

TRANSMISSION SYSTEM OPERATOR SERVICES AGREEMENT

by and between

GRIDFORCE ENERGY MANAGEMENT, LLC

And

ROCHELLE MUNICIPAL UTILITIES

TRANSMISSION SYSTEM OPERATOR SERVICES AGREEMENT

THIS TRANSMISSION SYSTEM OPERATOR SERVICES AGREEMENT (this "Agreement") is made and entered into as of this 1st day of July 2015 (the "Effective Date") by and between GRIDFORCE ENERGY MANAGEMENT, LLC, a Delaware limited liability company ("GEM"), and Rochelle Municipal Utilities ("Customer"). GEM and Customer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, GEM is engaged in the business of providing Transmission System Operator Services for electric transmission facilities which includes transmission lines, transmission substations, and all associated electrical equipment;

WHEREAS, Customer owns and operates approximately 20 miles of 138 kV transmission lines ("Facility" or "Facilities") and is a NERC Registered Transmission Owner;

WHEREAS, Customer desires to retain GEM to perform, and GEM is willing to perform, Transmission System Operator Services (as described herein) with respect to the Transmission Owner Area in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.1. Definitions. As used in this Agreement, unless otherwise defined below, the terms used herein shall have the definitions that are defined in the Glossary of Terms Used in NERC Reliability Standards, and the following defined terms shall have the respective meanings set forth below:

"Abnormal Operating Condition" means any condition on the Customer Facility, Interconnection Facilities, or the transmission facilities of other utilities which is outside normal operating parameters such that facilities are operating outside their normal ratings or reasonable operating limits have been exceeded but which has not resulted in an Emergency. An Abnormal Operating Condition may include high or low deviations in voltage or power system stabilizers.

"Adjacent Transmission Owner" means Commonwealth Edison Company ("ComEd").

"Affiliate" means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, Controls, or is Controlled by, or is under common Control with, such Person.

"Agreement" has the meaning set forth in the preamble hereof.

"Annual Transmission Operator Area Maintenance Charge" shall have the meaning set forth in Exhibit C.

“Bulk Electric System” has the meaning set forth in the Glossary of Terms Used in NERC Reliability Standards.

“Business Day” means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall open at 0800 and close at 1700 EPT.

“Certification” shall have the meaning described in the NERC Rules of Procedure.

“Certification Services” shall have the meaning set forth in Section 3.1 of this Agreement.

“Certification Term” shall have the meaning set forth in Section 2.2 of this Agreement.

“Change in Control” means any event or series of events, excluding any Change in Control event or series of events that have been made public and have been approved by the other Party before the Effective Date, by which (i) any person or entity or group of persons or entities shall acquire Control of another person or entity or (ii) in the case of a corporation, during any period of twelve consecutive months commencing before or after the date hereof, individuals who, at the beginning of such twelve-month period, were directors of such corporation shall cease for any reason to constitute a majority of the board of directors of such corporation.

“Change in Law” means the occurrence after the Effective Date of any of the following events: (a) any adoption, amendment or repeal of any Governmental Rule, whether published or unpublished, or any change therein or change in the interpretation or application thereof by any court, administrative agency, other Governmental Authority from that in effect on the Effective Date; or (b) the imposition by any Governmental Authority of any material condition, or the cessation of any such imposition, including but not limited to Remedial Action Demands or NERC Alerts, in connection with the Transmission System Operator Agency Services contemplated by this Agreement.

“Compliance Services” shall mean the services provided by GEM as set forth on Schedule 2 to Exhibit A.

“Consolidated Transmission Owners Agreement” or “CTOA” shall mean the PJM Consolidated Transmission Owners Agreement to be executed by Customer as of August 1, 2015.

“Contract Term” shall have the meaning set forth in Section 2.1 of this Agreement.

“Contract Year” shall have the meaning set forth in Section 2.5 of this Agreement.

“Control” means the direct or indirect ownership of over fifty percent (50%) of the capital stock (or other ownership interest, if not a corporation) of any Person or the possession, directly or indirectly, of the power to direct the management and policies of such Person by ownership of voting securities, by contract or otherwise. “Controlling” shall mean having Control of any Person, and “Controlled” shall mean being the subject of Control by another Person.

“Customer Equipment” means equipment owned or controlled by Customer or its Affiliate, including the Customer Facility and equipment provided to attain Certification and implement this Agreement, if applicable.

“Effective Date” means the date set forth in the Preamble to this Agreement.

“Emergency” has the meaning set forth in the Glossary of Terms Used in NERC Reliability Standards.

“Facility” or “Facilities” has the meaning set forth in the second “WHEREAS” clause of this Agreement.

“Facility Operating Limits” means the manufacturer’s design limitations, equipment warranties, and maximum or minimum operating capability of the Facility.

“FERC” means the Federal Energy Regulatory Commission or any successor agency that has jurisdiction over NERC.

“Force Majeure” means an event that prevents a Party from performing any of its obligations under this Agreement that is not within the reasonable control of the Party, without the fault or negligence of the Party, and that by the exercise of due diligence the Party is unable and could not reasonably have been expected to avoid, cause to be avoided, or overcome. Events of Force Majeure may include, but are not restricted to, acts of God; acts of the public enemy, war, blockades, insurrections, sabotage, civil disturbances and riots; epidemics; landslides, earthquakes, firestorms, hurricanes, tornadoes, floods, washouts; fire; explosion; breakage; and strikes, lock-outs, or other labor disputes, by which exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Party claiming Force Majeure must give prompt written notice and shall exercise due diligence to remove such inability with all reasonable dispatch.

“GEM Alternate Control Center” means the GEM alternate operations center located, in Austin, Texas or such other alternate sites that are capable of meeting the NERC Reliability Standard requirement for the Loss of Primary Control Center.

“GEM Control Center” means the GEM operations center located, as of the Effective Date, at 1331 Lamar St., Suite 560, Houston, TX 77010, or such other alternate sites that are capable of hosting the services.

“GEM Technology” has the meaning set forth in Section 3.6(a) of this Agreement.

“Good Utility Practice” means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry operating in proximity to the Transmission Owner’s Area 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, would reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability criteria, safety and expediency, taking into account the design and operational characteristics of the Facility and the Bulk Electric System. Good Utility Practice is not intended to be limited to the optimum practice, methods, or act to the exclusion of all others, but rather includes all acceptable practices, methods, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, applicable law and regulatory requirements, and the criteria, rules and standards promulgated by the FERC, the NERC, the appropriate Regional Entity, the National Electric Safety Code, and National Electrical Code, as they may be amended from time to time, including the rules and guidelines and criteria of any successor organizations.

“Governmental Authority” means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity or any arbitrator with authority to bind a Party at law.

“Governmental Rule” means (i) any constitution, charter, act, statute, law, ordinance, code, rule, regulation or order of any Governmental Authority; (ii) any condition, specified standards or objective criteria contained in any applicable permit, approval, decision, determination or ruling of any Governmental Authority; or (iii) any other legislative, administrative or judicial action, final decree or judgment of any Governmental Authority; in each of the foregoing cases as in effect from time to time.

“Loss of Control Center Reliability Standard” means the current version of the EOP-008 Reliability Standard or its successor FERC approved NERC Reliability Standard.

“Monthly Services Fee” means the fee described in Exhibit C hereof.

“NERC” means the North American Electric Reliability Corporation or any successor Electric Reliability Organization that is certified by the FERC to establish and enforce NERC Reliability Standards for the Bulk Electric System of North America, subject to FERC review.

“NERC Glossary of Terms” means the Glossary of Terms Used in NERC Reliability Standards approved by the NERC Board of Trustees and the FERC as amended, modified or supplemented from time to time.

“NERC Reliability Standard” means a FERC approved requirement, whether now existing or hereafter amended, modified or supplemented from time to time, to provide for reliable operation of the bulk power system, including without limiting the foregoing, requirements for the operation of existing bulk power system facilities, including cyber security protection, and including the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but shall not include any requirement to enlarge bulk power system facilities or to construct new transmission capacity or generation capacity.

“NERC Registered Entity” means the entity registered at NERC as the Transmission Operator for the Transmission Operator Area and responsible to NERC as the Transmission Operator for the Transmission Operator Area.

“Operating Representative” has the meaning set forth in Section 4.10 hereof.

“Party” has the meaning set forth in the preamble of this Agreement.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

“PJM TO/TOP Matrix” means the spreadsheet that lists the current NERC Reliability Standards applicable to PJM as the Transmission Operator and is intended to clarify the assignment of tasks based on the unique relationship between PJM and its Member Transmission Owners as defined in the Consolidated Transmission Owners Agreement and PJM Operating Agreement and described in detail in various PJM manuals.

“PJM Agreements” means the PJM Open Access Transmission Tariff, the Amended & Restated Operating Agreement of PJM Interconnection LLC, the Reliability Assurance Agreement, and other agreements, manuals, and practices of PJM.

“PUHCA 2005” means the Public Utility Holding Company Act of 2005 (enacted, effective February 8, 2006, by the Energy Policy Act of 2005), as it may be amended, and the regulations promulgated and rulings issued thereunder.

“Regional Entity” is a Regional Reliability Organization (RRO) that has NERC delegated authority to perform certain actions and is responsible for monitoring and enforcing compliance to the NERC Reliability Standard requirements applicable to the NERC Registered Entity.

“Reliability Coordinator” has the meaning set forth in the Glossary of Terms Used in NERC Reliability Standards.

“Section 2.5(a) Termination Notice” has the meaning set forth in Section 2.5(a) hereof.

“Services Commencement Date” has the meaning set forth in Section 2.3(a) of this Agreement.

“Services Contract Year” has the meaning set forth in Section 2.3(b) of this Agreement.

“Services Term” has the meaning set forth in Section 2.3 hereof.

“Third Party Owner” has the meaning set forth in Section 3.6(b) hereof.

“Transition Assistance” shall mean assistance provided by GEM to transition the Transmission System Operator Services to an alternate Transmission System Operator Services provider.

“Transmission Assets” means the Facility or Facilities of Customer.

“Transmission Operator” has the meaning set forth in the Glossary of Terms used in NERC Reliability Standards.

“Transmission Owner” has the meaning set forth in the Glossary of Terms used in NERC Reliability Standards.

“Transmission Owner Area” means the operational boundary around the Transmission Assets owned by the Customer.

“Transmission Owner Area Equipment” means the equipment comprising the Transmission Assets.

“Transmission Owner Area Operating Limits” means the operating limits, as updated, of the Transmission Assets as determined by Customer and communicated to GEM in writing.

“Transmission System Operator Services” means all functions and services required of a Transmission System Operator under the NERC Reliability Standards that GEM provides for Customer as described in the Agreement, except those functions or services that are the responsibility of Customer.

“Transmission System Operator Services Committee” has the meaning set forth in Section 4.11 of this Agreement.

“Transmission System Operator Services Committee Representative” has the meaning set forth in Section 4.11 of this Agreement.

ARTICLE 2. TERM AND TERMINATION

Section 2.1. Contract Term. The term of this Agreement shall begin at 12:01 a.m. (central prevailing time) on the Effective Date and, unless earlier terminated in accordance with the terms and conditions of this Article 2, shall continue through 11:59 p.m. (central prevailing time) on the Service Commencement Date (the “Contract Term”). Upon GEM achieving the Services Commencement Date, the Contract Term shall further be extended as provided in Section 2.3 and shall remain in effect during any extension or period of Continuation Assistance or Transition Assistance.

Section 2.2. Certification Term. GEM shall perform the Certification Services (“Certification Term”) commencing upon the Effective Date and continuing until the earlier of the following occur:

- (i) GEM is providing Transmission System Operator Services for the Customer Transmission Owner Area or
- (ii) the expiration of one (1) year from the Effective Date, unless the Parties agree in writing to extend the Certification Term, or
- (iii) upon Customer’s written notice to GEM to terminate this Agreement as provided under Section 2.5(j).

Section 2.3. Services Term.

(a) The term during which GEM shall perform the Transmission System Operator Services (the “Services Term”) shall commence on the date (the “Services Commencement Date”) that GEM initiates Transmission System Operator Services for the Customer Transmission Owner Area, as evidenced by (i) the agreed upon start date of GEM’s Transmission System Operator Services with Interconnected Transmission Systems and the Reliability Coordinator or (ii) the start date established by the Regional Entity or NERC.

(b) The Services Term shall continue for a period of one or more years (each twelve month period, a “Services Contract Term”), with the first Services Contract Term (“Initial Contract Term”) commencing on the Services Commencement Date and continuing until the date that is twelve months later at 11:59 p.m. (central prevailing time). The Services Term shall thereafter automatically renew on an annual basis, unless written notice is delivered by one Party to the other at least ninety (90) days prior to expiration of the then current Services Contract Term indicating that the Services Term will terminate at the end of such Services Contract Term, subject to the continuation, transition and survival periods set forth in Sections 2.6, 2.7 or 2.9. Any renewal or extension of the Services Term

shall be on the same terms and conditions as set forth herein, unless modifications are required by a Governmental Authority or mutually agreed to by the Parties.

Section 2.4. [Intentionally Left Blank]

Section 2.5. Termination Rights. Neither Party shall have the right to terminate this Agreement except as follows:

(a) Customer Termination Option. After the Initial Contract Term, Customer may at its election and in its sole discretion for any reason or no reason (other than as otherwise provided in this Agreement) provide one hundred twenty days (120) days prior written notice to GEM of termination of this Agreement and, in its sole discretion, request Continuation Assistance and Transition Assistance (a "Section 2.5(a) Termination Notice"). A Section 2.5(a) Termination Notice must state (i) that Customer is electing to terminate this Agreement voluntarily under this Section 2.5(a), (ii) whether Customer is requesting Continuation Assistance and Transition Assistance from GEM, and (iii) the expected termination date for the Agreement. Customer shall pay GEM a Termination Fee following the sending of the Section 2.5(a) Termination Notice as set out in Exhibit C.

(b) Termination Pursuant to Default. Either Party may provide notice of termination of this Agreement in accordance with Article 7 of this Agreement.

(c) GEM Termination Pursuant to Section 3.7. GEM may terminate this Agreement in accordance with the terms of Section 3.7.

(d) Customer Termination Pursuant to Section 4.4(c) and 4.5. Customer may provide notice of termination of this Agreement in accordance with the terms of Section 4.4(c) and 4.5.

(e) Termination for Change in Control. Within sixty (60) days of the effective date of a Change of Control event, Customer shall have the one-time option, but not the obligation, to terminate this Agreement, such termination to take effect upon provision of ninety (90) days written notice to GEM.

(f) Termination Pursuant to Section 15.6. Either Party may provide notice of termination of this Agreement in accordance with the terms of Section 15.6, and upon such termination no party shall have any further or remaining obligations or liabilities under this Agreement, except as expressly provided elsewhere in this Agreement, and Customer will not be required to pay the Termination Fee.

(g) Termination for Reliability Violations Caused by Customer. If Customer's failure to comply with its obligations under this Agreement is the cause, or a joint cause, of (i) a violation of Customer's obligations under the CTOA and/or other applicable PJM Agreements related to Customer's status as a Transmission Owner in PJM more than three (3) times in any calendar year during the Term of this Agreement (a "Contract Year"), or (ii) the aggregate total of all penalties, fines, fees and costs for violation of the NERC Reliability Standards caused or jointly caused by Customer that are levied against or for which GEM is responsible hereunder exceeds \$50,000 in any Contract Year, then GEM shall have the right to terminate this Agreement immediately. Upon such termination, Customer will be required to pay the Termination Fee, and Customer shall reimburse GEM for all the reasonable and documented out-of-pocket costs and expenses (including attorney's fees) incurred in connection with transitioning the Transmission System Operator Services to a successor or successor.

(h) Termination for Reliability Violations Caused by GEM. If GEM's failure to comply with its obligations under this Agreement (i) is the sole cause of a violation of the NERC Reliability Standards by the Customer, more than three (3) times in any calendar year during the Term of this Agreement (a "Contract Year"), or (ii) the aggregate total of all penalties, fines, fees and costs for violation of the NERC Reliability Standards caused by GEM that are levied against the Customer exceeds \$ 50,000 in any Contract Year, then Customer shall have the right to terminate this Agreement subject to Customer's rights to Continuation Assistance and Transition Assistance. Upon such termination, Customer will not be required to pay the Termination Fee.

(i) Termination for Failure to Achieve Certification. Customer may terminate this Agreement after the one year anniversary of the Certification Term without a Termination Fee if the Services Commencement Date has not occurred and GEM is the sole responsible party for the failure to commence services.

(j) Customer Termination During Certification Term. Notwithstanding any other provision in this Agreement, during the Certification Term, Customer shall have the right to terminate this Agreement in accordance with Section 2.5(a) or without a Termination Fee upon providing GEM thirty (30) days prior written notice during the Certification Term of its intention to terminate this Agreement, provided that (i) Customer reasonably determines that it is uneconomic to make the technical and physical upgrades necessary for GEM to provide Transmission System Operator Services, (ii) GEM has not obtained Certification, and (iii) such expenses exceed \$20,000. Upon such termination, Customer shall pay GEM the Certification Services Fee and Customer shall reimburse GEM for all reasonable and documented out-of-pocket costs and expenses (including attorney's fees) incurred by GEM that are greater than the Certification Services Fee.

Section 2.6. Continuation Of Transmission System Operator Services Following Expiration or Notice of Termination. In the event that Customer so requests in writing at least ninety (90) days prior to the expiration of the Contract Term, GEM shall continue to provide the Transmission System Operator Services for and on behalf of Customer with respect to the Customer Facilities's, on the terms and subject to the conditions of this Agreement (including payment by Customer of the Monthly Services Fee and other amounts payable by Customer under this Agreement), for one-hundred and eighty (180) days (the "Continuation Assistance") unless the Parties mutually agree to extend the Continuation Assistance. The quality and level of the Transmission System Operator Services shall not be degraded during the period Continuation Assistance is provided. In the event Continuation Services are provided following a Customer Event of Default or a Section 2.5(g) termination, the Monthly Services Fee payable by Customer shall escalate in accordance with the payment schedule in Exhibit C hereof.

Section 2.7. Transition Assistance Following Expiration or Termination. Prior to the expiration of the Contract Term for any reason, GEM shall, in addition to the Continuation Assistance provided under Section 2.6, if requested by Customer in writing, provide assistance and take all reasonable steps necessary to transition the Transmission System Operator Services to another Transmission System Operator Services provider; provided, however, that in no event shall GEM be required to provide Transition Assistance under this Section 2.7 for any period in excess of the number of days during which GEM actually provides Continuation Assistance to Customer pursuant to Section 2.6, or such other period as the Parties may agree upon. The quality and level of the Transmission System Operator Services provided by GEM shall not be degraded during the period Transition Assistance is provided. In addition, Customer shall pay for GEM resources a rate of \$200 dollars per hour and reimburse GEM for all out-of-pocket costs and expenses. Nothing contained herein

or in this Agreement shall obligate Customer to request or receive Continuation Assistance or Transition Assistance from GEM.

Section 2.8. Survival. This Agreement shall continue in effect after a notice of expiration or termination to the extent necessary (i) to allow GEM to provide the Continuation Assistance pursuant to Section 2.6, if applicable; (ii) to allow GEM to provide Transition Assistance to Customer pursuant to Section 2.7, if applicable; or (iii) to allow GEM to provide the Transmission System Operator Services when GEM is providing Continuation Assistance and/or Transition Assistance pursuant to Section 15.6, if applicable. In addition, the following Sections survive any expiration or termination of this Agreement: Articles 1, 8, 9, 13, 14 and Sections 2.8, 3.6, 4.1(c), 4.7, 10.2, 15.2, and 15.12.

ARTICLE 3. TRANSMISSION SYSTEM OPERATOR SERVICES OBLIGATIONS

Section 3.1. Certification Services. GEM shall provide the following Certification Services to Customer, as applicable: (i) an executed Delegation of Authority agreement within ten (10) Business Days of the Effective Date of this Agreement; (ii) consultation and implementation of the necessary communications infrastructure between the GEM's control center (associated data centers) and the Customer Transmission Owner Area using PJMNet; (iii) Energy Management System modeling services; (iv) and preparation for the certification audit or review, (collectively, the "Certification Services").

Section 3.2. Certification Equipment. [Not Applicable]

Section 3.3. Access. During the Certification Term, Customer will grant to GEM and its agents and subcontractors such access to the Customer Transmission Assets as is reasonably necessary and appropriate (i) for GEM to install, program, and test equipment or systems required for GEM to perform Certification Services; provided, however, that, when exercising such access rights, GEM (1) shall provide Customer with as much advance notice as is appropriate under the circumstances, (2) shall not unreasonably disrupt or interfere with the normal operations of the business of Customer, (3) shall work under observation by a Customer representative, and comply with the directives of such representative, and (4) shall adhere to the safety rules, procedures and policies established by Customer. GEM shall indemnify and hold Customer harmless for any injury, damage or claim arising out of GEM employee, agent, representative, contractor or subcontractor's, ingress or egress on Customer Facility property, except to the extent such liability is caused by the gross negligence or intentional misconduct of Customer, its employees, agents, representatives, contractors, or subcontractors. GEM waives any liability against Customer for any injury, damage or claim arising out of a GEM employee, agent, representative, contractor or subcontractor's ingress or egress on Customer Facility property except to the extent such injury, damage or claim is the result of the gross negligence or intentional misconduct of Customer, its employees, agents, representatives, contractors, or subcontractors. GEM shall not be in violation of this Agreement to the extent inadequate performance of Transmission System Operator Services is caused by GEM being prevented from accessing Customer Facility.

Section 3.4. Transmission System Operator Services.

(a) GEM shall perform Transmission System Operator Services identified in Exhibit A for the Transmission Owner Area with a level of accuracy, quality, completeness, timeliness, responsiveness and cost efficiency that is in accordance with the applicable NERC Reliability Standards in effect from time to time, and in a manner consistent with the PJM TO/TOP Matrix, other applicable

PJM Agreements, applicable laws and Good Utility Practice. GEM and Customer shall mutually agree on the division of responsibility for performing the Transmission System Operator Services for any new or modified NERC Reliability Standards or any laws applicable to a Transmission Owner adopted after the Effective Date, however the Registered Transmission Owner shall remain fully responsible until there is a modification to Exhibit A describing the functions that are the GEM's responsibility. GEM shall not be in violation of this Agreement to the extent its inadequate performance of Transmission System Operator Services is directly caused by Customer employees, agents, representatives, contractors, or subcontractors failing to comply with Customer obligations. To the extent a violation of a NERC Reliability Standard applicable to the Transmission Owner under the CTOA and/or other applicable PJM Agreements related to Customer's status as a Transmission Owner in PJM occurs, and such violation is jointly caused by the Parties and is a service identified in Exhibit A, as determined by the Regional Entity, NERC or any applicable Governmental Authorities, the Parties agree that any penalties, fines, fees and costs levied shall be allocated between the Parties on a pro-rata basis determined by the Transmission System Operator Services Committee, as provided for in Section 3.7 below.

(b) GEM shall perform the Optional Services, if any, with a level of accuracy, quality, completeness, timeliness, responsiveness and cost efficiency consistent with current applicable FERC approved NERC Reliability Standards in a manner consistent with Good Utility Practice. The terms and conditions of Optional Services shall be set forth in an appropriate Optional Services Exhibit services description, which may be agreed to subsequent to execution of the Services Agreement and shall be considered part of this Agreement, subject to the terms and conditions contained herein; provided that, any Optional Services Exhibit completed subsequent to execution of this Agreement, shall have an Optional Services Confirmation Form separately executed by the Operating Representatives and the Form will become effective as of the date of such execution as if it were an amendment to the Agreement. Optional Services Exhibits may be revised from time to time, upon mutual agreement of the Parties and execution of a replacement Optional Services Confirmation Form.

(c) GEM shall ensure that (i) all Transmission System Operator Services shall be performed by personnel that have the necessary knowledge, skills, experience, qualifications, rights and resources to provide and perform the Transmission System Operator Services in accordance with this Agreement and Good Utility Practice; and (ii) all control center personnel and other Transmission System Operator Services personnel who are required by NERC, Regional Entity and/ or other regulatory agencies to be certified are certified, in accordance with applicable NERC Reliability Standards.

Section 3.5. GEM Control Center and Alternate Control Center. GEM shall at all times during the Contract Term maintain and operate the GEM Control Center and GEM Alternate Control Center in accordance with all applicable NERC Reliability Standards.

Section 3.6. GEM Technology.

(a) GEM's Rights. GEM retains all rights, titles, and interests (including ownership of all patents, patent applications, including continuations, continuations-in-part, divisionals, reexaminations, and reissues, copyrights, trade secrets, trademarks, know-how, service marks and all other intellectual property rights including any derivatives, modifications or alterations thereto that are conceived, created or expressed by GEM or Customer ("Intellectual Property")) with respect to, and Customer shall not acquire, any interest or lien in or upon, any data, know-how, inventions, databases,

tools, algorithms, architecture, user interface designs, objects, methodologies, formulas, processes, manuals, materials, reports, software (including object and source codes), documentation, training materials, hardware, equipment and networks or any other information or materials that are proprietary to GEM and used by GEM to provide Transmission System Operator Services under this Agreement, or that are related to such services, including any enhancements, improvements, changes, modifications or additions thereto by or on behalf of GEM that are made and paid for by GEM, including any enhancements, improvements, changes, modifications or additions made by Customer at the direction of, and paid for by, GEM under this Agreement (collectively, "Customer Modifications") during the Contract Term (collectively, the "GEM Technology"). In furtherance of the foregoing, Customer hereby assigns and agrees to assign in the future to GEM any and all of its right, title and interest in and to any Customer Modifications in and to the GEM Technology, including any Intellectual Property therein, during the Contract Term. At the reasonable written request of GEM, Customer shall promptly perform any and all other reasonable acts, at GEM's expense, that are necessary in order for GEM to perfect its interests in and to the Customer Modifications and to the GEM Technology.

(b) Customer's Rights To Use GEM Technology. Subject to the provisions of Article 14, GEM shall at all times during the Contract Term and during the provision of any Transition Assistance or Continuation Assistance afford Customer all necessary and appropriate rights to use the GEM Technology solely in connection with the matters contemplated by this Agreement, and GEM hereby grants, and Customer hereby accepts, on the terms and subject to the conditions of this Agreement, a fully paid-up royalty fee, non-exclusive, personal, revocable, non-assignable license for so long at this Agreement is in effect or any extension thereof to use the GEM Technology solely in connection with this the matters contemplated by Agreement. To the extent that the services provided to Customer pursuant to this Agreement incorporate, use, or reference Third Party Software and Data (as defined below), Customer is granted a sublicense for the Contract Term to use the Third Party Software and Data solely in connection with this Agreement by GEM on the terms and conditions contained in this Agreement and as may be required by the owner of such Third Party Software and Data (each, a "Third Party Owner"). Customer's license of Third Party Software and Data is limited solely to use in conjunction with the services provided through this Agreement. For purposes of this Agreement, "Third Party Software and Data" means the software or data available to Customer via a secure and password-protected third party software system or GEM Technology.

Section 3.7. Cooperation of the Parties.

(a) Compliance and Cooperation with NERC Reliability Standards. Customer shall be the NERC Registered Transmission Owner and shall comply with, and remain obligated to ensure compliance with, applicable NERC Reliability Standards, including Transmission System Operator functions under the PJM TO/TOP Matrix delegated by this Agreement to GEM or to any third-parties. Customer, including Customer delegates, shall comply with functions assigned by the PJM TO/TOP Matrix and with the obligations of the applicable Regional Entity and any applicable NERC Reliability Standards, so far as compliance of these obligations is necessary and required in order for GEM to meet its obligations as the Transmission System Operator Services provider. Customer shall ensure that any agreement(s) with third-parties that impact the operation of the Transmission Owner Area establish practices and protocols that do not conflict with the requirements of the NERC Reliability Standards applicable to each Party.

(b) Reliability Standard Violations. Each Party acknowledges that if it fails to comply with its respective obligations under this Agreement and Exhibit A, and such failure causes a violation

of the NERC Reliability Standards, the other Party may be adversely affected. In the event of a violation of the NERC Reliability Standards applicable to the Transmission Operator obligations of the PJM TO/TOP Matrix, the Parties agree that the following provisions set forth the Parties' liabilities with respect to such violation:

- (i) In the event GEM is the sole cause of a violation of a NERC Reliability Standard applicable to Customer's Transmission Operator obligations under the PJM TO/TOP Matrix, the CTOA and/or other applicable PJM Agreements related to Customer's status as a Transmission Owner in PJM and relates to a service provided by GEM listed in Exhibit A, GEM shall be responsible for and shall contest or pay all penalties, fines, fees and costs levied by the Regional Entity, NERC or any applicable Governmental Authorities associated with such violation; provided, however, that Customer shall be responsible for and shall promptly reimburse GEM for all penalties, fines, fees and costs paid by GEM to a Regional Entity, NERC or any applicable Governmental Authorities due to Customer's failure to perform its obligations under this Agreement.
- (ii) Notwithstanding anything in this Agreement to the contrary, in the event that both Parties are responsible for compliance with a particular Reliability Standard, each Party shall be responsible for all penalties, fines, fees and cost levied by the Regional Entity, NERC or any applicable Governmental Authorities in proportion to its responsibility for causing a violation, as determined by the Transmission System Operator Services Committee. If the Transmission System Operator Services Committee is unable to agree on the percentage responsibility of each Party for the Joint Violation, the dispute shall be resolved through the remaining steps in the dispute resolution process set forth in Section 7.5.
- (iii) If (A) Customer fails to comply with its obligations in this agreement, (B) the Transmission System Operator Services Committee has attempted to address such failure by proposing an agreed upon mitigation plan or requesting recommendations for mitigation from the Regional Entity, (C) GEM has submitted a request to the applicable Regional Entity and/or NERC to approve and adopt such mitigation plans, and (D) either Customer or its Affiliate or its designee fails to adhere to or implement the approved mitigation plan, GEM shall have the right to terminate this Agreement upon thirty (30) days' written notice to Customer.
- (iv) If Customer's failure to comply with its obligations under this Agreement is the sole cause, or partly the cause, of a violation of the Reliability Standards applicable to Customer under the CTOA and/or other applicable PJM Agreements related to Customer's status as a Transmission Owner in PJM more than three (3) times in any Contract Year (and in each case GEM shall have notified Customer of such failure), GEM shall have the right to terminate upon thirty (30) days' written notice to Customer.

Section 3.8. Training. GEM shall provide initial training to Customer as reasonably requested by Customer during the Contract Term relating to GEM's services; provided, that Customer shall be required to reimburse GEM for any required travel expenses and other t reasonable, documented actual costs and expenses incurred by GEM.

Section 3.9. GEM Services Not Exclusive To Customer.

(a) Customer hereby expressly acknowledges that part of the value of the Transmission System Operator Services comes from the provision by GEM of services similar or identical to the Transmission System Operator or Balancing Authority Services for Persons other than Customer. Customer acknowledges that the expertise and business plan of GEM requires that it be able to represent multiple Persons and that the services rendered thereby are and may be beneficial to Customer.

(b) Notwithstanding the nature of the services to be performed by GEM under the terms of this Agreement, Customer specifically acknowledges that GEM is not precluded from representing or performing similar or related services for, or being employed by, Persons other than Customer, including competitors of Customer.

(c) Customer acknowledges that GEM from time to time has established or may establish contractual relationships with both users of power resources, transmitters of power and generators or producers of such power resources. Customer further acknowledges and accepts that Affiliates of GEM may, during the Contract Term, engage in energy trading, and that the existence of such activity shall not in and of itself create any conflict of interest for GEM in carrying out its obligations under and pursuant to this Agreement. The foregoing shall not be construed as relieving GEM of its obligations with respect to Customer's Confidential Information under Article 14 or any other obligations under this Agreement.

(d) Notwithstanding this Section 3.9, GEM agrees that, (i) in performing similar or related services for other customers, it shall do so in a non-discriminatory manner with respect to Customer and will provide Customer notice of any material conflict of interest as soon as practicable and (ii) it will obtain Customer's prior written consent before providing any services for, or to, other Persons within the Transmission Owners Area.

Section 3.10. [Intentionally left blank]

Section 3.11. Scheduling Coordinator. During the Services Term, Customer shall be its own Scheduling Coordinator or obtain Scheduling Coordinator services.

Section 3.12. GEM Balancing Authority. Customer specifically acknowledges that GEM Balancing Authority Services, if any, must be defined in a separate Balancing Authority Services Agreement.

ARTICLE 4.
CONTINUING OBLIGATIONS OF THE PARTIES

Section 4.1. Access Rights.

(a) GEM's Access Rights. Notwithstanding Section 3.3 and subject to the provisions of Article 14, Customer will use commercially reasonable efforts to, or to cause the grant to, GEM and its agents and subcontractors such access to the Customer Facility as is reasonably necessary and appropriate for GEM (i) to program, install, test, operate and maintain the equipment or GEM Technology, (ii) to obtain access to such information and data regarding the Customer Facility as is reasonably necessary and appropriate for GEM to carry out its obligations under this Agreement, and (iii) to exercise any other of its rights and carry out any other of its obligations under or in connection with this Agreement, in each case in accordance with the terms and provisions of this Agreement; provided, however, that, when exercising such access rights, GEM (1) provides Customer with as much advance notice as is appropriate under the circumstances, (2) does not unreasonably disrupt or interfere with the normal operations of the business of Customer, (3) works under observation by a Customer representative and complies with the reasonable directives of such representative, (4) adheres to the safety rules and procedures and polices established by Customer and (5) acts consistent with Good Utility Practice. Customer will use commercially reasonable efforts to ensure access rights are consistently available. GEM shall not be in violation of this Agreement to the extent inadequate performance of Transmission System Operator Services is caused solely by acts of Customer or the Customer Facility that prevent GEM employees or agents from accessing relevant equipment or the data.

(b) Customer's Access Rights. Subject to the provisions of Articles 14, GEM hereby grants to Customer and its agents and subcontractors such use of the GEM Technology as is reasonably necessary and appropriate for Customer to perform its obligations in accordance with the terms and provisions of this Agreement and to exercise any of its rights and carry out any other of its obligations under or in connection with this Agreement (including to obtain access to such information and data regarding the Customer Facility as is reasonably necessary and appropriate for Customer to carry out its obligations and exercise its rights under this Agreement); provided, however, that, when exercising such rights, Customer (i) does not unreasonably disrupt or interfere with the normal operations of the business of GEM, (iii) adheres to any rules and procedures established by GEM, (iv) acts consistent with Good Utility Practice and (v) does not attempt to reverse engineer, reverse compile, design around or in any other way attempt to discover the internal operations of the GEM Technology or to circumvent the GEM Technology.

(c) Term; Survival. The license granted in Section 3.6 and the access rights granted by each Party to the other Party under this Section 4.1 shall remain in effect during the Contract Term and shall survive the expiration or termination for any reason of this Agreement for so long as GEM is providing Transmission System Operator Services to Customer as provided for in this Agreement and for so long as reasonable, up to ninety (90) days after termination or expiration of the Contract Term, or the end of the Continuation or Transition periods to the extent necessary for each Party to exercise its rights to remove its equipment, data, technology or Intellectual Property from the premises of the other Party in accordance with the provisions of this Agreement. Notwithstanding the foregoing, should either Party decide permanently to abandon the use of any such license or access rights or any portion of any of them, the Party must send the other Party prompt written notice of such decision. In the event that a Party unilaterally revokes or terminates the other Party's access rights in breach of this Agreement, the Party whose access rights are revoked or terminated is then excused from any obligations to perform services that relate to or are dependent upon its access and that are impacted by such revocation or termination.

Section 4.2.

Operation And Maintenance Of Customer Equipment.

(a) Operation and Maintenance. Customer shall be solely responsible for the operation and maintenance of the Customer Equipment and shall operate and maintain the Customer Facility in a manner which will not interfere with the operation of GEM's obligations under this Agreement. The Parties acknowledge and agree that GEM is not responsible for and shall have no obligations hereunder with respect to the operation and maintenance of the Customer Facility.

(b) Voltage or Reactive Control Requirements. [TBD].

Section 4.3. Abnormal Operating Condition Procedures.

(a) Notification. GEM shall provide Customer Facility with prompt verbal notification if GEM becomes aware of any Abnormal Operating Condition regarding the Transmission Owner's Area or Interconnection Facilities which may reasonably be expected to affect GEM's or Customer's operations and Customer shall provide GEM with prompt verbal notification if it becomes aware of any Abnormal Operating Condition regarding the Customer Facility or the Transmission System which may reasonably be expected to affect Customer's or GEM's operations.

(b) Customer Facility Isolation Rights. Customer reserves the right, consistent with Good Utility Practice, to isolate the Customer Facility if, in its good faith judgment, it believes that continued parallel operation is creating or contributing to an Abnormal Operating Condition regarding the Customer Facility. Customer agrees to use commercially reasonable efforts to notify GEM and other adjacent Transmission Owners prior to isolating the Customer Facility. If any such isolation of the Customer Facility does not stabilize or mitigate the Abnormal Operating Condition, then the Facility will be allowed to reconnect if such reconnection is permitted by the Reliability Coordinator and the affected Transmission Owners following coordination with GEM.

(c) Mitigation Or Elimination. To the extent necessary, each Party agrees to cooperate and coordinate with the other Party in taking whatever reasonable corrective measures as are necessary to mitigate or eliminate the Abnormal Operating Condition, provided such measures are consistent with Good Utility Practice and do not require operation of the Facility outside the Facility Operating Limits.

(d) Abnormal Operating Condition Procedures. Parties agree to discuss and document procedures in addition to those described in Exhibit A, if deemed necessary by both parties, for Emergency events, such as loss of communication or system emergencies, and failure of GEM hardware, software or systems

Section 4.4. Modifications to GEM Technology.

(a) Modifications Not Required. Unless otherwise agreed to by the Parties or otherwise required by applicable Governmental Rules or the NERC Standards applicable to Transmission System Operators, GEM shall not be required at any time to upgrade or otherwise modify the GEM Technology; provided, however, that GEM agrees, at Customer's expense, to make any additions, modifications, or replacements to the GEM Technology that are requested by Customer in writing so long as such additions, modifications, or replacements are consistent with Good Utility Practice.

(b) GEM Modification Rights. Subject to the provisions of Section 4.5, GEM, in its reasonable discretion, and subject to the terms and conditions of this Agreement governing access to

the Customer Facility, may undertake additions, modifications, or replacements of the GEM Technology during the Contract Term, so long as such additions, modifications, or replacements are consistent with the Transmission System Operator Services.

(c) Notification Regarding Modifications. If any additions, modifications, or replacements of the GEM Technology might reasonably be expected to negatively affect the operation of the Customer Facility, GEM shall provide ninety (90) days' written notice to Customer prior to undertaking any such additions, modifications, or replacements (unless Good Utility Practice requires GEM to undertake such additions or modifications prior to the expiration of the ninety (90) day period, in which case GEM shall provide Customer such advance written notice as is reasonably practicable under the circumstances) and conduct such work at mutually agreeable times. If Customer objects to such additions, modifications, or replacements Customer must request a mitigation plan from the Transmission System Operator Services Committee. If the Transmission System Operator Services Committee has not unanimously reached an agreement on the mitigation plan within thirty (30) days, (i) GEM may at its sole discretion proceed at its expense with the addition, modification or replacement required due to a material change to applicable Governmental Rules or (ii) terminate this Agreement, prior to the effective date of the applicable Governmental Rule, NERC or Regional Entity standards.

Section 4.5. Responsibility For Section 4.4(b) Modification Costs.

(a) GEM acknowledges and agrees that the majority of additions, modifications or replacements undertaken pursuant to Section 4.4(b) will be paid for solely by GEM. However, in the event that additions, modifications or replacements undertaken pursuant to Section 4.4(b) are required due to change in applicable Governmental Rules, Change of Law, NERC or Regional Entity standard, Customer shall be responsible for an equitable, pro rata share of the actual, documented and reasonable costs and expenses incurred by GEM for such additions, modifications or replacements provided that GEM has notified Customer in writing and in advance of the costs and expenses. For purposes of this Section 4.5(a), Customer's equitable, pro rata share shall include consideration of the number of GEM customers that are affected by the modification, to which GEM is providing service at the time such additions, modifications, or replacements are made. If Customer objects to such modification prior to implementation of the change, (i) GEM may at its sole discretion proceed at its expense with the addition, modification or replacement required due to a material change to applicable Governmental Rules or (ii) terminate this Agreement, prior to the effective date of the applicable Governmental Rule, NERC or Regional Entity standards.

(b) In the event that the additions, modifications or replacements to GEM Technology are not required by applicable Governmental Rules, but are required as a result of any modification by Customer of the Certification Equipment or the Customer Facility Customer will reimburse GEM for the actual, documented, reasonable costs and expenses incurred by GEM in connection with the installation and construction of such additions, modifications or replacements.

(c) For any other additions, modifications and replacements undertaken to GEM Technology for which Customer is not specifically responsible hereunder, GEM shall be responsible for the costs and expenses associated with such additions, modifications or replacements to GEM Technology.

Section 4.6. Modifications to Customer Equipment or Networks.

(a) Modifications Permitted. Customer, in its discretion and at its sole cost and expense, may undertake additions, modifications or replacements, or may cause the undertaking of additions, modifications or replacements, to the Customer Equipment or Customer network, so long as such additions, modifications or replacements do not directly impact GEM's ability to provide the Transmission System Operator Services pursuant to this Agreement.

(b) Notification Regarding Modifications. If any additions, modifications or replacements undertaken by Customer would reasonably be expected to affect GEM's ability to satisfy its obligations under this Agreement, Customer shall notify GEM in writing ninety (90) days in advance of undertaking such additions, modifications or replacements (unless Good Utility Practice requires Customer to undertake such additions, modifications or replacements prior to the expiration of the ninety (90) day period, in which case Customer shall provide GEM such advance written notice as is reasonably practicable under the circumstances) and shall conduct work at mutually agreeable times.

(c) GEM Proposed Modifications to Customer Equipment. GEM shall notify Customer of any proposed additions or modifications needed to the Customer Equipment, or GEM network that affect the Transmission Owner Area, including any software modifications to control systems, that GEM believes are reasonably necessary and appropriate for GEM to perform its obligations under this Agreement in accordance with applicable Governmental Rules or the NERC Reliability Standards, along with the reasonable time period within which GEM believes that such additions or modifications should be completed. Unless otherwise agreed by the Parties and if, in Customer's reasonable opinion, such additions or modification are consistent with Good Utility Practice, Customer shall be responsible for any and all actual, documented and reasonable costs and expenses incurred for and in connection with additions or modifications to the Customer Equipment. Customer may respond with commercially reasonable objections to such modifications, including the extent to which such modifications are reasonable and appropriate. If Customer disagrees with or objects to the appropriateness or necessity of any additions or modifications proposed by GEM pursuant to this Section 4.6(c), Customer must request a mitigation plan from the Transmission System Operator Services Committee within thirty (30) days of receipt of the proposed addition or modification. If the Transmission System Operator Services Committee has not unanimously reached an agreement on a mitigation plan within thirty (30) days, (i) GEM may at its sole discretion proceed at its expense with the addition, modification or replacement required due to a material change to applicable Governmental Rules or NERC Reliability Standard or (ii) Customer must terminate this Agreement, prior to the effective date of the applicable Governmental Rule or NERC or Reliability Standard, upon prompt written notice to GEM specifying the expected date of termination and payment of the Termination Fee.

Section 4.7.

Information and Record-Keeping Obligations.

(a) Information Obligations.

- (i) Either Party may request that the other Party make available such information and data pertaining to the services contemplated by this Agreement as the requesting Party may reasonably require from the other Party to; (1) carry out the requesting Party's responsibilities under this Agreement; and (2) satisfy any reporting obligations that the requesting Party may have to NERC, the Regional Entity, the Reliability Coordinator or any Governmental Authority pursuant to the requesting Party's obligations under this Agreement. In the event of any such

request, the Party to which the request is made shall promptly make available any such requested information and data.

- (ii) Each Party's right to request information and data under this Section 4.7(a) shall be subject to Article 14 of this Agreement and the limitation that neither Party may use information or data provided by the other Party for any purpose other than as specified in this Section 4.7(a).

(b) Record-Keeping Obligations. Each Party shall maintain such records as are required by (i) the Regional Entity, NERC, the Reliability Coordinator, any applicable Governmental Authority pursuant to each party's obligations under this Agreement, and (ii) this Agreement, and (iii) all data, documents, or other materials relating to or substantiating any charges, costs or expenses payable or reimbursable by the other Party under and in accordance with the applicable requirements or rules or for a period of one (1) years from and after the date on which the records are created or assembled for purposes of this Agreement. Neither Party shall use the accounts or records of the other Party without the express written consent of the other Party unless such use is permitted by this Agreement or required by Governmental Rule, provided that, if permitted by law, such use as is required for Governmental Rule shall not occur until after the other Party has been notified.

- (c) Monthly Data. [Not Applicable]

Section 4.8. Telemetry.

(a) Metering And Telemetry Data. In the event that any metering equipment installed at the Facility fails to register data, the flows of electricity from the Customer Facility shall be determined from the best available data, as agreed by GEM and any affected Adjacent Transmission Owner.

Section 4.9. Metering Operation And Maintenance. Customer shall be responsible under this Agreement for operating and maintaining the metering equipment that is owned by Customer.

Section 4.10. Operating Representatives. GEM and Customer shall each designate a single individual in their respective organizations (the "Operating Representative") to coordinate all operational information to be transmitted between the Parties consistent with this Agreement. Each Party may change its Operating Representative from time to time by providing notice within a reasonable period of time in accordance with the requirements of this Agreement.

Section 4.11. Transmission System Operator Services Committee.

(a) As a means of securing effective and timely cooperation with respect to the activities hereunder and as a means of dealing on a prompt and orderly basis with various issues that may arise in connection with Transmission System Operator Services coordination and operation under changing conditions, the Parties shall establish a Transmission System Operator Services Committee (the "Transmission System Operator Services Committee"), comprising the Transmission System Operator Services Committee Representatives. The Transmission System Operator Services Committee may, upon mutual agreement, from time to time meet or consult with representatives as appropriate from a Regional Entity and/or NERC which shall serve solely an advisory function. The sole

responsibilities of the Transmission System Operator Services Committee shall be, with respect to the Transmission System Operator Services provided hereunder:

- (i) to review procedures and standard practices, consistent with the provisions of this Agreement, for the guidance of operating employees as to matters affecting transactions under this Agreement;
- (ii) to review any operating procedures required in connection with this Agreement;
- (iii) to review and approve all changes to the protocols that pertain to the Customer's obligations under the CTOA and/or other applicable PJM Agreements related to Customer's status as a Transmission Owner in PJM;
- (iv) to review and recommend as necessary the types and arrangement of equipment for intersystem communication facilities to enhance transactions and benefits under this Agreement;
- (v) to review potential changes to or an expansion of the Customer's obligations under the CTOA and/or other applicable PJM Agreements related to Customer's status as a Transmission Owner in PJM, or to the scope of services provided by GEM hereunder due to such changes;
- (vi) to review the appropriateness or necessity of any additions or modifications proposed by GEM pursuant to Section 4.6(c); and
- (vii) to do such other things and carry out such duties as specifically required or authorized by this Agreement; provided, however, that the Transmission System Operator Services Committee shall have no authority to amend or modify any provision of this Agreement except Exhibit A or procedures which must be modified by the Transmission System Operator Services Committee to comply with requirements established by NERC, if such modification is consistent with the express terms of this Agreement, is reduced to writing and is signed by each Transmission System Operator's Services Committee Representative.

(b) GEM and Customer shall each select one (1) representative (the "Transmission System Operator Services Committee Representative") for the Transmission System Operator Services Committee. Unless and until a Party provides notice to the contrary, its Transmission System Operator Services Committee Representative shall be the Operating Representative it designated pursuant to Section 4.9. In addition, GEM and Customer shall each select an alternate representative for the Transmission System Operator Services Committee to act in the absence of its Transmission System Operator Services Committee Representative. Each Party shall, on or before the Effective Date, in accordance with the requirements of this Agreement, give notice to the other Party of the name of its Transmission System Operator Services Committee Representative and alternate representative. Each Party shall, in accordance with the requirements of this Agreement, also give notice to the other Party of any change of its Transmission System Operator Services Committee Representative or alternate representative, as soon as possible but no more than thirty (30) days after the effectiveness of any such

change. Each Party's Transmission System Operator Services Committee Representative shall be authorized to act on its behalf with respect to those committee responsibilities provided herein. Each Transmission System Operator Services Committee Representative shall be entitled to bring one or more additional employee or subcontractor of such Party to any meeting of the Transmission System Operator Services Committee in order to provide any necessary or appropriate technical support.

(c) The Transmission System Operator Services Committee shall not be entitled to take any action or make any recommendation without the unanimous written consent of all of the Transmission System Operator Services Committee Representatives.

ARTICLE 5.

Customer shall compensate GEM for Transmission System Operator Services, Transition Services, and Optional Service, if any, provided under this Agreement in accordance with Exhibit C and any Optional Services Exhibit.

ARTICLE 6.

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 6.1. Representations And Warranties Of The Parties. Each Party, with respect to itself, hereby represents and warrants to the other Party as of the Effective Date as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement;

(b) the execution, delivery and performance of this Agreement are within its statutory and corporate or organizational powers, have been duly authorized by all necessary action and do not conflict with or result in a breach of or default (with or without notice or lapse of time or both) under any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(c) this Agreement has been duly executed and delivered on its behalf by a duly authorized representative of such Party;

(d) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or other Governmental Rules affecting creditors' rights generally, and with regard to equitable remedies, subject to equitable defenses and the discretion of the court before which proceedings to obtain such remedies may be pending;

(e) there are no bankruptcy, insolvency, reorganization, receivership, or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and

(f) there are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority that materially adversely affect such Party's ability to perform this Agreement.

Section 6.2. No Other Representations And Warranties. Each Party acknowledges that it has entered into this Agreement based solely upon the express representations and warranties set forth in this Agreement.

Section 6.3. Disclaimer Of Warranties. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

ARTICLE 7. EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events Of Default. An “Event of Default” means any of the following:

(a) the failure by a Party (the “Defaulting Party”) to make, when due, any payment for undisputed amounts required under this Agreement, if such failure is not cured within twenty (20) Business Days after written notice thereof from the Non-Defaulting Party; or

(b) any material representation or warranty made by a Party (the “Defaulting Party”) in this Agreement shall prove to have been false or misleading in any material respect on the date made; or

(c) any failure by a Party (the “Defaulting Party”) to perform its obligations under this Agreement in any material respect, if such failure is not excused by Force Majeure or cured within thirty (30) days after written notice thereof from the Non-Defaulting Party or, if such failure cannot be completely corrected or cured within thirty (30) days, if the Defaulting Party fails to (1) commence within such thirty (30) day period, and sustain continuously thereafter, diligent efforts to correct or cure such failure, and (2) completely correct or cure such failure within ninety (90) days after written notice thereof from the Non-Defaulting Party; or

Section 7.2. Remedies Upon An Event Of Default by GEM. If an Event of Default with respect to GEM occurs and is continuing without cure for thirty (30) consecutive days after written notice by Customer, Customer may:

(a) effective immediately upon written notice to GEM, terminate this Agreement without incurring any penalties (including the Termination Fee); and/or

(b) take whatever action at law or in equity, consistent with the provisions of this Agreement, as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants under this Agreement.

Section 7.3. Remedies Upon An Event Of Default by Customer. If an Event of Default with respect to Customer occurs and is continuing at any time, GEM may:

(a) effective immediately upon written notice to Customer, terminate this Agreement without incurring any penalties, and collect any outstanding fees due from Customer for services rendered under this Agreement prior to issuance of such notice; and/or

(b) take whatever action at law or in equity, consistent with the provisions of this Agreement, as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants under this Agreement.

Section 7.4. Remedies Cumulative. Except as otherwise provided in Article 9, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be pursued separately or concurrently as the Party pursuing such remedy determines. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

Section 7.5. Dispute Resolution. Any claim controversy or dispute arising out of, relating to, or in connection with this Agreement, including the interpretation, validity, termination or breach hereof, shall be submitted to the Transmission System Operator Services Committee for resolution. If the Transmission System Operator Services Committee is unable to resolve the disagreement through mutual agreement within ten (10) Business Days of the dispute being referred to them, then the dispute shall be referred to an executive of each Party authorized to resolve such dispute. If such executives are unable to resolve the dispute within twenty (20) Business Days, or any other mutually agreeable time period, each Party may pursue resolution of the dispute through any action at law or in equity, consistent with the provisions of this Agreement, available to it.

ARTICLE 8. INDEMNITY

Section 8.1. Mutual Indemnity.

(a) EACH PARTY (THE “INDEMNIFYING PARTY”) SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY AND ITS AFFILIATES, AND EACH OF THEIR OFFICERS, EMPLOYEES AND REPRESENTATIVES (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL THIRD PARTY SUITS, ACTIONS, LIABILITIES, LEGAL PROCEEDINGS, CLAIMS, FINES, PENALTIES, DEMANDS, LOSSES, COSTS AND EXPENSES OF WHATSOEVER KIND OR CHARACTER, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES (COLLECTIVELY, “LOSSES”) TO THE EXTENT THAT THE SAME ARISES OUT OF OR RESULTS FROM (i) ANY FAILURE OF A PARTY TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, (ii) ANY NEGLIGENT ACTS OR OMISSIONS BY A PARTY OR ITS SUBCONTRACTORS OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, (iii) ANY WILLFUL MISCONDUCT OR BREACH OF THIS AGREEMENT ON THE PART OF A PARTY OR ITS RESPECTIVE SUBCONTRACTORS OR ITS RESPECTIVE AGENTS OR EMPLOYEES IN THE PERFORMANCE OF ITS EXPRESS OBLIGATIONS ARISING UNDER THIS AGREEMENT, OR (iv) ANY PENALTIES, FINES, FEES AND COSTS LEVIED BY ANY APPLICABLE GOVERNMENTAL AUTHORITY FOR WHICH THE OTHER PARTY IS RESPONSIBLE HEREUNDER.

(b) NOTWITHSTANDING SECTION 8.1(a) ABOVE, WHEN ANY OBLIGATION FOR INDEMNIFICATION RESULTS FROM JOINT OR CONCURRENT NEGLIGENCE, OR WILLFUL MISCONDUCT OF BOTH PARTIES, SUCH PARTIES' DUTY OF INDEMNIFICATION SHALL BE IN PROPORTION TO EACH SUCH PARTY'S ALLOCABLE SHARE OF JOINT OR CONCURRENT NEGLIGENCE, OR WILLFUL MISCONDUCT.

Section 8.2. Notice. An Indemnified Party must promptly, upon its discovery of facts or circumstances giving rise to a claim for indemnification, give written notice thereof to the Indemnifying Party. To the extent that the Indemnifying Party is or will be actually and materially

prejudiced as a result of the failure of the Indemnified Party to provide timely notice, the Indemnifying Party's liability shall be reduced proportionate to such prejudice.

Section 8.3. Amount of Losses. The amount of losses shall be computed net of any related recoveries to which the Indemnified Party is entitled under insurance policies, or other payments received or currently receivable from third parties.

Section 8.4. Workers' Compensation. In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have under applicable workers' compensation laws. In claims against any Indemnified Party by any representative of the Indemnifying Party, the indemnification obligation under this Article 8 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

Section 8.5. Not Exclusive; Survival. Neither Party's indemnity obligations hereunder shall be construed to negate, abridge or reduce other rights or obligations or indemnity, which would otherwise exist at law or in equity. The obligations contained in this Article 8 shall survive any termination, cancellation or suspension of this Agreement.

ARTICLE 9. LIMITATION OF LIABILITY; MITIGATION OF DAMAGES

Section 9.1. Limitation Of Liability.

(a) Limitations of Liability. EXCEPT AS SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, A PARTY, INCLUDING A THIRD PARTY OWNER, WILL NOT BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BY STATUTE, IN TORT OR CONTRACT, WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY OF RECOVERY. WITHOUT LIMITING THE FOREGOING, THE MAXIMUM AMOUNT OF GEM'S LIABILITY, IF ANY, TO CUSTOMER HEREUNDER ARISING FROM ALL CLAIMS, LAWSUITS, ACTIONS OR OTHER LEGAL PROCEEDINGS BY CUSTOMER, ANY REPRESENTATIVE OF CUSTOMER, OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH GEM'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT SHALL BE 100% OF THE AGGREGATE MONTHLY SERVICE FEES PAYABLE IN THE CONTRACT YEAR IN WHICH SUCH LIABILITY AROSE.

(b) Limitations of Liability, Duty To Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement; provided, however, that nothing in this Agreement shall be construed to require a Party to settle any strike or labor dispute in which it may be involved.

Section 9.2. Survival. The provisions of this Article 9 shall survive expiration or termination of this Agreement.

ARTICLE 10.
BILLING AND PAYMENT; AUDIT RIGHTS

Section 10.1. Billing And Payment. On or before the tenth (10th) day of each calendar month during the Services Term, GEM shall render to Customer (by regular mail, facsimile or other means permitted under Article 13) an invoice setting forth the Monthly Services Fee and, if applicable, the Optional Services Fee and the Annual Facility Maintenance Charge, due for the next calendar month pursuant to Exhibit C; and the total amount of any other amounts, if any, due to GEM under this Agreement for the immediately preceding calendar month. Payment of any undisputed amounts contained in such invoice shall be made by Customer to GEM in immediately available funds at the invoice address provided in Exhibit B within thirty (30) days of receipt of the invoice; provided that, if such due date is not a Business Day, payment shall be due on the next Business Day following such date. Any disputed payments shall be resolved in accordance with Section 7.5 of this Agreement and upon resolution any payment due to GEM shall be made promptly thereafter. In the event that the netted amount of any invoice results in a payment being due to Customer from GEM, Customer shall notify GEM of same and have the option to have such amount paid to it subject to the terms of this Section 10.1 from the date GEM receives such notification, or applied against any amounts Customer may owe GEM for the next calendar month. Late payments shall accrue interest, for each day from the due date to the date of the payment, at a rate equal to the effective prime commercial lending rate for such day as published in the Wall Street Journal under "Money Rates;" provided, the interest rate shall never exceed the maximum lawful rate permitted by applicable Governmental Rule ("Interest").

Section 10.2. Audits.

(a) GEM shall keep detailed accounts and records of all costs and expenses incurred, in the performance of its obligations under this Agreement. Customer shall have the right, at its expense, to audit any costs, payments, or other supporting documentation pertaining to transactions under this Agreement to determine the accuracy of payments provided to the other Party under this Agreement; provided that (a) all costs billed pursuant to this Agreement shall be subject to audit for a period of one (1) year following the issuance of an invoice therefore; (b) no adjustment for any invoice shall be made unless an objection was made to such invoice no later than one (1) year following the issuance of an invoice therefore; and (c) a Party may not conduct more than one (1) payment accuracy audit per calendar year, unless the audit is requested by a Governmental Authority or unless Customer, acting in good faith, identifies in writing irregularities meriting an audit. Audits shall take place during normal business hours and at the offices where such accounts and records are maintained, unless otherwise agreed upon by the Parties. Customer agrees to use commercially reasonable efforts and reasonably work with GEM on the timing and scheduling of any audits undertaken by Customer. To the extent that audited information includes Confidential Information (as the term is defined in Article 14), the auditing Party shall comply with the confidentiality provisions of this Agreement.

(b) During an audit of financial accounts set forth in Section 10.2(a), Customer has the right to verify GEM's operating environment to ensure that GEM is maintaining adequate controls and security measures as established for the Transmission System Operator Services by NERC, subject to restrictions in NERC Reliability Standards, Governmental Rule or Confidentiality obligations to other GEM customers.

(c) Audits shall be performed in a manner intended to minimize disruption to the Parties' respective businesses or the Parties' ability to perform its respective obligations under this

Agreement. All such audits and verifications may be conducted during the term of this Agreement and for a period of ninety (90) days after the termination or expiration of this Agreement or such longer period required by law or regulations applicable to the auditing party. To the extent that audited information includes Confidential Information, the auditing Party shall comply with the confidentiality provisions of this Agreement.

(d) Without limiting the foregoing, GEM shall provide access to Customer, its auditors (including internal audit staff), inspectors, regulators, consultants, and other representatives to: (i) facilities where the Transmission System Operator Services are being performed; (ii) GEM personnel providing the Transmission System Operator Services; and (iii) data and records in the possession of GEM relating to any of the Transmission System Operator Services. Customer and Customer's designees shall adhere to the law, regulatory requirements, NERC and Regional Entity standards, and GEM's security and safety policies regarding access that are in place at the time of the audit.

(e) GEM shall assist Customer's auditors (including internal audit staff), inspectors, regulators, consultants, and other representatives as is reasonably required. GEM shall cooperate fully with Customer or its designees in connection with audit functions and with regard to examinations by regulatory authorities and shall, on a timely basis, furnish each with information requested. Customer and Customer's designees acknowledge and agree that GEM is subject to confidentiality agreements with third parties, laws and regulatory requirement, NERC and Regional Entity standards GEM's security and safety policies regarding access that are in place at the time of the audit that may impact GEM's ability to assist, release information or allow examination by Customer or its designees.

(f) Audits and inspections shall be limited to financial information relating to the Transmission System Operator Services for the Transmission Owner Area.

ARTICLE 11. ASSIGNMENT; BINDING EFFECT

Section 11.1. Assignment. Other than as set forth in this Section 11.1, neither Party shall assign this Agreement or any of its rights or obligations hereunder (whether by operation of law or otherwise) to any person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Subject to any requirements of or restrictions imposed by the NERC or any other applicable Governmental Authority, either Party may, following notice, assign this Agreement to any entity which succeeds to all or substantially all of such Party's assets or business, without the consent of the other Party. This Agreement shall be binding on and inure to the benefit of the Parties thereto, their successors and permitted assigns.

Section 11.2. Financing Assignments. Notwithstanding anything to the contrary in Section 11.1, either Party may, without the prior written consent of the other Party but with prior written notice assign its rights to receive payment (but not its obligations) under this Agreement to any entity(ies) or institution(s) for the purposes of financing or refinancing the development, design, construction, or operation of the assigning Party's facilities.

Section 11.3. Party to Remain Responsible. No assignment permitted under this Article 11 shall relieve the assigning Party from its obligations, duties, liabilities, or financial responsibility hereunder unless and until (a) the assignee(s) agrees in writing to assume the obligations, duties, liabilities, and financial responsibilities of the assigning Party and in connection therewith cures any then existing payment defaults of the assigning Party and any then existing performance defaults

that are capable of cure under this Agreement and (b) the non-assigning Party reasonably determines that the assignee(s) is no less technically and financially capable of performing its obligations and duties under this Agreement than was the assigning Party..

ARTICLE 12. FORCE MAJEURE

Section 12.1. Notice of Claim of Force Majeure. If either Party is rendered unable by an event of Force Majeure to carry out, in whole or in part, its obligations under this Agreement, such Party shall, as soon as reasonably practicable after the occurrence of the event, give the other Party notice thereof, including full details of the Force Majeure event, the date of its commencement, the anticipated duration, if ascertainable, the performance of the Party claiming Force Majeure that is prevented by the Force Majeure event, and the actions being taken to mitigate the effects of the Force Majeure event.

Section 12.2. Performance Excused. During the pendency of the Force Majeure event but for no longer period, the Party claiming Force Majeure shall be excused, to the extent provided for in this Agreement, from the obligations under this Agreement that are prevented by the Force Majeure event.

Section 12.3. Mitigation. The Party claiming Force Majeure shall use commercially reasonable efforts to remedy the Force Majeure event with all reasonable dispatch; provided, however, that neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such dispute.

Section 12.4. Payment Obligations.

(a) If there is a Force Majeure event affecting GEM and GEM's ability to provide Transmission System Operator Services: (i) Customer shall be relieved from paying all fees payable hereunder during the pendency of the Force Majeure event (which fees shall be pro-rated for the period of time during which the relevant services were unavailable) and (ii) if the Force Majeure event exceeds sixty (60) days, Customer shall have the right to terminate this Agreement on at least thirty (30) day's notice with no Termination Fee.

(b) If there is a Force Majeure event affecting Customer or the Facility that adversely affects GEM's ability to provide the Transmission System Operator Services, then such event shall not relieve Customer of its obligation to make payments under this Agreement; provided, however, that if the Force Majeure event exceeds sixty (60) days, Customer shall have the right to terminate this Agreement on at least thirty (30) day's notice with no Termination Fee.

Section 12.5. Notice Of Ability To Resume Performance. As soon as the Party claiming Force Majeure is able to resume performance of its obligations excused as a result of the occurrence, it shall give prompt written notification thereof to the other Party.

ARTICLE 13.
NOTICES

All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit B hereto. All notices, requests, statements or payments shall be made in writing except (a) where this Agreement expressly provides that notice may be made orally and (b) that notices of an operational nature may be provided by telephone or e-mail; provided, that if any such notice is provided by e-mail, it shall be confirmed immediately by telephone. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, or e-mail (so long as a copy of such e-mail notice is provided promptly thereafter by hand delivery, overnight delivery, or courier). A Party may change its address or the persons specified in Exhibit B by providing notice of the same in accordance herewith.

ARTICLE 14.
CONFIDENTIALITY OBLIGATIONS

Section 14.1. Confidential Information Defined.

(a) Information Deemed Confidential. For purposes of this Agreement, “Confidential Information” means (i) all information, including trade secrets and proprietary information (including financial information and information regarding contractual relationships, business and pricing forecasts, licensing and regulatory compliance techniques, business processes, sales, and marketing plans), in whatever form, or technology, including GEM Technology, or information related to technology or GEM Technology, that is furnished by either Party (the “Disclosing Party”) or its representatives to the other Party (the “Recipient Party”) or its representatives, and that the Disclosing Party or any of its representatives designate as confidential or should reasonably be viewed as confidential by the Recipient Party; (ii) all information of a commercial nature or which concerns the cost, design, operation, maintenance, scheduling, output and other economic aspects of the GEM or the Customer or a Customer Facility, whether exchanged orally or in written or electronic form; (iii) all information that is metered or telemetered with respect to the Transmission System Operator Area; (iv) the substance of any discussions or negotiations between the Disclosing Party and the Recipient Party or any representatives relating to any of the foregoing; and (v) all notes, reports, documents, analyses, compilations, forecasts, studies, synopses, and other materials of a Party or any of its representatives that reflect, interpret, evaluate, or are derived from any of the foregoing; and (vi) all information obtained by Customer from GEM relating to this Agreement, in whatever form.

(b) Information Not Deemed Confidential. Confidential Information does not include information which: (i) is or becomes generally available to the public other than as a direct or indirect result of an intentional or inadvertent disclosure by the Recipient Party or any of its representatives, or anyone to whom the Recipient Party or any of its representatives transmits the information; (ii) was available to the Recipient Party prior to its disclosure to the Recipient Party by the Disclosing Party or any of the Disclosing Party’s representatives, provided that such information is not known to the Recipient Party to be subject to another confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party or another party; (iii) becomes available to the Recipient Party from a source other than the Disclosing Party or any of the Disclosing Party’s representatives, provided that such source is not known to the Recipient Party to be subject to another confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party or another party; or (iv) is independently developed by the Recipient Party, other than in connection with this Agreement.

Section 14.2. Nondisclosure Of Confidential Information. Except as set forth in this Section 14.2 and in Section 14.3, the Recipient Party shall not disclose any Confidential Information to any Person other than as permitted hereby, and shall safeguard each and all of the Confidential Information from unauthorized disclosure in accordance with the terms of this Article 14.

(a) The Recipient Party may disclose Confidential Information to any of its Affiliates, and any of its or any such Affiliate's representatives, but only if such Persons need to know the Confidential Information for purposes permitted by this Agreement and are notified of the confidential nature of the information; provided, however, that GEM may not disclose Confidential Information to those employees of any Affiliates of GEM that are engaged in developing, owning or operating bulk electric system electric generation facilities or trading in energy commodities. Each Party agrees to be responsible for any unauthorized disclosure of such information by such Persons.

(b) The Recipient Party may disclose Confidential Information to its representatives who need to know such information in connection with the performance of this Agreement. The Recipient Party agrees to notify such Persons of the confidential nature of such information and to be responsible for any unauthorized disclosure of such information by such Persons.

(c) GEM may disclose Confidential Information to a representative of PJM, Commonwealth Edison, a Balancing Authority, a Transmission Operator, or a Reliability Coordinator who needs to know such information in connection with protecting the reliability of the bulk electric system only. GEM agrees to notify such Persons of the confidential nature of such information, if the sharing of the information is not covered by non-disclosure agreements, and to be responsible for any unauthorized disclosure of such information by such Persons.

Section 14.3. Disclosure to Governmental Authorities. Confidential Information may be disclosed to a Regional Entity, NERC and any Governmental Authority requesting such Confidential Information, provided that unless the disclosure is the result of a normal compliance enforcement and monitoring activity, to the extent practicable and legally permissible, (i) prior to disclosure, the Recipient Party shall inform the Disclosing Party of the substance of any requirements so that the Disclosing Party may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of an injunction or other protective relief to prohibit such disclosure, and (ii) such disclosure is limited to the extent necessary to comply with such Governmental Authority.

Section 14.4. Remedies. Any violation of Article 14 of this Agreement may cause irreparable harm to the Disclosing Party. Accordingly, the Disclosing Party shall be entitled to seek injunctive relief enjoining and restraining any violation in addition to any other rights or remedies at equity or law. Such remedy shall not be the exclusive remedy for any breach of Article 14 of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

ARTICLE 15. MISCELLANEOUS

Section 15.1. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties. Except for any matters, which, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, and no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

Section 15.2. Governing Law THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY FEDERAL LAW WHERE APPLICABLE, AND, WHEN NOT IN CONFLICT WITH OR PREEMPTED BY FEDERAL LAW, SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES.

Section 15.3. [Intentionally Left Blank]

Section 15.4. Non-Waiver. No waiver by either Party of (a) the performance of any provision of this Agreement by the other Party, (b) any one or more Event of Default by the other Party in the performance of any of the provisions of this Agreement, or (c) any of such Party's rights under this Agreement shall be construed as a waiver of any other performance, Event of Default, or rights, whether of a like kind or different nature.

Section 15.5. Severability. Except as otherwise provided in this Agreement, any provision or article declared or rendered unlawful by a Governmental Authority with jurisdiction over the Parties, or deemed unlawful because of a change in Governmental Rule, shall not affect the validity, legality, and enforceability of the remaining provisions and articles of this Agreement.

Section 15.6. PUHCA Compliance.

(a) In the event that GEM reasonably determines that it may become subject to the provisions of PUHCA 2005, as a public utility company as a result of its rights or obligations under this Agreement, then GEM shall promptly notify Customer in writing, prior to initiating the terms of this Section, and GEM and Customer shall negotiate in good faith for a reasonable period of time to amend this Agreement to prevent, remedy such applicability of PUHCA 2005 so that GEM does not become or will no longer be subject to the provisions of PUHCA 2005 as a public utility company; provided, however, that GEM shall have the right to immediately or at any time thereafter take any action specifically required by the FERC with respect to the provision of Transmission System Operator Services so that GEM does not become or will no longer be subject to the provisions of PUHCA 2005 as a public utility company. If the Parties are unable to mutually agree upon appropriate amendments to this Agreement consistent with this Section 15.6(a), then either Party shall have the right to terminate this Agreement upon written notice to the other Party. Notwithstanding anything in this Agreement to the contrary, if GEM determines in good faith that GEM must, immediately or any time after providing notification to Customer pursuant to this Section 15.6(a), terminate this Agreement to avoid becoming or being subject to the provisions of PUHCA 2005 as a public utility company, then GEM shall have the right to terminate this Agreement upon written notice to Customer, and GEM shall not be required to negotiate with Customer as otherwise required under this Section 15.6(a); provided, however, that GEM shall, to the maximum extent practicable without becoming subject to the provisions of PUHCA 2005 as public utility company, provide Customer with as much advance prior written notice of termination as possible and use all commercially reasonable efforts to avoid terminating this Agreement pursuant to this Section 15.6(a).

(b) The Parties also recognize that every transmission facility interconnected to the North American transmission system must be part of and associated with a Transmission System Operator Services provider in order to ensure the secure and reliable operation of the North American transmission system and that, in the event GEM were to determine that termination of this Agreement is required under this Section 15.6, the Customer would need to transition to another Transmission

System Operator Services Provider. Accordingly, in the event that GEM terminates this Agreement pursuant to this Section 15.6 the Parties shall work to effectuate the transition of the Customer to another Transmission System Operator Services provider as expeditiously as possible and:

- (i) GEM shall, until such time as the Customer is transitioned to another Transmission System Operator Services provider:
 - (A) use commercially reasonable efforts to provide Transmission System Operator Services to Customer at the Monthly Services Fee or such other compensation as mutually agreed upon by the Parties, and
 - (B) if requested by Customer in writing, provide Transition Assistance in connection with the transition of the Customer to another Transmission System Operator Services provider.

Section 15.7. Headings. The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

Section 15.8. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any Person, other than the Parties to this Agreement, any right or remedy of any nature whatsoever.

Section 15.9. Relationship Of The Parties. The Parties are independent contractors, and shall not be deemed to be partners, joint venturers or agents of each other for any purpose, including for purposes of any taxes or for workers' compensation or liability purposes. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.

Section 15.10. Accommodation Of Financing Parties. To facilitate the procurement or maintenance of financing or refinancing by Customer or any purchaser of the output from a Customer Facility, GEM shall cooperate with Customer in good faith, at Customer's expense, in such financing or refinancing efforts and shall agree to reasonable modifications of this Agreement as may be requested to protect the interest of any Persons providing such financing; provided that such modifications do not materially adversely affect GEM's rights or duties under this Agreement.

Section 15.11. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

Section 15.12. Telephone Recordings. Except to the extent otherwise expressly provided in this Agreement, the Parties intend that telephonic communications between the Parties may be employed as a matter of normal course in the administration of this Agreement. Each Party agrees that it will not contest or assert any defense (except a defense that the tapes or other recording device are not authentic or have been actively tampered with) to the validity or enforceability of such telephonic communications under laws relating to whether certain agreements are to be in writing or signed by the Party to be thereby bound or the authority of any employee of such Party to make such communication. Each Party consents to the recording of its representatives' telephone conversations without any further notice. Nothing contained in this Section 15.12 shall be construed as in anyway

limiting a Party's ability to challenge the admissibility, authenticity or veracity of a telephone communication.

Section 15.13. Construction. This Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the Party who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable either to this Agreement or such other documents and instruments.

Section 15.14. Exhibits. The exhibits attached to this Agreement form an integral part of this Agreement, and any and all exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

Section 15.15. No Publicity. Neither Party shall refer to the other party directly or indirectly in any media release, public announcement, or public disclosure relating to this Agreement or its subject matter, in any promotional or marketing materials, lists, or business presentations, without prior written consent from the other Party for each such use.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed on its behalf by its duly authorized representative, effective as of the Effective Date. This Agreement shall not become effective as to either Party unless and until executed by both Parties

Gridforce Energy Management, LLC

By: _____

Its: _____

Rochelle Municipal Utilities

By: _____

Its: _____

EXHIBIT A

This Exhibit expressly identifies the requirements of the PJM TO Reliability Standards Matrix for which GEM is either solely or jointly responsible.

GEM Responsibilities

1. Receipt and logging of PJM All Call information received by GEM
2. Participation in PJM satellite phone testing activities
3. GEM System Operators will serve as the point of contact for communications to/and or from RMU and PJM/ComEd
4. GEM 24 x 7 staffed control center with appropriately certified system operators
5. GEM review and understanding of RMU emergency procedures, including manual load shedding protocols and restoration.
6. Receipt of information for the customer footprint via ICCP using PJMNet
7. Receipt of information for the neighboring TO via ICCP using PJMNet
8. EMS modeling (one-line diagrams for RMU and interconnected ComEd substation(s) if information is provided)
9. Control Center related EOP-004 reporting protocols
10. Monitor voltage against PJM default schedule and coordinate with RMU on LTC modifications if needed
11. ICCP Points List Exchange with PJM
12. Alarm Configuration as agreed upon with RMU
13. Logging of events of significance at RMU and communications with RMU/ComEd
14. Historical data for up to 10 points per transmission line as agreed upon with RMU
15. Outage Coordination with PJM and ComEd including eDart submissions

EXHIBIT B

**NOTICES AND INVOICE ADDRESSES;
TRANSMISSION SYSTEM OPERATOR SERVICES REPRESENTATIVES**

<p>GEM:</p> <p><u>NOTICES, CORRESPONDENCE & PAYMENTS:</u></p> <p>Gridforce Energy Management, LLC 1331 Lamar St., Suite 560 Houston, TX 77010</p> <p>Attn: J.T. Thompson, President Telephone No.: (713) 332-2901 E-mail: JT@Grid4ce.net</p> <p>with a copy to:</p> <p>Gridforce Energy Management, LLC Attn: Counsel, CJ Ingersoll 1331 Lamar St., Suite 560 Houston, TX 77010</p> <p>Telephone No.: (713) 332-2906 Email.: CJI@Grid4ce.net</p> <p><u>OPERATING REPRESENTATIVE:</u></p> <p><u>Denise Ayers</u> Gridforce Energy Management, LLC 1331 Lamar St., Suite 560 Houston, TX 77010</p> <p>Telephone No.: (713) 332-2902 E-mail: DeniseA@Grid4ce.net</p>	<p><u>INVOICES:</u></p> <p>Gridforce Energy Management, LLC 1331 Lamar St., Suite 560 Houston, TX 77010</p> <p>Attn: Denise Ayers, SVP Tel: 713-332-2902 E-mail: DeniseA@Grid4ce.net</p>
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TRANSMISSION SYSTEM OPERATOR SERVICES
COMMITTEE ALTERNATE:

David Jones

Gridforce Energy Management, LLC

1331 Lamar St., Suite 560

Houston, TX 77010

Telephone No.: (713) 332-2995

E-mail: davidj@Grid4ce.net

RMU

NOTICES, & CORRESPONDENCE:

Dan Westin
Business and Financial Analyst, RMU
333 Lincoln Highway
Rochelle, Il 61068
Tel: 815-561-2050
Fax: 815-562-5861
Email: dwestin @rmu.net

OPERATING REPRESENTATIVE:

TBD

TRANSMISSION SYSTEM OPERATOR SERVICES
COMMITTEE ALTERNATE:

INVOICES & PAYMENTS:

Dan Westin
Business and Financial Analyst, RMU
PO Box 456
333 Lincoln Highway
Rochelle, Il 61068
Tel: 815-561-2050
Fax: 815-562-5861
Email: dwestin @rmu.net

EXHIBIT C

FEE SCHEDULE

- (a) Charges and Payments. Customer shall be responsible for payments to GEM and GEM shall be responsible for payments to Customer as follows:
1. Certification Services Fee Customer shall pay GEM a Certification Services fee of twenty thousand dollars (\$20,000) at the start of the Contract Term. .
 2. Annual Facility Maintenance Charge. [Not Applicable.]
 3. Monthly Services Fee. Customer shall pay GEM a Monthly Transmission System Operator Services fee (the "Monthly Services Fee") in the amount twenty thousand dollars (\$20,000) per month commencing at the beginning of the month in which the Services Term begins and each month thereafter during which GEM provides Transmission System Operator Services to Customer.

The Monthly Services Fee shall be prorated for any partial month on the basis of the actual number of days in such month, and, as necessary, in accordance with Section 12.4 of this Agreement. The Monthly Services Fee and the Optional Services Fee(s), shall be adjusted annually according to the CPI Index as published by the Bureau of Labor Statistics.

The Monthly Services Fee shall be adjusted for any period in which GEM is providing Continuation Assistance after a Customer Event of Default or a Section 2.5(g) Termination notice by GEM as follows:

(i) For the month beginning with the date which is [1] month after a Customer Event of Default or a Section 2.5(g) Termination notice by GEM, the Monthly Fee will be increased by 100% of the monthly services fee.

(ii) For the month beginning with the date which is 2 months after a Customer Event of Default or a Section

2.5(g) Termination notice by GEM, the Monthly Fee will be increased by 150% of the monthly services fee.

(iii) For each month beginning with the date which is 3 months after a Customer Event of Default or a Section 2.5(g) Termination notice by GEM, the Monthly Fee will be increased by 200% of the monthly services fee.

The Monthly Services Fee shall be adjusted for any period in which GEM is providing Transition Assistance as set forth in Section 2.7

4. Termination Fees.

(i) Customer shall pay GEM a “Termination Fee” equal to forty eight thousand dollars (\$ 48,000) on a monthly basis in equal installments, beginning at the start of the month following the sending of the Termination Notice, the duration of which is based upon the number of months prior written notice of such election given by Customer to GEM.

(b) Additional Amounts Payable by Customer Under Agreement. The amounts payable by Customer and GEM under Exhibit C, Section (a) above are in addition and not in lieu of any other amounts payable by Customer and GEM under any other provisions of this Agreement.

1. Customer shall also be responsible for any costs of an extraordinary nature not contemplated as of the signing of this Agreement which have been mutually agreed to and are required for the performance of the Transmission System Operator Services, including but not limited to, any costs associated with membership dues, cyber security, Regional Entity and NERC unplanned compliance enforcement activities for the Transmission Owner Area (which costs may include but not be limited to gathering documents and operations protocols, responding to Regional Entity questionnaires, preparing for demonstrations of equipment operation and Emergency procedures, and obtaining historical data and electronic tags) or Transmission Owner fees or annual payments assessed by a third party.

2. Customer shall also pay GEM an hourly rate of \$200 per man-hour for the following services when initiated by RMU:

(i) Audit Support for GEM Responsibilities in Exhibit A

(ii) Development of procedures or programs that are not covered under GEM’s Responsibilities in Exhibit A.

(iii) Other activities mutually agreed upon by the Parties.