to each of the Second Round Offerees that provided a Second Round Call Option Notice electing to acquire a portion of the Unelected Default Interest on the Call Option Closing Date, and to each Owner, including the Defaulting Owner (and it will make commercially reasonable efforts to give contemporaneous notice to those Financing Parties (i) that have provided Financing to the Defaulting Owner, and (ii) of which the Management Committee has actual knowledge), which notice will ask the Final Round Offerees if they are interested in purchasing all or a portion of the Remaining Default Interest on the Call Option Closing Date in accordance with the terms of **Section 14.2.7.4** (the "**Final Round Notice**").

14.2.7.3.2 Maximum Remaining Default Interest Percentage. Within the time period specified by the Management Committee (the "**Final Round Call Option Period**"), each Final Round Offeree will give the Management Committee and each Owner, including the Defaulting Owner, notice (the "**Final Round Call Option Notice**") of whether it elects to acquire all or a portion of the Remaining Default Interest on the Call Option Closing Date in accordance with the terms of **Section 14.2.7.4**. Each Final Round Call Option Notice will set forth the maximum percentage of the Remaining Default Interest desired by such Final Round Offeree (the "**Maximum Remaining Default Interest Percentage**").

14.2.7.3.3 Effect of Final Round Call Option Notice. The Final Round Notice will provide that the Final Round Call Option Notice will irrevocably bind the Final Round Offeree giving such notice to purchase the Maximum Remaining Default Interest Percentage on the Call Option Closing Date in accordance with the terms of **Section 14.2.7.4**. The Final Round Notice will provide that if a Final Round Offeree fails to give a Final Round Call Option Notice, it will have irrevocably waived its right to elect to acquire all or a portion of the Remaining Default Interest on the Call Option Closing Date.

14.2.7.3.4 Allocation of Remaining Default Interest. On the Call Option Closing Date, the Remaining Default Interest will be allocated among the Final Round Offerees that have given a Final Round Call Option Notice as determined by the Management Committee.

14.2.7.4 Call Option Closing Date.

14.2.7.4.1 Call Option Notice. If the Management Committee elects to exercise the Call Option on or prior to the last day of the Call Option Exercise Period, it will provide a notice to the Defaulting Owner (the "**Call Option Notice**") (with a copy thereof to the Call Option Transferees) that (i) specifies the Persons to which all of the Defaulting Owner's Asset Ownership Percentage and other Percentages (except for the Residual Interest, if any) will be Transferred as a result of the elections made by or allocations made in accordance with the terms of **Sections 14.2.7.1, 14.2.7.2 and 14.2.7.3** to the Eligible Owners, the Second Round Offerees and the Final Round Offerees, or any of them (the "**Call Option Transferees**"), and (ii) sets forth the date on which such Transfers will occur (the "**Call Option Closing Date**").

14.2.7.4.2 Call Option Closing Date Events. On the Call Option Closing Date:

- (i) all rights and obligations of the Defaulting Owner with respect to the Asset Ownership Percentage and other Percentages of the Defaulting Owner will automatically be terminated, except for such obligations of the Defaulting Owner that arose prior to the Call Option Closing Date and are expressly intended to survive the Transfer of the Defaulting Owner's Asset Ownership Percentage hereunder, including pursuant to **Section 20.1**, and the

Defaulting Owner's Asset Ownership Percentage and other Percentages will be reduced to zero; **provided, however**, notwithstanding anything to the contrary contained herein, if such Defaulting Owner owns any Discretely Owned Substation Assets, then it will remain a party to and will continue to fulfill its obligations under the Transmission Capacity Exchange Agreement as if it has a .0000001 Percentage Interest (the "**Residual Interest**") but it will not remain a party to any of the other Project Agreements other than the Transmission Easement Agreement to which it is a party on the Call Option Closing Date;

- (ii) the Defaulting Owner must deliver to the Management Committee and the Management Committee may immediately deliver to each Call Option Transferee the Call Option Assignment Agreement of the Defaulting Owner, without further notice, to effect the Transfer to the Call Option Transferees of all right, title and interest in and to the Defaulting Owner's Asset Ownership Percentage and other Percentages (except for the Residual Interest, if any);
- (iii) in consideration of the Transfer of all of the Defaulting Owner's right, title and interest in and to the Defaulting Owner's Asset Ownership Percentage and other Percentages (except for the Residual Interest, if any) to the applicable Call Option Transferees, the Call Option Transferees will pay an amount equal to all CM Costs paid by the Defaulting Owner as of the Call Option Closing Date (the "**Call Price**") in accordance with **Section 14.2.7.5**;
- (iv) the Secretary will update **Exhibit B** and take all other necessary action to reflect the transactions contemplated by this **Section 14.2.7.4**; and
- (v) the Call Option Transferees will undertake any and all reasonable actions, including the execution, delivery and filing of appropriate instruments, to effect the transactions contemplated by this **Section 14.2.7.4**.

- 14.2.7.5 Payment of Call Price. The Call Price will be paid by each Call Option Transferee in proportion to the Defaulting Owner's Asset Ownership Percentage allocated to each of them, as follows:
- (i) First, if a Financing Party claims the existence of Liens on the Defaulting Owner's Asset Ownership Percentage, the amounts claimed to be secured by Liens thereon as of the Call Option Closing Date and required by the terms of such Defaulting Owner's Financing Instrument to be paid to the Financing Party will be deducted from the Call Price and paid to such Financing Party;
 - (ii) Next, any unpaid Project Continuation LD Amount, plus any accrued interest thereon, will be deducted from the Call Price and paid to the Project Account designated by the Management Committee for the benefit of the Step-Up Owners in accordance with **Section 14.2.6.2.1**;
 - (iii) Next, any unpaid amounts due and owing by the Defaulting Owner to the Non-Defaulting Owners pursuant to **Article 16** will be deducted from the Call Price and paid to the Project Account designated by the Management Committee for the benefit of the Non-Defaulting Owners; **provided, however**, if the Defaulting Owner has disputed any such amounts, then the disputed amounts will be placed into a Third Party escrow account established pursuant to the Escrow Agreement in the form attached hereto as **Exhibit O** (the "**Escrow Agreement**"); **provided, further, however**, if the parties are unable to determine the exact amounts due and owing by the Defaulting Owner to the Non-Defaulting Owners pursuant to **Article 16** on the Call Option Closing Date, then a reasonable estimate thereof as determined by the Management Committee will be placed in the escrow account established pursuant to the Escrow Agreement.
 - (iv) Finally, the remainder, if any, of the Call Price will be paid to the Defaulting Owner.
- 14.2.7.6 Permitted Transfer of Call Option Rights. The right to elect to acquire all or any portion of the Asset Ownership Percentage of a Defaulting Owner by a Non-Defaulting Owner pursuant to **Section 14.2.7.1** may be Transferred directly to a Third Party if the Transfer of an Asset Ownership Percentage to such Third Party is a Permitted Transfer.
- 14.2.7.7 Termination of Call Option. The Management Committee's right to exercise the Call Option will automatically terminate if the Defaulting Owner has Transferred all of its Asset Ownership

Percentage in accordance with **Article 10** before the Management Committee has exercised the Call Option.

14.2.8 Non-Defaulting Owners' Right to Project Termination Liquidated Damages if Construction Period Payment Default Not Cured and Windup Plan is Adopted.

14.2.8.1 Application of Project Termination Liquidated Damages. The Owners have extensively reviewed the issue of potential Damages arising from a Defaulting CPP Owner's failure to cure a Construction Period Payment Default within the time and in the manner set forth in **Section 14.2.4** if, within three hundred and sixty five (365) days after the CPP Default Cure Period, the Management Committee adopts a Windup Plan with respect to the entire Project or only with respect to those Phases that are not Ninety Percent Completed Phases pursuant to **Section 14.2.3.4** or **14.2.5.6**. The Owners have in good faith determined that such Damages cannot be accurately ascertained or measured and would be extremely impracticable or impossible to calculate. Based on the foregoing, the Owners have agreed (i) to establish liquidated damages as the basis for Damages to be paid under such circumstances (the "**Project Termination Liquidated Damages**") by the Defaulting CPP Owner (a) that triggered the obligation of the Non-Defaulting CPP Owners to make Advances if the Windup Plan is adopted pursuant to **Section 14.2.3.4** or (b) with respect to which a Freeze has occurred if the Windup Plan is adopted pursuant to **Section 14.2.5.6**, (ii) that the Project Termination Liquidated Damages constitute a fair and reasonable approximation of the amount of actual damage that would be suffered by the Non-Defaulting CPP Owners under such circumstances, and (iii) that the Project Termination Liquidated Damages are not, do not constitute and will not be deemed a penalty for such uncured Construction Period Payment Default under such circumstances.

14.2.8.2 Project Termination LD Amount.

14.2.8.2.1 Formula for Project Termination LD Amount. If the Windup Plan is adopted (i) pursuant to **Section 14.2.3.4**, then the Defaulting CPP Owner that triggered the obligation of the Non-Defaulting CPP Owners to make Advances, or (ii) pursuant to **Section 14.2.5.6**, then the Defaulting CPP Owner with respect to which a Freeze has occurred, must pay to each other Owner Project Termination Liquidated Damages calculated as follows:

“Project Termination LD Amount” = .125 x CMNETENP; **provided, however**, if the aggregate Project Termination LD Amount payable to all Owners exceeds MAXPTLDA, then the Project Termination LD Amount will be each such Non-Defaulting CPP Owner’s pro rata share of the MAXPTLDA.

CMNETENP is (i) all CM Costs paid by the Non-Defaulting CPP Owner as of the date immediately prior to the date of the Automatic Freeze (a) to a Project Account or (b) pursuant to any DOSA Construction Agreement, less (ii) CM Costs that are included in **clause (i)** of this paragraph to the extent directly relating to any Phase with respect to which a Phase In-Service Date has occurred as of such date.

MAXPTLDA is $.15((PI \times MAX) - (ENP))$.

PI is the Percentage Interest of the Defaulting Owner immediately prior to the date of the Automatic Freeze.

MAX is the Maximum CM Cost Amount as of the date immediately prior to the date of the Automatic Freeze.

ENP is all CM Costs paid by the Defaulting CPP Owner as of the date immediately prior to the date of the Automatic Freeze (i) to a Project Account or (ii) pursuant to any DOSA Construction Agreement, in each case to the extent directly relating to all Phases with respect to which a Phase In-Service Date has occurred as of such date.

14.2.8.2.2 Notice of Project Termination LD Amount Calculation.

Promptly after adopting the Windup Plan pursuant to **Section 14.2.3.4** or **14.2.5.6**, the Management Committee will send written notice to the Defaulting CPP Owner that is obligated to pay Project Termination Liquidated Damages to the Non-Defaulting CPP Owners pursuant to this **Section 14.2.8**, setting forth its calculation of the Project Termination LD Amount (**“Project Termination LD Amount Calculation”**), which will be deemed to be accepted by such Defaulting CPP Owner unless such Defaulting CPP Owner delivers a notice to the Management Committee and the other Owners specifying its objections thereto in reasonable detail within five (5) Business Days following the delivery of the Project Termination LD Amount Calculation to the Defaulting CPP Owner (an **“Objection Notice”**). If such Defaulting CPP Owner delivers an Objection Notice, the Management

Committee and such Defaulting CPP Owner will resolve the dispute in accordance with **Article 18**.

14.2.8.3 Payment of Project Termination LD Amount. The Defaulting CPP Owner will pay the difference, if any, between the Project Termination LD Amount and any Project Continuation LD Amount actually paid by it to the Main Trust Account for the benefit of the other Owners on the fifth (5th) Business Day after its receipt of the Project Termination LD Amount Calculation. Such difference will accrue interest at the Late Payment Rate beginning on the due date until the Project Termination LD Amount has been paid in full. Neither the failure of the Defaulting CPP Owner to receive notice from the Management Committee of its Project Termination LD Amount Calculation promptly after adoption of the Windup Plan nor the delivery of an Objection Notice by the Defaulting CPP Owner will relieve the Defaulting CPP Owner from paying the Project Termination LD Amount or any interest thereon in accordance with this **Section 14.2.8.3**.

14.2.8.4 Effect of Finding of Unenforceability of Project Termination LD Amount. If the Project Termination LD Amount is found by a court of competent jurisdiction not to be enforceable for any reason whatsoever, the Owners agree that for any uncured Construction Period Payment Default, the Non-Defaulting CPP Owners will be entitled to Damages, including Consequential Damages. In no event will the Non-Defaulting CPP Owners be entitled to Damages, including Consequential Damages, in an amount greater than (i) one hundred and fifty percent (150%) of the applicable Project Termination LD Amount if such finding is the result of a direct assertion by a Defaulting CPP Owner that the Project Termination LD Amount should be unenforceable, (ii) one hundred percent (100%) of the applicable Project Termination LD Amount if such finding is the result of a direct assertion by a Non-Defaulting CPP Owner that the Project Termination LD Amount should not be enforceable, or (iii) one hundred and twenty-five percent (125%) of the applicable Project Termination LD Amount in all other cases.

14.2.9 Construction Period Payment Default Remedies Exclusive; Applicability of Equitable Remedies and Set-Off Rights to Construction Period Payment Defaults. The remedies set forth in **Section 14.2**, together with the provisions of **Section 15.6** (Common Provisions Applicable to All Defaults), are the exclusive remedies applicable to Construction Period Payment Defaults.

14.3 Provisions Governing Advance Defaults.

14.3.1 Immediate Consequences of Advance Default.

14.3.1.1 Notice to Owners of Advance Default. If an Advance Default occurs, the Chair will give notice to each Non-Defaulting Owner required to remit Advances on the day immediately following the day on which the Advance is due. The Chair may give a copy of such notice to the Defaulting Owner but will have no obligation to do so.

14.3.1.2 Notice to Defaulting Owner Financing Parties of Advance Default. If the Chair elects to give notice under **Section 14.3.1.1** to the Defaulting Owner, the Chair will make commercially reasonable efforts to give contemporaneous notice to those Financing Parties (i) that have provided Financing to the Defaulting Owner, and (ii) of which the Management Committee has actual knowledge.

14.3.1.3 Suspension of Voting Rights of Defaulting Owner for Advance Default. At such time as an Owner becomes a Defaulting Owner as the result of an Advance Default, it will cease to be entitled to have an Authorized Owner Representative serve on the Management Committee and it will cease to be entitled to exercise any voting rights under this Agreement. The rights of the Defaulting Owner removed pursuant to the first sentence of this **Section 14.3.1.3** will immediately and automatically be reinstated on the first to occur of (i) the Defaulting Owner's cure of the Advance Default in accordance with **Section 14.3.2** or (ii) the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets if the Owner remains an Owner as of such date. For the avoidance of doubt, if more than one Advance Default has occurred with respect to the same Defaulting Owner, then the rights of the Defaulting Owner removed pursuant to the first sentence of this **Section 14.3.1.3** will not be reinstated until the first to occur of (a) the Defaulting Owner's cure of all such Advance Defaults in accordance with **Section 14.3.2** or (b) the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets if the Owner remains an Owner as of such date.

14.3.2 Requirements for Cure of Advance Default. An Owner that becomes a Defaulting Owner as a result of an Advance Default may cure the Advance Default only by satisfying **Sections 14.3.2.1, 14.3.2.2 and 14.3.2.3.**

14.3.2.1 Out-of-Pocket Costs for Advance Default. The Defaulting Owner must pay to the Main Trust Account, for the benefit of the

Advancing Owners, all out-of-pocket costs incurred by such Advancing Owner as a result of the Advance Default (the “**Advance Default OPCs**”).

14.3.2.2 Default Late Fee for Advance Default. The Defaulting Owner must pay to the Main Trust Account, for the benefit of all Advancing Owners, a late fee equal to five percent (5%) of the amount of the Advance that the Defaulting Owner failed to pay (the “**Advance Default Late Fee**”).

14.3.2.3 Interest for Advance Default. The Defaulting Owner must pay to the Main Trust Account, for the benefit of each Advancing Owner, interest at the Late Payment Rate calculated on the basis of annual compounding and the actual number of days elapsed on (i) the amount of the Advance that the Defaulting Owner failed to pay from the day such Advance was due through and including the date that the Defaulting Owner cures the Advance Default, and (ii) the Advance Default OPCs from the day such Advance was due through and including the date that the Defaulting Owner cures the Advance Default ((i) and (ii) are collectively referred to as the “**Advance Default Accrued Interest**”).

14.3.2.4 Restoration of Voting Rights Upon Cure of Advance Default. If a Defaulting Owner cures its Advance Default in accordance with **Sections 14.3.2.1 through 14.3.2.3**, the rights removed pursuant to **Section 14.3.1.3** will be restored as provided in **Section 14.3.1.3**.

14.3.3 Remedies Applicable to Advance Default. The Non-Defaulting Owners will be entitled to recover from the Defaulting Owner the Advance Default OPCs, the Advance Default Late Fee and the Advance Default Accrued Interest. The remedies set forth in **Section 14.3.1.3** and this **Section 14.3.3**, together with the provisions of **Section 15.6**, are the exclusive remedies applicable to Advance Defaults.

14.4 Provisions Governing Call Price Defaults.

14.4.1 Immediate Consequences of Call Price Default.

14.4.1.1 Notice to Non-Defaulting Owners of Call Price Default. If a Call Price Default occurs, the Chair will give notice to each Non-Defaulting Owner on the day immediately following the day on which the payment of the Call Price is due. The Chair may give a copy of such notice to the Defaulting Owner but will have no obligation to do so.

14.4.1.2 Notice to Defaulting Owner Financing Parties of Call Price Default. If the Chair elects to give notice under **Section 14.4.1.1** to the Defaulting Owner, the Chair will make commercially

reasonable efforts to give contemporaneous notice to those Financing Parties (i) that have provided Financing to the Defaulting Owner, and (ii) of which the Management Committee has actual knowledge.

14.4.1.3 Suspension of Voting Rights of Defaulting Owner for Call Price Default. At such time as an Owner becomes a Defaulting Owner as the result of a Call Price Default, it will cease to be entitled to have an Authorized Owner Representative serve on the Management Committee and it will cease to be entitled to exercise any voting rights under this Agreement. The rights of the Defaulting Owner removed pursuant to the first sentence of this **Section 14.4.1.3** will immediately and automatically be reinstated on the first to occur of (i) the Defaulting Owner's cure of the Call Price Default in accordance with **Section 14.4.2** or (ii) the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets if the Owner remains an Owner as of such date.

14.4.2 Requirements for Cure of Call Price Default. An Owner that becomes a Defaulting Owner as a result of a Call Price Default may cure the Call Price Default only by satisfying **Sections 14.4.2.1, 14.4.2.2** and **14.4.2.3** within five (5) days after the occurrence of the Call Price Default.

14.4.2.1 Out-of-Pocket Costs for Call Price Default. The Defaulting Owner must pay to the Main Trust Account, for the benefit of the Call Option Transferees that are Owners, all out-of-pocket costs incurred by such Call Option Transferees as a result of the Call Price Default (the "**Call Price Default OPCs**").

14.4.2.2 Default Late Fee for Call Price Default. The Defaulting Owner must pay to the Main Trust Account, for the benefit of all Call Option Transferees that are Owners, a late fee equal to five percent (5%) of the amount of the Call Price that the Defaulting Owner failed to pay (the "**Call Price Default Late Fee**").

14.4.2.3 Interest for Call Price Default. The Defaulting Owner must pay to the Main Trust Account, for the benefit of each Call Option Transferee that is an Owner, interest at the Late Payment Rate calculated on the basis of annual compounding and the actual number of days elapsed on (i) the amount of the Call Price that the Defaulting Owner failed to pay from the day such Call Price was due through and including the date that the Defaulting Owner cures the Call Price Default, and (ii) the Call Price Default OPCs from the day such Call Price was due through and including the date that the Defaulting Owner cures the Call Price Default ((i)

and (ii) are collectively referred to as the “**Call Price Default Accrued Interest**”).

14.4.2.4 Restoration of Voting Rights Upon Cure of Call Price Default. If a Defaulting Owner cures its Call Price Default in accordance with **Sections 14.4.2.1** through **14.4.2.3**, the rights removed pursuant to **Section 14.4.1.3** will be restored as provided in **Section 14.4.1.3**.

14.4.3 Remedies Applicable to Call Price Default. The Non-Defaulting Owners will be entitled to recover from the Defaulting Owner the Call Price Default OPCs, the Call Price Default Late Fee and the Call Price Default Accrued Interest. The remedies set forth in **Section 14.4.1.3** and this **Section 14.4.3**, together with the provisions of **Section 15.6**, are the exclusive remedies applicable to Advance Defaults.

14.5 Provisions Governing CP Insolvency Default.

14.5.1 Notice of CP Insolvency Default.

14.5.1.1 Notice to Non-Defaulting Owners of CP Insolvency Default. If a CP Insolvency Default occurs, then promptly after the Management Committee obtains knowledge of such occurrence, the Chair will give notice of such fact to each Non-Defaulting Owner.

14.5.1.2 Notice to Defaulting Owner Financing Parties of CP Insolvency Default. The Chair may, but has no obligation to, make commercially reasonable efforts to give notice, contemporaneously with the notice of CP Insolvency Default given to the Non-Defaulting Owners, to those Financing Parties (i) that have provided Financing to the Defaulting Owner, and (ii) of which the Management Committee has actual knowledge.

14.5.2 No Cure of CP Insolvency Default. A CP Insolvency Default may not be cured.

14.5.3 Non-Defaulting Owner Remedies for CP Insolvency Default.

14.5.3.1 Optional Freeze. If within forty-five (45) days after a CP Insolvency Default the Management Committee determines by a Level B Vote to revoke the Defaulting Owner’s right to make any further payments in respect of CM Costs, then the Defaulting Owner will no longer have such right effective on the forty sixth (46th) day after the CP Insolvency Default (an “**Optional Freeze**”). If the Management Committee exercises its right to impose an Optional Freeze pursuant to this **Section 14.5.3.1**, then the provisions of **Sections 14.2.5.2** through **14.2.5.7** will apply.

14.5.3.2 Call Option for CP Insolvency Default. At any time and from time to time after the occurrence of a CP Insolvency Default, the Non-Defaulting Owners may exercise the Call Option in accordance with **Section 14.2.7**.

14.5.3.3 Exclusive Remedies for CP Insolvency Default; Applicability of Equitable Remedies and Set-Off Rights to CP Insolvency Defaults. The remedies set forth in **Sections 14.5.3.1 and 14.5.3.2**, together with the provisions of **Section 15.6**, are the exclusive remedies applicable to a CP Insolvency Default.

14.6 Provisions Governing Covenant Defaults. The provisions applicable to a Covenant Default, whether occurring prior to the date of Final Completion of all of the Facilities and the Discretely Owned Substation Assets or at any other time, will be as set forth in **Section 15.4**.

14.7 Provisions Governing Failure to Pay Operating Expenses Before Final Completion. The failure of an Owner to pay, when due, any Operating Expenses required to be paid by it under this Agreement, whether occurring prior to the date of Final Completion of all of the Facilities and the Discretely Owned Substation Assets or at any other time, will be governed by the provisions applicable to an Operations Payment Default as set forth in **Section 15.2**.

14.8 Additional Cure Period for Financing Instrument. Notwithstanding anything to the contrary in this **Article 14**, to the extent that any act or action otherwise required by the terms of this Agreement, other than the payment of monies, would cause an Owner to be in default under a Facility Mortgage as the result of a Default governed by this **Article 14**, such act or action will be stayed for a period not exceeding sixty (60) days to provide such Owner or its Financing Party time to avoid or cure such default under such Facility Mortgage.

ARTICLE 15

DEFAULTS RELATED TO OPERATIONS ACTIVITIES; GENERAL DEFINITIONS; COVENANT DEFAULTS; INJUNCTIVE RELIEF, SPECIFIC PERFORMANCE, AND SET-OFF RIGHTS

15.1 General Definitions Related to Defaults.

15.1.1 Definition of Operations Payment Default. An “Operations Payment Default” is the failure of an Owner to pay, when due, any Operating Expenses required to be paid by it under this Agreement, if payment is not received within fifteen (15) days after the date such payment was due.

15.1.2 Definition of General Insolvency Default. A “General Insolvency Default” occurs with respect to a Person if, at any time on or after the Final Completion Date of all of the Facilities and the Discretely Owned Substation Assets, (i) such Person (a) fails to generally pay its Debts as they become due, (b) admits in writing of its inability to pay its Debts as they become due or (c) makes a general assignment for the benefit of creditors; (ii) any Proceeding is instituted by or against such Person seeking (a) to adjudicate it as bankrupt or insolvent, (b)

liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its Debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property and, in the case of any such Proceeding instituted against such Person, either such Proceeding remains undismissed for a period of thirty (30) days or any of the actions sought in such Proceeding occur; or (iii) such Person takes any action to authorize any of the actions set forth above in this definition.

15.1.3 **Definition of Covenant Default.** Each of the following is a “**Covenant Default**”:

15.1.3.1 **Failure of Covenants.** The failure of an Owner to keep, observe or perform in any material respect the terms, covenants or obligations under this Agreement (other than a Construction Period Payment Default, an Advance Default, a Call Price Default, an Operations Payment Default, a General Insolvency Default or a CP Insolvency Default and other than an Individually Enforceable Obligation) or the breach by an Owner in any material respect of any of the representations or warranties contained in this Agreement, in each case if the Management Committee determines, by a Level A Vote of the Authorized Owner Representatives who were not appointed by the Owner or any Affiliated Owner with respect to which such failure or breach has occurred (the “**Performing Owners**”) to:

- (i) declare a default and that such failure or breach is not susceptible to cure, upon notice by the Management Committee to the Owner with respect to which such failure or breach has occurred (the “**Non-Performing Owner**”); or
- (ii) declare a default and that such failure or breach is susceptible to cure within thirty (30) days after notice by the Management Committee to the Non-Performing Owner, if such Non-Performing Owner has not cured such failure or breach within such thirty (30) day period; **provided, however**, that if the Non-Performing Owner notifies the Management Committee within five (5) days after its receipt of such notice that it (a) reasonably and in good faith believes that such failure or breach is not susceptible to cure within such thirty (30) day period but is susceptible to cure within the number of days set forth in such Non-Performing Owner’s notice which in no event may exceed ninety (90) days and (b) will diligently and in good faith proceed to remedy such failure or breach during the entirety of such period, then the Management Committee, acting by a Level A Vote of the Performing Owners, may extend the period of time that such Non-Performing Owner

has to cure such failure or breach for such number of days as determined by the Management Committee and will provide notice of such extension to such Non-Performing Owner.

15.1.3.2 **Failure of Individually Enforceable Obligations.** The failure of an Owner to keep, observe or perform the terms, covenants or obligations under **Articles 16** (Third Party Claims), **17** (Confidentiality) or **18** (Dispute Resolution for Excluded Matters) or **Sections 10.4** (Right of First Negotiation), **14.2.6** (Payment of Project Continuation Liquidated Damages), **14.2.8** (Payment of Project Termination Liquidated Damages) or **19.3.1.3** (Actions With Respect to Windup Plan) of this Agreement or **Section 3 of Schedule 1** (collectively, the “**Individually Enforceable Obligations**”) in each case if any Performing Owner determines:

- (i) to declare a default and that such failure is not susceptible to cure, upon notice by such Performing Owner to the Non-Performing Owner; or
- (ii) to declare a default and that such failure is susceptible to cure within thirty (30) days after notice by such Performing Owner to the Non-Performing Owner, if such Non-Performing Owner has not cured such failure within such thirty (30) day period; **provided, however,** that if the Non-Performing Owner notifies such Performing Owner within five (5) days after its receipt of such notice that it (a) reasonably and in good faith believes that such failure is not susceptible to cure within such thirty (30) day period but is susceptible to cure within the number of days set forth in such Non-Performing Owner’s notice which in no event may exceed ninety (90) days and (b) will diligently and in good faith proceed to remedy such failure during the entirety of such period, then such Performing Owner may extend the period of time that such Non-Performing Owner has to cure such failure for such number of days as determined by the such Performing Owner and will provide notice of such extension to such Non-Performing Owner.

15.1.4 **Definition of Default.** “Default” means the occurrence of any Construction Period Payment Default, Advance Default, Call Price Default, Operations Payment Default, Covenant Default, General Insolvency Default or CP Insolvency Default. The existence or non-existence of a Default may be disputed in good faith by any Owner.

15.1.5 **Definition of Defaulting Owner.** “Defaulting Owner” means an Owner that is in Default, including a Defaulting CPP Owner.

15.1.6 **Definition of Non-Defaulting Owner.** “Non-Defaulting Owner” means an Owner that is not in Default, including a Non-Defaulting CPP Owner.

15.1.7 **Applicability to Discretely Owned Substation Owners.** For purposes of this **Article 15**, all references to Owner includes an Owner in its capacity as a Discretely Owned Substation Owner.

15.2 Provisions Governing Operations Payment Defaults.

15.2.1 Notice of Overdue Operations Payment.

15.2.1.1 **Notice to Other Owners of Overdue Operations Payment.** If an Owner fails to pay, when due, any Operating Expenses required to be paid by it under this Agreement, the Chair will give notice to each other Owner on the day immediately following the day on which such payment is due. The Chair may give a copy of such notice to the Owner that has failed to pay, but will have no obligation to do so.

15.2.1.2 **Notice to Financing Parties of Overdue Operations Payment.** If the Chair elects to give notice under **Section 15.2.1.1** to the Owner that has failed to pay, the Chair will make commercially reasonable efforts to give contemporaneous notice to those Financing Parties (i) that have provided Financing to the Owner that has failed to pay, and (ii) of which the Management Committee has actual knowledge.

15.2.2 **Requirements for Cure of Operations Payment Default.** An Owner that becomes a Defaulting Owner as a result of an Operations Payment Default may cure the Operations Payment Default only by satisfying, within the period specified in **Section 15.2.2.1**, the requirements of **Sections 15.2.2.2, 15.2.2.3, 15.2.2.4, and 15.2.2.5.**

15.2.2.1 **Cure Period for Operations Payment Default.** A Defaulting Owner will have a period of thirty (30) Business Days after the occurrence of an Operations Payment Default within which to take all actions required to cure the Operations Payment Default.

15.2.2.2 **Deficiency Amount for Operations Payment Default.** The Defaulting Owner must pay to the Main Trust Account the total amount of all Project Costs, other than CM Costs, that the Defaulting Owner has not paid when due under this Agreement.

15.2.2.3 **Out-of-Pocket Costs for Operations Payment Default.** The Defaulting Owner must pay to the Main Trust Account, for the benefit of the Non-Defaulting Owners, all out-of-pocket costs incurred by such Non-Defaulting Owners as a result of the Operations Payment Default (the “**OP Default OPCs**”).

15.2.2.4 Default Late Fee for Operations Payment Default. The Defaulting Owner must pay to the Main Trust Account, for the benefit of all other Owners, a late fee equal to five percent (5%) of the amount of the Project Costs that the Defaulting Owner failed to pay.

15.2.2.5 Interest for Operations Payment Default. The Defaulting Owner must pay to the Main Trust Account, for the benefit of all other Owners, interest at the Late Payment Rate calculated on the basis of annual compounding and the actual number of days elapsed on (i) the amount of the Project Costs that the Defaulting Owner failed to pay from the day such Project Costs were due through and including the date that the Defaulting Owner cures the Operations Payment Default, and (ii) the OP Default OPCs from the day such Project Costs were due through and including the date that the Defaulting Owner cures the Operations Payment Default.

15.2.3 Remedies Applicable to Operations Payment Default. The remedies applicable to an Operations Payment Default are as set forth in **Sections 15.5 and 15.6.**

15.3 Provisions Governing General Insolvency Default.

15.3.1 Notice of General Insolvency Default.

15.3.1.1 Notice to Non-Defaulting Owners of General Insolvency Default. If a General Insolvency Default occurs, then promptly after the Management Committee obtains knowledge of such occurrence, the Chair will give notice of such fact to each other Owner.

15.3.1.2 Notice to Defaulting Owner Financing Parties of General Insolvency Default. The Chair may, but has no obligation to, make commercially reasonable efforts to give notice, contemporaneously with the notice of General Insolvency Default given to the other Owners, to those Financing Parties (i) that have provided Financing to the Defaulting Owner, and (ii) of which the Management Committee has actual knowledge.

15.3.2 No Cure of General Insolvency Default. A General Insolvency Default may not be cured.

15.3.3 Remedies Applicable to Certain General Insolvency Defaults. In the event of a General Insolvency Default that does not result in an Operations Payment Default or Covenant Default, (i) the Management Committee, acting by a Level A Vote, or an Owner with respect to enforcing its Individually Enforceable Obligations, may exercise any remedies now or hereafter existing under Applicable Law, at law, in equity, by statute or otherwise (including those set forth in **Section 15.6** but excluding Consequential Damages except as provided

in **Section 15.5.2.2**), and each and every such remedy will be cumulative and will be in addition to every other such remedy, and (ii) the pursuit by the Management Committee or Owners, as applicable, of any specific remedy will not be deemed to be an election of that remedy to the exclusion of any other, whether provided hereunder or by law, equity, or statute.

15.4 Provisions Governing Covenant Defaults.

15.4.1 **Notice of Covenant Default**. If the Management Committee makes a determination that a Covenant Default has occurred pursuant to **Section 15.1.3.1**, the Chair will promptly give notice thereof to the Owner that triggered such Covenant Default and provide a copy of such notice to the other Owners. If an Owner makes a determination pursuant to **Section 15.1.3.2** that a Covenant Default that constitutes an Individually Enforceable Obligation has occurred, such Owner will promptly give notice thereof to the Owner that triggered such Covenant Default and provide a copy of such notice to the other Owners.

15.4.2 **No Cure of Covenant Default**. A Covenant Default may not be cured.

15.4.3 **Remedies Applicable to Covenant Defaults**. The remedies applicable to a Covenant Default are as set forth in **Sections 15.5** and **15.6**.

15.5 Provisions Applicable to Certain Defaults.

15.5.1 **Available Damages**. In the event of an Operations Payment Default, Covenant Default or General Insolvency Default that results in an Operations Payment Default or Covenant Default (collectively, the “**Non-Exclusive Defaults**”), the Non-Defaulting Owners will be entitled to recover from the Defaulting Owner and the Defaulting Owner will be liable and obligated to pay and reimburse each Non-Defaulting Owner for Damages incurred by such Non-Defaulting Owner that arise from, in connection with or incident to its Default, including amounts in **Section 15.2.2** with respect to an Operations Payment Default, subject to the provisions of **Section 15.5.2** below.

15.5.2 No Consequential Damages.

15.5.2.1 **General Rule**. No Owner will be liable to any other Owner under this Agreement or any other Project Agreement for any special, incidental, consequential, indirect, exemplary, treble or punitive Damages, including loss of revenue, loss of profits, diminution of value, cost of capital, loss of goodwill, or increased operating costs (collectively, “**Consequential Damages**”) except as provided in **Section 15.5.2.2**.

15.5.2.2 **Exceptions**. An Owner will be liable to another Owner for Consequential Damages (i) arising from any Third Party Claims (including a Shared Liability), (ii) deemed to be included in any liquidated damages or the framework for establishing any Project

Continuation Liquidated Damages or Project Termination Liquidated Damages, (iii) under the circumstances and to the extent set forth in **Sections 14.2.6.4** (Unenforceability of Project Continuation LD Amount) and **14.2.8.4** (Unenforceability of Project Termination LD Amount), (iv) arising from the failure of an Owner to pay Damages that have been established by mutual agreement or pursuant to the dispute resolution procedures in **Article 18** or **Section 3** of **Schedule 1** as due and owing hereunder, or (v) expressly provided in any other Project Agreement.

15.5.3 **Remedies Not Exclusive.** In the event of a Non-Exclusive Default, the Management Committee, acting by a Level A Vote, or an Owner with respect to enforcing its Individually Enforceable Obligations, may exercise any remedies provided for in **Section 15.5** or **15.6** or now or hereafter existing under Applicable Law, at law, in equity, by statute or otherwise, and each and every such remedy will be cumulative and will be in addition to every other such remedy. In the event of any such Non-Exclusive Default, the pursuit by the Management Committee or Owners, as applicable, of any specific remedy will not be deemed to be an election of that remedy to the exclusion of any other, whether provided hereunder or under Applicable Law, by law, equity, or statute. The Owners agree and acknowledge that only the Management Committee and no Owner acting in its individual capacity may exercise any rights or remedies against another Owner, except against an Owner that Defaults with respect to an Individually Enforceable Obligation.

15.5.4 **Interest on Overdue Obligations.** If any amount due hereunder, other than CM Costs or an Advance, is not paid by the due date thereof, the Owner owing such obligation will pay to the other Owners that are not then Defaulting Owners or to the applicable Project Account for the benefit of the Owners that are not then Defaulting Owners, as appropriate, interest thereon at the Late Payment Rate concurrently with the payment of the amount, such interest to begin to accrue as of the due date of such payment. Any payment of interest at the Late Payment Rate pursuant to this Agreement will not excuse or cure any Default hereunder. All payments will first be applied to the payment of accrued but unpaid interest. The amount of any judgment obtained by one or more Owners against another Owner in any Proceeding arising out of a Non-Exclusive Default by such other Owner under this Agreement will bear interest until paid at the greater of (i) the Late Payment Rate or (ii) the judgment rate under Applicable Law.

15.6 Common Provisions Applicable to All Defaults.

15.6.1 **Injunctive Relief and Specific Performance.** The Owners agree that in the event of a Default, the Management Committee, or with respect to enforcing its Individually Enforceable Obligations any Owner, will be entitled to seek and obtain a temporary or permanent injunction, specific performance or other

equitable relief specifically to enforce an Owner's obligations under this Agreement without the necessity of posting a bond.

15.6.2 **Right of Set-Off.** Each Non-Defaulting Owner will have the right to set-off against any amount (other than the Call Price payable to a Financing Party pursuant to **Section 14.2.7.5(i)** as a result of or upon exercise of a Collateral Assignment, Project Costs or Advances) it owes to a Defaulting Owner under this Agreement or any other Project Agreement, all amounts due to such Non-Defaulting Owner from the Defaulting Owner pursuant to this Agreement or any other Project Agreement.

15.7 Additional Cure Period for Financing Instrument. Notwithstanding anything to the contrary in this **Article 15**, to the extent that any act or action otherwise required by the terms of this Agreement, other than the payment of monies, would cause an Owner to be in default under a Facility Mortgage as the result of a Default governed by this **Article 15**, such act or action will be stayed for a period not exceeding sixty (60) days to provide such Owner or its Financing Party time to avoid or cure such default under such Facility Mortgage. The foregoing will not be applicable after the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets or to any Phase after its Phase In-Service Date, unless the act or action is associated with an Upgrade.

ARTICLE 16 THIRD PARTY CLAIMS; SHARED LIABILITY; EFFECT OF INSURANCE; AND CONTRIBUTION

16.1 Third Party Claims.

16.1.1 **Indemnification.** To the maximum extent permitted by Applicable Law, each Owner (an "**Indemnifying Owner**"), will defend, indemnify and hold harmless the other Owners, their Affiliates and their respective directors, officers, shareholders, members, partners, employees, and agents (collectively, the "**Indemnified Persons**") from and against any and all Damages, including Consequential Damages, arising from a claim or a Proceeding instituted by a Third Party (a "**Third Party Claim**") (other than Third Party Claims that are a Shared Liability, in which case **Section 16.2** will apply) as a result of or arising out of or in connection with: (i) the Indemnifying Owner's performance of or failure to perform its obligations under this Agreement; (ii) the failure of any representation or warranty made by the Indemnifying Owner in this Agreement to be true and correct in all respects as of the date of this Agreement; (iii) the Transfer by the Indemnifying Owner of any portion of its Asset Ownership Percentage (but excluding any and all (a) Damages arising out of acts or omissions of the transferee once it becomes an Owner and (b) internal costs incurred by an Owner that participates in any Proceedings relating to Governmental Approvals being sought by an Indemnifying Owner in order for such Indemnifying Owner to engage in a Permitted Transfer); (iv) a Non-Defaulting Owner's or the Management Committee's exercise of any remedies permitted under this Agreement as a result of a Default by the Indemnifying

Owner; or (v) the Indemnifying Owner's acts or omissions that (a) are unrelated to the Project or (b) relate solely to the Indemnifying Owner's Discretely Owned Substation Assets (the Damages described in this **Section 16.1** are collectively referred to herein as "**Third Party Claim Damages**").

16.1.1.1 **Contributory Negligence.** With respect to Third Party Claims alleging negligence by an Indemnified Person (other than Third Party Claims of negligence that are a Shared Liability, in which case **Section 16.2.1** will apply), an Indemnifying Owner will not be responsible for that portion of any award as to which it is determined (whether in the Proceeding brought by the Third Party or in any subsequent Proceeding commenced by an Owner to determine the allocation of liability) that another Owner was negligent to the extent of the specific percentage of negligence allocated to such other Owner; **provided, however**, the foregoing will not relieve the Indemnifying Owner of its obligation to (i) defend the Indemnified Persons in any such Third Party Claim in accordance with **Section 16.1.1**, and (ii) indemnify and hold the Indemnified Persons harmless from and against all negligence liability (other than that portion specifically allocated to another Owner) in accordance with **Section 16.1.1**.

16.1.2 **Notice of Third Party Claims.** Any Indemnified Person will, promptly after the receipt of notice of any Third Party Claim against such Indemnified Person in respect of which indemnification may be sought pursuant to **Section 16.1.1**, notify the Indemnifying Owner of such Third Party Claim. The Indemnifying Owner will not be obligated to indemnify any Indemnified Person with respect to any such Third Party Claim if the Indemnified Person fails to notify the Indemnifying Owner thereof in accordance with the provisions of this **Section 16.1.2** in sufficient time to permit the Indemnifying Owner to defend against such Third Party Claim and to make a timely response thereto, including any responsive motion or answer to a complaint, petition, notice or other legal, equitable or administrative process relating to the Third Party Claim, but only insofar as such failure to notify the Indemnifying Owner has actually resulted in material prejudice or damage to the Indemnifying Owner.

16.1.3 **Defense of Third Party Claims.** In case any such Third Party Claim is made or brought against an Indemnified Person, the Indemnifying Owner may, or if so requested by the Indemnified Person will, assume the defense thereof with counsel, selected by the Indemnifying Owner, that is free of any conflicts of interest, is competent and experienced to defend the Indemnified Person and is reasonably acceptable to the Indemnified Person. The Indemnified Person will not have the right to be solely defended by such counsel; such counsel may represent multiple clients in such circumstances, so long as a conflict of interest in such representation does not exist during the period of such representation. In such circumstances, the Indemnified Person will (i) at no cost or expense to the Indemnified Person, cooperate with the Indemnifying Owner and provide the

Indemnifying Owner with such information and assistance as the Indemnifying Owner(s) reasonably requests in connection with such Third Party Claim and (ii) at its own expense, have the right to participate and be represented by counsel of its own choice (by attendance and observation only) in any such Proceeding or with respect to any such Third Party Claim. If the Indemnifying Owner assumes the defense of the relevant Third Party Claim, (a) the Indemnifying Owner(s) will not be liable for any settlement thereof that is made without its prior written consent, which consent will not be unreasonably withheld, delayed or conditioned, and (b) the Indemnifying Owner will control the settlement of such Third Party Claim; **provided, however**, that the Indemnifying Owner will not conclude any settlement that requires any action or forbearance from action or payment (unless paid in full by the Indemnifying Owner) or admission by the Indemnified Person or any of its Affiliates without the prior approval of the Indemnified Person. Any such contrary settlement will require the prior written consent of the Indemnified Person, which consent will not be unreasonably withheld, delayed or conditioned.

16.1.4 **Prejudicial Actions**. The obligations of an Indemnifying Owner will not extend to any Damages to the extent the same results from the act or omission of the Indemnified Person (unless required by Applicable Law or applicable legal process) after the Indemnified Person has received notice of the Third Party Claim against it that materially prejudices the defense of the Third Party Claim, without, in any such case, the prior written consent of the Indemnifying Owner (such consent not to be required in a case where the Indemnifying Owner has not assumed the defense of the Third Party Claim). Subject to **Section 16.1.1.1**, good faith responses by the Indemnified Person to subpoenas and discovery requests or good faith testimony or affidavits given in the course of a Proceeding, in each case arising out of a Third Party Claim, will not be considered such a prejudicial act or omission of the Indemnified Person.

16.1.5 **Right to Participate**. The Indemnified Person agrees to afford the Indemnifying Owner or its counsel the opportunity to be present at, and to participate in (by attendance and observation only), conferences with all Persons (or their counsel), including Governmental Bodies, bringing or asserting any Third Party Claim against the Indemnified Person.

16.2 Exceptions and Clarifications.

16.2.1 **Shared Liability**. The parties acknowledge that from time to time (i) the Construction Manager may request an Owner to perform services or provide information in furtherance of the Construction Manager's ability to perform the Services or a Contractor's performance of Construction Work, or (ii) a Maintenance Provider may request an Owner to perform services or provide information in furtherance of the Maintenance Provider's ability to perform its obligations under the Operation and Maintenance Agreement, in each case which services or information is for the benefit of the Project. If a Third Party Claim is brought or asserted against an Owner as a result of the provision by it of requested

assistance (a “**Shared Liability Claim**”), then except as provided in **Section 16.2.1.1** or, in connection with the settlement of a Shared Liability Claim except as otherwise agreed by the unanimous vote of all of the Owners, any Damages arising from such Third Party Claim will be shared among the Owners on the basis of the Percentage Interests (a “**Shared Liability**”).

16.2.1.1 Exception for Gross Negligence, Intentional Misconduct or Fraud. If a judgment is rendered in favor of a Third Party in connection with a Shared Liability Claim arising from an Owner providing the requested assistance described in **Section 16.2.1**, and such judgment is based solely on a finding in the judgment that such Owner engaged in gross negligence, intentional misconduct or fraud, then the Owner that provided the requested assistance will pay one hundred percent (100%) of all amounts awarded in such judgment.

16.2.1.2 Notice of Shared Liability Claim. Each Owner will promptly notify the Management Committee of the Shared Liability Claim in writing (specifying in reasonable detail the basis therefor) after such Owner receives notice of any Shared Liability Claim.

16.2.1.3 Defense of Shared Liability Claim. The Management Committee will assume the defense of all Shared Liability Claims on behalf of all Owners with counsel of its choice. All costs and expenses associated with the defense of a Shared Liability Claim will be shared among the Owners on the basis of the Percentage Interests. The Management Committee may settle a Shared Liability Claim by a Level B Vote. No Owner will pursue, defend, settle or compromise a Shared Liability Claim on its own without the consent of the Management Committee acting by a Level B Vote. Each Owner will (i) at its own cost or expense cooperate with the Management Committee and provide the Management Committee with such information and assistance as the Management Committee reasonably requests in connection with a Shared Liability Claim and (ii) at its own expense, have the right to participate and be represented by counsel of its own choice (by attendance and observation only) in connection therewith.

16.2.2 Effect of Insurance. Any Damages due and payable under this **Article 16** will be net of any amount paid to the Third Party from proceeds of insurance in connection with a Shared Liability Claim or Third Party Claim under policies in effect pursuant to the Insurance Plan. The provisions of this **Article 16** are not to be construed so as to relieve any insurer of its obligation to pay any insurance claims in accordance with insurance policies in effect. The obligations of the Owners under this **Article 16** are not limited by such Owner’s insurance coverage.

16.2.3 **Right of Contribution.** Each Owner will have a contractual right of contribution hereunder against other Owners pursuant to the provisions of this **Section 16.2.3.**

16.2.3.1 **Basis for Owner Claim of Contribution Right.** If Third Party Claim Damages or a Shared Liability is imposed on the Owners on a joint and several basis (or a basis upon which an Owner is assigned an obligation to pay greater than its Percentage Interest) and such Third Party Claim Damages or a Shared Liability is not covered by insurance or is not indemnified by another Owner, then the Third Party Claim Damages or Shared Liability will be allocated pro rata among all of the Owners in accordance with their Percentage Interests, subject to the indemnification provisions of **Section 16.1.1** and the Shared Liability provisions of **Section 16.2.1.1.**

16.2.3.2 **Contribution Claim by Owner(s).** If an Owner (the “**Owner Claiming Contribution**”) is obligated to pay or pays more than its Percentage Interest in connection with incurring or discharging Third Party Claim Damages or a Shared Liability (as described in **Section 16.2.3.1**) of one or more other Owners to a Third Party under this Agreement, then the Owner Claiming Contribution will have a right of contribution against each other Owner (i) that is not obligated to pay to such Third Party its Percentage Interest in connection with such claim or liability, (ii) that has not timely paid the full amount of its Percentage Interest with respect to such claim or liability, or (iii) for whom the Owner Claiming Contribution has paid all or a portion of another Owner’s obligation arising from Third Party Claim Damages or a Shared Liability (the “**Owner Subject To Contribution**”), then the Owner Subject To Contribution is obligated hereunder to promptly and timely pay its pro rata Percentage Interest of such claim or liability to the Third Party to whom such payments are owed (in the case of an untimely unpaid claim or liability) or to the Owner Claiming Contribution (in the case of payment by the Owner Claiming Contribution of all or a portion of the Percentage Interest owed by the Owner Subject To Contribution). In the cases of **clauses (i) and (iii)** of this **Section 16.2.3.2**, all payments by the Owner Subject To Contribution will be made to the Owner Claiming Contribution. In the case of **clause (ii)** of this **Section 16.2.3.2**, all payments by the Owner Subject To Contribution will be made directly to the Third Party to whom the Third Party Claim Damages or the Shared Liability is owed. If payment is made by the Owner Subject To Contribution directly to the Owner Claiming Contribution, then the Owner Claiming Contribution is obligated to promptly remit the amount of such payment to the proper Person for payment of the Third Party Claim Damages or Shared Liability.

- 16.2.3.3 Notice and Right of Set-Off/Recoupment by Owner Claiming Contribution. If an Owner Subject To Contribution does not remit the amount it is obligated to pay under **Section 16.2.3.2** within thirty (30) days of a written demand by the Owner Claiming Contribution, and thereby fully satisfy its payment obligation to either (i) the Third Party to whom Third Party Claim Damages or a Shared Liability is owed or (ii) the Owner Claiming Contribution, as applicable (thereby continuing to expose the Owner Claiming Contribution to a payment obligation not owing by it or non-payment of its right to contribution due to its prior payment of the obligation(s) of an Owner Subject To Contribution), then the Owner Claiming Contribution will have the right to set-off and otherwise recoup any amount (other than the Call Price payable to a Financing Party pursuant to **Section 14.2.7.5(i)** as a result of or upon exercise of a Collateral Assignment, Project Costs or Advances) it owes to an Owner Subject To Contribution either under this Agreement or any other Project Agreement.
- 16.2.3.4 Payment to Third Party by Owner Claiming Contribution. If the Owner Claiming Contribution is claiming such contribution right due to an unpaid obligation to a Third Party, then any amount (i) of set-off by an amount owed by, or (ii) directly paid to, the Owner Claiming Contribution with respect to the Owner Subject To Contribution will be promptly remitted to such Third Party by the Owner Claiming Contribution.
- 16.2.3.5 Reallocation of Contribution Payment Obligation Among Other Owners. If the Owner Claiming Contribution does not (i) receive full payment of the rightfully claimed contribution amount or (ii) its set-off right exercise is not sufficient to satisfy the full amount of the contribution obligation owed to the Owner Claiming Contribution within thirty (30) days after the notice and demand made by the Owner Claiming Contribution as set forth in **Section 16.2.3.3**, then such unpaid amount will become the obligation of all Owners other than the Owner Subject To Contribution on a pro rata basis in accordance with their respective Percentage Interests, as such Percentage Interests are adjusted for the removal of the Owner Subject To Contribution such that all the Owners (other than the Owner Subject To Contribution) will be obligated for one hundred percent (100%) of such unpaid amount and each will thereafter be deemed an Owner Claiming Contribution from the Owner Subject To Contribution. Nothing herein will be deemed to relieve the Owner Subject To Contribution from its payment obligations described in this **Section 16.2.3** and each Owner Claiming Contribution will have a right of contribution and set-off/recoupment against the Owner Subject To Contribution

subsequent to the reallocation of the unpaid amount among the Owners as described in this **Section 16.2.3.5**.

16.2.4 **Project Costs.** Nothing in this **Article 16** modifies each Owners obligation to pay its Asset Ownership Percentage of all Project Costs in accordance with **Section 5.1**.

ARTICLE 17 CONFIDENTIALITY

17.1 Confidentiality of Information. It may be necessary for an Owner to provide confidential or proprietary information with respect to its participation in the Project or an Owner may agree to develop certain confidential or proprietary information as part of or in connection with the construction, operation or maintenance of the Project. Each Owner covenants, with respect to such confidential and proprietary information provided by such Owner, that any and all confidential and proprietary information so provided for use for this Agreement or the Project, whether or not it falls within the definition of "Confidential Information" as defined below, does not infringe upon or violate the rights or interests of any Third Party (including any trade secret or confidentiality rights of such Third Party). Each Owner agrees to use the confidential and proprietary information it develops in connection with this Agreement or the Project (**provided** that the cost of developing such information has been treated as a Project Cost), and confidential and proprietary information provided to it by any other Owner or an owner in another CapX Project or representative in connection with this Agreement or the Project or another CapX Project ("**Confidential Information**"), solely (i) in order to participate in this Agreement and the Project or (ii) for other activities contemplated by this Agreement (each a "**Permitted Purpose**"). Each Owner will keep Confidential Information confidential and will not, and will advise its Representatives (as defined below) not to, disclose to any Person any Confidential Information in any manner whatsoever or otherwise use any Confidential Information other than for a Permitted Purpose; **provided, however,** that any Confidential Information may be disclosed to an Owner's financial, technical, legal and other professional advisors, members, employees, Affiliates and other representatives (collectively referred to as "**Representatives**") who may need to know such Confidential Information for the purpose of advising the Owner with respect to this Agreement or the Project or another CapX Project; **provided further, however,** that such Representatives are informed by the Owner of the confidential nature of the Confidential Information and that they will be bound by the confidentiality provisions of this **Article 17** to the same extent as if they were parties hereto. Each Owner agrees that it will be responsible for any breach of this **Article 17** by any of its Representatives and for any use of the Confidential Information by any of them for any purpose other than a Permitted Purpose. Written documents, electronic documents and other physical information will be deemed Confidential Information, and protected hereby, only if clearly and prominently marked and identified as "CONFIDENTIAL." Oral or other non-written communications will be deemed Confidential Information only if they are declared to be Confidential Information at the time disclosed.

- 17.2 Information Not Deemed Confidential Information.** Notwithstanding **Section 17.1**, the term “Confidential Information” does not include any information that (i) is or becomes generally available to the public other than as a result of a disclosure by an Owner, or any of its respective Representatives in violation of **Section 17.1**; (ii) was within an Owner’s possession before its being furnished to such Owner by or on behalf of any other Owner or an owner in another CapX Project; (iii) becomes available to an Owner on a non-confidential basis from a source other than any other Owner or any of their respective Representatives or an owner in another CapX Project or its representative, **provided** that such recipient does not know that such source is bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other Person with respect to such information; or (iv) is independently developed by an Owner, without access to the Confidential Information.
- 17.3 Requirement to Disclose Confidential Information.** If an Owner (i) is required by legal process, a Governmental Body, Arbitrator or otherwise by operation of law to disclose any Confidential Information of another Owner or an owner in another CapX Project or its representative (“**Disclosing Party**”) or (ii) determines that it is necessary to disclose any Confidential Information in connection with Proceedings before any Governmental Body with jurisdiction over an Owner’s rates or operations, then to the extent legally permissible, the Owner, as applicable, will give prompt prior notice of such impending disclosure to the Disclosing Party so that the Disclosing Party at its own cost may seek a protective Order or other appropriate remedy. The Owner (a) will disclose only that portion of the Confidential Information that it is legally required to disclose or determines that is necessary to disclose in connection with Proceedings before any Governmental Body with jurisdiction over an Owner’s rates or operations, (b) will give prompt notice of same to the Disclosing Party, and (c) will reasonably cooperate with the Disclosing Party in connection with the efforts of the Disclosing Party seeking a protective Order or other appropriate remedy. If the Disclosing Party fails to obtain a protective Order or other appropriate remedy with respect to the extent of the planned disclosure of Confidential Information by the Owner required or deeming it necessary to disclose, such Owner may rely on advice of its legal counsel (which may be its in-house counsel) with respect to its obligations of disclosure or the necessity of its disclosure as contemplated herein.
- 17.4 Compliance with FERC Standards of Conduct.** Each Owner will not, directly or indirectly, reveal any non-public transmission function information (as defined in **18 C.F.R. §§ 358.3j**, as such rules may be interpreted, amended or replaced by FERC from time to time, and hereinafter referred to as “**Transmission Information**”) in a manner that violates **18 C.F.R. §§ 358.6 and 358.7**, as such rules may be interpreted, amended or replaced by FERC from time to time (the “**FERC Standards of Conduct**”). To the extent applicable, a disclosure (inadvertent or otherwise) of Transmission Information by an Owner must be appropriately addressed by such Owner pursuant to **18 C.F.R. § 358.7** or any successor provision.
- 17.5 Restrictions on Access to Critical Energy Infrastructure Information.** Each Owner certifies for itself and its Representatives who may be granted access to “critical energy infrastructure information” (“**CEII**”) as defined in **18 C.F.R. § 388.113(c)(1)** or any

successor provision that (i) it and each of its Representatives are aware of the requirements of **18 C.F.R. Part 388** with regard to CEII and (ii) it has no reason to believe that it or its Representatives would be restricted from access to CEII. To the extent applicable, a disclosure (inadvertent or otherwise) of CEII by an Owner must be appropriately addressed by such Owner pursuant to **18 C.F.R. § 358.7(a)(2)** or any successor provision.

- 17.6 Property of Owner.** Except Confidential Information developed by an Owner in connection with the Project, the costs of which were included as Project Costs for which the Owner was reimbursed in accordance with this Agreement, all Confidential Information will remain the Property of the Owner providing it. Notwithstanding any provision in this **Article 17** to the contrary, if such Owner's Asset Ownership Percentage is at any time reduced to zero (without regard to any Residual Interest), such Owner will have no right to demand that such Confidential Information be returned to such Owner or be destroyed at the instruction of such Owner, it being agreed and understood that the remaining Owners or any Owners in other CapX Projects will have an irrevocable, perpetual right and license to use the Confidential Information for any Permitted Purpose on a royalty free basis thereafter under this Agreement and for the Project.
- 17.7 No Accuracy Warranty.** The Owner that discloses Confidential Information is not providing any warranties or representations as to the accuracy of any such Confidential Information. Nothing herein is intended to, or will, obligate an Owner to provide any Confidential Information to any other Owner; **provided, however**, the foregoing will not abrogate or otherwise absolve a disclosing Owner from the covenant set forth in **Section 17.1** above regarding non-infringement and prohibitions on use.
- 17.8 Breach of Confidentiality Provisions.** Each Owner expressly agrees that a breach of any of the terms or conditions of this **Article 17** would result in irreparable harm and that money would not be a sufficient remedy for any such breach. Accordingly, in the event of a breach or threatened breach by an Owner or by any of its Representatives or an owner in another CapX Project or its representative of any of the provisions of this **Article 17** (and in addition to any other remedy provided by law or in equity), each Owner agrees that the Owner which such breach would harm will be entitled to seek appropriate equitable relief, including injunctive relief and specific performance.
- 17.9 Public Disclosure.** If an Owner intends to make, directly or indirectly, any material public comment, statement, or communication (such as a press release) with respect to, or otherwise to disclose or to permit the disclosure of a material non-public aspect of, the CapX 2020 Transmission Capacity Expansion Initiative or any of the material terms, conditions, or other material aspects of this Agreement, the Project or another CapX Project, it will use reasonable commercial efforts to first provide to the other Owners, their Representatives and all of the owners in the other CapX Projects or their respective representatives the content of the proposed disclosure, and the time and place that the disclosure will be made and provide to the Owners, their Representatives and the other owners in the CapX Projects or their representatives a reasonable opportunity to comment on the proposed disclosure; **provided, however**, that no such public comment, statement

or communication will include any Confidential Information, except as required by Applicable Law.

- 17.10 Public Disclosure Laws.** The Owners intend that nothing in this Agreement and no action taken pursuant to this Agreement will (i) cause Confidential Information that would otherwise have been exempt from public access or inspection to become subject to public access or inspection under any Applicable Law regarding public access to information or (ii) make unavailable or waive any exception to or protection under public disclosure Applicable Laws that would otherwise enable the Owners to preserve the confidentiality of the Confidential Information.

ARTICLE 18 DISPUTE RESOLUTION FOR EXCLUDED MATTERS

- 18.1 Excluded Matters.** Disputes with respect to (i) a Percentage Calculation arising under **Section 3.1.3.3** (a “**Percentage Calculation Dispute**”), (ii) a Project Continuation LD Amount Calculation arising under **Sections 14.2.6.2.2** (a “**Project Continuation LD Amount Calculation Dispute**”) or (iii) a Project Termination LD Amount Calculation arising under **Sections 14.2.8.2.2** (a “**Project Termination LD Amount Calculation Dispute**”) will be resolved pursuant to this **Article 18** and not pursuant to **Section 3** of **Schedule 1**.
- 18.2 Appointment of Arbitrator.** Within ten (10) days after the Management Committee’s receipt of an Objection Notice, the Management Committee and each Objecting Owner in the case of a Percentage Calculation Dispute and the Defaulting Owner in the case of a Project Continuation LD Amount Calculation Dispute will, collectively, select and engage an independent certified public accounting firm to act as arbitrator and to resolve the Percentage Calculation Dispute, Project Continuation LD Amount Calculation Dispute or Project Termination LD Amount Calculation Dispute (the “**Arbitrator**”).
- 18.3 Arbitration Process.** Within five (5) days following the engagement of the Arbitrator or such other reasonable period of time determined by the Management Committee by a Level B Vote, the Arbitrator will convene a meeting at which the Management Committee and each Owner may present to the Arbitrator the factual basis for its agreement or disagreement with the Percentage Calculation, Project Continuation LD Amount Calculation, or Project Termination LD Amount Calculation, as applicable. Prior to or at the meeting, the Management Committee and any Owner may submit written information to the Arbitrator in support of its position. If an Owner submits any written information to the Arbitrator, it will contemporaneously provide a copy to all of the other Owners and the Management Committee. If the Management Committee submits any written information to the Arbitrator, it will contemporaneously provide a copy to all of the Owners. Neither the Management Committee nor any Owner will be entitled to engage in any discovery in connection with the dispute that is the subject of the process provided for in this **Article 18**. Neither the Management Committee nor any Owner will make or knowingly cause or permit to be made any oral or written ex-parte communication to the Arbitrator about the Proceeding. The Arbitrator will, with respect to the issues that are disputed, make a written determination by independent calculation

of the Percentages, Project Continuation LD Amount or Project Termination LD Amount, as applicable, as of the applicable date. The Arbitrator must abide by the terms of this Agreement in making its determination.

18.4 Effect of Arbitrator's Decision. The decision of the Arbitrator will be final and binding on all Owners and will be made in accordance with the provisions of **Section 3.1.3.3** in the case of a Percentage Calculation Dispute, **Section 14.2.6.2.1** in the case of a Project Continuation LD Amount Calculation Dispute and **Section 14.2.8.2.1** in the case of a Project Termination LD Amount Calculation Dispute.

18.4.1 Percentage Calculation Dispute. If the Arbitrator determines that any Percentages set forth in **Exhibit B** are incorrect, the Percentages of each affected Owner immediately will be increased or decreased based on the determination of the Arbitrator and promptly thereafter the Secretary will revise **Exhibit B** to reflect the same and deliver a copy of revised **Exhibit B** to each Owner.

18.4.2 Project Continuation LD Amount Calculation Dispute. If the Arbitrator determines that a Project Continuation LD Amount is less than the Project Continuation LD Amount Calculation and the Defaulting Owner has paid the Project Continuation LD Amount reflected in the Project Continuation LD Amount Calculation, then the Non-Defaulting Owners promptly will refund to the Defaulting Owner the difference between the Project Continuation LD Amount paid by the Defaulting Owner and the Project Continuation LD Amount determined by the Arbitrator (without interest). If the Arbitrator determines that a Project Continuation LD Amount is greater than the Project Continuation LD Amount Calculation and the Defaulting Owner has paid the Project Continuation LD Amount reflected in the Project Continuation LD Amount Calculation, then Defaulting Owner promptly will pay to the Non-Defaulting Owners the difference between the Project Continuation LD Amount determined by the Arbitrator and the Project Continuation LD Amount paid by the Defaulting Owner (without interest).

18.4.3 Project Termination LD Amount Calculation Dispute. If the Arbitrator determines that a Project Termination LD Amount is less than the Project Termination LD Amount Calculation and the Defaulting Owner has paid the Project Termination LD Amount reflected in the Project Termination LD Amount Calculation, then the Non-Defaulting Owners promptly will refund to the Defaulting Owner the difference between the Project Termination LD Amount paid by the Defaulting Owner and the Project Termination LD Amount determined by the Arbitrator (without interest). If the Arbitrator determines that a Project Termination LD Amount is greater than the Project Termination LD Amount Calculation and the Defaulting Owner has paid the Project Termination LD Amount reflected in the Project Termination LD Amount Calculation, then Defaulting Owner promptly will pay to the Non-Defaulting Owners the difference between the Project Termination LD Amount determined by the Arbitrator and the Project Termination LD Amount paid by the Defaulting Owner (without interest).

18.5 Fees of Arbitrator. The fees and expenses of the Arbitrator incurred in connection with its performance of the duties set forth in this **Article 18** will be borne by the Non-Prevailing Party (as defined below) (provided that if the Non-Prevailing Party consists of

two (2) or more Owners, the obligation of such Owners to pay such fees and expenses will be on a several and not a joint basis and such Owners will pay such fees and expenses in proportion to their Percentage Interests as determined by the Arbitrator in the case of a Percentage Calculation Dispute or immediately prior to the date of the Freeze in the case of a Project Continuation LD Amount Calculation Dispute or Project Termination LD Amount Calculation Dispute). “**Non-Prevailing Party**” means (i) the Objecting Owners collectively or Defaulting Owner, as applicable, if the Arbitrator’s determination confirms the Percentage Calculation, the Project Continuation LD Amount Calculation or the Project Termination LD Amount, as applicable, (ii) the non-Objecting Owners collectively or the Non-Defaulting Owners collectively, as applicable, if the Arbitrator’s determination confirms the Percentages, Project Continuation LD Amount or Project Termination LD Amount set forth in the applicable Objection Notice, or (iii) the Owners collectively if the Arbitrator confirms neither.

- 18.6 Confidentiality.** The Percentage Calculation and any other reports, forms or other information relating thereto or to the Project are Confidential Information. The Management Committee and the Owners will require the Arbitrator to sign a confidentiality agreement containing the same or substantially similar obligations of confidentiality as set forth in **Article 17**.

ARTICLE 19 TERMINATION

19.1 Termination.

19.1.1 Termination of the Project or a Phase. If a Phase In-Service Date has not occurred with respect to any Phase, then, subject to **Section 14.2.5.2**, the Project may be terminated in its entirety, or, subject to **Section 14.2.5.3**, if a Phase In-Service Date has occurred with respect to one or more Phases, then the Project may be terminated only with respect to those Phases as to which a Phase In-Service Date has not occurred, in each case as follows and provided that such termination is in compliance with Applicable Law: (i) by a writing executed by all of the Owners (acting as Owners and not through their Authorized Owner Representatives); (ii) pursuant to **Section 13.5.4** (Cost Offering Failure); (iii) pursuant to **Section 14.2.3.4** (Second Construction Period Payment Default); or (iv) pursuant to **Section 14.2.5.6** (Partial Subscription to DO’s Future Payment Obligations). If a Phase In-Service Date has occurred with respect to a Phase, then the Project may be terminated with respect to such Phase only by a writing executed by all of the Owners (acting as Owners and not through their Authorized Owner Representatives) and provided that such termination is in compliance with Applicable Law.

19.1.2 Termination of this Agreement. This Agreement may be terminated with respect to all of the Owners as follows: (i) by a writing executed by all of the Owners (acting as Owners and not through their Authorized Owner Representatives) terminating this Agreement; or (ii) by a Level C Vote of the Management Committee (including the Owner Representative of a Defaulting

Owner) after the Project has been terminated in its entirety pursuant to **Section 13.5.4, 14.2.3.4 or 14.2.5.6** and the Windup Plan has been implemented; or (iii) by a Level C Vote of the Management Committee (including the Owner Representative of a Defaulting Owner) after all of the Facilities have been permanently decommissioned and disconnected from the Transmission Grid in compliance with Applicable Law.

19.2 Retirement and Retirement Costs. The Management Committee will have the right to decide to permanently decommission and disconnect from the Transmission Grid all or a portion of the Facilities by a Level C Vote (including the Owner Representative of a Defaulting Owner). Retirement of any of the Facilities will be conducted in compliance with Applicable Law. All costs (less salvage credits, if any) associated with retirement of all or a portion of the Facilities, including dismantling, demolishing, and removing Equipment and structures (including the cost of transportation and handling incidental thereto), security, disposing of debris, any site work necessary to effect retirement in accordance with Good Utility Practice, and the costs of any remediation, site restoration or monitoring, will constitute CM Costs or Operating Expenses as provided in **Section 19.3.1.1**.

19.3 Effect of Project or Phase Termination.

19.3.1 **Windup Plan.** If the Project or a Phase of a Project is terminated pursuant to **Section 19.1.1**, then the Management Committee will, by a Level B Vote, adopt a wind-up plan (the “**Windup Plan**”) with respect to the Project or such Phase, which will include how it intends to accomplish the following and the Project or Phase, as applicable, will remain in effect until the Management Committee, by a Level B Vote, determines that the Windup Plan has been fully implemented and the Owners are notified of the Project or Phase termination date; **provided, however,** in no event may the Management Committee include in the Windup Plan any Phase with respect to which a Phase In-Service Date has occurred unless the Project is terminated with respect to such Phase by a writing executed by all of the Owners pursuant to the last sentence in **Section 19.1.1**. By way of clarification, notwithstanding the Management Committee’s determination to terminate the Project or a Phase and adopt a Windup Plan relating thereto, such Project or Phase termination and Windup Plan will have no effect on the means and method of and proceeds from the disposition (if any) of the Discretely Owned Substation Assets within such applicable Project or Phase. In connection with the Windup Plan, the Management Committee will only have the authority to act with respect to the Facilities of the Project or Phase subject to the Windup Plan, as applicable, except to the extent necessary to enforce the rights and obligations of the Owners (i) in the Facilities (including ingress and egress for parts of the Facilities that may be physically connected to a Discretely Owned Substation Asset), (ii) under the Project Agreements or a DOSA Construction Agreement, or (iii) as otherwise required by Applicable Law.

19.3.1.1 **Costs.** All termination costs, including with respect to termination of Project Agreements, Construction Agreements, Real Property

Agreements, and other contracts that are part of the Project or Phase or which relate to the Project or Phase that is subject to the Windup Plan, in accordance with the terms thereof, and any cancellation costs, termination costs and damages payable thereunder will constitute (i) CM Costs if (a) such costs and damages would have constituted CM Costs if the Project or Phase had not been terminated, or (b) the respective Windup Plan is adopted prior to the Substantial Completion Date of all of the Facilities and the Discretely Owned Substation Assets, in which event all such costs and damages will be paid by the Owners in accordance with their respective Percentage Interest, or (ii) Operating Expenses, in which event such costs and damages will be paid by the Owners in accordance with their respective Asset Ownership Percentages, provided that, to the extent such termination costs relate to costs and expenses associated with Project Agreements, Construction Agreements, Real Property Agreements, and other contracts that relate to Discretely Owned Substation Assets that are part of the Project or Phase or which relate to the Project or Phase that is subject to the Windup Plan, such termination costs and expenses will be the sole responsibility of the applicable Discretely Owned Substation Owner.

- 19.3.1.2 Required Steps. The (i) timely disposition of the Property that constitutes the Facilities of the Project or Phase subject to the Windup Plan, as applicable, by sale, auction, division of assets, or otherwise; (ii) deposit of any proceeds of such disposition in the account(s) specified by the Management Committee; (iii) taking of all action required by Good Utility Practice to provide for the retirement from service of any part of the Facilities that are not sold or disposed of, including any remediation, restoration or other actions required by Applicable Law or necessary or desirable for the protection of the Owners from liability; (iv) payment of all liabilities related to the Facilities subject to such disposition and establishment of any reserves necessary to satisfy any contingent liabilities related to such Facilities (including those arising pursuant to **clause (iii)** of this **Section 19.3.1.2**); (v) undertaking of other necessary steps for the winding up of such Facilities; (vi) periodic reporting to the Owners on the status of the Windup Plan; (vii) preparation of a final accounting for the Project or Phase subject to the Windup Plan, and, in the event the Windup Plan does not include all of the Facilities, to facilitate the proper calculation of the Percentages upon completion of the Windup Plan and prior to disbursement of any available funds in the Project Accounts, and (viii) allocation and disbursement of any available funds in the Project Accounts (after satisfaction of the provisions of this **Section 19.3.1.2**) (the

“Distributable Cash”) to the Owners in accordance with **Section 19.3.2**.

19.3.1.3 Effect of Windup Plan on Asset Ownership Percentages. The Owners will take all actions or omit to take such actions to effect the provisions of the Windup Plan, including (i) execution and delivery of such documents, instruments and other documentation reasonably necessary for the Owners to take the required steps under the Windup Plan, including those described in **Section 19.3.1.2** above, and (ii) the Secretary will cause the accounting and recalculation to update and revise **Exhibit B** to reflect the then current Asset Ownership Percentage of each Owner in the event the Windup Plan does not result in termination of the Project and promptly provide a copy of revised **Exhibit B** to each Owner and take all other necessary actions to reflect the matters contemplated by the provisions of **Section 19.3**.

19.3.2 Allocations and Distributions Upon Termination of Project or a Phase. Distributable Cash will be allocated and paid to each Owner in accordance with the provisions of **Exhibit Q** to this Agreement, and the examples set forth in **Exhibit Q** will provide the general methodology with respect to such allocations, distributions and amounts that may be owed among and between the Owners.

19.3.2.1 Effect of Call on Project Termination Distributions to Owners. If the Management Committee has:

- (i) exercised the Call Option and completed the Transfer to the Call Option Transferees on a Call Option Closing Date that occurs prior to the Project or Phase termination date determined by the Management Committee pursuant to **Section 19.3.1**, the Defaulting Owner will no longer be an Owner for purposes of the allocation and distribution of Distributable Cash upon Project termination and completion of the Windup Plan, and will not participate in such allocation and distribution, or
- (ii) exercised the Call Option but has not completed the Transfer to the Call Option Transferees, the Management Committee may, at its option and in its discretion pursuant to a Level A Vote, rescind the Call Option Notice by written notice to the Defaulting Owner on or after the date that the Management Committee has adopted the Windup Plan pursuant to **Section 19.3.1**, and no Owners or Call Option Transferees, or their representatives, will thereafter have any further obligation to the Defaulting Owner with respect to the Call Option Notice and the election to rescind such

notice and the transactions contemplated thereby. If the Call Option notice is rescinded as set forth above, the Defaulting Owner will be an Owner for purposes of the allocation and distribution of Distributable Cash upon Project termination and completion of the Windup Plan.

- 19.3.2.2 Effect of Residual Interest on Project Termination Distributions to Owners. The existence of a Residual Interest of an Owner will not entitle an Owner to participate in allocations and distributions among or between the Owners arising from Project termination and completion of the Windup Plan.
- 19.3.2.3 Effect of Windup Plan on Discretely Owned Substation Assets. Without the consent of the Discretely Owned Substation Owner, no Discretely Owned Substation Assets will become subject to the Windup Plan. Subject to payment and performance of a Discretely Owned Substation Owner's obligations pursuant to the Project Agreements, all proceeds, if any, from the exploitation or disposition of the Discretely Owned Substation Assets by an Owner of such assets will belong to such Discretely Owned Substation Owner.
- 19.3.2.4 Effect of Payment to Financing Party. If any remittance is made from Distributable Cash of the Project with respect to payment of a Financing Party of any Owner in connection with the Windup Plan, then the amount of Distributable Cash that is remitted to the Financing Party from what would otherwise be Distributable Cash available for remittance to the Owners (or to otherwise satisfy Project debt obligations of the Owners) will be treated as if a cash distribution was made to such Owner and such amount will be (i) subtracted in determining the amount of Distributable Cash available to such Owner, and (ii) the amount of Distributable Cash that was remitted to such Financing Party will be allocated pro rata to all Owners based on such Owners' respective Asset Ownership Percentages.
- 19.3.2.5 Reconciliation of Liquidated Damages Upon Project Termination. If the Project or a Phase of the Project (i) is terminated pursuant to **Section 19.1.1** and the Management Committee has adopted a Windup Plan, and (ii) Project Continuation Liquidated Damages have previously accrued against the Defaulting CPP Owner pursuant to **Section 14.2.6**, then such Project Continuation Liquidated Damages and the provisions of **Section 14.2.6** will be supplanted in their entirety by the accrual of Project Termination Liquidated Damages pursuant to **Section 14.2.8**, as follows:

- (i) If Project Continuation Liquidated Damages have not been remitted by the Defaulting CPP Owner to the Step-Up Owners, then the Project Continuation Liquidated Damages will in no way be considered in the determination of allocations and distributions of Distributable Cash pursuant to this **Section 19.3.2** and **Exhibit Q**.
- (ii) If Project Continuation Liquidated Damages have been remitted by the Defaulting CPP Owner to the Step-Up Owners, whether directly or indirectly, by payment, the exercise of set-off rights by the Step-Up Owners or otherwise, then the amounts previously received or otherwise credited by the Step-Up Owners will be reconciled and adjusted as follows:
 - (a) First, the amount of Project Continuation Liquidated Damages received, directly or indirectly, by each Step-Up Owner will be subtracted from the amount of Distributable Cash allocated to such Step-Up Owner(s); and
 - (b) Second, the amount of Project Termination Liquidated Damages will be allocated pro rata to all Owners, other than the Defaulting CPP Owner, based on such Owners' Asset Ownership Percentages.

ARTICLE 20 MISCELLANEOUS

- 20.1 Survival.** Schedule 1, Articles 14, 15, 16, 17, 18, 19 and 20 and Sections 7.1.2, 7.3, 7.4, 7.5, 8.1, 8.3, 9.5 and 12.2.6 will survive the termination of this Agreement in its entirety with respect to all Owners or termination of this Agreement with respect to any individual Owner pursuant to the terms of this Agreement.
- 20.2 Forward Contracts; Single Agreement.** The Owners acknowledge and agree that this Agreement and the other Project Agreements are “forward contracts” and that the Owners are “forward contract merchants”, as those terms are defined in the United States Bankruptcy Code. The Owners further acknowledge and agree that this Agreement and the other Project Agreements form a single, integrated agreement, and this Agreement and the other Project Agreements are entered into in reliance on the fact that this Agreement and the other Project Agreements collectively form a single agreement among the Owners.

20.3 Force Majeure. No party (in any capacity) will be liable hereunder to the extent that its performance of an obligation hereunder is delayed or prevented by an event of Force Majeure. Such party will use its commercially reasonable efforts to overcome the limitations imposed by the occurrence of such event of Force Majeure and to mitigate the consequences of its inability to perform on the other parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Owners have caused this Agreement to be executed as of the date above recited.

GREAT RIVER ENERGY

BY Wm. Kaul
ITS Vice President, Transmission

**ALLETE, INC., d/b/a MINNESOTA
POWER**

BY _____
ITS _____

**WESTERN MINNESOTA MUNICIPAL
POWER AGENCY**

BY _____
ITS _____

OTTER TAIL POWER COMPANY

BY _____
ITS _____

**NORTHERN STATES POWER
COMPANY, a Minnesota corporation**

BY _____
ITS _____

[SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT]

IN WITNESS WHEREOF, the Owners have caused this Agreement to be executed as of the date above recited.

GREAT RIVER ENERGY

BY _____
ITS _____

**ALLETE, INC., d/b/a MINNESOTA
POWER**

BY *A. Hecht* 8/12/2010
ITS President and CEO

**WESTERN MINNESOTA MUNICIPAL
POWER AGENCY**

BY _____
ITS _____

OTTER TAIL POWER COMPANY

BY _____
ITS _____

**NORTHERN STATES POWER
COMPANY, a Minnesota corporation**

BY _____
ITS _____

[SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT]

IN WITNESS WHEREOF, the Owners have caused this Agreement to be executed as of the date above recited.

GREAT RIVER ENERGY

BY _____
ITS _____

**ALLETE, INC., d/b/a MINNESOTA
POWER**

BY _____
ITS _____

**WESTERN MINNESOTA MUNICIPAL
POWER AGENCY**

BY Carl Pant
ITS President

OTTER TAIL POWER COMPANY

BY _____
ITS _____

**NORTHERN STATES POWER
COMPANY, a Minnesota corporation**

BY _____
ITS _____

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GREAT RIVER ENERGY

BY _____
ITS _____

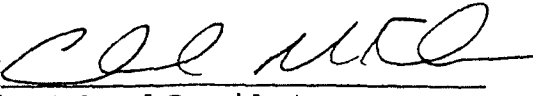
**ALLETE, INC., d/b/a MINNESOTA
POWER**

BY _____
ITS _____

**WESTERN MINNESOTA MUNICIPAL
POWER AGENCY**

BY _____
ITS _____

OTTER TAIL POWER COMPANY

BY 
ITS CEO and President

**NORTHERN STATES POWER
COMPANY, a Minnesota corporation**

BY _____
ITS _____

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BY _____
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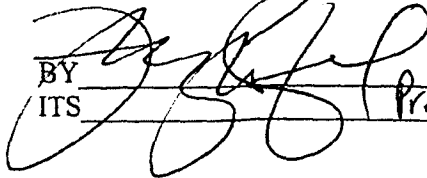
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BY _____
ITS _____

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COMPANY, a Minnesota corporation**

BY  _____
ITS President & CEO

[SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT]