SERVICE AGREEMENT NO. 2764

SERVICE AGREEMENT NO. 2764   
 AMENDED AND RESTATED

ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT   
 AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.,   
 AND

NEW YORK STATE ELECTRIC & GAS CORPORATION   
 AND

ELP TICONDEROGA SOLAR LLC   
 AND

NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID   
 Dated as of December 11, 2023

(Barton Brook Substation and Republic Substation Upgrades)



SERVICE AGREEMENT NO. 2764

TABLE OF CONTENTS

Page Number

ARTICLE 1. DEFINITIONS 2

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION 6

Effective Date 6

Term of Agreement 6

Termination 6

Termination Costs 7

Survival 8

ARTICLE 3. EPC SERVICES 8

Performance of EPC Services 8

General Conditions Applicable to Interconnection Customer’s Performance of

the EPC Services 8

Equipment Procurement 10

Construction Commencement 10

Work Progress 10

Information Exchange 10

Ownership of Affected System Upgrade Facilities 10

Access Rights 11

Lands of Other Property Owners 11

Permits 11

Taxes 11

Tax Status; Non-Jurisdictional Entities 16

Modification 16

ARTICLE 4. TESTING AND INSPECTION 17

Initial Testing and Modifications 17

Notice of Testing 17

ARTICLE 5. COMMUNICATIONS 17

No Annexation 17

ARTICLE 6. PERFORMANCE OBLIGATIONS 18

EPC Services 18

ARTICLE 7. COST OBLIGATIONS 18

Cost Responsibilities 18

Provision and Application of Security 18

ARTICLE 8. INVOICE 18

General 18

Refund of Remaining Security/Case and Overpayment Amount 18

Payment 19

Disputes 19

ARTICLE 9. REGULATORY REQUIRMENTS AND GOVERNING LAW 19

Regulatory Requirements 19

Governing Law 19

ARTICLE 10. NOTICES 20

General 20

Billings and Payments 20

i



SERVICE AGREEMENT NO. 2764

Alternative Forms of Notice 20

ARTICLE 11. FORCE MAJEURE 20

General 20

ARTICLE 12. DEFAULT 21

General 21

Right to Terminate 21

ARTICLE 13. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE 21

Indemnity 21

No Consequential Damages 22

Insurance 23

ARTICLE 14. ASSIGNMENT 23

Assignment 23

ARTICLE 15. SEVERABILITY 24

ARTICLE 16. COMPARABILITY 24

ARTICLE 17. CONFIDENTIALITY 24

Confidentiality 24

Term 24

Confidential Information 24

Scope 25

Release of Confidential Information 25

Rights 25

No Warranties 25

Standard of Care 26

Order of Disclosure 26

Termination of Agreement 26

Remedies 26

Disclosure to FERC, its Staff, or a State 27

Required Notices Upon Requests or Demands for Confidential Information . 27

ARTICLE 18. INTERCONNECTION CUSTOMER AND AFFECTED SYSTEM OPERATOR

NOTICES OF ENVIRONMENTAL RELEASES 27

ARTICLE 19. INFORMATION REQUIRMENT 28

Information Acquisition 28

Information Submission by Interconnection Customer 28

Information Supplementation 28

ARTICLE 20. INFORMATION ACCESS AND AUDIT RIGHTS 28

Information Access 28

Reporting of Non-Force Majeure Events 28

Audit Rights 29

Audit Rights Periods 29

Audit Results 29

ARTICLE 21. SUBCONTRACTORS 29

General 29

Responsibility of Principal 29

No Limitation by Insurance 30

ARTICLE 22. DISPUTES 30

Submission 30

ii



SERVICE AGREEMENT NO. 2764

External Arbitration Procedures 30

Arbitration Decisions 30

Costs 31

Termination 31

ARTICLE 23. REPRESENTATIONS, WARRANTIES AND COVENANTS 31

General 31

ARTICLE 24. MISCELLANEOUS 32

Binding Effect 32

Conflicts 32

Rules of Interpretation 32

Compliance 33

Joint and Several Obligations 33

Entire Agreement 33

No Third Party Beneficiaries 33

Waiver 33

Headings 33

Multiple Counterparts 34

Amendment 34

Modification by the Parties 34

Reservation of Rights 34

No Partnership 34

Other Transmission Rights 34

Appendices

iii

SERVICE AGREEMENT NO. 2764

AMENDED AND RESTATED ENGINEERING, PROCUREMENT, AND   
 CONSTRUCTION AGREEMENT

THIS AMENDED AND RESTATED ENGINEERING, PROCUREMENT, AND

CONSTRUCTION AGREEMENT (“Agreement”) is made and entered into this 11th day of   
December, 2023, by and among: (i) ELP Ticonderoga Solar LLC a limited liability company   
organized and existing under the laws of the State of New York (“Interconnection Customer”);   
(ii) New York State Electric & Gas Corporation a corporation organized and existing under the   
laws of the State of New York (“Affected System Operator”); (iii) Niagara Mohawk Power   
Corporation d/b/a National Grid, a corporation organized and existing under the laws of the State   
of New York (“National Grid”); and (iv) the New York Independent System Operator, Inc., a   
not-for-profit corporation organized and existing under the laws of the State of New York   
(“NYISO”). The Interconnection Customer, Affected System Operator, or the NYISO each may   
be referred to as a “Party” or collectively referred to as the “Parties.” National Grid has executed   
this Agreement and is a party to this Agreement for the limited purpose of reviewing the   
protection changes that will be performed under this Agreement that impact National Grid’s 115   
kV system. National Grid shall not be subject to the terms and conditions in this Agreement,   
except for the requirements in Articles 3.2, 3.5, 3.6, 4.2, 10, and 19 of this Agreement.

RECITALS

WHEREAS, Interconnection Customer is developing a solar project, known as the Ticonderoga Solar project, that is in the NYISO interconnection queue with Queue No. 734 (“Small   
Generating Facility”), which project will interconnect to certain transmission facilities of Niagara Mohawk Power Corporation d/b/a National Grid (“Connecting Transmission Owner”) that are part of the New York State Transmission System operated by the NYISO;

WHEREAS, Interconnection Customer has entered into an interconnection agreement among the NYISO, Connecting Transmission Owner, and the Interconnection Customer concerning the interconnection of the Small Generating Facility;

WHEREAS, the interconnection of the Small Generating Facility will have certain impacts on the Affected System owned by the Affected System Operator;

WHEREAS, the Facility Study for the Small Generating Facility determined that certain System Upgrade Facilities are required to be constructed on the Affected System owned by the Affected System Operator to enable the Small Generating Facility to interconnect reliably to the New   
York State Transmission System in a manner that meets the NYISO Minimum Interconnection Standard (“Affected System Upgrade Facilities”);

WHEREAS, certain of the Affected System Upgrade Facilities concerning protection changes will impact National Grid’s 115 kV system, and National Grid will review such protection changes to ensure that they are consistent with National Grid’s specifications;

WHEREAS, Interconnection Customer and Affected System Operator desire to have

Interconnection Customer perform, and Interconnection Customer is willing to perform, the

1

SERVICE AGREEMENT NO. 2764

engineering, procurement, and construction services required to construct and place in service the Affected System Upgrade Facilities (“EPC Services”) in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, Interconnection Customer, Affected System Operator, and the NYISO have agreed   
to enter into this Agreement for the purpose of allocating the responsibilities for the performance   
and oversight of the EPC Services required to construct the Affected System Upgrade Facilities;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the

meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that   
are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT,   
Appendix 1 of Section 32.5 of Attachment Z of the ISO OATT, Section 30.1 of Attachment X of   
the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, or the body of this   
Agreement.

Affected System shall mean the electric system of the Affected System Operator that is affected by the Small Generating Facility.

Affected System Operator shall have the meaning set forth in the introductory paragraph.

Affected System Upgrade Facilities shall have the meaning set forth in the recitals and shall consist of the System Upgrade Facilities described in Appendix A of this Agreement.

Affiliate shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization,   
directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority, including but not limited to Environmental Law.

Applicable Reliability Councils shall mean the NERC, the NPCC and the NYSRC.

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable   
Reliability Councils, and the Transmission District in which the Affected System Upgrade   
Facilities will be constructed, as those requirements and guidelines are amended and modified   
and in effect from time to time; provided that no Party shall waive its right to challenge the   
applicability or validity of any requirement or guideline as applied to it in the context of this   
Agreement.

2

SERVICE AGREEMENT NO. 2764

Breach shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.

Breaching Party shall mean a Party that is in Breach of this Agreement.

Business Day shall mean Monday through Friday, excluding federal holidays.

Calendar Day shall mean any day including Saturday, Sunday or a federal holiday.

Completion Date shall mean the date on which the Interconnection Customer has completed the EPC Services, as set forth in Appendix A.

Confidential Information shall mean any information that is defined as confidential by Article

17 of this Agreement.

Connecting Transmission Owner shall have the meaning set forth in the recitals.

Default shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 12 of this Agreement.

Effective Date shall mean the date determined pursuant to Article 2.1 of this Agreement.

Environmental Law shall mean Applicable Laws and Regulations relating to pollution or protection of the environment or natural resources.

EPC Services shall have the meaning set forth in the recitals and shall consist of the services described in Appendix A.

Facilities Study shall mean a study conducted by NYISO or a third party consultant for the   
Interconnection Customer to determine a list of facilities (including Affected System Upgrade Facilities), the cost of those facilities, and the time required to interconnect the Small Generating Facility with the New York State Transmission System or with the Distribution System. The scope of the study is defined in Section 32.3.5 of Attachment Z of the ISO OATT.

Facilities Study Agreement shall mean the form of agreement contained in Appendix 6 of Attachment Z of the ISO OATT for conducting the Facilities Study.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq. (“FPA”).

FERC shall mean the Federal Energy Regulatory Commission (“Commission”) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war,   
insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or   
equipment, any order, regulation or restriction imposed by governmental, military or lawfully   
established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure   
event does not include acts of negligence or intentional wrongdoing by the Party claiming Force   
Majeure.

3

SERVICE AGREEMENT NO. 2764

Generating Facility shall mean Interconnection Customer’s device for the production and/or   
storage for later injection of electricity identified in the Interconnection Request, but shall not   
include the Interconnection Customer’s Attachment Facilities or Distribution Upgrades.

Generating Facility Capacity shall mean the net seasonal capacity of the Generating Facility and the aggregate net seasonal capacity of the Generating Facility where it includes multiple energy production devices.

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

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental   
subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection   
Customer, NYISO, Affected System Operator, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or

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

In-Service Date shall mean the date upon which the Affected System Upgrade Facilities are

energized consistent with the provisions of this Agreement, notice of which must be provided to the NYISO in the form of Appendix C.

Interconnection Customer shall have the meaning set forth in the introductory paragraph. IRS shall mean the Internal Revenue Service.

Milestones shall mean the milestones for the performance of the EPC Services, as set forth in Appendix A.

NERC shall mean the North American Electric Reliability Corporation or its successor organization.

4

SERVICE AGREEMENT NO. 2764

New York State Transmission System shall mean the entire New York State electric

transmission system, which includes (i) the Transmission Facilities Under ISO Operational Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining transmission facilities within the New York Control Area.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with this Agreement or its performance.

NPCC shall mean the Northeast Power Coordinating Council or its successor organization.

NYISO Minimum Interconnection Standard - The reliability standard that must be met by   
any generation facility or Class Year Transmission Project that is subject to NYISO’s Large   
Facility Interconnection Procedures in Attachment X to the ISO OATT or the NYISO’s Small   
Generator Interconnection Procedures in Attachment Z, that is proposing to connect to the New   
York State Transmission System or Distribution System, to obtain ERIS. The Minimum   
Interconnection Standard is designed to ensure reliable access by the proposed project to the   
New York State Transmission System or to the Distribution System. The Minimum   
Interconnection Standard does not impose any deliverability test or deliverability requirement on   
the proposed interconnection.

NYSRC shall mean the New York State Reliability Council or its successor organization. Party or Parties shall have the meaning set forth in the introductory paragraph.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a   
Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and   
are otherwise substantially equivalent to those a Party would use to protect its own interests.

Security shall mean a bond, irrevocable letter of credit, parent company guarantee or other form   
of security from an entity with an investment grade rating, executed for the benefit of the   
Affected System Operator, meeting the commercially reasonable requirements of the Affected   
System Operator with which it is required to be posted pursuant to Article 7.2, and consistent   
with the Uniform Commercial Code of the jurisdiction identified in Article 9.2.1 of this   
Agreement.

Services Tariff shall mean the NYISO Market Administration and Control Area Tariff, as filed   
with the Commission, and as amended or supplemented from time to time, or any successor tariff   
thereto.

Small Generating Facility - the Interconnection Customer’s facility, no larger than 20 MW for   
the production and/or storage for later injection of electricity identified in the Interconnection   
Request if proposing to interconnect to the New York State Transmission System or Distribution   
System, but shall not include (i) facilities proposing to simply receive power from the New York   
State Transmission System or the Distribution System; (ii) facilities proposing to interconnect to   
the New York State Transmission System or the Distribution System made solely for the purpose   
of generation with no wholesale sale for resale nor to net metering; (iii) facilities proposing to the   
New York State Transmission System or the Distribution System made solely for the purpose of   
net metering; (iv) facilities proposing to interconnect to LIPA’s distribution facilities; and (v) the

5



SERVICE AGREEMENT NO. 2764

Interconnection Customer’s Interconnection Facilities. A facility will be treated as a single Small Generating Facility if all units within the facility are behind a single facility meter, even if such units are different technology types. For purposes of this Agreement, the Small Generating   
Facility shall be the facility described in the recitals.

Small Generator Interconnection Agreement shall mean the interconnection agreement

among the NYISO, Connecting Transmission Owner, and Interconnection Customer concerning   
Interconnection Customer’s Small Generating Facility with OATT Services Agreement No.   
2666.

System Upgrade Facilities shall mean the least costly configuration of commercially available   
components of electrical equipment that can be used, consistent with Good Utility Practice and   
Applicable Reliability Requirements, to make the modifications to the existing transmission   
system that are required to maintain system reliability due to: (i) changes in the system,   
including such changes as load growth and changes in load pattern, to be addressed in the form   
of generic generation or transmission projects; and (ii) proposed interconnections. In the case of   
proposed interconnection projects, System Upgrade Facilities are the modifications or additions   
to the existing New York State Transmission System that are required for the proposed project to   
connect reliably to the system in a manner that meets the NYISO Minimum Interconnection   
Standard.

Tariff shall mean the NYISO Open Access Transmission Tariff (“OATT”), as filed with the   
Commission, and as amended or supplemented from time to time, or any successor tariff.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION   
 Effective Date.

This Agreement shall become effective upon the date of execution by the Parties, subject   
to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO   
and Affected System Operator shall promptly file this Agreement with FERC upon execution.   
Interconnection Customer shall reasonably cooperate with the NYISO and Affected System   
Operator with respect to the filing of this Agreement with FERC and provide any information   
reasonably requested by the NYISO and Affected System Operator needed for such filing.

Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect until the later of: (i) the Completion Date, and (ii) the date on which the final payment of all invoices issued under this Agreement have been made pursuant to Articles 8.1 and 8.3 and any remaining Security has been released or refunded pursuant to Article 8.2.

Termination.

Completion of Term of Agreement

This Agreement shall terminate upon the completion of the term of the Agreement pursuant to Article 2.2.

6



SERVICE AGREEMENT NO. 2764

Written Notice.

This Agreement may be terminated: (i) by all Parties agreeing in writing to terminate this Agreement, or (ii) by the NYISO and the Affected System Operator after giving the   
Interconnection Customer ten (10) Calendar Days advanced written notice after the Small   
Generator Interconnection Agreement for the Small Generating Facility has been terminated and such notice of termination has been accepted by FERC.

Default.

Any Party may terminate this Agreement to the extent permitted under Article 12 and Article 22.

Compliance.

Notwithstanding Articles 2.3.1, 2.3.2, and 2.3.3, no termination of this Agreement shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

Termination Costs.

If this Agreement is terminated pursuant to Article 2.3.2 above, the Interconnection

Customer shall be responsible for all costs that are the responsibility of the Interconnection

Customer under this Agreement that are incurred by the Interconnection Customer or the other   
Parties through the date the Parties agree in writing to terminate this Agreement or through the   
date of the Interconnection Customer’s receipt of a notice of termination. Such costs include any   
cancellation costs relating to orders or contracts. In the event of termination, all Parties shall use   
commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a   
consequence of termination. Upon termination of this Agreement, unless otherwise ordered or   
approved by FERC.

With respect to any portion of the EPC Services that have not yet been performed,   
the Interconnection Customer shall, to the extent possible and with the Affected System   
Operator’s authorization, cancel any pending orders of, or return, any materials or equipment for,   
or contracts for construction of, such facilities; provided that in the event the Affected System   
Operator elects not to authorize such cancellation, Affected System Operator shall assume all   
payment obligations with respect to such materials, equipment, and contracts, and   
Interconnection Customer shall deliver such material and equipment, and, if necessary, assign   
such contracts, to Affected System Operator as soon as practicable, at Affected System   
Operator’s expense.

Interconnection Customer may, at its option, retain any portion of such materials or equipment that Affected System Operator chooses not to accept delivery of, in which case Interconnection Customer shall be responsible for all costs associated with procuring such   
materials or equipment.

7



SERVICE AGREEMENT NO. 2764

With respect to any portion of the EPC Services already performed pursuant to the terms of this Agreement, Interconnection Customer shall be responsible for all costs   
associated with the removal, relocation or other disposition or retirement of such related   
materials, equipment, or facilities.

Survival.

This Agreement shall continue in effect after termination to the extent necessary to

provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Interconnection Customer and Affected System Operator each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

ARTICLE 3. EPC SERVICES

Performance of EPC Services.

Interconnection Customer shall perform the EPC Services, as set forth in Appendix A   
hereto, using Reasonable Efforts to complete the EPC Services by the Milestone dates set forth   
in Appendix A hereto. Interconnection Customer shall not undertake any action which is   
inconsistent with the Affected System Operator’s standard safety practices, its material and   
equipment specifications, its design criteria and construction procedures, its labor agreements,   
and Applicable Laws and Regulations. In the event Interconnection Customer reasonably   
expects that it will not be able to complete the EPC Services by the specified dates,   
Interconnection Customer shall promptly provide written notice to the Affected System Operator   
and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter. The   
NYISO has no responsibility, and shall have no liability, for the performance of any of the EPC   
Services under this Agreement.

General Conditions Applicable to Interconnection Customer’s Performance of the EPC Services.

Interconnection Customer’s performance of the EPC Services are subject to the following conditions:

Interconnection Customer shall engineer, procure equipment, and construct the Affected System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Affected System Operator and National Grid as set forth in Appendix A;

Interconnection Customer’s engineering, procurement and construction of the   
Affected System Upgrade Facilities shall comply with all requirements of law to which

8



SERVICE AGREEMENT NO. 2764

Affected System Operator and National Grid would be subject in the engineering, procurement or construction of the Affected System Upgrade Facilities;

Affected System Operator and National Grid shall review and approve the

engineering design, equipment acceptance tests, and the construction of the Affected System Upgrade Facilities;

Prior to commencement of construction, Interconnection Customer shall provide Affected System Operator, National Grid, and NYISO a schedule for construction of the   
Affected System Upgrade Facilities, and shall promptly respond to requests for information from Affected System Operator, National Grid, or NYISO;

At any time during construction, Affected System Operator shall have the right to   
gain unrestricted access to the Affected System Upgrade Facilities and to conduct inspections of   
the same;

At any time during construction, should any phase of the engineering, equipment   
procurement, or construction of the Affected System Upgrade Facilities not meet the standards   
and specifications provided by Affected System Operator and National Grid, Interconnection   
Customer shall be obligated to remedy deficiencies in that portion of the Affected System   
Upgrade Facilities;

Interconnection Customer shall indemnify Affected System Operator, National   
Grid, and NYISO for claims arising from the Interconnection Customer’s construction of   
Affected System Upgrade Facilities under procedures applicable to Article 13.1 Indemnity;

Interconnection Customer shall transfer control of Affected System Upgrade Facilities to Affected System Operator;

Unless the Interconnection Customer and Affected System Operator otherwise

agree, Interconnection Customer shall transfer ownership of Affected System Upgrade Facilities to Affected System Operator;

Affected System Operator and National Grid shall approve, and Affected System   
Operator shall accept for operation and maintenance, the Affected System Upgrade Facilities to   
the extent engineered, procured, and constructed in accordance with this Article 3.2; and

Interconnection Customer shall deliver to NYISO and Affected System Operator “as built” drawings, information, and any other documents that are reasonably required by NYISO or Affected System Operator to assure that the Affected System Upgrade Facilities are built to the standards and specifications required by Affected System Operator.

Interconnection Customer shall pay the Affected System Operator the actual

costs, without markup or profit, the Affected System Operator incurs to execute the

responsibilities enumerated to Affected System Operator under Article 3.2, commencing on the   
date on which Interconnection Customer has provided written notice to proceed, which amount

9



SERVICE AGREEMENT NO. 2764

is estimated at $961,207. Affected System Operator shall invoice Interconnection Customer such actual costs on a monthly basis pursuant to Article 8.

Equipment Procurement

Interconnection Customer shall commence design of the Affected System Upgrade Facilities and procure necessary equipment in accordance with the Milestones set forth in Appendix A.

Construction Commencement

Interconnection Customer shall commence construction of the Affected System Upgrade   
Facilities in accordance with the Milestones set forth in Appendix A, which shall provide for the   
commencement of construction as soon as practicable after the following additional conditions   
are satisfied:

Approval of the appropriate Governmental Authority has been obtained, to the extent required, for the construction of a discrete aspect of the Affected System Upgrade   
Facilities; and

Necessary real property rights and rights-of-way have been obtained, to the extent   
required, for the construction of a discrete aspect of the Affected System Upgrade Facilities.

Work Progress.

Interconnection Customer will keep the Affected System Operator, National Grid, and NYISO advised periodically as to the progress of its respective design, procurement and   
construction efforts. Affected System Operator, National Grid, or NYISO may, at any time, request a progress report from Interconnection Customer.

Information Exchange.

As soon as reasonably practicable after the Effective Date, Interconnection Customer,   
Affected System Operator, and National Grid shall exchange information, and provide NYISO   
the same information, regarding the design of the Affected System Upgrade Facilities and   
compatibility of the Affected System Upgrade Facilities with the New York State Transmission   
System, and shall work diligently and in good faith to make any necessary design changes.   
Interconnection Customer shall inform the Affected System Operator and NYISO of any   
termination of the Small Generator Interconnection Agreement for its Small Generating Facility   
within ten (10) days of the termination of the Small Generator Interconnection Agreement.

Ownership of Affected System Upgrade Facilities.

Affected System Operator shall own the Affected System Upgrade Facilities as described in Appendix A.

10



SERVICE AGREEMENT NO. 2764   
 Access Rights.

Upon reasonable notice and supervision by the Granting Party, and subject to any

required or necessary regulatory approvals, either the Affected System Operator or the

Interconnection Customer (“Granting Party”) shall furnish to the other of those two Parties

(“Access Party”) at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable   
agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain   
ingress and egress needed for the performance of the EPC Services, including ingress or egress to construct, repair, test (or witness testing), inspect, replace or remove the Affected System   
Upgrade Facilities. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established in advance, as may be changed   
from time to time, by the Granting Party and provided to the Access Party. The Access Party   
shall indemnify the Granting Party against all claims of injury or damage from third parties   
resulting from the exercise of the access rights provided for herein.

Lands of Other Property Owners.

If any part of the Affected System Upgrade Facilities will be installed on property owned by persons other than the Affected System Operator, the Affected System Operator shall at   
Interconnection Customer’s expense use efforts, similar in nature and extent to those that it   
typically undertakes for its own or affiliated generation, including use of its eminent domain   
authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to perform the EPC Services upon such property, including to construct, repair, test (or witness testing), inspect, replace or remove the Affected System Upgrade Facilities.

Permits.

NYISO, Interconnection Customer, and Affected System Operator shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the EPC Services in compliance with Applicable Laws and Regulations.

Taxes.

Interconnection Customer Payments Not Taxable.

The Interconnection Customer and Affected System Operator intend that all payments or   
property transfers made by Interconnection Customer to Affected System Operator for the   
installation of the Affected System Upgrade Facilities shall be non-taxable, either as   
contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any   
applicable state income tax laws and shall not be taxable as contributions in aid of construction   
or otherwise under the Internal Revenue Code and any applicable state income tax laws.

11



SERVICE AGREEMENT NO. 2764

Representations and Covenants.

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Interconnection

Customer represents and covenants that (i) ownership of the electricity generated at the Affected   
System Upgrade Facilities will pass to another party prior to the transmission of the electricity on   
the New York State Transmission System, (ii) for income tax purposes, the amount of any   
payments and the cost of any property transferred to the Affected System Operator for the   
Affected System Upgrade Facilities will be capitalized by Interconnection Customer as an   
intangible asset and recovered using the straight-line method over a useful life of twenty (20)   
years, and (iii) any portion of the Affected System Upgrade Facilities that is a “dual-use intertie,”   
within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis   
amount of electricity in the direction of the Small Generating Facility. For this purpose, “de   
minimis amount” means no more than 5 percent of the total power flows in both directions,   
calculated in accordance with the “5 percent test” set forth in IRS Notice 88-129. This is not   
intended to be an exclusive list of the relevant conditions that must be met to conform to IRS   
requirements for non-taxable treatment.

At Affected System Operator’s request, Interconnection Customer shall provide Affected System Operator with a report from an independent engineer confirming its representation in clause (iii), above. Interconnection Customer represents and covenants that the cost of the   
Affected System Upgrade Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Affected System Operator.

Notwithstanding Article 3.11.1, Interconnection Customer shall protect, indemnify and hold harmless Affected System Operator from the cost consequences of any current tax liability imposed against Affected System Operator as the result of payments or property transfers made by Interconnection Customer to Affected System Operator under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by   
Affected System Operator.

Affected System Operator shall not include a gross-up for the cost consequences of any   
current tax liability in the amounts it charges Interconnection Customer under this Agreement   
unless (i) Affected System Operator has determined, in good faith, that the payments or property   
transfers made by Interconnection Customer to Affected System Operator should be reported as   
income subject to taxation or (ii) any Governmental Authority directs Affected System Operator   
to report payments or property as income subject to taxation; provided, however, that Affected

System Operator may require Interconnection Customer to provide security, in a form reasonably acceptable to Affected System Operator (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 3.11.   
Interconnection Customer shall reimburse Affected System Operator for such costs on a fully   
grossed-up basis, in accordance with Article 3.11.4, within thirty (30) Calendar Days of   
receiving written notification from Affected System Operator of the amount due, including detail about how the amount was calculated.

12



SERVICE AGREEMENT NO. 2764

This indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by the Affected System Operator upon request of the IRS, to keep these years open for audit or   
adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 3.11.

Tax Gross-Up Amount.

Interconnection Customer’s liability for the cost consequences of any current tax liability   
under this Article 3.11 shall be calculated on a fully grossed-up basis. Except as may otherwise   
be agreed to by the parties, this means that Interconnection Customer will pay Affected System   
Operator, in addition to the amount paid for the Affected System Upgrade Facilities, an amount   
equal to (1) the current taxes imposed on Affected System Operator (“Current Taxes”) on the   
excess of (a) the gross income realized by Affected System Operator as a result of payments or   
property transfers made by Interconnection Customer to Affected System Operator under this   
Agreement (without regard to any payments under this Article 3.11) (the “Gross Income

Amount”) over (b) the present value of future tax deductions for depreciation that will be

available as a result of such payments or property transfers (the “Present Value Depreciation Amount”), plus (2) an additional amount sufficient to permit the Affected System Operator to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Affected System

Operator’s composite federal and state tax rates at the time the payments or property transfers are received and Affected System Operator will be treated as being subject to tax at the highest   
marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the Present Value   
Depreciation Amount shall be computed by discounting Affected System Operator’s anticipated tax depreciation deductions as a result of such payments or property transfers by Affected   
System Operator’s current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer’s liability to Affected System Operator pursuant to this Article 3.11.4 can be expressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value   
Depreciation Amount))/(1 - Current Tax Rate). Interconnection Customer’s estimated tax   
liability in the event taxes are imposed shall be stated in Appendix A.

Private Letter Ruling or Change or Clarification of Law.

At Interconnection Customer’s request and expense, Affected System Operator shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Affected System Operator under this   
Agreement are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer’s knowledge. Affected System Operator and Interconnection Customer shall   
cooperate in good faith with respect to the submission of such request.

13



SERVICE AGREEMENT NO. 2764

Affected System Operator shall keep Interconnection Customer fully informed of the

status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection   
Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Affected System Operator shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

Subsequent Taxable Events.

If, within 10 years from the date on which the relevant Affected System Upgrade

Facilities are placed in service, (i) Interconnection Customer Breaches the covenants contained   
in Article 3.11.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129,   
or (iii) this Agreement terminates and Affected System Operator retains ownership of Affected   
System Upgrade Facilities, Interconnection Customer shall pay a tax gross-up for the cost   
consequences of any current tax liability imposed on Affected System Operator, calculated using   
the methodology described in Article 3.11.4 and in accordance with IRS Notice 90-60.

Contests.

In the event any Governmental Authority determines that Affected System Operator’s   
receipt of payments or property constitutes income that is subject to taxation, Affected System   
Operator shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of   
receiving notification of such determination by a Governmental Authority. Upon the timely   
written request by Interconnection Customer and at Interconnection Customer’s sole expense,   
Affected System Operator may appeal, protest, seek abatement of, or otherwise oppose such   
determination. Upon Interconnection Customer’s written request and sole expense, Affected   
System Operator may file a claim for refund with respect to any taxes paid under this Article

3.11, whether or not it has received such a determination. Affected System Operator reserves the   
right to make all decisions with regard to the prosecution of such appeal, protest, abatement or   
other contest, including the selection of counsel and compromise or settlement of the claim, but   
Affected System Operator shall keep Interconnection Customer informed, shall consider in good   
faith suggestions from Interconnection Customer about the conduct of the contest, and shall   
reasonably permit Interconnection Customer or an Interconnection Customer representative to   
attend contest proceedings.

Interconnection Customer shall pay to Affected System Operator on a periodic basis, as   
invoiced by Affected System Operator, Affected System Operator’s documented reasonable   
costs of prosecuting such appeal, protest, abatement or other contest, including any costs   
associated with obtaining the opinion of independent tax counsel described in this Article 3.11.7.   
The Affected System Operator may abandon any contest if Interconnection Customer fails to   
provide payment to the Affected System Operator within thirty (30) Calendar Days of receiving   
such invoice. At any time during the contest, Affected System Operator may agree to a   
settlement either with Interconnection Customer’s consent or after obtaining written advice from   
nationally-recognized tax counsel, selected by Affected System Operator, but reasonably   
acceptable to Interconnection Customer that the proposed settlement represents a reasonable

14



SERVICE AGREEMENT NO. 2764

settlement given the hazards of litigation. Interconnection Customer’s obligation shall be based   
on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so   
much of the settlement that is supported by the written advice from nationally-recognized tax   
counsel selected under the terms of the preceding sentence. The settlement amount shall be   
calculated on a fully grossed-up basis to cover any related cost consequences of the current tax   
liability. The Affected System Operator may also settle any tax controversy without receiving   
the Interconnection Customer’s consent or any such written advice; however, any such   
settlement will relieve Interconnection Customer from any obligation to indemnify Affected   
System Operator for the tax at issue in the contest (unless the failure to obtain written advice is   
attributable to Interconnection Customer’s unreasonable refusal to the appointment of   
independent tax counsel).

Refund.

In the event that (a) a private letter ruling is issued to Affected System Operator which

holds that any amount paid or the value of any property transferred by Interconnection Customer   
to Affected System Operator under the terms of this Agreement is not subject to federal income   
taxation, (b) any legislative change or administrative announcement, notice, ruling or other   
determination makes it reasonably clear to Affected System Operator in good faith that any   
amount paid or the value of any property transferred by Interconnection Customer to Affected   
System Operator under the terms of this Agreement is not taxable to Affected System Operator,

(c) any abatement, appeal, protest, or other contest results in a determination that any payments   
or transfers made by Interconnection Customer to Affected System Operator are not subject to   
federal income tax, or (d) if Affected System Operator receives a refund from any taxing   
authority for any overpayment of tax attributable to any payment or property transfer made by   
Interconnection Customer to Affected System Operator pursuant to this Agreement, Affected   
System Operator shall promptly refund to Interconnection Customer the following:

(i) Any payment made by Interconnection Customer under this Article 3.11 for taxes   
that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) Interest on any amounts paid by Interconnection Customer to Affected System   
Operator for such taxes which Affected System Operator did not submit to the taxing authority,   
calculated in accordance with the methodology set forth in FERC’s regulations at 18 C.F.R.   
§35.19a(a)(2)(iii) from the date payment was made by Interconnection Customer to the date   
Affected System Operator refunds such payment to Interconnection Customer, and

(iii) With respect to any such taxes paid by Affected System Operator any refund or   
credit Affected System Operator receives or to which it may be entitled from any Governmental   
Authority, interest (or that portion thereof attributable to the payment described in clause (i),   
above) owed to the Affected System Operator for such overpayment of taxes (including any   
reduction in interest otherwise payable by Affected System Operator to any Governmental   
Authority resulting from an offset or credit); provided, however, that Affected System Operator   
will remit such amount promptly to Interconnection Customer only after and to the extent that   
Affected System Operator has received a tax refund, credit or offset from any Governmental

15



SERVICE AGREEMENT NO. 2764

Authority for any applicable overpayment of income tax related to the Affected System Operator’s Attachment Facilities.

The intent of this provision is to leave both the Interconnection Customer and Affected System Operator, to the extent practicable, in the event that no taxes are due with respect to any payment for Affected System Upgrade Facilities hereunder, in the same position they would have been in had no such tax payments been made.

Taxes Other Than Income Taxes.

Upon the timely request by Interconnection Customer, and at Interconnection Customer’s   
sole expense, Affected System Operator shall appeal, protest, seek abatement of, or otherwise   
contest any tax (other than federal or state income tax) asserted or assessed against Affected   
System Operator for which Interconnection Customer may be required to reimburse Affected   
System Operator under the terms of this Agreement. Interconnection Customer shall pay to   
Affected System Operator on a periodic basis, as invoiced by Affected System Operator,   
Affected System Operator’s documented reasonable costs of prosecuting such appeal, protest,   
abatement, or other contest. Interconnection Customer and Affected System Operator shall   
cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a   
prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by   
Interconnection Customer to Affected System Operator for such taxes until they are assessed by   
a final, non-appealable order by any court or agency of competent jurisdiction. In the event that   
a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer   
will be responsible for all taxes, interest and penalties, other than penalties attributable to any   
delay caused by Affected System Operator.

Tax Status; Non-Jurisdictional Entities.   
 Tax Status.

Each Party shall cooperate with the other Parties to maintain the other Parties’ tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including the status of NYISO, or the status of the Interconnection Customer with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

Modification.

General

If, prior to the In-Service Date, the Affected System Operator proposes to modify the   
Affected System Upgrade Facilities, the Affected System Operator must provide to the NYISO   
at least ninety (90) Calendar Days in advance of the commencement of the work, or such shorter   
period upon which the Parties may agree, sufficient information for the NYISO to evaluate the   
impact of the proposed modification on the reliable interconnection of Interconnection   
Customer’s Small Generating Facility to the New York State Transmission System. The   
NYISO’s agreement to the proposed modification shall not be unreasonably withheld,   
conditioned, or delayed if the proposed modification is reasonably related to the interconnection

16



SERVICE AGREEMENT NO. 2764

of the Small Generating Facility and will enable Interconnection Customer’s Small Generating Facility to reliably interconnect to the New York State Transmission System and will not impose additional costs to the Interconnection Customer greater than the estimated cost for the Affect System Upgrade Facilities identified in the Facility Study.

Standards.

Any additions, modifications, or replacements made to a Party’s facilities shall be

designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

Modification Costs.

Interconnection Customer shall not be assigned the costs of any additions, modifications, or replacements that Affected System Operator makes to the Affected System Upgrade Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Affected System Upgrade Facilities or the New York State Transmission System, or to   
provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO OATT.

ARTICLE 4. TESTING AND INSPECTION   
 Initial Testing and Modifications.

In accordance with the Milestones set forth in Appendix A, Affected System Operator shall test the Affected System Upgrade Facilities to ensure their safe and reliable operation.   
Similar testing may be required after initial operation. Interconnection Customer shall make any modifications to the facilities that are found to be necessary as a result of such testing.   
Interconnection Customer shall bear the cost of all such testing and modifications

Notice of Testing.

Interconnection Customer shall notify the Affected System Operator, National Grid, and NYISO in advance of its performance of tests of the Affected System Upgrade Facilities.

ARTICLE 5. COMMUNICATIONS

No Annexation.

Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or   
attachment to real property, unless otherwise mutually agreed by the Party providing such   
equipment and the Party receiving such equipment.

17



SERVICE AGREEMENT NO. 2764

ARTICLE 6. PERFORMANCE OBLIGATIONS   
 EPC Services.

Interconnection Customer shall perform the EPC Services described in Appendix A.

ARTICLE 7. COST OBLIGATIONS

Cost Responsibilities

Interconnection Customer will be responsible for all costs associated with the EPC Services.

Provision and Application of Security

Interconnection Customer shall provide Affected System Operator with Security in the

amount set forth in Appendix A. If Interconnection Customer: (i) does not pay an invoice issued   
by Affected System Operator pursuant to Article 8.1 within the timeframe set forth in Article 8.3   
or (ii) does not pay any disputed amount into an independent escrow account pursuant to Article

8.4, Affected System Operator may draw upon Interconnection Customer’s Security to recover such payment. Interconnection Customer’s Security shall be reduced on a dollar-for-dollar basis for Interconnection Customer’s payments made to the Affected System Operator associated with the performance of the EPC Services.

ARTICLE 8. INVOICE

General.

To the extent that any amounts are due to the Interconnection Customer or Affected

System Operator under this Agreement, the owed Party, as applicable, shall submit to the other Party, on a monthly basis, an invoice of amounts due for the preceding month. Each invoice   
shall state the month to which the invoice applies and fully describe the services and equipment provided. Interconnection Customer and Affected System Operator may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts one Party owes to the other Party under this Agreement, including interest   
payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party. Within six months after the Completion Date, Interconnection Customer or   
Affected System Operator, as applicable, shall provide a final invoice to the other Party of any remaining amounts due associated with the EPC Services.

Refund of Remaining Security/Case and Overpayment Amount

The Affected System Operator shall release or refund to Interconnection Customer any   
remaining portions of its Security or cash payment provided by Interconnection Customer   
pursuant to Article 7.2 and any amount Interconnection Customer has overpaid as described in   
Section 8.4 within 30 days of the later of: (i) the Interconnection Customer’s payment of any   
final invoice to the Affected System Operator, and (ii) Interconnection Customer’s completion of   
the EPC Services.

18



SERVICE AGREEMENT NO. 2764   
 Payment.

Invoices shall be rendered to the paying Party at the address specified in Appendix B

hereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of   
receipt. All payments shall be made in immediately available funds payable to the other Party,   
or by wire transfer to a bank named and account designated by the invoicing Party. Payment of   
invoices will not constitute a waiver of any rights or claims the paying Party may have under this   
Agreement.

Disputes.

In the event of a billing dispute between Parties, the Party owed money shall continue to   
perform under this Agreement as long as the other Party: (i) continues to make all payments not   
in dispute; and (ii) pays to the Party owed money or into an independent escrow account the   
portion of the invoice in dispute, pending resolution of such dispute. If the Party that owes   
money fails to meet these two requirements for continuation of service, then the Party owed   
money may provide notice to the other Party of a Default pursuant to Article 12. Within thirty

(30) Calendar Days after the resolution of the dispute, the Party that owes money to the other

Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC’s Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 9. REGULATORY REQUIRMENTS AND GOVERNING LAW   
 Regulatory Requirements

Each Party’s obligations under this Agreement shall be subject to its receipt of any

required approval or certificate from one or more Governmental Authorities in the form and

substance satisfactory to the applying Party, or the Party making any required filings with, or

providing notice to, such Governmental Authorities, and the expiration of any time period

associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require a Party to take any action that   
could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

Governing Law.

The validity, interpretation and performance of this Agreement and each of its

provisions shall be governed by the laws of the state of New York, without regard to its conflicts of law principles.

This Agreement is subject to all Applicable Laws and Regulations.

Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

19



SERVICE AGREEMENT NO. 2764 ARTICLE 10. NOTICES

General.

Unless otherwise provided in this Agreement, any notice, demand or request required or   
permitted to be given by a Party to the other Parties and any instrument required or permitted to   
be tendered or delivered by a Party in writing to the other Parties shall be effective when   
delivered and may be so given, tendered or delivered, by recognized national courier, or by   
depositing the same with the United States Postal Service with postage prepaid, for delivery by   
certified or registered mail, addressed to the Party, or personally delivered to the Party, at the   
address set out in Appendix B hereto. For purposes of this Article 10, National Grid is a “Party.”

A Party may change the notice information in this Agreement by giving five (5) Business Days written notice prior to the effective date of the change.

Billings and Payments.

Billings and payments shall be sent to the addresses set out in Appendix B hereto.

Alternative Forms of Notice.

Any notice or request required or permitted to be given by a Party to the other Parties and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix B hereto.

ARTICLE 11. FORCE MAJEURE

General

Economic hardship is not considered a Force Majeure event. A Party shall not be

responsible or liable, or deemed, in Default with respect to any obligation hereunder, other than   
the obligation to pay money when due, to the extent the Party is prevented from fulfilling such   
obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an   
obligation to pay money when due) by reason of Force Majeure shall give notice and the full   
particulars of such Force Majeure to the other Parties in writing or by telephone as soon as   
reasonably possible after the occurrence of the cause relied upon. Telephone notices given   
pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall   
specifically state full particulars of the Force Majeure, the time and date when the Force Majeure   
occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall   
exercise due diligence to remove such disability with reasonable dispatch, but shall not be   
required to accede or agree to any provision not satisfactory to it in order to settle and terminate a   
strike or other labor disturbance.

20



SERVICE AGREEMENT NO. 2764 ARTICLE 12. DEFAULT

General.

No Breach shall exist where such failure to discharge an obligation (other than the

payment of money) is the result of Force Majeure as defined in this Agreement or the result of an   
act or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give written   
notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days   
from receipt of the Breach notice within which to cure such Breach; provided however, if such   
Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall   
commence such cure within thirty (30) Calendar Days after notice and continuously and   
diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach   
notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

Right to Terminate.

If a Breach is not cured as provided in this Article 12, or if a Breach is not capable of

being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

ARTICLE 13. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE   
 Indemnity.

Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and save

harmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and all

damages, losses, claims, including claims and actions relating to injury to or death of any person   
or damage to property, the alleged violation of any Environmental Law, or the release or   
threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses,   
court costs, attorney fees, and all other obligations by or to third parties (any and all of these a   
“Loss”), arising out of or resulting from (i) the Indemnified Party’s performance of its   
obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the   
Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the   
gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the   
Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any   
Hazardous Substance.

Indemnified Party.

If a Party is entitled to indemnification under this Article 13 as a result of a claim by a   
third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed   
under Article 13.1.3, to assume the defense of such claim, such Indemnified Party may at the

21



SERVICE AGREEMENT NO. 2764

expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

Indemnifying Party.

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party

harmless under this Article 13, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

Indemnity Procedures.

Promptly after receipt by an Indemnified Party of any claim or notice of the

commencement of any action or administrative or legal proceeding or investigation as to which   
the indemnity provided for in Article 13.1 may apply, the Indemnified Party shall notify the   
Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a   
Party’s indemnification obligation unless such failure or delay is materially prejudicial to the   
Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defense   
thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the   
Indemnified Party. If the defendants in any such action include one or more Indemnified Parties   
and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be   
legal defenses available to it and/or other Indemnified Parties which are different from or   
additional to those available to the Indemnifying Party, the Indemnified Party shall have the right   
to select separate counsel to assert such legal defenses and to otherwise participate in the defense   
of such action on its own behalf. In such instances, the Indemnifying Party shall only be   
required to pay the fees and expenses of one additional attorney to represent an Indemnified   
Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action,   
suit or proceeding, the defense of which has been assumed by the Indemnifying Party.   
Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and   
control the defense of any such action, suit or proceedings if and to the extent that, in the opinion   
of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential   
imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of   
interest between the Indemnified Party and the Indemnifying Party, in such event the   
Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not   
settle or consent to the entry of any judgment in any action, suit or proceeding without the   
consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or   
delayed.

No Consequential Damages.

Other than the indemnity obligations set forth in Article 13.1, in no event shall any Party   
be liable under any provision of this Agreement for any losses, damages, costs or expenses for   
any special, indirect, incidental, consequential, or punitive damages, including but not limited to   
loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary

22



SERVICE AGREEMENT NO. 2764

equipment or services, whether based in whole or in part in contract, in tort, including

negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

Insurance.

13.3.1 The Interconnection Customer shall, at its own expense, maintain in force general   
liability insurance without any exclusion for liabilities related to its performance of the EPC   
Services under this Agreement. The insurance coverage shall be as follows: The   
Interconnection Customer shall, at its own expense, maintain in force throughout the   
period of this Agreement, the following minimum insurance coverage, with insurers authorized   
to do business in the State of New York. Commercial General Liability Insurance including, but   
not limited to, bodily injury, property damage, products/completed operations, contractual and   
personal injury liability with a combined single limit of $2 million per occurrence, $5 million   
annual aggregate. The Interconnection Customer shall obtain additional insurance only if   
necessary as a function of performing the EPC Services. Such insurance shall be obtained from   
an insurance provider authorized to do business in New York State where the EPC Services   
under this Agreement are being performed. Certification that such insurance is in effect shall be   
provided upon request of the Affected System Operator, except that the Interconnection   
Customer shall show proof of insurance to the Affected System Operator no later than ten   
Business Days prior to the construction start date set forth in the milestones table in Appendix A   
to this Agreement. An Interconnection Customer of sufficient creditworthiness may propose to   
self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

13.3.2 The NYISO and Affected System Operator agree to maintain general liability   
insurance or self-insurance consistent with the existing commercial practice. Such   
insurance or self-insurance shall not exclude the liabilities undertaken pursuant to this   
Agreement.

13.3.3 The Parties further agree to notify one another whenever an accident or incident

occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

ARTICLE 14. ASSIGNMENT

Assignment.

This Agreement may be assigned by a Party only with the written consent of the other

Parties; provided that a Party may assign this Agreement without the consent of the other Parties   
to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal   
authority and operational ability to satisfy the obligations of the assigning Party under this   
Agreement; provided further that a Party may assign this Agreement without the consent of the   
other Parties in connection with the sale, merger, restructuring, or transfer of a substantial   
portion or all of its assets, so long as the assignee in such a transaction directly assumes in   
writing all rights, duties and obligations arising under this Agreement; and provided further that   
the Interconnection Customer shall have the right to assign this Agreement, without the consent

23



SERVICE AGREEMENT NO. 2764

of the NYISO or Affected System Operator, for collateral security purposes to aid in providing   
financing for the Small Generating Facility, provided that the Interconnection Customer will   
promptly notify the NYISO and Affected System Operator of any such assignment. Any   
financing arrangement entered into by the Interconnection Customer pursuant to this Article will   
provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s   
assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee   
will notify the NYISO and Affected System Operator of the date and particulars of any such   
exercise of assignment right(s) and will provide the NYISO and Affected System Operator with   
proof that it meets the requirements of Articles 7.2 and 13.3. Any attempted assignment that   
violates this Article is void and ineffective. Any assignment under this Agreement shall not   
relieve a Party of its obligations, nor shall a Party’s obligations be enlarged, in whole or in part,   
by reason thereof. Where required, consent to assignment will not be unreasonably withheld,   
conditioned or delayed.

ARTICLE 15. SEVERABILITY

If any provision in this Agreement is finally determined to be invalid, void or

unenforceable by any court or other Governmental Authority having jurisdiction, such

determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

ARTICLE 16. COMPARABILITY

The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

ARTICLE 17. CONFIDENTIALITY   
 Confidentiality.

Certain information exchanged by the Parties during the term of this Agreement shall   
constitute confidential information (“Confidential Information”) and shall be subject to this   
Article 17.

If requested by a Party receiving information, the Party supplying the information shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

Term.

During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 17, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

Confidential Information.

24



SERVICE AGREEMENT NO. 2764

The following shall constitute Confidential Information: (1) any non-public information that is treated as confidential by the disclosing Party and which the disclosing Party identifies as Confidential Information in writing at the time, or promptly after the time, of disclosure; or (2) information designated as Confidential Information by the NYISO Code of Conduct contained in Attachment F to the ISO OATT.

Scope.

Confidential Information shall not include information that the receiving Party can

demonstrate: (1) is generally available to the public other than as a result of a disclosure by the   
receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential   
basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party   
without restriction by a third party, who, to the knowledge of the receiving Party after due   
inquiry, was under no obligation to the disclosing Party to keep such information confidential;

(4) was independently developed by the receiving Party without reference to Confidential

Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act   
or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance   
with Article 17.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental   
Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any   
legal proceeding establishing rights and obligations under this Agreement. Information   
designated as Confidential Information will no longer be deemed confidential if the Party that   
designated the information as confidential notifies the other Party that it no longer is   
confidential.

Release of Confidential Information.

No Party shall release or disclose Confidential Information to any other person, except to   
its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees,   
consultants, or to parties who may be considering providing financing to or equity participation   
with Interconnection Customer, or to potential purchasers or assignees of a Party, on a need-to-  
know basis in connection with this Agreement, unless such person has first been advised of the   
confidentiality provisions of this Article 17 and has agreed to comply with such provisions.

Notwithstanding the foregoing, a Party providing Confidential Information to any person shall   
remain primarily responsible for any release of Confidential Information in contravention of this   
Article 17.

Rights.

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

No Warranties.

By providing Confidential Information, no Party makes any warranties or representations   
as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party   
obligates itself to provide any particular information or Confidential Information to the other

25



SERVICE AGREEMENT NO. 2764

Parties nor to enter into any further agreements or proceed with any other relationship or joint   
venture.

Standard of Care.

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under this Agreement or its regulatory requirements, including the ISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information it receives in accordance with the requirements of Attachment F to the ISO OATT.

Order of Disclosure.

If a court or a Government Authority or entity with the right, power, and apparent

authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories,

requests for production of documents, administrative order, or otherwise, to disclose Confidential   
Information, that Party shall provide the other Parties with prompt notice of such request(s) or   
requirement(s) so that the other Parties may seek an appropriate protective order or waive   
compliance with the terms of this Agreement. Notwithstanding the absence of a protective order   
or waiver, the Party may disclose such Confidential Information which, in the opinion of its   
counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to   
obtain reliable assurance that confidential treatment will be accorded any Confidential   
Information so furnished.

Termination of Agreement.

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

Remedies.

The Parties agree that monetary damages would be inadequate to compensate a Party for   
another Party’s Breach of its obligations under this Article 17. Each Party accordingly agrees   
that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the   
first Party Breaches or threatens to Breach its obligations under this Article 17, which equitable   
relief shall be granted without bond or proof of damages, and the receiving Party shall not plead   
in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an   
exclusive remedy for the Breach of this Article 17, but shall be in addition to all other remedies   
available at law or in equity. The Parties further acknowledge and agree that the covenants

contained herein are necessary for the protection of legitimate business interests and are

reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential   
or punitive damages of any nature or kind resulting from or arising in connection with this   
Article 17.

26



SERVICE AGREEMENT NO. 2764

Disclosure to FERC, its Staff, or a State.

Notwithstanding anything in this Article 17 to the contrary, and pursuant to 18 C.F.R.   
section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests   
information from one of the Parties that is otherwise required to be maintained in confidence   
pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information   
to FERC or its staff, within the time provided for in the request for information. In providing the   
information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112,   
request that the information be treated as confidential and non-public by FERC and its staff and   
that the information be withheld from public disclosure. Parties are prohibited from notifying   
the other Parties to this Agreement prior to the release of the Confidential Information to the   
Commission or its staff. The Party shall notify the other Parties to the Agreement when it is   
notified by FERC or its staff that a request to release Confidential Information has been received   
by FERC, at which time the Parties may respond before such information would be made public,   
pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a   
confidential investigation shall be treated in a similar manner if consistent with the applicable   
state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise,   
resulting from that Party divulging Confidential Information pursuant to a FERC or state   
regulatory body request under this paragraph.

Required Notices Upon Requests or Demands for Confidential Information

Except as otherwise expressly provided herein, no Party shall disclose Confidential

Information to any person not employed or retained by the Party possessing the Confidential

Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the   
disclosing Party to be required to be disclosed in connection with a dispute between or among   
the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the   
other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its   
obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any   
disclosures of a Party’s Confidential Information under this subparagraph, or if any third party or   
Governmental Authority makes any request or demand for any of the information described in   
this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and   
agrees to assert confidentiality and cooperate with the other Party in seeking to protect the   
Confidential Information from public disclosure by confidentiality agreement, protective order or   
other reasonable measures.

ARTICLE 18. INTERCONNECTION CUSTOMER AND AFFECTED SYSTEM   
 OPERATOR NOTICES OF ENVIRONMENTAL RELEASES

Interconnection Customer and Affected System Operator shall each notify the other

Parties, first orally and then in writing, of the release of any Hazardous Substances, any asbestos   
or lead abatement activities, or any type of remediation activities related to the Affected System   
Upgrade Facilities, each of which may reasonably be expected to affect the other Parties. The   
notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a   
good faith effort to provide the notice no later than twenty-four hours after such Party becomes   
aware of the occurrence; and (ii) promptly furnish to the other Parties copies of any publicly

available reports filed with any Governmental Authorities addressing such events.

27



SERVICE AGREEMENT NO. 2764

ARTICLE 19. INFORMATION REQUIRMENT   
 Information Acquisition

Interconnection Customer and Affected System Operator shall each submit specific   
information regarding the electrical characteristics of its facilities to the other Parties and to   
National Grid as described below any in accordance with Applicable Reliability Standards.

Information Submission by Interconnection Customer

The initial information submission by Interconnection Customer shall occur no later than the date(s) specified in the Milestones set forth in Appendix A to this Agreement. On a monthly basis Interconnection Customer shall provide the Affected System Operator, National Grid, and NYISO a status report on the construction and installation of the Affected System Upgrade   
Facilities, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

Information Supplementation

Interconnection Customer shall supplement their information submissions described above in this Article 19 with any and all “as built” information or “as tested” performance   
information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist.

ARTICLE 20. INFORMATION ACCESS AND AUDIT RIGHTS   
 Information Access.

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting

Party”) information that is in the possession of the Disclosing Party and is necessary in order for   
the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the   
Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and   
responsibilities under this Agreement. The Parties shall not use such information for purposes   
other than those set forth in this Article 20.1 of this Agreement and to enforce their rights under   
this Agreement.

Reporting of Non-Force Majeure Events.

Each Party (the “Notifying Party”) shall notify the other Parties when the Notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide   
necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information   
provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.

28



SERVICE AGREEMENT NO. 2764   
 Audit Rights.

Subject to the requirements of confidentiality under Article 17 of this Agreement, each   
Party shall have the right, during normal business hours, and upon prior reasonable notice to   
another Party, to audit at its own expense the other Party’s accounts and records pertaining to the other Party’s performance or satisfaction of its obligations under this Agreement. Such audit   
rights shall include audits of the other Party’s costs, and calculation of invoiced amounts. Any   
audit authorized by this Article shall be performed at the offices where such accounts and   
records are maintained and shall be limited to those portions of such accounts and records that   
relate to the Party’s performance and satisfaction of obligations under this Agreement. Each   
Party shall keep such accounts and records for a period equivalent to the audit rights periods   
described in Article 20.4 of this Agreement.

Audit Rights Periods.

Audit Rights Period for Construction-Related Accounts and Records.

Accounts and records related to the design, engineering, procurement, and construction of   
the Affected System Upgrade Facilities shall be subject to audit for a period of twenty-four   
months following the issuance of a final invoice in accordance with Article 8.1 of this   
Agreement.

Audit Rights Period for All Other Accounts and Records.

Accounts and records related to a Party’s performance or satisfaction of its obligations   
under this Agreement other than those described in Article 20.4.1 of this Agreement shall be   
subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights   
period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to   
such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit   
rights period shall be twenty-four months after the event for which the audit is sought.

Audit Results.

If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with   
those records from the audit which support such determination.

ARTICLE 21. SUBCONTRACTORS

General.

Nothing in this Agreement shall prevent a Party from utilizing the services of any

subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

Responsibility of Principal.

29



SERVICE AGREEMENT NO. 2764

The creation of any subcontract relationship shall not relieve the hiring Party of any of its   
obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties   
for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been   
made; provided, however, that in no event shall the NYISO or Affected System Operator be   
liable for the actions or inactions of an Interconnection Customer or its subcontractors with   
respect to obligations of the Interconnection Customer under Article 3 of this Agreement. Any   
applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding   
upon, and shall be construed as having application to, any subcontractor of such Party.

No Limitation by Insurance.

The obligations under this Article 21 will not be limited in any way by any limitation of subcontractor’s insurance.

ARTICLE 22. DISPUTES   
 Submission.

In the event any Party has a dispute, or asserts a claim, that arises out of or in connection   
with this Agreement or its performance (a “Dispute”), such Party shall provide the other Parties   
with written notice of the Dispute (“Notice of Dispute”). Such Dispute shall be referred to a   
designated senior representative of each Party for resolution on an informal basis as promptly as   
practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated   
representatives are unable to resolve the Dispute through unassisted or assisted negotiations   
within thirty (30) Calendar Days of the other Parties’ receipt of the Notice of Dispute, such   
Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in   
accordance with the arbitration procedures set forth below. In the event the Parties do not agree   
to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it   
may have in equity or at law consistent with the terms of this Agreement.

External Arbitration Procedures.

Any arbitration initiated under this Agreement shall be conducted before a single neutral   
arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten

(10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one   
arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall   
be knowledgeable in electric utility matters, including electric transmission and bulk power   
issues, and shall not have any current or past substantial business or financial relationships with   
any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the   
Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the   
arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration   
Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; provided,   
however, in the event of a conflict between the Arbitration Rules and the terms of this Article 22,   
the terms of this Article 22 shall prevail.

Arbitration Decisions.

30



SERVICE AGREEMENT NO. 2764

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within

ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision   
and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the   
provisions of this Agreement and shall have no power to modify or change any provision of this   
Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the   
Parties, and judgment on the award may be entered in any court having jurisdiction. The   
decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the   
arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act   
or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be   
filed with FERC if it affects jurisdictional rates, terms and conditions of service, or Affected   
System Upgrade Facilities.

Costs.

Each Party shall be responsible for its own costs incurred during the arbitration process   
and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit   
on the three member panel; or (2) one-third the cost of the single arbitrator jointly chosen by the   
Parties.

Termination.

Notwithstanding the provisions of this Article 22, any Party may terminate this

Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

ARTICLE 23. REPRESENTATIONS, WARRANTIES AND COVENANTS   
 General.

Each Party makes the following representations, warranties and covenants:

Good Standing.

Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the State of New York; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

Authority.

Such Party has the right, power and authority to enter into this Agreement, to become a   
Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and   
binding obligation of such Party, enforceable against such Party in accordance with its terms,   
except as the enforceability thereof may be limited by applicable bankruptcy, insolvency,

31



SERVICE AGREEMENT NO. 2764

reorganization or other similar laws affecting creditors’ rights generally and by general equitable   
principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

No Conflict.

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

Consent and Approval.

Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental   
Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

ARTICLE 24. MISCELLANEOUS   
 Binding Effect.

This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

Conflicts.

If there is a discrepancy or conflict between or among the terms and conditions of this cover agreement and the Appendices hereto, the terms and conditions of this cover agreement shall be given precedence over the Appendices, except as otherwise expressly agreed to in   
writing by the Parties.

Rules of Interpretation.

This Agreement, unless a clear contrary intention appears, shall be construed and

interpreted as follows: (1) the singular number includes the plural number and vice versa; (2)

reference to any person includes such person’s successors and assigns but, in the case of a Party,   
only if such successors and assigns are permitted by this Agreement, and reference to a person in   
a particular capacity excludes such person in any other capacity or individually; (3) reference to   
any agreement (including this Agreement), document, instrument or tariff means such   
agreement, document, instrument, or tariff as amended or modified and in effect from time to   
time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to   
any Applicable Laws and Regulations means such Applicable Laws and Regulations as   
amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time,   
including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated   
otherwise, reference to any Article, Section or Appendix means such Article of this Agreement   
or such Appendix to this Agreement, as the case may be; (6) “hereunder”, “hereof’, “herein”,

32



SERVICE AGREEMENT NO. 2764

“hereto” and words of similar import shall be deemed references to this Agreement as a whole   
and not to any particular Article or other provision hereof or thereof; (7) “including” (and with   
correlative meaning “include”) means including without limiting the generality of any   
description preceding such term; and (8) relative to the determination of any period of time,   
“from” means “from and including”, “to” means “to but excluding” and “through” means   
“through and including”.

Compliance.

Each Party shall perform its obligations under this Agreement in accordance with

Applicable Laws and Regulations, Applicable Reliability Standards, the ISO OATT and Good Utility Practice. To the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this Agreement for its compliance therewith. When any Party becomes aware of such a situation, it shall notify the other Parties promptly so that the Parties can discuss the amendment to this Agreement that is appropriate under the circumstances.

Joint and Several Obligations.

Except as otherwise stated herein, the obligations of NYISO, Interconnection Customer, and Affected System Operator are several, and are neither joint nor joint and several.

Entire Agreement.

This Agreement, including all Appendices and Schedules attached hereto, constitutes the   
entire agreement between the Parties with reference to the subject matter hereof, and supersedes   
all prior and contemporaneous understandings or agreements, oral or written, between the Parties   
with respect to the subject matter of this Agreement. There are no other agreements,   
representations, warranties, or covenants which constitute any part of the consideration for, or   
any condition to, either Party’s compliance with its obligations under this Agreement.

No Third Party Beneficiaries.

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and permitted their assigns.

Waiver.

The failure of a Party to this Agreement to insist, on any occasion, upon strict

performance of any provision of this Agreement will not be considered a waiver of any

obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either   
Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a   
waiver with respect to any other failure to comply with any other obligation, right, duty of this   
Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

Headings.

33



SERVICE AGREEMENT NO. 2764

The descriptive headings of the various Articles of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

Multiple Counterparts.

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

Amendment.

The Parties may by mutual agreement amend this Agreement, by a written instrument duly executed by all of the Parties.

Modification by the Parties.

The Parties may by mutual agreement amend the Appendices to this Agreement, by a   
written instrument duly executed by all three of the Parties. Such an amendment shall become   
effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

Reservation of Rights.

NYISO and the Affected System Operator shall have the right to make unilateral filings   
with FERC to modify this Agreement with respect to any rates, terms and conditions, charges,   
classifications of service, rule or regulation under section 205 or any other applicable provision   
of the Federal Power Act and FERC’s rules and regulations thereunder, and Interconnection   
Customer shall have the right to make a unilateral filing with FERC to modify this Agreement   
pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC’s   
rules and regulations thereunder; provided that each Party shall have the right to protest any such   
filing by another Party and to participate fully in any proceeding before FERC in which such   
modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties   
or of FERC under sections 205 or 206 of the Federal Power Act and FERC’s rules and   
regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided   
herein.

No Partnership.

This Agreement shall not be interpreted or construed to create an association, joint

venture, agency relationship, or partnership among the Parties or to impose any partnership

obligation or partnership liability upon any Party. No Party shall have any right, power or

authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

Other Transmission Rights.

Notwithstanding any other provision of this Agreement, nothing herein shall be construed   
as relinquishing or foreclosing any rights, including but not limited to firm transmission rights,   
capacity rights, or transmission congestion rights that the Interconnection Customer shall be

34

SERVICE AGREEMENT NO. 2764

entitled to, now or in the future under any other agreement or tariff as a result of or otherwise   
associated with, the transmission capacity, if any, created by the Affected System Upgrade   
Facilities.

35

SERVICE AGREEMENT NO. 2764

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals,   
each of which shall constitute and be an original effective Agreement between the Parties.

New York Independent System Operator,

Inc.

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

Date:

New York State Electric & Gas Corporation

By:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:

Date:

ELP Ticonderoga Solar LLC

By:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:

Date:

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

Niagara Mohawk Power Corporation d/b/a National Grid

By:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Title:

Date:

36

SERVICE AGREEMENT NO. 2764

APPENDICES

Appendix A

EPC Services

Appendix B

Addresses for Delivery of Notices and Billings

Appendix C

In-Service Date

SERVICE AGREEMENT NO. 2764

APPENDIX A

EPC SERVICES

1. Affected System Upgrade Facilities

The Affected System Upgrade Facilities consist of the upgrades to electrical equipment   
and facilities at Affected System Operator’s Barton Brook Substation and Republic Substation   
described in this Section 1 of Appendix A. Interconnection Customer shall perform this work in   
accordance with the applicable requirements of Affected System Operator, and shall comply   
with Avangrid/Iberdrola Standards, to the extent not inconsistent with the terms of this   
Agreement or the NYISO OATT. In addition to these requirements, Interconnection Customer   
will also comply with National Grid’s requirements (i.e., the applicable Electric System Bulletins   
(“ESBs”)), to the extent not inconsistent with the terms of this Agreement or the   
OATT. National Grid must review all engineering drawings, and the constructing,   
commissioning and testing must be coordinated with National Grid in accordance with the   
ESBs. In addition, outages must be coordinated between the Affected System Operator and   
National Grid. The Affected System Operator will be responsible for project management and   
construction oversight with respect to the Affected System Upgrade Facilities. The Affected   
System Operator will provide field construction management to oversee, but not direct, the   
construction work and testing and commissioning. Vendors for equipment and services will be   
per Affected System Operator’s approved vendor list. Affected System Operator will furnish the   
list to the Developer.

A. Barton Brook Substation

Interconnection Customer shall remove the following equipment and facilities at Affected System Operator’s Barton Brook Substation:

• one (1) 3-Ø, 115 kV, 1200A, fused disconnect switch;

• one (1) 3-Ø, 115 kV, fused disconnect switch stand;

• two (2) 115 kV, fused disconnect switch stand foundations; and

• electromagnetic relay removals:

o one (1) IAC (time-overcurrent) relay; and

o one (1) IAV (time-delay voltage) relay.

Interconnection Customer shall install the following equipment and facilities at Affected System Operator’s Barton Brook Substation:

• one (1) 3-Ø, 115 kV, motor operating mechanism for vertical break disconnect switch;

• one (1) 115 kV, 2000A, gas circuit breaker with four (4) sets of multi-ratio current   
 transformers (“CTs”);

• three (3) 96 kV (76 maximum continuously operating voltage (“MCOV”)), station class   
 surge arresters;

• three (3) surge arrester mounting adapters;

• one (1) 115 kV, 2000A gas circuit breaker foundation;

A-1

SERVICE AGREEMENT NO. 2764

• motor operated disconnect switch control cabinet:

o one (1) SEL-2411;

• transformer/breaker relaying panels:

o two (2) relay panels;

o one (1) SEL-451;

o one (1) SEL-487E;

o miscellaneous control and test switches;

• existing remote terminal unit (“RTU”) cabinet:

o one (1) remote terminal unit (“RTU”) status board;

o one (1) RTU control board; and

• communication installations:

o one (1) telephone communication board;   
 ▪ Telco T1 circuit; and

o existing communication cabinet   
 ▪ one (1) JungleMUX.

B. Republic Substation

Interconnection Customer shall install the following equipment and facilities at Affected System Operator’s Barton Brook Substation:

• existing RTU cabinet:

o one (1) RTU status board;

o one (1) RTU control board;

• communication installations:

o one (1) telephone communication board;   
 ▪ Telco T1 circuit; and

o existing communication cabinet   
 ▪ one (1) JungleMUX.

2. Interconnection Customer’s Cost Responsibilities

Affected System Upgrade Facilities Estimate

Barton Brook Substation $698,934

Republic Substation $96,755

Total $795,689

A-2

SERVICE AGREEMENT NO. 2764

3. Milestones

Item Milestone Days Following Responsible Party

Issuance of Notice   
to Proceed by   
Interconnection   
 Customer

1. Engineering Start 30 Interconnection Customer1

2. Engineering End 150 Interconnection Customer

3. Procurement Start 90 Interconnection Customer2

4. Procurement End 450 Interconnection Customer

5. Construction Start 450 Interconnection Customer3

6 Construction End / In-Service 510 Interconnection Customer

Date

7. Completion Date 570 Interconnection Customer;

Affected System Operator

4. Security

In accordance with Article 7.2 of this Agreement, Interconnection Customer will, on or before the date on which Interconnection Customer issues a written notice to proceed to Affected System Operator, provide Affected System Operator with Security in the amount set forth in Article 3.2.12 in the form of cash, a letter of credit, surety bond or parental guarantee.   
Interconnection Customer will have the right to replace any Security previously provided by Interconnection Customer with another form of Security satisfying the definition thereof, and upon delivery by Interconnection Customer of such replacement Security any Security   
previously held by Affected System Operator shall be released.

1 All engineering performed by Interconnection Customer with review by Affected System Operator.

Assume three levels of design (30%, 60%, 100%/Issued For Procurement). Assume 10 business days of review by Affected System Operator per submission.

2 All procurement to be performed by Interconnection Customer based on approved designs. Assume no

required oversight by Affected System Operator during procurement. Equipment and material procurement requires Affected System Operator review and approval, including vendor drawings.

3 All construction to be performed by Interconnection Customer with project management staff on site.   
Affected System Operator will provide a field construction manager to be on site for the full duration of   
construction, Testing & Commissioning, energization and post energization activities. Also, assume periodic   
inspections by Affected System Operator as work progresses, including construction manager, engineering, safety and environmental quality.

A-3

SERVICE AGREEMENT NO. 2764

APPENDIX B

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

Rensselaer, NY 12144   
Phone: (518) 356-6000

Email: interconnectionsupport@nyiso.com

New York State Electric & Gas Corporation Attn: Transmission Services

18 Link Drive, PO Box 5224   
Binghamton NY 13902-5224   
Phone: (607) 237-5533

Email: NYISOInterconnectionAdmin@avangrid.com

ELP Ticonderoga Solar LLC

Attn: Jamie Fordyce

c/o VC Renewables LLC

14 Arrow Street, Suite 22

Cambridge, MA 02138

Phone: (415) 948-4288

Email: jbf@vcrenewables.com

With copy to:

VC Renewables LLC

110 Edison Place, Suite 300 Newark, NJ 07102

VC Renewables LLC

2925 Richmond Ave, Suite 1100 Houston, TX 77098

Attn: General Counsel

Email: legalhouston@vitol.com

Niagara Mohawk Power Corporation d/b/a National Grid Attn: Kevin Reardon

Director, Commercial Services 170 Data Drive

Waltham, MA 02451

B-1

SERVICE AGREEMENT NO. 2764

Billings and Payments:

New York State Electric & Gas Corporation   
Attn: Mgr. Billing & Risk Management

18 Link Drive, PO Box 5224

Binghamton NY 13902-5224   
Phone: (585) 484-6883   
Email: tlfoster@nyseg.com

ELP Ticonderoga Solar LLC Attn: Jamie Fordyce

c/o VC Renewables LLC

14 Arrow Street, Suite 22

Cambridge, MA 02138

Phone: (415) 948-4288

Email: jbf@vcrenewables.com

B-2

SERVICE AGREEMENT NO. 2764

APPENDIX C

IN-SERVICE DATE

[Date]

New York Independent System Operator, Inc. Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

Affected System Operator’s Address

Niagara Mohawk Power Corporation Attn: Kevin Reardon

Director, Commercial Services 170 Data Drive

Waltham, MA 02451

Re: Ticonderoga Solar Project Affected System Upgrade Facilities

Dear :

On [Date] [Interconnection Customer] completed the Affected System Upgrade Facilities.

This letter confirms that [describe Affected System Upgrade Facilities] have commenced service, effective as of [Date plus one day].

Thank you.

[Signature]

[Interconnection Customer’s Representatives]

C-1