

SERVICE AGREEMENT NO. 2942

SERVICE AGREEMENT NO. 2942

ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

AND

LONG ISLAND POWER AUTHORITY

AND

SUNRISE WIND LLC

AND

HOLTSVILLE ENERGY STORAGE, LLC

Dated as of January 9, 2026

(Class Year 2021 Long Island SDUs)

SERVICE AGREEMENT NO. 2942

TABLE OF CONTENTS

	Page Number
ARTICLE 1. DEFINITIONS.....	2
ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION	7
2.1 Effective Date.....	7
2.2 Term of Agreement.....	8
2.3 Termination.....	8
2.4 Termination Costs.....	8
2.5 Survival.	9
ARTICLE 3. EPC SERVICES	9
3.1 Provision of EPC Services.	9
3.2 Equipment Procurement.....	10
3.3 Construction Commencement.....	10
3.4 Reserved.....	10
3.5 Work Progress.....	10
3.6 Information Exchange.....	10
3.7 Ownership of Common System Deliverability Upgrades.....	10
3.8 Lands of Other Property Owners.	10
3.9 Permits.	11
3.10 Reserved.....	11
3.11 Tax Status; Non-Jurisdictional Entity.....	11
3.12 Modification.....	11
ARTICLE 4. TESTING AND INSPECTION.....	12
4.1 Initial Testing and Modifications.....	12
4.2 Notice of Testing.....	12
ARTICLE 5. COMMUNICATIONS	12
5.1 No Annexation.	12
ARTICLE 6. COST AND SECURITY OBLIGATIONS	12
6.1 Cost Responsibilities.....	12
6.2 Provision and Application of Security.....	13
6.3 Line Outage Costs.....	13
ARTICLE 7. INVOICE	14
7.1 General.....	14
7.2 Reissuance of Security and Refund of Remaining Security	16
7.3 Payment.....	16
7.4 Disputes.....	16
ARTICLE 8. REGULATORY REQUIREMENTS AND GOVERNING LAW.....	17
8.1 Regulatory Requirements.....	17
8.2 Governing Law.....	17
ARTICLE 9. NOTICES.....	17
9.1 General.....	17
9.2 Billings and Payments.....	17
9.3 Alternative Forms of Notice.	17

ARTICLE 10. FORCE MAJEURE18
ARTICLE 11. DEFAULT18

SERVICE AGREEMENT NO. 2942

11.1 General..... 18

11.2 Right to Terminate. 18

ARTICLE 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE18

12.1 Indemnity. 19

12.2 No Consequential Damages..... 20

12.3 Insurance. 20

ARTICLE 13. ASSIGNMENT.....22

ARTICLE 14. SEVERABILITY.....23

ARTICLE 15. COMPARABILITY.....23

ARTICLE 16. CONFIDENTIALITY.....23

16.1 Confidentiality. 23

16.2 Term..... 23

16.3 Confidential Information..... 23

16.4 Scope..... 24

16.5 Release of Confidential Information..... 24

16.6 Rights. 24

16.7 No Warranties. 24

16.8 Standard of Care..... 24

16.9 Order of Disclosure..... 25

16.10 Termination of Agreement..... 25

16.11 Remedies..... 25

16.12 Disclosure to FERC, its Staff, or a State..... 25

16.13 Required Notices Upon Requests or Demands for Confidential Information . 26

ARTICLE 17. AFFECTED TRANSMISSION OWNER NOTICES OF ENVIRONMENTAL
RELEASES 26

ARTICLE 18. INFORMATION REQUIREMENT.....26

18.1 Information Acquisition..... 26

18.2 Information Submission by Affected Transmission Owner. 27

18.3 Information Supplementation..... 27

ARTICLE 19. INFORMATION ACCESS AND AUDIT RIGHTS.....27

19.1 Information Access. 27

19.2 Reporting of Non-Force Majeure Events..... 27

19.3 Audit Rights. 27

19.4 Audit Rights Periods. 28

19.5 Audit Results..... 28

ARTICLE 20. SUBCONTRACTORS28

20.1 General..... 28

20.2 Responsibility of Principal..... 28

20.3 Reserved..... 29

20.4 No Limitation by Insurance. 29

ARTICLE 21. DISPUTES.....29

21.1 Submission..... 29

21.2 External Arbitration Procedures..... 29

21.3 Arbitration Decisions. 29

21.4 Costs..... 30

21.5 Termination..... 30

SERVICE AGREEMENT NO. 2942

ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS30
 22.1 General..... 30
ARTICLE 23. MISCELLANEOUS31
 23.1 Binding Effect..... 31
 23.2 Conflicts..... 31
 23.3 Rules of Interpretation..... 31
 23.4 Compliance. 32
 23.5 Joint and Several Obligations. 32
 23.6 Entire Agreement. 32
 23.7 No Third Party Beneficiaries. 32
 23.8 Waiver..... 32
 23.9 Headings..... 32
 23.10 Multiple Counterparts. 33
 23.11 Amendment..... 33
 23.12 Modification by the Parties..... 33
 23.13 Reservation of Rights..... 33
 23.14 No Partnership..... 33
 23.15 Other Transmission Rights..... 33
 23.16 Modifications Related to NYISO’s Compliance with Order No. 2023. 34

Appendices

SERVICE AGREEMENT NO. 2942

ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

(“Agreement”) is made and entered into this 9th day of January 2026, by and among: (i) Sunrise Wind LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Sunrise”), and Holtsville Energy Storage, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Holtsville”), (each individually a “Developer” and collectively the “Developers”); (ii) Long Island Power Authority (“LIPA” or “Authority”), which is an instrumentality and political subdivision 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 Developers, the Affected Transmission Owner, or the NYISO each may be referred to individually as a “Party” or collectively referred to as the “Parties.” Long Island Electric Utility Servco LLC (“Servco”) is not a party to this Agreement and is executing and administering this Agreement on behalf of LIPA as LIPA’s agent. LIPA shall have full liability for the obligations of the Affected Transmission Owner under this Agreement, and Servco shall have no liability with respect to this Agreement.

RECITALS

WHEREAS, Sunrise is developing and constructing a Large Generating Facility (Queue Position No. 766) and an uprate to the Large Generating Facility (Queue Position No. 987) that will interconnect to transmission facilities that are part of the New York State Transmission System operated by the NYISO;

WHEREAS, Holtsville is developing and constructing a Large Generating Facility (Queue Position No. 956) that will interconnect to transmission facilities that are part of the New York State Transmission System operated by the NYISO;

WHEREAS, Yaphank Energy Storage, LLC was previously developing a Large Generating Facility included in the NYISO’s Queue (Queue Position No. 965) to interconnect to transmission facilities that are part of the New York State Transmission System operated by the NYISO, and subsequently terminated this project;

WHEREAS, both Yaphank Energy Storage, LLC and Holtsville are wholly owned by Savion, LLC (“Savion”);

WHEREAS, each Developer requested that the NYISO provide it with Capacity Resource Interconnection Service as part of the interconnection of its facility to the New York State Transmission System or Distribution System;

WHEREAS, the NYISO’s Class Year Deliverability Study and Additional SDU Study for Class Year 2021 (collectively, the “Class Year Deliverability Study”) determined that certain System Deliverability Upgrades must be constructed on the Affected System owned by the Affected Transmission Owner to enable the Developers to interconnect reliably their facilities to the New York State Transmission System in a manner that meets the NYISO Deliverability

SERVICE AGREEMENT NO. 2942

Interconnection Standard at the requested level of Capacity Resource Interconnection Service (“Common System Deliverability Upgrades”);

WHEREAS, each Developer accepted, and provided Security in the form of letters of credit to the Affected Transmission Owner pursuant to Sections 25.7.2.1 and 25.8 of Attachment S to the ISO OATT to cover, its portion of the estimated cost of the Common System Deliverability Upgrades as determined in the Class Year Deliverability Study for Class Year 2021 (“Developer Common SDU Cost Cap”);

WHEREAS, the NYISO subsequently determined that certain of the Common System Deliverability Upgrades identified in Class Year 2021 are no longer required in connection with Developers’ projects due to the withdrawal of the Yaphank Energy Storage project and the results of the Class Year Deliverability Study and Additional SDU Study for Class Year 2023, and the NYISO updated the required Common System Deliverability Upgrades;

WHEREAS, Affected Transmission Owner is a non-jurisdictional utility pursuant to Section 201(f) of the Federal Power Act whose facilities are included in the New York State Transmission System as Transmission Facilities Requiring ISO Notification;

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 Deliverability Upgrades (“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 for the purpose of allocating the responsibilities for the performance and oversight of the EPC Services required to construct the Common System Deliverability Upgrades.

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

ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT, Section 30.1 of Attachment X of the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, Section 40.1 of Attachment HH of the OATT, the body of the LFIP, or the body of this Agreement.

Additional SDU Study: A study that a Developer may elect to pursue if the Class Year Deliverability Study identifies the need for a new System Deliverability Upgrade (*i.e.*, a System Deliverability Upgrade not previously identified and cost allocated in a Class Year Study and not substantially similar to a System Deliverability Upgrade previously identified and cost allocated in a Class Year Study) that requires additional study.

SERVICE AGREEMENT NO. 2942

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 ERO, 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 Deliverability Upgrades 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.

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.

Capacity Resource Interconnection Service (“CRIS”) shall mean the service provided by NYISO to the Developers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with Attachment HH to the ISO OATT; such service being one of the eligibility requirements for participation as a NYISO Installed Capacity Supplier.

Class Year Deliverability Study shall mean an assessment, conducted by the NYISO staff in cooperation with Market Participants, to determine whether System Deliverability Upgrades are required for Class Year CRIS Projects under the NYISO Deliverability Interconnection Standard. For purposes of this Agreement, Class Year Deliverability Study includes the Class Year Deliverability Study and the Additional SDU Study.

SERVICE AGREEMENT NO. 2942

Class Year Interconnection Facilities Study (“Class Year Study”) shall mean a study conducted by the NYISO or a third party consultant for the Developer to determine a list of facilities (including Connecting Transmission 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 or Class Year Transmission Project 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 in this Attachment X.

Common System Deliverability Upgrades 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 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 of this Agreement.

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

Developer Common SDU Cost Cap shall have the meaning set forth in the recitals 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.

Electric Reliability Organization (“ERO”) shall mean the North American Electric Reliability Corporation or its successor organization.

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

EPC Costs shall mean the actual costs that Affected Transmission Owner incurs in performing the EPC Services in accordance with this Agreement.

SERVICE AGREEMENT NO. 2942

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.

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.

Forfeited Security shall mean any Security posted to an Affected Transmission Owner in connection with the Common System Deliverability Upgrades by a Developer that has accepted its Project Cost Allocation for the upgrades in a NYISO Class Year Deliverability Study and subsequently terminates or abandons development of its project. This includes the Security posted to the Affected Transmission Owners by Yaphank Energy Storage, LLC (NYISO Queue No. 965) when it accepted its Project Cost Allocation for the Common System Deliverability Upgrades in Class Year 2021 and subsequently terminated its project, which Security amount is set forth in Appendix A.

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.

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. For the avoidance of doubt, the Authority’s Board of Trustees shall be considered a Governmental Authority.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,”

SERVICE AGREEMENT NO. 2942

“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 Deliverability Upgrades 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 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 SDU Cost Cap in the Class Year Deliverability Study, 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.

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 Deliverability Interconnection Standard – The standard that must be met, unless otherwise provided for by Attachment HH to the ISO OATT, by (i) any generation facility larger than 2MW in order for that facility to obtain CRIS; (ii) any Class Year Transmission Project; (iii) any entity requesting External CRIS Rights, and (iv) any entity requesting a CRIS transfer pursuant to Section 40.18.4 of Attachment HH to the ISO OATT. To meet the NYISO Deliverability Interconnection Standard, the Developer must, in accordance with the rules in

SERVICE AGREEMENT NO. 2942

Attachment HH to the ISO OATT, fund or commit to fund any System Deliverability Upgrades identified for its project in the Class Year Deliverability Study.

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, the Developers, 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 Deliverability Upgrades 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 or additions to Byways and Highways and Other Interfaces on the existing New York State Transmission System and Distribution System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Deliverability Interconnection Standard at the requested level of Capacity Resource Interconnection Service.

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

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date.

This Agreement shall become effective upon the date of execution by all Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO shall promptly file this Agreement with FERC upon execution, if required, with LIPA joining in such filing as a non-jurisdictional entity. 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 information reasonably requested by the NYISO and Affected Transmission Owner needed for such filing. Any filing of this Agreement, notice of termination, or other filing made to FERC pursuant to this Agreement shall not be construed to be any waiver of the status of the Authority as a non-jurisdictional utility pursuant to Section 201(f) of the Federal Power Act.

SERVICE AGREEMENT NO. 2942

2.2 Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect until the later of: (i) the Completion Date, and (ii) the date on which the final payment of all invoices issued under this Agreement has been made pursuant to Articles 7.1 and 7.3 and the security has been released or refunded pursuant to Article 7.2.

2.3 Termination.

Completion of Term of Agreement

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

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 and Article 21.

Compliance.

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

2.4 Termination Costs.

If this Agreement is terminated pursuant to Article 2.3.2 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 Article 6 regarding each Developer's responsibility for the costs of the EPC Services, subject to the Developer Common SDU 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:

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

SERVICE AGREEMENT NO. 2942

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 that have already been 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 for material or equipment not taken by a Developer, Affected Transmission Owner shall promptly refund such amount 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.

2.4.2

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.

2.4.3

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 Article 6 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 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.

SERVICE AGREEMENT NO. 2942

3.2 Equipment Procurement.

Affected Transmission Owner shall commence design of the Common System Deliverability Upgrades 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 Deliverability Upgrades for which it is responsible 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:

3.3.1 Approval of the appropriate Governmental Authority has been obtained, to the extent required, for the construction of a discrete aspect of the Common System Deliverability Upgrades; and

3.3.2 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 Deliverability Upgrades.

3.4 Reserved.

3.5 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 Deliverability Upgrades and the compatibility of the System Deliverability Upgrades 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 Deliverability Upgrades.

Affected Transmission Owner shall own the Common System Deliverability Upgrades as described in Appendix A hereto.

3.8 Lands of Other Property Owners.

If any part of the Common System Deliverability Upgrades 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 its own or affiliated generation, including use of its eminent

SERVICE AGREEMENT NO. 2942

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 Deliverability Upgrades.

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 Reserved.

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 any Affected Transmission Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, LIPA shall not be required to comply with any provisions of this Agreement that would result in the loss of tax-exempt status of any of its Tax-Exempt Bonds or impair its ability to issue future tax-exempt obligations. For the purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, the interest on which is not included in gross income under the Internal Revenue Code.

3.11.2

Non-Jurisdictional Entity.

LIPA does not waive its exemption, pursuant to Section 201(f) of the FPA from Commission jurisdiction with respect to the Commission's exercise of FPA's general ratemaking authority.

3.12 Modification.

General

If, prior to the In-Service Date, the Affected Transmission Owner proposes to modify the Common System Deliverability Upgrades, 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 NYISO and Affected Transmission Owner may agree, sufficient information for the NYISO to evaluate whether the proposed modification constitutes a material modification to the Common System Deliverability Upgrades. The NYISO's agreement to the proposed modification shall not be unreasonably withheld, conditioned, or delayed if the NYISO determines that the proposed modification is not a material modification.

3.12.2

Standards.

SERVICE AGREEMENT NO. 2942

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.

3.12.3

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 Deliverability Upgrades or the New York State Transmission System to facilitate the interconnection of a facility not subject to this Agreement to the Common System Deliverability Upgrades or the New York State Transmission System, or to provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment HH 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 Deliverability Upgrades 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 and Developers in advance of its performance of tests of the Common System Deliverability Upgrades.

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 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 SDU Cost Cap, except as set forth in Article 6.1.3 or 7.1.

SERVICE AGREEMENT NO. 2942

6.1.2

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 Article 6.1.2 is greater than the combined Developer Common SDU Cost Cap amount, each Developer's responsibility for any costs above its Developer Common SDU Cost Cap shall be determined in accordance with Section 40.16.3 of Attachment HH of the ISO OATT; *provided, however,* that prior to charging a Developer for any costs above its Developer Common SDU Cost Cap amount that is initially included in this Agreement, the Affected Transmission Owner shall first recover costs incurred above the Developer Common SDU Cost Cap by drawing on any Forfeited Security held by the Affected Transmission Owner in accordance with Section 40.16.3.3 of Attachment HH to the ISO OATT. The Parties have agreed among each other, and with Yaphank Energy Storage, LLC, on the approach by which the Affected Transmission Owner will make use of the Forfeited Security, which approach is set forth in Article 7.1 of this Agreement. The Parties shall amend this Agreement if there are any changes to the Developer Common SDU Cost Cap initially included in this Agreement as required by Section 40.16.3 of Attachment HH 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 Class Year Deliverability Study for Class Year 2021 and set forth in Appendix A, then the Affected Transmission Owner shall make a true-up payment to each Developer pursuant to Article 7.2 to refund to the Developer any costs that the Developer has paid to the Affected Transmission Owner under Article 6.1.1 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.

6.2 Provision and Application of Security

Section 6.2 applies to each Developer that has provided the Affected Transmission Owner with cash or Security in the amount of its Developer Common SDU Cost Cap for its share of the Common System Deliverability Upgrades 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 Article 7.1 within the timeframe set forth in Article 7.3 or (ii) does not pay any disputed amount into an independent escrow account pursuant to Article 7.4, the Affected Transmission Owner may draw upon the cash or Security posted by the Developer for that 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

SERVICE AGREEMENT NO. 2942

System Deliverability Upgrades on a case-by-case basis, subject to the Developer Common SDU Cost Cap.

ARTICLE 7. INVOICE

7.1 General.

To the extent that any amounts are due to a Developer or Affected Transmission Owner under this Agreement, the owed Party, as applicable, shall submit to the other Part(ies), on a monthly basis, an invoice of amounts due for the preceding month or as otherwise agreed by such Parties and as set forth in this Article 7. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. As established in this Article 7.1, the Affected Transmission Owner will address the owed amount included in the invoice by first drawing on the Prepayment Amounts (as the term is defined below). The Developers and Affected Transmission Owner may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts one Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party. Affected Transmission Owner will deliver to each Developer semiannually (on January 31 and August 31 or the next Business Day) a status report that includes expenditures to date and the expected timing of the next Prepayment Amount that will be due from the Developers.

The Affected Transmission Owner shall invoice each Developer in accordance with this Agreement for each Developer's respective share of the EPC Services in proportion to each Developer's Invoice Share set forth in Section 2.B of Appendix A. The Affected Transmission Owner will draw down on the Prepayment Amounts (as the term is defined below) as the Affected Transmission Owner incurs the actual EPC Costs.

Each Developer has provided a letter of credit as Security to Affected Transmission Owner in the amount of the Developer's respective portion of the Developer Common SDU Cost Cap amounts as set forth in Section 2.A of Appendix A (each an "LOC Amount") to cover, pursuant to Attachment S of the ISO OATT, the cost amount identified in the NYISO's Class Year Deliverability Study for Class Year 2021 for the Common System Deliverability Upgrades.

7.1.1 Within 10-days of the date on which this Agreement becomes effective under Article 2.1, each Developer shall pay the Affected Transmission Owner the first 30% of the Developer's respective Developer Common SDU Cost Cap amount ("First Prepayment Amount"). In addition to the First Prepayment Amount, Affected Transmission Owner and Holtsville have agreed that Holtsville shall cause Savion to pay an additional amount of \$1,545,853.00 ("Additional First Prepayment Amount") in cash to replace the Forfeited Security. Upon the Affected Transmission Owner's receipt of the Additional First Prepayment Amount, Affected Transmission Owner shall release the Forfeited Security. Upon the Affected Transmission Owner's receipt of the applicable Developer's First Prepayment Amount, Sunrise Wind and Holtsville shall have the right to reduce their LOC Amount on a dollar-for-dollar basis by \$1,413,999.90 and \$395,556.30, respectively. For the avoidance of doubt, Affected Transmission Owner shall hold \$3,299,333.10 LOC Amount for Sunrise Wind and shall hold

SERVICE AGREEMENT NO. 2942

\$922,964.70 LOC Amount for Holtsville following the payment of the First Prepayment Amount.
7.1.2

The Affected Transmission Owner shall notify each Developer when it determines that the cumulative amount invoiced by the Affected Transmission Owner will exceed the sum of the First Prepayment Amount and the Additional First Prepayment Amount, and shall request an additional payment from each Developer equal to 30% of its respective Developer Common SDU Cost Cap (“Second Prepayment Amount”). Within 30 days of receipt of such notice by the Developer, the Developer shall tender to the Affected Transmission Owner the Second Prepayment Amount in accordance with Article 7.3 of this Agreement and shall have the right to reduce the LOC Amount, dollar-for-dollar, by the amount of the Second Prepayment Amount.
7.1.3

The Affected Transmission Owner shall notify each Developer when it determines that the cumulative amount invoiced by the Affected Transmission Owner will exceed the sum of the First Prepayment Amount, the Additional First Prepayment Amount and the Second Prepayment Amount and shall request an additional payment from each Developer equal to 40% of its respective Developer Common SDU Cost Cap (“Third Prepayment Amount”). Within 30 days of receipt of such notice by the Developer, the Developer shall tender to the Affected Transmission Owner the Third Prepayment Amount in accordance with Article 7.3 of this Agreement and shall have the right to reduce the LOC Amount, dollar-for-dollar, by 10% of its respective Developer Common SDU Cost Cap. The LOC Amount equal to 30% of its respective Developer Common SDU Cost Cap shall remain in place until the final reconciliation is complete and Developers have paid the final invoice amount to the Affected Transmission Owner.
7.1.4

Following the Developers’ payment of the Third Prepayment Amount, the Affected Transmission Owner shall thereafter notify Developers whenever it determines that the total prepayment amount held by the Affected Transmission Owner (“Retained Prepayment Amount”) nears a \$500,000 balance, as determined by the Affected Transmission Owner. The First Prepayment Amount, Additional First Prepayment Amount, Second Prepayment Amount, Third Prepayment Amount, and Retained Prepayment Amount are collectively the “Prepayment Amounts”. In such instances, Affected Transmission Owner will invoice the Developers, in proportion to each Developer’s Invoice Share, to replenish the Retained Prepayment Amount to the lesser of: (i) \$1,000,000 or (ii) Affected Transmission Owner’s remaining estimated amount for the EPC Costs. Developers shall make the replenishment payment to Affected Transmission Owner within thirty (30) days of the invoice receipt. This notice, invoice, and replenishment process for the Retained Prepayment Amount will continue until the project is complete and all actual costs are paid by the Developers to the Affected Transmission Owner and reconciled against the prepayments as described in Article 7.2.
7.1.5

The Prepayment Amounts are estimates only and shall not limit each Developer’s obligation to pay the Affected Transmission Owner for all applicable costs actually incurred by Affected Transmission Owner in its performance of the EPC Services in excess of the sum of the Prepayment Amounts, including the Additional First Prepayment Amount for the Forfeited

SERVICE AGREEMENT NO. 2942

Security amount, to the extent not inconsistent with Attachment HH to the ISO OATT, including Section 7.1.6.3.4 of Attachment HH.

Subject to Article 7.4, the Affected Transmission Owner's obligation to proceed with the work under this Agreement shall be contingent upon receipt of all of the Prepayment Amounts requested by the Affected Transmission Owner in accordance with the terms of this Agreement.

7.2 Reissuance of Security and Refund of Remaining Security

Each Developer may, at its request, reissue to the Affected Transmission Owner its Security to reflect a reduction of the LOC Amount to the extent permitted by Article 7.1, in a form and substance reasonably satisfactory to the Affected Transmission Owner.

Within six (6) months after the Completion Date, the Affected Transmission Owner shall issue to each Developer a final invoice of any remaining amounts due associated with the EPC Services ("Final Invoice") and shall set forth such costs in sufficient detail to enable each Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Affected Transmission Owner shall refund to each Developer any amount by which the actual payment by Developer for estimated costs, including any remaining Prepayment Amount that was provided by Developer, exceeds the actual costs of the EPC Services within thirty (30) Calendar Days of issuance of the Final Invoice. Upon each Developer's full and complete payment of the actual total costs of the EPC Services as provided in Article 7.1.3, Affected Transmission Owner shall release and have no further right to draw on such Developer's Security and such Developer shall have the right to cancel their Security.

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 SDU Cost Cap and any other amounts due under the terms of this Agreement; and (ii) pays to the Party owed money or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Party that owes money fails to meet these two requirements for continuation of service, then the Party owed money may provide notice to the other Party of a Default pursuant to Article 11. 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).

SERVICE AGREEMENT NO. 2942

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 ~~8.2.1~~ 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.

8.2.2 This Agreement is subject to all Applicable Laws and Regulations.

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

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.

9.3 Alternative Forms of Notice.

SERVICE AGREEMENT NO. 2942

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.

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 Article 11, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

ARTICLE 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

SERVICE AGREEMENT NO. 2942

12.1 Indemnity.

Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and save harmless, as applicable, the other Parties and their agents (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.

12.1.1

Indemnified Party.

If a Party is entitled to indemnification under this Article 12 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 12.1.3, to 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.

12.1.2

Indemnifying Party.

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 12, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

12.1.3

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 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

SERVICE AGREEMENT NO. 2942

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 Article 12.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary 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.

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: **12.3.1**

12.3.2 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.

SERVICE AGREEMENT NO. 2942

12.3.3

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.

12.3.4

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.

12.3.5

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.

12.3.6

The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of Affected Transmission Owner shall name the Developers, 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 Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

12.3.7

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.

12.3.8

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.

12.3.9

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

SERVICE AGREEMENT NO. 2942

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

12.3.10

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.

12.3.11

Notwithstanding the foregoing, Affected Transmission Owner may self-insure to meet the minimum insurance requirements of Articles 12.3.1 through 12.3.9 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 Articles 12.3.1 through 12.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 12.3.11, it shall notify the other Parties that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Articles 12.3.1 through 12.3.9 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 Articles 12.3.1 through 12.3.9.

12.3.12

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.

12.3.13

Subcontractors of Affected Transmission Owner must maintain the same insurance requirements stated under Articles 12.3.1 through 12.3.9 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

SERVICE AGREEMENT NO. 2942

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 and 12.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 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.

Certain information exchanged by the Parties during the term of this Agreement shall constitute confidential information ("Confidential Information") and shall be subject to this Article 16.

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 Article 16, each 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.

SERVICE AGREEMENT NO. 2942

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 Article 16.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

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 connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 16 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 16.

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,

SERVICE AGREEMENT NO. 2942

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 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 Article 16. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 16, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 16, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 16.

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

Notwithstanding anything in this Article 16 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

SERVICE AGREEMENT NO. 2942

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 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 Deliverability Upgrades, 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.

SERVICE AGREEMENT NO. 2942

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 Deliverability Upgrades, including, but not limited to, the following information: (1) progress of EPC Services to date; (2) a description of the activities for the EPC Services since the last report; (3) a description of the action items for the EPC Services for the next period; and (4) the delivery status of equipment ordered with respect to the EPC Services.

18.3 Information Supplementation.

Affected Transmission Owner shall supplement its information submissions described above in this Article 18 with any and all “as-built” information or “as-tested” performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist.

ARTICLE 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 Article 19.1 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.

SERVICE AGREEMENT NO. 2942

Subject to the requirements of confidentiality under Article 16 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit at its own expense the other Party's accounts and records pertaining to the other Party's performance or satisfaction of its obligations under this Agreement. Such audit rights shall include audits of the other Party's costs, and calculation of invoiced amounts. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to the Party's performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 19.4 of this Agreement.

19.4 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 Deliverability Upgrades 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 Article 7.1 of this Agreement.

Audit Rights Period for All Other Accounts and Records.

Accounts and records related to a Party's performance or satisfaction of its obligations under this Agreement other than those described in Article 19.4.1 of this Agreement shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

19.5 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.

SERVICE AGREEMENT NO. 2942

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 Article 3 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

20.3 Reserved.

20.4 No Limitation by Insurance.

The obligations under this Article 20 will not be limited in any way by any limitation of subcontractor's insurance.

ARTICLE 21. DISPUTES

21.1 Submission.

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

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 Article 21, the terms of this Article 21 shall prevail.

21.3 Arbitration Decisions.

SERVICE AGREEMENT NO. 2942

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 Deliverability Upgrades.

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.

Notwithstanding the provisions of this Article 21, any Party may terminate this Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS

22.1 General.

Each Party makes the following representations, warranties and covenants:

~~22.1.1~~

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.

~~22.1.2~~

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).

SERVICE AGREEMENT NO. 2942

22.1.3

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.

22.1.4

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.

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

SERVICE AGREEMENT NO. 2942

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.

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.

SERVICE AGREEMENT NO. 2942

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.

NYISO 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 any Party 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

SERVICE AGREEMENT NO. 2942

incremental transmission capacity, if any, created by these Common System Deliverability Upgrades, in the configuration described in and as operated in accordance with Appendix A of this Agreement.

23.16 Modifications Related to NYISO's Compliance with Order No. 2023.

If, as part of the NYISO's compliance proceeding at the Commission in response to Order No. 2023, the Commission directs that the NYISO modify the *pro forma* Standard Large Generator Interconnection Agreement located in Appendix 4 of Attachment X to the ISO OATT, the Parties shall amend and restate this Agreement to incorporate the modifications; *provided, however,* the Parties may agree to include in the amended and restated agreement non-conforming changes to any terms of the *pro forma* Large Generator Interconnection Agreement that have been modified to comply with the Commission's order, which non-conforming modifications must be filed with the Commission for its acceptance.

SERVICE AGREEMENT NO. 2942

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

New York Independent System Operator, Inc.

By: _____

Name: _____

Title: _____

Date:

**Long Island Power Authority
acting by and through its agent
Long Island Electric Utility Servco LLC**

By: _____

Name: _____

Title: _____

Date:

Holtsville Energy Storage, LLC

By: _____

Name: _____

Title: _____

Date:

Sunrise Wind LLC

By: _____

Name: _____

Title: _____

Date:

By: _____

Name: _____

Title: _____

Date:

SERVICE AGREEMENT NO. 2942

APPENDICES

Appendix A

EPC Services

Appendix B

Addresses for Delivery of Notices and Billings

Appendix C

In-Service Date

SERVICE AGREEMENT NO. 2942

APPENDIX A

EPC SERVICES

1. Common System Deliverability Upgrades

The Common System Deliverability Upgrades consist of the following System Deliverability Upgrades:

Reconductoring Portion of Macarthur to Bayport 69 kV Overhead Line for Uprating from 77/92/97 MVA to 77/92/108 MVA

The NYISO’s Class Year Deliverability Study for Class Year 2019 identified the Affected Transmission Owner’s Bayport to MacArthur circuit as limiting and requiring an upgrade. The Common System Deliverability Upgrades will uprate the existing Bayport - MacArthur 69 kV transmission line STE rating to 108 MVA. The STE increase will be accomplished by rebuilding the existing Bayport - MacArthur 69 kV transmission line from rating 77/92/97 MVA (Normal/LTE/STE) to the new rating requirement 77/92/108 MVA.

The existing MacArthur - Bayport overhead 69 kV line consists of 1.55 miles of 795 kcmil aluminum-conductor steel-reinforced (“ACSR”) cable and 2.11 miles of 477 kcmil ACSR cable. To increase the line rating, the 2.11 miles 477 kcmil ACSR shall be replaced with a larger conductor. The MacArthur to Bayport line reconductor shall include designing, furnishing and installing the following major physical and electrical equipment:

- new conductor;
- new overhead shield wire;
- all structure replacements to support larger conductor; and
- repair of roads and features in right-of-way.

2. Developer Cost Responsibility

A. Security and Developer Common SDU Cost Cap

Each Developer has accepted and has provided a Letter of Credit as Security to Affected Transmission Owner in the amounts set forth in the table below in this Appendix A to cover, pursuant to Attachment S of the ISO OATT, the cost amount identified in the NYISO’s Class Year Deliverability Study for Class Year 2021 for the Common System Deliverability Upgrades.

The amounts in the below table constitute the Developer Common SDU Cost Cap for each Developer.

Developer	Developer Common SDU Cost Cap (\$) and Security Amount
Sunrise (Q766)	\$4,488,889
Sunrise (Q987)	\$224,444

SERVICE AGREEMENT NO. 2942

Holtsville (Q956)	\$1,318,521

Total \$6,031,854

B. Developer’s Invoice Share	
Developer	Invoice Share (%)
Sunrise (Q766)	74.42% Sunrise (Q987)
3.72% Holtsville (Q956)	21.86%

C. Forfeited Security

Yaphank Energy Storage, LLC provided Affected Transmission Owner security in the amount of \$1,545,852. Affected Transmission Owner will recover these costs by calling for the Forfeited Security to be converted into cash as set forth in Article 7.1.1 of this Agreement.

3. Milestones

Item	Milestone	Date	Responsible Party
1.	EPC Agreement complete Execution	Completed	NYISO, Affected Transmission Owner, Developers
2.	First Prepayment Amount (30%) and Additional Prepayment Amount due	Days following the Execution Date Ten (10) Calendar	Developers
3.		Forty (40) Calendar	
	Design Commencement	Days following the Execution Date	Affected Transmission Owner
4.	Easements Secured	12/01/2027	Affected Transmission Owner
5.	Permits and SEQRA Approval	01/30/2028	Affected Transmission Owner
6.	Construction Commencement	02/01/2028	Affected Transmission Owner
7.	Completion Date (construction)	12/07/2028	Affected Transmission Owner
8.	In-Service Date	12/21/28	Affected Transmission Owner

Note: All dates are tentative and subject to change. The above dates will be pushed out for delays, such as, but not limited to, delays in EPC Agreement execution or receipt of required permits and approvals or any other matters beyond the Affected Transmission Owner's control.

A-2

SERVICE AGREEMENT NO. 2942

In addition, if there is a delay in receiving the Prepayment Amounts, the schedule dates will be pushed out accordingly.

4. Agency

PSEG Long Island LLC (“PSEG LI”) and the Affected Transmission Owner are parties to the Amended and Restated Operations Services Agreement dated as of December 31, 2013, as amended (“A&R OSA”). Pursuant to the A&R OSA, PSEG LI established an operating subsidiary known as Long Island Electric Utility Servco LLC (“Servco”). Servco is not a party to this Agreement and is executing and administering this Agreement on behalf of the Affected Transmission Owner as its agent. Affected Transmission Owner shall have full liability under this Agreement, and Servco shall have no liability with respect to this Agreement. Servco shall be the Affected Transmission Owner’s representative on matters related to this Agreement, including the attached Appendices.

SERVICE AGREEMENT NO. 2942

APPENDIX B

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

Before In-Service Date of the Common System Deliverability Upgrades:

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 Deliverability Upgrades:

New York Independent System Operator, Inc.
Attn: Vice President, Operations
10 Krey Boulevard Rensselaer, NY 12144
Phone: (518) 356-6000
Email: interconnectionsupport@nyiso.com

LIPA:

c/o Long Island Electric Utility Servco LLC
Attn: Director-Legal, Regulatory
333 Earle Ovington Blvd. Uniondale, NY
11553

c/o Long Island Electric Utility Servco LLC
Power Portfolios
175 East Old Country Rd.
Hicksville, NY 11801
Phone: 516-949-8613 Email:
Iram.Iqbal@pseg.com

Sunrise:

Sunrise Wind, LLC
Attn: Grid Integration Manager, Sunrise Wind
437 Madison Avenue New York, NY 10022

SERVICE AGREEMENT NO. 2942

Email: SRW01GridIntegration@orsted.com
Telephone: (857) 284-1430

Holtsville:

Holtsville Energy Storage, LLC
c/o Savion, LLC 422 Admiral
Blvd. Kansas City, MO 64106
Attn: Senior Vice President of Transmission
Email: dsunderman@savionenergy.com
Telephone: 785-766-7613

Holtsville Energy Storage, LLC
c/o Savion, LLC 422 Admiral
Blvd. Kansas City, MO 64106
Attn: Senior Vice President of Transmission
Email: echam@savionenergy.com
Telephone: 913-207-9165

Holtsville Energy Storage, LLC
c/o Savion, LLC 422 Admiral
Blvd. Kansas City, MO 64106
Attn: Senior Manager of Transmission
Email: mkarki@savionenergy.com
Telephone: 816-946-9796

Billings and Payments:

LIPA:

LIPA
c/o Long Island Electric Utility Servco LLC
Power Portfolios
175 East Old Country Rd.
Hicksville, NY 11801
Phone: 516-949-8613 Email:
Iram.Iqbal@pseg.com

Sunrise:

Sunrise Wind, LLC
Attn: Invoices, Sunrise Wind

SERVICE AGREEMENT NO. 2942

437 Madison Avenue
New York, NY 10022
Email: invoices@orsted.com
Telephone: (857) 284-1430

Holtsville:

Holtsville Energy Storage, LLC
c/o Savion, LLC 422 Admiral
Blvd. Kansas City, MO 64106
Attn: Accounts Receivable
Email: accounting@savionenergy.com

Holtsville Energy Storage, LLC
c/o Savion, LLC 422 Admiral
Blvd. Kansas City, MO 64106
Attn: Senior Manager of Transmission
Email: mkarki@savionenergy.com
Telephone: 816-946-9796

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

NYISO:

Before In-Service Date of the Common System Deliverability Upgrades:

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 Deliverability Upgrades:

New York Independent System Operator, Inc.
Attn: Vice President, Operations
10 Krey Boulevard Rensselaer, NY 12144
Phone: (518) 356-6000 Fax: (518) 356-6118
Email: interconnectionsupport@nyiso.com

LIPA:

SERVICE AGREEMENT NO. 2942

LIPA

c/o Long Island Electric Utility Servco LLC
Power Portfolios
175 East Old Country Rd.
Hicksville, NY 11801
Phone: 516-949-8613 Email:
Iram.Iqbal@pseg.com

Sunrise:

Sunrise Wind, LLC
Attn: Grid Integration Manager, Sunrise Wind
437 Madison Avenue New York, NY 10022
Email: SRW01GridIntegration@orsted.com
Telephone: (857) 284-1430

Holtsville:

Holtsville Energy Storage, LLC
c/o Savion, LLC 422 Admiral
Blvd. Kansas City, MO 64106
Attn: Senior Vice President of Transmission
Email: dsunderman@savionenergy.com
Telephone: 785-766-7613

Holtsville Energy Storage, LLC
c/o Savion, LLC 422 Admiral
Blvd. Kansas City, MO 64106
Attn: Vice President of Transmission
Email: echam@savionenergy.com
Telephone: 913-207-9165

Holtsville Energy Storage, LLC
c/o Savion, LLC 422 Admiral
Blvd. Kansas City, MO 64106
Attn: Senior Manager of Transmission
Email: mkarki@savionenergy.com
Telephone: 816-946-9796

SERVICE AGREEMENT NO. 2942

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 Deliverability Upgrades

Dear _____:

On **[Date]** **[Affected Transmission Owner]** has completed the Common System Deliverability Upgrades. This letter confirms that [describe the Common System Deliverability Upgrades] have commenced service, effective as of **[Date plus one day]**.

Thank you.

[Signature]

[Affected Transmission Owner Representative]

CC:

[Copy Developers]

