**SERVICE AGREEMENT NO. 2642**

**SERVICE AGREEMENT NO. 2642**

**AMENDED AND RESTATED**

**ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

**AMONG THE**

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

**AND**

**NEW YORK STATE ELECTRIC & GAS CORPORATION**

**AND**

**CASSADAGA WIND LLC**

**AND**

**ARKWRIGHT SUMMIT WIND FARM LLC**

**AND**

**BALL HILL WIND ENERGY, LLC**

**Dated as of October 25, 2024**

**(Thermal Transfer Limit SUFs)**

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**SERVICE AGREEMENT NO. 2642**

**AMENDED AND RETATED ENGINEERING, PROCUREMENT, AND**

**CONSTRUCTION AGREEMENT**

**THIS AMENDED AND RESTATED ENGINEERING, PROCUREMENT, AND**

**CONSTRUCTION AGREEMENT** (“Agreement”) is made and entered into this 25th day of

October, 2024, by and among: (i) Cassadaga Wind LLC, a limited liability company organized

and existing under the laws of the State of Delaware (“Cassadaga”), Arkwright Summit Wind

Farm LLC, a limited liability company organized and existing under the laws of the State of

Delaware (“Arkwright”), and Ball Hill Wind Energy, LLC, a limited liability company organized

and existing under the laws of the State of Delaware (“Ball Hill”) (each individually a

“Developer” and collectively the “Developers”); (ii) New York State Electric & Gas

Corporation, a corporation organized and existing under the laws of the State of New York

(“Affected Transmission Owner”); and (iii) 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”). Each individual Developer, the Affected Transmission Owner, or the NYISO each

may be referred to individually as a “Party” or collectively referred to as the “Parties.”

**RECITALS**

**WHEREAS,** Arkwright, owner of a project previously in the NYISO interconnection queue

(Queue No. 421), has developed and constructed a Large Generating Facility that is

interconnected to transmission facilities that are part of the New York State Transmission

System operated by the NYISO;

**WHEREAS,** Cassadaga, owner of a project in the NYISO interconnection queue (Queue No.

387), is developing and constructing a Large Generating Facility that will interconnect to

transmission facilities that are part of the New York State Transmission System operated by the

NYISO;

**WHEREAS,** Ball Hill, owner of a project in the NYISO interconnection queue (Queue No.

505), is developing and constructing a Large Generating Facility that will interconnect to

transmission facilities that are part of the New York State Transmission System operated by the

NYISO;

**WHEREAS,** each Developer’s project participated in the Interconnection Facilities Study for

Class Year 2017, which study identified certain System Upgrade Facilities that are required on

the Affected System owned by the Affected Transmission Owner to mitigate transfer degradation

between the NYISO and PJM Interconnection, L.L.C. (“PJM”) caused by Developers’ projects

(“Common System Upgrade Facilities”);

**WHEREAS,** each Developer accepted, and provided Security to the Affected Transmission

Owner pursuant to Section 25.8.2 of Attachment S to the OATT to cover, its portion of the

estimated cost of the Common System Upgrade Facilities designated in the Interconnection

Facilities Study for Class Year 2017 (“Developer Common SUF Cost Cap”);

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**WHEREAS,** Developers and Affected Transmission Owner desire to have the Affected

Transmission Owner perform, and Affected Transmission Owner is willing to perform, the

engineering, procurement, and construction services required to construct the Common System

Upgrade Facilities (“EPC Services”) in accordance with the terms and conditions hereinafter set

forth; and

**WHEREAS**, Developers, Affected Transmission Owner, and the NYISO have agreed to enter

into this Agreement consistent with Section 30.12.1 of Attachment X of the OATT for the

purpose of allocating the responsibilities for the performance and oversight of the EPC Services

required to construct the Common 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.](#br6) Terms used in this Agreement with initial capitalization that

are not defined in this Article [1](#br6) shall have the meanings specified in Section 1 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, the body of the LFIP or the body of this Agreement.

**Affected System** shall mean the electric system of the Affected Transmission Owner, which is

part of the New York State Transmission System that is affected by the proposed interconnection

of the Large Generating Facilities.

**Affected Transmission Owner** shall have the meaning set forth in the introductory paragraph.

**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 Common 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.

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**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.

**Common System Upgrade Facilities** shall have the meaning set forth in the recitals and shall

consist of the materials, equipment, and work described in Appendix A.

**Commercial Operation** shall mean the status of a Large Generating Facility that has

commenced generating electricity for sale, excluding electricity generated during Trial

Operation.

**Completion Date** shall mean the date on which the Affected Transmission Owner has completed

the EPC Services, as set forth in Appendix A.

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

Article [16](#br28) of this Agreement.

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in

accordance with Article [11](#br23) of this Agreement.

**Developer** shall have the meaning set forth in the introductory paragraph.

**Developer Common SUF Cost Cap** shall mean a Developer’s portion of the estimated cost of

the Common System Upgrade Facilities as designated in the Interconnection Facilities Study for

Class Year 2017 and described in Appendix A.

**Distribution System** shall mean the facilities and equipment used to distribute electricity that

are subject to FERC jurisdiction, and are subject to the NYISO’s Large Facility Interconnection

Procedures in Attachment X to the ISO OATT or Small Generator Interconnection Procedures in

Attachment Z to the ISO OATT under FERC Order Nos. 2003 and/or 2006. The term

Distribution System shall not include LIPA’s distribution facilities.

**Effective Date** shall mean the date determined under [Article 2.1.](#br10)

**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.

**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.

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**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.

**Generating Facility** shall mean a Developer’s device for the production and/or storage for later

injection of electricity identified in the Interconnection Request, but shall not include the

Developer’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 Developers, NYISO,

Affected Transmission Owner, 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 Common System Upgrade Facilities are

energized consistent with the provisions of this Agreement and available to provide

Transmission Service under the NYISO Tariff, notice of which must be provided to the NYISO

in the form of Appendix C.

**Interconnection Facilities Study** shall mean a study conducted by NYISO or a third party

consultant for the Developer to determine a list of facilities (including Connecting Transmission

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Owner’s Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System

Deliverability Upgrades as identified in the Interconnection System Reliability Impact Study),

the cost of those facilities, and the time required to interconnect the Large Generating Facility

with the New York State Transmission System or with the Distribution System. The scope of

the study is defined in Section 30.8 of the Standard Large Facility Interconnection Procedures.

**Interconnection Facilities Study Agreement (“Class Year Study Agreement”)** shall mean the

form of agreement contained in Appendix 2 of the Standard Large Facility Interconnection

Procedures for conducting the Interconnection Facilities Study.

**Interconnection Request** shall mean a Developer’s request, in the form of Appendix 1 to the

Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to

interconnect a new Large Generating Facility to the New York State Transmission System or to

the Distribution System, or to materially increase the capacity of, or make a material

modification to the operating characteristics of, an existing Large Generating Facility that is

interconnected with the New York State Transmission System or with the Distribution System.

**Invoice Share** shall mean an individual Developer’s percentage share of the Developers’ total

cost responsibility for Affected Transmission Owner’s performance of the EPC Services subject

to the Developer Common SUF Cost Cap, as set forth in Appendix A.

**IRS** shall mean the Internal Revenue Service.

**Large Generating Facility** shall mean a Generating Facility having a Generating Facility

Capacity of more than 20 MW.

**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.

**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

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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 mean NYISO, the Affected Transmission Owner, each individual

Developer, or any combination of the above.

**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.

**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.

**Standard Large Facility Interconnection Procedures (“Large Facility Interconnection**

**Procedures” or “LFIP”)** shall mean the interconnection procedures applicable to an

Interconnection Request pertaining to a Large Generating Facility that are included in

Attachment X of the ISO OATT.

**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.

**Trial Operation** shall mean the period during which Developer is engaged in on-site test

operations and commissioning of the Large Generating Facility prior to Commercial Operation.

**ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION**

**2.1**

**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 Transmission Owner shall promptly file this Agreement with FERC upon

execution. Each Developer shall reasonably cooperate with the NYISO and Affected

Transmission Owner with respect to the filing of this Agreement with FERC and provide any

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information reasonably requested by the NYISO and Affected Transmission Owner needed for

such filing.

**2.2**

**Term of Agreement.**

Subject to the provisions of Article [2.3, thi](#br11)s 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 has been made pursuant to Article[s 7.1](#br21) [and 7.3](#br22) and any remaining

Security has been released or refunded pursuant to Article [7.2.](#br21)

**2.3**

**Termination.**

**Completion of Term of Agreement**

This Agreement shall terminate upon the completion of the term of the Agreement

pursuant to Artic[le 2.2.](#br11)

**Written Notice.**

This Agreement may be terminated by all Parties agreeing in writing to terminate this

Agreement.

**Default.**

A Party or Parties may terminate this Agreement as and to the extent permitted under

Article [11](#br23) and Artic[le 21.](#br34)

**Compliance.**

Notwiths[tanding Articles 2.3.1, 2.3.2, and 2.3.3,](#br11) 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.

**2.4**

**Termination Costs.**

If this Agreement is terminated pursuant to Artic[le 2.3.2](#br11) above, the Developers shall be

responsible for all costs that are the responsibility of the Developers under this Agreement that

are incurred by the Developers or other Parties through the date the Parties agree in writing to

terminate this Agreement. Such costs shall be allocated among the Developers using the same

methodology as set forth in Articl[e 6](#br20) regarding each Developer’s responsibility for the costs of

the EPC Services, subject to the Developer Common SUF Cost Cap. Such costs include any

cancellation costs related 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:

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With respect to any portion of the EPC Services that have not yet been performed,

the Affected Transmission Owner shall, to the extent possible and with each Developer’s

authorization, cancel any pending orders of, or return, any materials or equipment for, or cancel

any contracts associated with the performance of the EPC Services; *provided, however*, that in

the event a Developer elects not to authorize such cancellation, that Developer shall assume all

payment obligations, including reimbursing the other Developers for any payments they have

already made, with respect to such materials, equipment, and contracts, and the Affected

Transmission Owner shall deliver such material and equipment, and, if necessary, assign such

contracts, to the Developer as soon as practicable, at the Developer’s expense. To the extent that

Developers have already paid Affected Transmission Owner for any or all such costs of materials

or equipment not taken by a Developer, Affected Transmission Owner shall promptly refund

such amounts to Developers, less any costs, including penalties incurred by the Affected

Transmission Owner to cancel any pending orders of or return such materials, equipment, or

contracts.

The Affected Transmission Owner may, at its option, retain any portion of such

materials or equipment that the Developer chooses not to accept delivery of, in which case that

Affected Transmission Owner shall be responsible for all costs associated with procuring such

materials or equipment.

With respect to any portion of the EPC Services already performed pursuant to

the terms of this Agreement, Developers shall be responsible for all costs associated with the

removal, relocation or other disposition or retirement of such related materials, equipment, or

facilities subject to each Developer’s Invoice Share identified in Appendix A. Such costs shall

be allocated among the Developers using the same methodology as set forth in Artic[le 6](#br20)

regarding each Developer’s responsibility for the costs of the EPC Services.

**2.5**

**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; and to permit the determination and enforcement of

liability and indemnification obligations arising from acts or events that occurred while this

Agreement was in effect.

**ARTICLE 3. EPC SERVICES**

**3.1**

**Provision of EPC Services.**

Affected Transmission Owner 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. The Affected Transmission Owner shall not be required to undertake any

action which is inconsistent with its 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 the Affected Transmission Owner reasonably

expects that it will not be able to complete the EPC Services by the specified dates, the Affected

Transmission Owner shall promptly provide written notice to the other Parties, and shall

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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 Service under

this Agreement.

**3.2**

**Equipment Procurement.**

Affected Transmission Owner shall commence design of the Common System Upgrade

Facilities and procure necessary equipment in accordance with the Milestones set forth in

Appendix A.

**3.3**

**Construction Commencement.**

Affected Transmission Owner shall commence construction of the Common 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 Common 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 Common System Upgrade Facilities.

**3.4**

**3.5**

**Reserved.**

**Work Progress.**

Affected Transmission Owner will keep the other Parties advised periodically as to the

progress of its design, procurement and construction efforts. Any Party may, at any time, request

a progress report from the Affected Transmission Owner.

**3.6**

**Information Exchange.**

As soon as reasonably practicable after the Effective Date, Affected Transmission Owner

shall provide the NYISO with information regarding the design of the Common System Upgrade

Facilities and the compatibility of the Common System Upgrade Facilities with the New York

State Transmission System and shall work diligently and in good faith to make any necessary

design changes.

**3.7**

**Ownership of Common System Upgrade Facilities.**

Affected Transmission Owner shall own the Common System Upgrade Facilities as

described in Appendix A hereto.

**3.8 Lands of Other Property Owners.**

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If any part of the Common System Upgrade Facilities is to be installed on property

owned by persons other than the Developers or the Affected Transmission Owner, the Affected

Transmission Owner shall at Developers’ expense use efforts, similar in nature and extent to

those that it typically undertakes for itself, 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 Common

System Upgrade Facilities.

**3.9**

**Permits.**

NYISO, the Affected Transmission Owner and the Developers 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.

**3.10**

**Taxes.**

**Developer Payments Not Taxable.**

Affected Transmission Owner intend that all payments or property transfers made by a

Developer to Affected Transmission Owner for the installation of the Common 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.

**Representations and Covenants.**

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

represents and covenants that (i) ownership of the electricity generated at its Large Generating

Facility 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 Affected Transmission Owner for the Common System

Upgrade Facilities will be capitalized by the Developer 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

Common 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 Developer’s Large 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 Transmission Owner’s request, a Developer shall provide the Affected

Transmission Owner with a report from an independent engineer confirming its representation in

clause (iii), above. Affected Transmission Owner represents and covenants that the cost of the

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Common System Upgrade Facilities paid for by Developers will have no net effect on the base

upon which its rates are determined.

**Indemnification for the Cost Consequences of Current Tax Liability Imposed**

**Upon the Affected Transmission Owner.**

Notwithstanding Article [3.10.1, each D](#br14)eveloper shall protect, indemnify and hold

harmless Affected Transmission Owner from the cost consequences of any current tax liability

imposed against the Affected Transmission Owner as the result of payments or property transfers

made by the Developer to the Affected Transmission Owner under this Agreement, as well as

any interest and penalties, other than interest and penalties attributable to any delay caused by the

Affected Transmission Owner.

Affected Transmission Owner shall not include a gross-up for the cost consequences of

any current tax liability in the amounts it charges a Developer under this Agreement unless (i)

the Affected Transmission Owner has determined, in good faith, that the payments or property

transfers made by the Developer to the Affected Transmission Owner should be reported as

income subject to taxation or (ii) any Governmental Authority directs the Affected Transmission

Owner to report payments or property as income subject to taxation; provided, however, that the

Affected Transmission Owner may require the Developer to provide security, in a form

reasonably acceptable to the Affected Transmission Owner (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 Artic[le 3.10. The Developer sha](#br14)ll reimburse the Affected Transmission Owner for such

costs on a fully grossed-up basis, in accordance with Art[icle 3.10.4, within thi](#br15)rty (30) Calendar

Days of receiving written notification from the Affected Transmission Owner of the amount due,

including detail about how the amount was calculated.

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 Transmission Owner 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 3.10.](#br14)

**Tax Gross-Up Amount.**

A Developer’s liability for the cost consequences of any current tax liability under this

Artic[le 3.10](#br14) shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed

to by the parties, this means that a Developer will pay Affected Transmission Owner, in addition

to the amount paid for the Common System Upgrade Facilities, an amount equal to (1) the

current taxes imposed on the Affected Transmission Owner (“Current Taxes”) on the excess of

(a) the gross income realized by the Affected Transmission Owner as a result of payments or

property transfers made by the Developer to the Affected Transmission Owner under this

Agreement (without regard to any payments under this Arti[cle 3.10) (](#br14)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 Transmission Owner

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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 the Affected

Transmission Owner’s composite federal and state tax rates at the time the payments or property

transfers are received and the Affected Transmission Owner will be treated as being subject to

tax at the highest marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the

Present Value Depreciation Amount shall be computed by discounting the Affected

Transmission Owner’s anticipated tax depreciation deductions as a result of such payments or

property transfers by the Affected Transmission Owner’s current weighted average cost of

capital. Thus, the formula for calculating a Developer’s liability to Affected Transmission

Owner pursuant to this Artic[le 3.10.4](#br15) can be expressed as follows: (Current Tax Rate x (Gross

Income Amount - Present Value Depreciation Amount))/(1 - Current Tax Rate). A Developer’s

estimated tax liability in the event taxes are imposed shall be stated in Appendix A, EPC

Services.

**Private Letter Ruling or Change or Clarification of Law.**

At any Developer’s request and expense, Affected Transmission Owner 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 the Developer to the Affected Transmission Owner under this Agreement are subject

to federal income taxation. The Developer 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 the Developer’s knowledge. The Affected

Transmission Owner and the Developer shall cooperate in good faith with respect to the

submission of such request.

The Affected Transmission Owner shall keep the Developer 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 the Developer to participate in

all discussions with the IRS regarding such request for a private letter ruling. The Affected

Transmission Owner shall allow the Developer to attend all meetings with IRS officials about the

request and shall permit the Developer 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 Common System Upgrade

Facilities are placed in service, (i) a Developer Breaches the covenants contained in Article

[3.10.2, (i](#br14)i) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii)

this Agreement terminates and Affected Transmission Owner retains ownership of the Common

System Upgrade Facilities, the relevant Developer(s) shall pay a tax gross-up for the cost

consequences of any current tax liability imposed on the Affected Transmission Owner,

calculated using the methodology described in Art[icle 3.10.4](#br15) and in accordance with IRS Notice

90-60.

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**Contests.**

In the event any Governmental Authority determines that Affected Transmission Owner’s

receipt of payments or property constitutes income that is subject to taxation, the Affected

Transmission Owner shall notify the relevant Developer(s), in writing, within thirty (30)

Calendar Days of receiving notification of such determination by a Governmental Authority.

Upon the timely written request by a Developer and at Developer’s sole expense, the Affected

Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such

determination. Upon a Developer’s written request and sole expense, the Affected Transmission

Owner may file a claim for refund with respect to any taxes paid under this Artic[le 3.10, whether](#br14)

or not it has received such a determination. The Affected Transmission Owner reserves the right

to make all decisions with regard to the prosecution of such appeal, protest, abatement or other

contest, including the selection of counsel and compromise or settlement of the claim, but the

Affected Transmission Owner shall keep the relevant Developer informed, shall consider in good

faith suggestions from Developer about the conduct of the contest, and shall reasonably permit

Developer or a Developer representative to attend contest proceedings.

Developer shall pay to Affected Transmission Owner on a periodic basis, as invoiced by

Affected Transmission Owner, Affected Transmission Owner’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 describ[ed in this Article 3.10.7. The](#br17) Affected

Transmission Owner may abandon any contest if the Developer fails to provide payment to the

Affected Transmission Owner within thirty (30) Calendar Days of receiving such invoice. At

any time during the contest, Affected Transmission Owner may agree to a settlement either with

Developer’s consent or after obtaining written advice from nationally-recognized tax counsel,

selected by Affected Transmission Owner, but reasonably acceptable to Developer, that the

proposed settlement represents a reasonable settlement given the hazards of litigation.

Developer’s obligation shall be based on the amount of the settlement agreed to by Developer, 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 Transmission Owner may also settle any

tax controversy without receiving the Developer’s consent or any such written advice; however,

any such settlement will relieve the Developer from any obligation to indemnify Affected

Transmission Owner for the tax at issue in the contest (unless the failure to obtain written advice

is attributable to the Developer’s unreasonable refusal to the appointment of independent tax

counsel).

**Refund.**

In the event that (a) a private letter ruling is issued to Affected Transmission Owner

which holds that any amount paid or the value of any property transferred by a Developer to the

Affected Transmission Owner 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 the Affected Transmission Owner in good faith that

any amount paid or the value of any property transferred by a Developer to the Affected

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Transmission Owner under the terms of this Agreement is not taxable to the Affected

Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a

determination that any payments or transfers made by a Developer to the Affected Transmission

Owner are not subject to federal income tax, or (d) if the Affected Transmission Owner receives

a refund from any taxing authority for any overpayment of tax attributable to any payment or

property transfer made by a Developer to the Affected Transmission Owner pursuant to this

Agreement, the Affected Transmission Owner shall promptly refund to the Developer the

following:

(i)

Any payment made by the Developer under this Art[icle 3.10](#br14) for taxes that is

attributable to the amount determined to be non-taxable, together with interest thereon,

(ii)

Interest on any amounts paid by the Developer to the Affected Transmission

Owner for such taxes which the Affected Transmission Owner did not submit to the taxing

authority, calculated in accordance with the methodology set forth in FERC’s regulations at 18

C.F.R. §35.19a(a)(2)(iii) from the date payment was made by the Developer to the date the

Affected Transmission Owner refunds such payment to the Developer, and

(iii) With respect to any such taxes paid by the Affected Transmission Owner, any

refund or credit the Affected Transmission Owner receives or to which it may be entitled from

any Governmental Authority, interest (or that portion thereof attributable to the payment

described in clause (i), above) owed to the Affected Transmission Owner for such overpayment

of taxes (including any reduction in interest otherwise payable by the Affected Transmission

Owner to any Governmental Authority resulting from an offset or credit); provided, however,

that the Affected Transmission Owner will remit such amount promptly to the Developer only

after and to the extent that Affected Transmission Owner has received a tax refund, credit or

offset from any Governmental Authority for any applicable overpayment of income tax related to

the Common System Upgrade Facilities.

The intent of this provision is to leave both the Developer and the Affected Transmission

Owner, to the extent practicable, in the event that no taxes are due with respect to any payment

for Common 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 a Developer, and at the Developer’s sole expense, Affected

Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other

than federal or state income tax) asserted or assessed against the Affected Transmission Owner

for which the Developer may be required to reimburse the Affected Transmission Owner under

the terms of this Agreement. The Developer shall pay to the Affected Transmission Owner on a

periodic basis, as invoiced by the Affected Transmission Owner, the Affected Transmission

Owner’s documented reasonable costs of prosecuting such appeal, protest, abatement, or other

contest. The Developer and the Affected Transmission Owner shall cooperate in good faith with

respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or

abatement or cannot be deferred, no amount shall be payable by the Developer to the Affected

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Transmission Owner 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, the Developer will be responsible for all taxes, interest

and penalties, other than penalties attributable to any delay caused by the Affected Transmission

Owner.

**3.11**

**Tax Status; Non-Jurisdictional Entity.**

**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 Affected Transmission Owner with respect to the issuance

of bonds including, but not limited to, Local Furnishing Bonds.

**3.12**

**Modification.**

**General**

If, prior to the In-Service Date, the Affected Transmission Owner proposes to modify the

Common System Upgrade Facilities, the Affected Transmission Owner 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 Developers’

Large Generating Facilities 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 of the Large

Generating Facilities and will enable Developers’ Large Generating Facilities to reliably

interconnect to the New York State Transmission System. If the cost of the modified Common

System Upgrade Facilities is greater than the Developer Common SUF Cost Cap, the additional

cost will be allocated in accordance with Sections 25.6.1.4.1 and 25.8.6.4 of Attachment S of the

OATT.

**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.**

Developers shall not be assigned the costs of any additions, modifications, or

replacements that the Affected Transmission Owner makes to the Common System Upgrade

Facilities or the New York State Transmission System to facilitate the interconnection of a

facility not subject to this Agreement to the Common System Upgrade Facilities or the New

York State Transmission System, or to provide Transmission Service to a third party under the

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ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO

OATT.

**ARTICLE 4. TESTING AND INSPECTION**

**4.1**

**Initial Testing and Modifications.**

In accordance with the Milestones set forth in Appendix A, Affected Transmission

Owner shall test the Common System Upgrade Facilities to ensure their safe and reliable

operation. Similar testing may be required after initial operation. Affected Transmission Owner

shall make any modifications to the facilities that are found to be necessary as a result of such

testing. Developers shall bear the cost of all such testing and modifications.

**4.2**

**Notice of Testing.**

The Affected Transmission Owner shall notify the NYISO in advance of its performance

of tests of the Common System Upgrade Facilities.

**ARTICLE 5. COMMUNICATIONS**

**5.1**

**No Annexation.**

Any and all equipment placed on the premises of a Party during the term of this

Agreement 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.

**ARTICLE 6. COST AND SECURITY OBLIGATIONS**

**6.1**

**Cost Responsibilities.**

Each Developer will be responsible for its respective Invoice Share of the

monthly costs incurred by Affected Transmission Owner in performing the EPC Services;

*provided, however*, that the Developer will not be responsible for any cost above the Developer

Common SUF Cost Cap, except as set forth in Artic[le 6.1.3.](#br20)

On a periodic basis as set forth in the Milestones in Appendix A, Affected

Transmission Owner shall provide to the other Parties in writing an updated estimate of its cost

for performing the EPC Services. The updated cost estimate shall fully specify any additional

services and equipment required for the Affected Transmission Owner to perform the EPC

Services and explain why these additional services and equipment are required.

If the Affected Transmission Owner’s updated cost estimate as provided under

Artic[le 6.1.2](#br20) is greater than the estimated cost for such services as determined by the

Interconnection Facilities Study for Class Year 2017, each Developer’s responsibility for any

costs above its Developer Common SUF Cost Cap shall be determined in accordance with

Section 25.8.6 of Attachment S of the ISO OATT. The Parties shall amend this Agreement if

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there are any changes to the Developer Common SUF Cost Cap required by Section 25.8.6 of

Attachment S of the ISO OATT.

If the final cost incurred by the Affected Transmission Owner in performing the

EPC Services is less than the estimated cost for such services as determined by the

Interconnection Facilities Study for Class Year 2017 and set forth in Appendix A, then the

Affected Transmission Owner shall make a true-up payment to each Developer pursuant to

Artic[le 7.2](#br21) to refund to the Developer any costs that the Developer has paid to the Affected

Transmission Owner under [Article 6.1.1](#br20) that are greater than its Invoice Share of the actual

costs.

Affected Transmission Owner shall be solely responsible for its costs in

performing the EPC Services that are not recoverable from Developers under this Article [6.1.](#br20)

**6.2**

**Provision and Application of Security**

Each Developer has provided the Affected Transmission Owner with cash or Security in

the amount of its Developer Common SUF Cost Cap for its share of the Common System

Upgrade Facilities as determined in accordance with Attachment S to the ISO OATT and set

forth in Appendix A. If a Developer: (i) does not pay an invoice issued by the Affected

Transmission Owner pursuant to Ar[ticle 7.1](#br21) within the timeframe set forth in Art[icle 7.3](#br22) or (ii)

does not pay any disputed amount into an independent escrow account pursuant to Artic[le 7.4,](#br22)

the Affected Transmission Owner may draw upon the cash or Security posted by the Developer

for the Affected Transmission Owner to recover such payment.

**6.3**

**Line Outage Costs.**

Notwithstanding anything in the ISO OATT to the contrary, the Affected Transmission

Owner may propose to recover line outage costs associated with the installation of the Common

System Upgrade Facilities on a case-by-case basis, subject to the Developer Common SUF Cost

Cap.

**ARTICLE 7. INVOICE**

**7.1**

**General.**

To the extent that any amounts are due to a Developer or the Affected Transmission

Owner under this Agreement, the owed Party shall submit to the owing Party, on a monthly

basis, an invoice of the amounts due for the preceding period. Each invoice shall state the time

period to which the invoice applies and fully describe the services and equipment provided.

Within six months after the Completion Date, a Party owed any remaining amounts

associated with the EPC Services shall provide a final invoice to the owing Party or Parties.

**7.2**

**Refund of Remaining Security/Cash and Overpayment Amount**

The Affected Transmission Owner shall release or refund to a Developer any remaining

portions of its Security or cash payments provided by the Developer to satisfy its Project Cost

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Allocation in accordance with Attachment S of the ISO OATT and any amount that the

Developer has overpaid as described in Art[icle 6.1.4](#br21) within 30 days of the later of: (i) the

Developer’s payment of any final invoice to the Affected Transmission Owner under Artic[le 7.1,](#br21)

and (ii) Affected Transmission Owner’s completion of the EPC Services.

**7.3**

**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.

**7.4**

**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 up to the Developer Common SUF Cost Cap; 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 Artic[le 11.](#br23) 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 8. REGULATORY REQUIREMENTS AND GOVERNING LAW**

**8.1**

**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 Developers 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.

**8.2**

**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.

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Each Party expressly reserves the right to seek changes in, appeal, or otherwise

contest any laws, orders, rules, or regulations of a Governmental Authority.

**ARTICLE 9. NOTICES**

**9.1**

**General.**

Unless otherwise provided in this Agreement, any notice, demand or request required or

permitted to be given by a Party to any of the other Parties and any instrument required or

permitted to be tendered or delivered by a Party in writing to any of 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.

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.

**9.2**

**Billings and Payments.**

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

**Alternative Forms of Notice.**

**9.3**

Any notice or request required or permitted to be given by a Party to any of 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 10. FORCE MAJEURE**

**10.1** Economic hardship is not considered a Force Majeure event.

**10.2** 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.

**ARTICLE 11. DEFAULT**

**11.1 General.**

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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 acting together

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.

**11.2 Right to Terminate.**

If a Breach is not cured as provided in this Artic[le 11, or i](#br23)f 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 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

**12.1**

**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 Art[icle 12](#br24) as a result of a claim by a

third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed

under Articl[e 12.1.3, to](#br25) assume the defense of such claim, such Indemnified Party may at the

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.**

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

harmless under this Article [12, th](#br24)e 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 [12.1](#br24) 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.

**12.2**

**No Consequential Damages.**

Other than the indemnity obligations set forth in Artic[le 12.1, in no e](#br24)vent 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

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.

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**12.3**

**Insurance.**

Affected Transmission Owner shall, at its own expense, procure and maintain in force

throughout the period of this Agreement and until released by the other Parties, the following

minimum insurance coverages, with insurance companies licensed to write insurance or

approved eligible surplus lines carriers in the state of New York with a minimum A.M. Best

rating of A or better for financial strength, and an A.M. Best financial size category of VIII or

better:

Employers’ Liability and Workers’ Compensation Insurance providing statutory

benefits in accordance with the laws and regulations of New York State.

Commercial General Liability (“CGL”) Insurance including premises and

operations, personal injury, broad form property damage, broad form blanket contractual liability

coverage products and completed operations coverage, coverage for explosion, collapse and

underground hazards, independent contractors coverage, coverage for pollution to the extent

normally available and punitive damages to the extent normally available using Insurance

Services Office, Inc. Commercial General Liability Coverage (“ISO CG”) Form CG 00 01 04 13

or a form equivalent to or better than CG 00 01 04 13, with minimum limits of Two Million

Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate combined

single limit for personal injury, bodily injury, including death and property damage.

Comprehensive Automobile Liability Insurance for coverage of owned and non-

owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a

minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily

injury, including death, and property damage.

If applicable, the Commercial General Liability and Comprehensive Automobile

Liability Insurance policies should include contractual liability for work in connection with

construction or demolition work on or within 50 feet of a railroad, or a separate Railroad

Protective Liability Policy should be provided.

Excess Liability Insurance over and above the Employers’ Liability, Commercial

General Liability and Comprehensive Automobile Liability Insurance coverages, with a

minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence and

Twenty Million Dollars ($20,000,000) aggregate. The Excess policies should contain the same

extensions listed under the Primary policies.

The Commercial General Liability Insurance, Comprehensive Automobile

Insurance and Excess Liability Insurance policies of Affected Transmission Owner shall name

the other Parties, their parents, associated and Affiliate companies and their respective directors,

officers, agents, servants and employees (“Other Party Group”) as additional insureds using ISO

CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13 and CG 20 37 04

13 or equivalent to or better forms. All policies shall contain provisions whereby the insurers

waive all rights of subrogation in accordance with the provisions of this Agreement against the

Other Party Group and provide thirty (30) Calendar days advance written notice to the Other

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Party Group prior to anniversary date of cancellation or any material change in coverage or

condition.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify

that the policies are primary and non-contributory. Affected Transmission Owner shall be

responsible for its deductibles or retentions.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies, if written on a Claims First Made

Basis, shall be maintained in full force and effect for at least three (3) years after termination of

this Agreement, which coverage may be in the form of tail coverage or extended reporting period

coverage if agreed by each Developer and the Affected Transmission Owner.

If applicable, Pollution Liability Insurance in an amount no less than $7,500,000

per occurrence and $7,500,000 in the aggregate. The policy will provide coverage for claims

resulting from pollution or other environmental impairment arising out of or in connection with

work performed on the premises by the other party, its contractors and and/or subcontractors.

Such insurance is to include coverage for, but not be limited to, cleanup, third party bodily injury

and property damage and remediation and will be written on an occurrence basis. The policy

shall name the Other Party Group as additional insureds, be primary and contain a waiver of

subrogation.

The requirements contained herein as to the types and limits of all insurance to

be maintained by Affected Transmission Owner are not intended to and shall not in any manner,

limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

Upon request, Affected Transmission Owner shall provide to the requesting Party certificate of

insurance for all insurance required in this Agreement, executed by each insurer or by an

authorized representative of each insurer.

Notwithstanding the foregoing, Affected Transmission Owner may self-insure to

meet the minimum insurance requirements of Article[s 12.3.1](#br26) th[rough 12.3.9](#br27) to the extent it

maintains a self-insurance program; provided that, such Party’s senior debt is rated at investment

grade, or better, by Standard & Poor’s and that its self-insurance program meets the minimum

insurance requirements of Art[icles 12.3.1](#br26) throug[h 12.3.9. In t](#br27)he event that a Party is permitted to

self-insure pursuant to this Article [12.3.11, it](#br27) shall notify the other Parties that it meets the

requirements to self-insure and that its self-insurance program meets the minimum insurance

requirements in a manner consistent with that specified in Ar[ticles 12.3.1](#br26) th[rough 12.3.9](#br27) and

provide evidence of such coverages. For any period of time that a Party’s senior debt is unrated

by Standard & Poor’s or is rated at less than investment grade by Standard & Poor’s, such Party

shall comply with the insurance requirements applicable to it under Articl[es 12.3.1](#br26) through

[12.3.9.](#br27)

Each Developer and Affected Transmission Owner agree to report to each of the

other Parties in writing as soon as practical all accidents or occurrences resulting in injuries to

any person, including death, and any property damage arising out of this Agreement.

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Subcontractors of each party must maintain the same insurance requirements

stated under Articles [12.3.1](#br26) thr[ough 12.3.9](#br27) and comply with the Additional Insured requirements

herein. In addition, their policies must state that they are primary and non-contributory and

contain a waiver of subrogation.

**ARTICLE 13. 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

a Developer shall have the right to assign this Agreement, without the consent of the NYISO or

Affected Transmission Owner, for collateral security purposes to aid in providing financing for

its Large Generating Facility, provided that the Developer will promptly notify the NYISO and

Affected Transmission Owner of any such assignment. Any financing arrangement entered into

by a Developer 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 Transmission

Owner of the date and particulars of any such exercise of assignment right(s) and will provide

the NYISO and Affected Transmission Owner with proof that it meets the requirements of

Articles [6.2](#br21) [and 12.3. Any attempted assi](#br26)gnment 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 14. 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 15. COMPARABILITY**

The Parties will comply with all applicable comparability and code of conduct laws, rules

and regulations, as amended from time to time.

**ARTICLE 16. CONFIDENTIALITY**

**16.1 Confidentiality.**

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Certain information exchanged by the Parties during the term of this Agreement shall

constitute confidential information (“Confidential Information”) and shall be subject to this

Artic[le 16.](#br28)

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.

**16.2 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 Art[icle 16, e](#br28)ach Party

shall hold in confidence and shall not disclose to any person Confidential Information.

**16.3 Confidential Information.**

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.

**16.4 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 Art[icle 16.9](#br30) 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.

**16.5 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 Developers, or to potential purchasers or assignees of a Party, on a need-to-know basis in

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connection with this Agreement, unless such person has first been advised of the confidentiality

provisions of this Arti[cle 16](#br28) 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 Arti[cle 16.](#br28)

**16.6 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.

**16.7 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

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

venture.

**16.8 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.

**16.9 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.

**16.10 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

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or electronic Confidential Information received from the other Parties pursuant to this

Agreement.

**16.11 Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party for

another Party’s Breach of its obligations under this Ar[ticle 16. Each Part](#br28)y 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 Arti[cle 16, which equi](#br28)table

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 Articl[e 16, but s](#br28)hall 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

Artic[le 16.](#br28)

**16.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article [16](#br28) 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.

**16.13 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

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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 17. AFFECTED TRANSMISSION OWNER NOTICES OF**

**ENVIRONMENTAL RELEASES**

The Affected Transmission Owner shall 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 Common 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.

**ARTICLE 18. INFORMATION REQUIREMENT**

**18.1**

**Information Acquisition.**

Affected Transmission Owner shall submit specific information regarding the electrical

characteristics of its facilities to the other Parties as described below and in accordance with

Applicable Reliability Standards.

**18.2**

**Information Submission by Affected Transmission Owner.**

The initial information submission by the Affected Transmission Owner shall occur no

later than the date(s) specified in the Milestones set forth in Appendix A to this Agreement. On

a monthly basis the Affected Transmission Owner shall provide Developers and NYISO a status

report on the construction and installation of Common 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.

**18.3**

**Information Supplementation.**

Affected Transmission Owner shall supplement its information submissions described

above in this Art[icle 18](#br32) 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.

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**ARTICLE 19. INFORMATION ACCESS AND AUDIT RIGHTS**

**19.1**

**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 Artic[le 19.1](#br33) of this Agreement and to enforce their rights under

this Agreement.

**19.2**

**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.

**19.3**

**Audit Rights.**

Subject to the requirements of confidentiality under [Article 16](#br28) 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 Art[icle 19.4](#br33) of this Agreement.

**19.4**

**19.5**

**Reserved.**

**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 Common System Upgrade Facilities shall be subject to audit for a period of twenty-four

months following the issuance by a Developer or the Affected Transmission Owner, as

applicable, of a final invoice in accordance with Artic[le 7.1](#br21) of this Agreement.

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**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 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.

**19.6**

**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 20. SUBCONTRACTORS**

**20.1**

**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.

**20.2**

**Responsibility of Principal.**

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 Transmission Owner be

liable for the actions or inactions of a Developer or its subcontractors with respect to obligations

of the Developer under Artic[le 3](#br12) 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.

**20.3**

**20.4**

**Reserved.**

**No Limitation by Insurance.**

The obligations under this Ar[ticle 20](#br34) will not be limited in any way by any limitation of

subcontractor’s insurance.

**ARTICLE 21. DISPUTES**

**21.1**

**Submission.**

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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.

**21.2**

**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, the Parties shall invoke the

assistance of the FERC’s Dispute Resolution Service to select an arbitrator. In each case, the

arbitrator 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 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 Artic[le 21, t](#br34)he terms of this Ar[ticle 21](#br34) shall prevail.

**21.3**

**Arbitration Decisions.**

Unless otherwise agreed by the Parties, the arbitrator 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 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 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 may be appealed solely on the grounds that the conduct of the arbitrator, 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 Common System

Upgrade Facilities.

**21.4**

**Costs.**

Each Party shall be responsible for its own costs incurred during the arbitration process

and for its per capita share of the costs of the single arbitrator.

**21.5 Termination.**

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**SERVICE AGREEMENT NO. 2642**

Notwithstanding the provisions of this Ar[ticle 21, any Par](#br34)ty 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 22. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**22.1**

**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,

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 23. MISCELLANEOUS**

**23.1**

**Binding Effect.**

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**SERVICE AGREEMENT NO. 2642**

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.

**23.2**

**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.

**23.3**

**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, except

for the terms Developer and Developers, which are defined in the introductory paragraph; (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”,

“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”.

**23.4**

**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.

**23.5**

**Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, each Developer and

Affected Transmission Owner are several, and are neither joint nor joint and several.

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**23.6**

**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.

**23.7**

**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.

**23.8**

**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.

**23.9**

**Headings.**

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.

**23.10**

**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.

**23.11**

**Amendment.**

The Parties may by mutual agreement amend this Agreement, by a written instrument

duly executed by all of the Parties.

**23.12**

**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.

**23.13**

**Reservation of Rights.**

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**SERVICE AGREEMENT NO. 2642**

NYISO and the Affected Transmission Owner 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 each of the

Developers 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.

**23.14**

**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.

**23.15**

**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 Developers shall be entitled to, now or

in the future under any other agreement or tariff as a result of, or otherwise associated with, the

incremental transmission capacity, if any, created by these Common System Upgrade Facilities.

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**SERVICE AGREEMENT NO. 2642**

**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.**

**Cassadaga Wind LLC**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

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

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

Title:

Title:

Date:

Date:

**New York State Electric & Gas Corporation**

By:

By:

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

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

Title:

Title:

Date:

Date:

**Arkwright Summit Wind Farm LLC**

**Ball Hill Wind Energy, LLC**

By:

By:

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

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

Title:

Date:

Title:

Date:

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**SERVICE AGREEMENT NO. 2642**

**APPENDICES**

**Appendix A**

EPC Services

**Appendix B**

Addresses for Delivery of Notices and Billings

**Appendix C**

In-Service Date

**SERVICE AGREEMENT NO. 2642**

**APPENDIX A**

**EPC SERVICES**

**1.**

**Common System Upgrade Facilities**

The Common System Upgrade Facilities consist of:

• Upgrading the terminal equipment at the Hillside Substation for the Hillside – East

Towanda 230 kV line #70, which will include:

o One (1) 3000 A Wave trap; and

o One (1) bushing Current Transformer; and

• Reconductoring of Affected Transmission Owner’s North Waverly-East Sayre 115

kV line, which will include:

o Approximately twenty-six (26) new steel pole structures;

o One (1) 795 kcmil (26/7) ACSR conductor; and

o 36 Fiber Optical Ground Wire (OPGW).

• Remote End Work/Other

o North Waverly Substation Remote End

▪ Replace Line 956 disconnect switch.

▪ Replace 115kV strain bus.

o NYSEG Hillside Substation Remote End

▪ Evaluate relay settings at Hillside Substation for Line 962 protection

relays, because of change in line impedance of Line 956.

▪ Relay setting adjustment.

o South Owego Substation Remote End

▪ Evaluate relay settings at South Owego Substation for Line 962

protection relays, because of change in line impedance of Line 956.

▪ Relay setting adjustment.

o Telecom Work

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**SERVICE AGREEMENT NO. 2642**

▪ No information is available at this time; this will be provided in the

conceptual design.

**2.**

**Developer Cost Responsibility**

**A**. **Developer Common SUF Cost Cap**

Each Developer has accepted, and has provided Security to Affected Transmission

Owner to cover, pursuant to Section 25.8 of Attachment S of the ISO OATT the cost amount

identified in the Interconnection Facilities Study for Class Year 2017 for the Common System

Upgrade Facilities. The amounts in the below table constitute the Developer Common SUF Cost

Cap for each Developer.

**Developer**

Cassadaga

**Line 956**

**Cost Allocation ($)**

$3,850,774

**Remote ends**

**Cost Allocation ($)**

$254,206

Ball Hill

$2,283,949

$150,746

Arkwright

$2,175,476

$143,615

Sub total $8,310,199

Grand total $8,858,766

$548,567

**B. Developer’s Invoice Share**

**Developer**

**Invoice Share (%)**

Cassadaga

Ball Hill

Arkwright

46.34%

27.48%

26.18%

**3.**

**Item**

**Milestones**

**Milestone**

**Date**

**Responsible**

**Party**

**Line 956**

1.

Commence Engineering and

Permitting

August 31, 2021

NYSEG

2.

3.

4.

5.

Commence Procurement

June 1, 2022

NYSEG

NYSEG

NYSEG

NYSEG

Commence Construction

In-Service Date

April 1, 2025

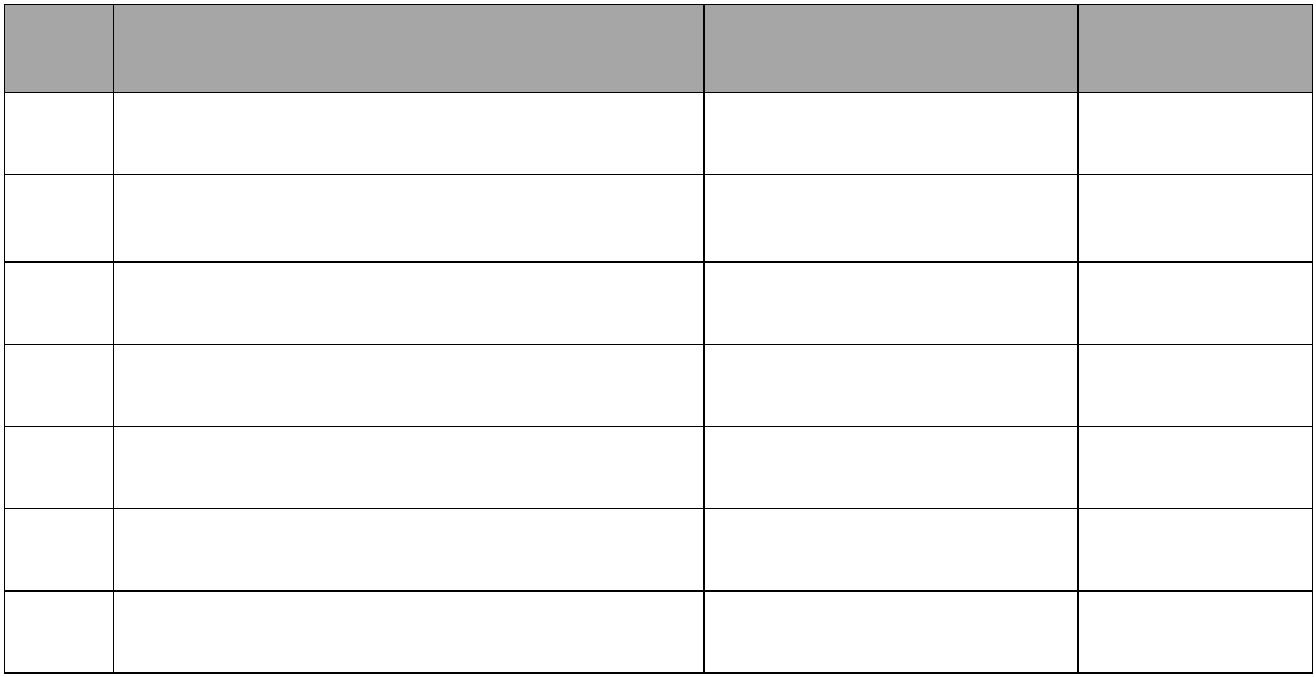
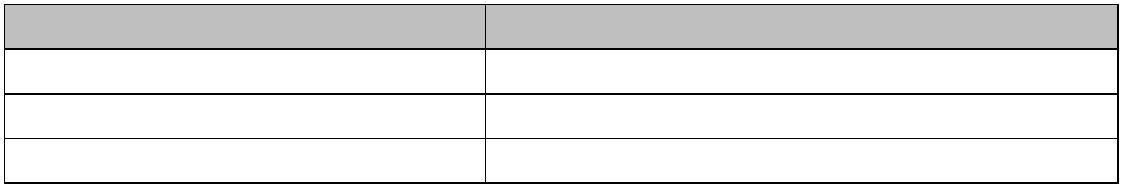
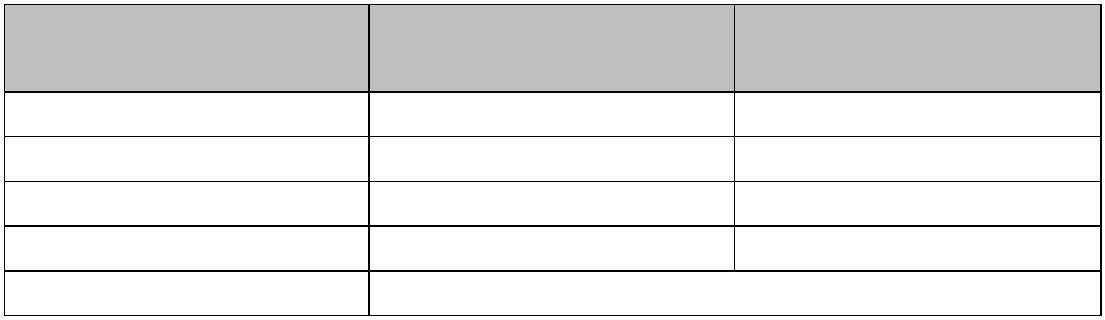
October 1, 2025

December 31, 2025

Completion Date

**Remote ends**

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**SERVICE AGREEMENT NO. 2642**

6.

Commence Engineering

Commence Procurement

Commence Construction

In-Service Date

November 1, 2024

April 1, 2025

NYSEG

NYSEG

NYSEG

NYSEG

NYSEG

7.

8.

September 1, 2025

February 1, 2026

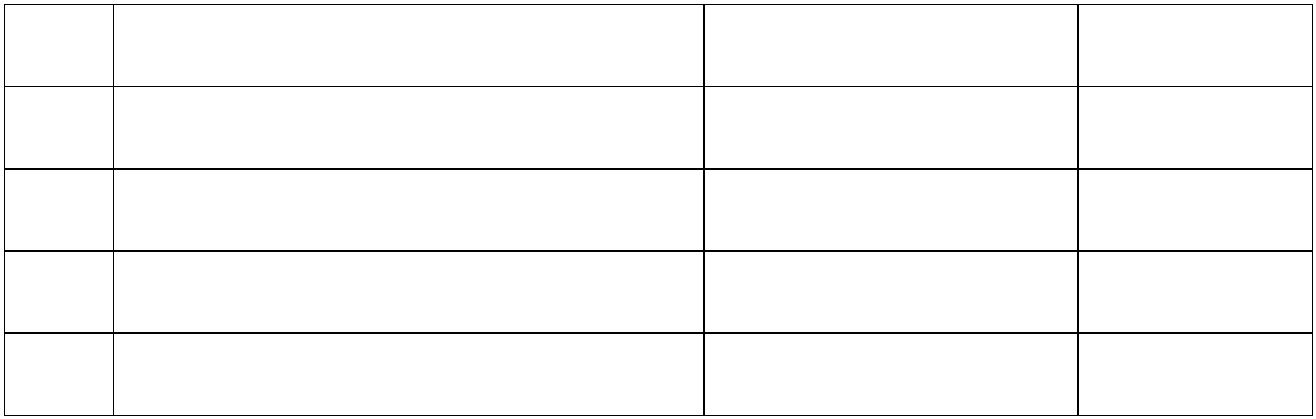
May 31, 2026

9.

10.

Completion Date

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**SERVICE AGREEMENT NO. 2642**

**APPENDIX B**

**ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

**Notices:**

NYISO:

Before In-Service Date of the Common System Upgrade Facilities:

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

After In-Service Date of the Common System Upgrade Facilities:

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

Phone: (518) 356-6000

Email: interconnectionsupport@nyiso.com

NYSEG:

New York State Electric & Gas Corporation

Attn: Transmission Services

18 Link Drive

PO Box 5224

Binghamton, NY 13902-5224

Phone: 585-484-6306

Email: smurillo@nyseg.com, lourdes\_lopez@rge.com or

NYISOInterconnectionadmin@avangrid.com

Cassadaga:

Cassadaga Wind LLC

Attn: Transmission Manager

1401 E 6th St, 4th Floor

Austin, TX 78702

Phone: 512-658-9951

Email: [transmission@rwe.com](mailto:transmission@rwe.com)

CC: uslegal@rwe.com

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**SERVICE AGREEMENT NO. 2642**

Arkwright

Arkwright Summit Wind Farm LLC

c/o EDP Renewables North America LLC

Attn: General Counsel

1501 McKinney St.

Suite 1300

Houston, TX 77010

Phone: (713) 265-0350

Email: [legalnotices@edpr.com;](mailto:legalnotices@edpr.com) [diana.sanchez@edp.com](mailto:diana.sanchez@edp.com)

Ball Hill:

Ball Hill Wind Energy, LLC

c/o Northland Power Inc.

Attn: Engineering and Construction (prior to In-Service)

Attn: Market Operations & Compliance (after In-Service)

30 St. Clair Avenue West, 3rd Floor

Toronto, Ontario M4V 3A1

Canada

Phone: (416) 962-6262

Fax: (416) 962-6266

[Luke.Kupczyk@Northlandpower.com](mailto:Luke.Kupczyk@Northlandpower.com) (prior to In-Service)

[Octavia.Peterson@Northlandpower.com](mailto:Octavia.Peterson@Northlandpower.com) (after In-Service)

**Billings and Payments:**

NYSEG:

New York State Electric & Gas Corporation

Attn: Billing

18 Link Drive

PO Box 5224

Binghamton, NY 13902

Phone: 585-484-6883

Email: [tlfoster@nyseg.com](mailto:tlfoster@nyseg.com) or NYISOInterconnectionadmin@avangrid.com

Cassadaga:

Cassadaga Wind LLC

Attn: Accounts Payable

353 N Clark St, 30th Floor

Chicago, IL 60654

Phone:

Email: [apinvoice.americas@rwe.com](mailto:apinvoice.americas@rwe.com)

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**SERVICE AGREEMENT NO. 2642**

CC: transmission@rwe.com

Arkwright:

Arkwright Summit Wind Farm LLC

c/o EDP Renewables North America LLC

Attn: Executive Vice President, Finance

Cc: General Counsel

1501 McKinney St.

Suite 1300

Houston, TX 77010

Phone: (713) 265-0350

Email: assetmanagement@edpr.com

Ball Hill:

Ball Hill Wind Energy, LLC

c/o Northland Power Inc.

Attn: Accounts Payable

30 St. Clair Avenue West, 3rd Floor

Toronto, Ontario M4V 3A1

Canada

Phone: (416) 962-6262

Fax: (416) 962-6266

[accountspayable@Northlandpower.com](mailto:accountspayable@Northlandpower.com)

**Alternative Forms of Delivery of Notices (telephone or email):**

NYISO:

Before In-Service Date of the Common System Upgrade Facilities:

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

After In-Service Date of the Common System Upgrade Facilities:

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

Phone: (518) 356-6000

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**SERVICE AGREEMENT NO. 2642**

Email: interconnectionsupport@nyiso.com

NYSEG:

New York State Electric & Gas Corporation

Attn: Operations and Transmission Services

18 Link Drive

PO Box5224

Binghamton, NY 13904

Phone: 585-484-6306

Email: nyisointerconnectionadmin@avangrid.com

Cassadaga:

Cassadaga Wind LLC

Attn: Transmission Manager

1401 E 6th St, 4th Floor

Austin, TX 78702

Phone: 512-658-9951

Email: transmission@rwe.com

Arkwright:

Arkwright Summit Wind Farm LLC

c/o EDP Renewables North America LLC

Attn: Asset Management

1501 McKinney St.

Suite 1300

Houston, TX 77010

Phone: (713) 265-0350

Email: assetmanagement@edpr.com

Ball Hill:

Ball Hill Wind Energy, LLC

c/o Northland Power Inc.

30 St. Clair Avenue West, 3rd Floor

Toronto, Ontario M4V 3A1

Canada

Phone: (416) 962-6262

Fax: (416) 962-6266

Email: legal@northlandpower.com

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**SERVICE AGREEMENT NO. 2642**

**APPENDIX C**

**IN-SERVICE DATE**

**[Date]**

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

Re:

\_\_\_\_\_\_\_\_\_\_\_\_\_ Common System Upgrade Facilities

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

On **[Date] [Affected Transmission Owner]** has completed the Common System Upgrade

Facilities. This letter confirms that [describe the Common System Upgrade Facilities] have

commenced service, effective as of **[Date plus one day]**.

Thank you.

**[Signature]**

**[Affected Transmission Owner Representative]**

CC:

**[Copy Developers]**

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