

## Attachment IV

## **30.14      Appendices**

## APPENDIX 1 TO LFIP - INTERCONNECTION REQUEST

1. The undersigned Developer submits this request to interconnect its Large Generating Facility or Class Year Transmission Project with the New York State Transmission System or Distribution System pursuant to the Standard Large Facility Interconnection Procedures in the ISO OATT ("LFIP").
2. This Interconnection Request is for [insert project name]: \_\_\_\_\_  
\_\_\_\_\_, which

is (check one of the following):

- \_\_\_\_\_ A proposed new Large Generating Facility
- \_\_\_\_\_ A proposed Co-located Storage Resource
- \_\_\_\_\_ A proposed Hybrid Storage Resource
- \_\_\_\_\_ A proposed multi-unit Large Generating Facility not seeking to participate as a Co-located Storage Resource or Hybrid Storage Resource
- \_\_\_\_\_ A proposed new BTM:NG Resource
- \_\_\_\_\_ A proposed new Class Year Transmission Project
- \_\_\_\_\_ A material modification to a proposed or existing facility (e.g., an increase in the capacity of an existing facility beyond the permissible de minimis increases permitted under Section 30.3.1 of Attachment X to the ISO OATT)

3. Legal Name of the Developer (or, if an individual, individual's name) (must be a single individual or entity):

Name of Developer: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address or location of the proposed new Large Facility site (to the extent known) or, in the case

of an existing Generating Facility or Class Year Transmission Project, the name and specific location of that existing facility: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Approximate location, and, if available, address, coordinates, of the proposed Point(s) of Interconnection: :

POI: \_\_\_\_\_

Quadrants: \_\_\_\_\_

Alternate POI: \_\_\_\_\_

5. MW nameplate rating: \_\_\_\_\_ at \_\_\_\_\_ degrees F (if the degrees are applicable)

6. Requested Interconnection Service:

MW of requested ERIS at the POI (maximum summer or winter net MW, whichever is greater): \_\_\_\_\_

(NOTE: A Developer may request ERIS below the Generating Facility Capability for Large Generating Facilities and the full facility capacity for Class Year Transmission Projects subject to the requirements and limitations set forth in Section 30.3.2.3 of Attachment X to the ISO OATT).

- If requesting ERIS for a multi-unit facility, specify the requested ERIS for each Generator: \_\_\_\_\_
- Maximum summer net (net MW = gross MW minus auxiliary loads total MW) which can be achieved at 90 degrees F: \_\_\_\_\_  
Maximum winter net (net MW = gross MW minus auxiliary loads total MW) which can be achieved at 10 degrees F : \_\_\_\_\_
- MW of requested increase in ERIS of an existing facility, as calculated from the baseline ERIS (as defined in Section 30.3.1 of Attachment X – for temperature-sensitive machines, provide the summer and winter MW vs. temperature curves for both gross MW and net MW corresponding to the requested net MW values provided above): \_\_\_\_\_

MW of requested CRIS: \_\_\_\_\_

- If requesting CRIS for a multi-unit facility, specify the requested CRIS for each Generator: \_\_\_\_\_

7. If a Class Year Transmission Project, which of the following forms of CRIS does the Developer intend to request:

Unforced Capacity Deliverability Rights  
External-to-Rest of State Deliverability Rights

8. General description of the proposed Project (e.g.: describe type/size/number/general configuration of the proposed generator units, transmission, transformers, feeders, lines leading to the proposed point of interconnection(s), breakers, etc): \_\_\_\_\_
9. Attach a conceptual breaker one-line diagram and a project location geo map.
10. Proposed In-Service Date (Month/Year): \_\_\_\_\_  
Proposed Initial Synchronization Date (Month/Year): \_\_\_\_\_  
Proposed Commercial Operation Date (Month/Year): \_\_\_\_\_
11. Project power flow, short circuit, transient stability modeling data and supporting documentation (as set forth in Attachment A) (optional). Modeling data will be required during the scoping and applicable study agreement process, as coordinated by the ISO.
12. \$10,000 non-refundable application fee must be submitted with this Interconnection Request form.
13. Evidence of Site Control as specified in the LFIP (check one):  
  
\_\_\_\_\_ Is attached to this Interconnection Request and provides site control for the following number of acres: \_\_\_\_\_; or  
  
\_\_\_\_\_ Will be provided at a later date in accordance with the LFIP, in which case a non-refundable \$10,000 deposit in lieu of site control must be provided with this Interconnection Request form
14. This Interconnection Request shall be submitted to the ISO through the interconnection portal on the NYISO website.
15. This Interconnection Request is submitted by:  
  
Signature: \_\_\_\_\_  
  
Name (type or print): \_\_\_\_\_  
  
Title: \_\_\_\_\_  
  
Company: \_\_\_\_\_

Date: \_\_\_\_\_

## **LARGE GENERATING FACILITY PRELIMINARY DATA**

**(Additional data will be required at subsequent stages of the interconnection study process)**

1. Describe the composition of assets (including MW level) within the Large Generating Facility, including load reduction assets (e.g., 50 MW wind facility, 20 MW Energy Storage Resource and a load reduction resource with a maximum of 1 MW of load reduction):  

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2. Maximum Injection Capability of entire Large Generating Facility over 1 hour:  

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3. If the facility includes a Resource with Energy Duration Limitations , indicate the maximum injection capability for the entire Large Generating Facility over the selected duration (e.g., 100 MW over 4 hours):  

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4. Provide the following information for each unit within the Large Generating Facility:

Note: A completed Siemens PTI PSSE power-flow and dynamics models or other compatible formats, such as IEEE and PSLF models, and Aspen short circuit model must be supplied at a later stage of the interconnection study process.

Resource/Fuel type: \_\_\_\_ (Select from the drop box in the portal system)

Generator Nameplate Rating: \_\_\_\_\_MW (Typical)

MVA \_\_\_\_\_ °F \_\_\_\_\_ Voltage (kV) \_\_\_\_\_

Maximum Reactive Power at Rated Power Leading (MVAR):

\_\_\_\_\_

Minimum Reactive Power at Rated Power Lagging (MVAR): \_\_\_\_

Connection (e.g. Wye, Delta or Wye-grounded) \_\_\_\_\_

Reactance data per unit, Subtransient – unsaturated ( $X''_{di}$ ): \_\_\_\_\_

Customer-Site Load: \_\_\_\_\_ MW

Existing load? Yes \_\_\_ No \_\_\_

If existing load with metered load data, provide coincident Summer peak load: \_\_\_\_\_

If new load or existing load without metered load data, provide estimated coincident Summer peak load, together with supporting documentation for such estimated value:  
\_\_\_\_\_

Typical Reactive Load (if known): \_\_\_\_\_

Generator manufacturer, model name & number: \_\_\_\_\_

Inverter manufacturer, model name, number, and version: \_\_\_\_\_

Note: A completed General Electric Company Power Systems Load Flow (PSLF) data sheet or other compatible formats, such as IEEE and PTI power flow models, must be supplied at a later stage of the interconnection study process.

Nameplate Output Power Rating in MW: (Summer) \_\_\_\_\_ (Winter) \_\_\_\_\_

Nameplate Output Power Rating in MVA: (Summer) \_\_\_\_\_ (Winter) \_\_\_\_\_

**If solar**, total number of solar panels in solar farm to be interconnected pursuant to this

Interconnection Request: \_\_\_\_\_

Inverter manufacturer, model name, number, and version: \_\_\_\_\_

**If wind**, total number of generators in wind farm to be interconnected pursuant to this

Interconnection Request: \_\_\_\_\_

Generator Height: Single phase \_\_\_\_\_ Three Phase \_\_\_\_\_

Wind Model Type: \_\_\_ Type 1 \_\_\_ Type 2 \_\_\_ Type 3 \_\_\_ Type 4

**If an Energy Storage Resource or a Resource with Energy Duration Limitations:**

Inverter manufacturer, model name, number, and version:

Energy storage capability (MWh): \_\_\_\_\_

Minimum Duration for full discharge (i.e., injection) (Hours): \_\_\_\_\_



Minimum Duration for full charge (i.e., withdrawal) (Hours): \_\_\_\_\_

Maximum withdrawal from the system (i.e., when charging) (MW): \_\_\_\_\_

Maximum sustained four-hour injection in MW hours (calculated at the Minimum Duration for full discharge): \_\_\_\_\_

Primary frequency response operating range for electric storage resource: \_\_\_\_\_

Minimum State of Charge: \_\_\_\_\_(%)    Maximum State of Charge: \_\_\_\_\_(%)

### **GENERATOR STEP-UP TRANSFORMER DATA**

#### **RATINGS**

Capacity                      Self-cooled/Maximum Nameplate  
\_\_\_\_\_/\_\_\_\_\_MVA

Voltage Ratio (Generator Side/System Side/Tertiary)  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_kV

Winding Connections (Generator Side/System Side/Tertiary (Delta or Wye))  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Fixed Taps Available \_\_\_\_\_

Present Tap Setting \_\_\_\_\_

#### **IMPEDANCE**

Positive              Z1 (on self-cooled MVA rating) \_\_\_\_\_ % \_\_\_\_\_ X/R

Zero                  Z0 (on self-cooled MVA rating) \_\_\_\_\_ % \_\_\_\_\_ X/R

### **ADDITIONAL INFORMATION REQUESTED FOR CLASS YEAR TRANSMISSION PROJECTS**

Description of proposed project:

- a. General description of the equipment configuration and kV level: \_\_\_\_\_
- b. Transmission technology and manufacturer (e.g., HVDC VSC): \_\_\_\_\_

**ADDITIONAL INFORMATION REQUESTED FOR FACILITIES  
SEEKING ERIS BELOW FULL OUTPUT**

Describe any injection-limiting equipment if the facility is requesting ERIS below its full output:

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**ATTACHMENT A TO APPENDIX 1 – LFIP INTERCONNECTION REQUEST**  
**Terms and Conditions of Interconnection Study(ies)**

These terms and conditions for the study of a Large Generating Facility or Class Year Transmission Project, or a material modification to an existing Large Generating Facility or Class Year Transmission Project proposed in the Interconnection Request dated \_\_\_\_\_ (“the Project”) and submitted by \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“Developer”) sets forth the respective obligations between Developer and 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”) (hereinafter the “Terms and Conditions”). By signing below, Developer confirms its understanding and acceptance of the Terms and Conditions.

**RECITALS**

**WHEREAS**, Developer is proposing to develop the Project; and

**WHEREAS**, the Project is already interconnected to the New York State Transmission System (or Distribution System, as applicable) or desires to interconnect the Large Facility with the New York State Transmission System (or Distribution System, as applicable); and

**WHEREAS**, Developer has requested NYISO to perform one or more of the following studies: Optional Interconnection Feasibility Study, Interconnection System Reliability Impact Study, or Optional Interconnection System Reliability Impact Study to assess the impact of the Project on the New York State Transmission System (or Distribution System, as applicable).and any Affected Systems.

**Now, THEREFORE**, in consideration of and subject to the terms and conditions contained herein, Developer and NYISO agree as follows:

- 1.0 When used in these Terms and Conditions, with initial capitalization, the terms specified shall have the meanings indicated in the NYISO’s Commission-approved Standard Large Facility Interconnection Procedures (“LFIP”).
- 2.0 Developer shall elect and NYISO shall cause to be performed, in accordance with the NYISO Open Access Transmission Tariff (“OATT”), one or more of the following: an Optional Interconnection Feasibility Study consistent with Section 30.6 of the LFIP, an Interconnection System Reliability Impact Study consistent with Section 30.7 of the LFIP, and an Optional Interconnection System Reliability Impact Study consistent with Section 30.10 of the LFIP, collectively referred to as the “Studies.” The terms of Sections 30.6, 30.7, 30.10, 30.13.1, and 30.13.3 of the LFIP, as applicable, are incorporated by reference herein.
- 3.0 The scopes for the Studies that Developer elects or is required to perform under its Interconnection Request and these Terms and Conditions shall be subject to the assumptions developed by Developer, NYISO, and the Connecting Transmission

Owner(s) at the respective scoping meetings for each Study and approved by NYISO Operating Committee.

- 4.0 The Studies shall be based on the technical information provided by Developer in the Interconnection Request, as may be modified as the result of the Scoping Meeting and completed study results, if performed and available. NYISO reserves the right to request additional information from Developer as may reasonably become necessary consistent with Good Utility Practice during the course of the Studies (including dynamic modeling data) and as designated in accordance with Section 30.3.3.4 of the LFIP and such additional information shall be provided in a prompt manner. If, after the designation of the Point of Interconnection pursuant to Section 30.3.3.4 of the LFIP, Developer modifies its Interconnection Request pursuant to Section 30.4.4, the time to complete the Studies may be extended.
- 5.0 Optional Interconnection Feasibility Study. If Developer elects to perform an Optional Interconnection Feasibility Study, the study report shall provide the following:
- If Developer elects to perform an Optional Interconnection Feasibility Study with a limited analysis (i.e., \$10,000 study deposit), the study report shall provide, to the extent selected by Developer:
    - development of a conceptual breaker-level one-line diagram of existing NYS Transmission System or Distribution System where the Large Facility proposes to interconnect; and/or
    - a review of the feasibility/constructability of a conceptual breaker-level one-line diagram of the proposed interconnection (e.g., space for additional breaker bay in existing substation or identification of cable routing concerns inside existing substation).
  - If Developer elects to perform an Optional Interconnection Feasibility Study with detailed analyses (i.e., \$60,000 study deposit), the study report shall provide, to the extent selected by Developer:
    - development of conceptual breaker-level one-line diagram of existing NYS Transmission System or Distribution System where the Large Facility proposes to interconnect (i.e., how to integrate the Large Facility into the existing system);
    - a review of the feasibility/constructability of a conceptual breaker-level one-line diagram of the proposed interconnection (e.g., space for additional breaker bay in existing substation or identification of cable routing concerns inside existing substation);
    - preliminary review of local protection, communication, and grounding issues associated with the proposed interconnection;

- power flow, short circuit, and/or bus flow analyses; and/or
- preliminary identification of Connecting Transmission Owner Attachment Facilities and Local System Upgrade Facilities with a non-binding good faith cost estimate of Developer's cost responsibility and a non-binding good faith estimated time to construct.

6.0 Interconnection System Reliability Impact Study. The Interconnection System Reliability Impact Study report shall provide the following information:

- Identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
- identification of any thermal overload or voltage limit violations resulting from the interconnection;
- identification of any instability or inadequately damped response to system disturbances resulting from the interconnection;
- description and non-binding, good faith estimated cost of facilities required to interconnect the Large Facility to the New York State Transmission System (or Distribution System, as applicable) and to address the identified short circuit, instability, and power flow issues; and
- if Developer opts to skip the Optional Interconnection Feasibility Study NYISO will supplement the information set forth above.
- if Developer is required to or elects to include a preliminary non-binding deliverability evaluation under the Deliverability Interconnection Standard pursuant to Section 30.7.3.2 of Attachment X to the OATT, the System Reliability Impact Study report shall also (1) identify, at a high level, potential System Deliverability Upgrades to make the facility fully deliverable for the full amount of requested CRIS; and (2) provide preliminary non-binding cost estimates for such potential System Deliverability Upgrades.

7.0 Optional Interconnection System Reliability Impact Study. If Developer elects to perform an Optional Interconnection System Reliability Impact Study, the study report shall provide a sensitivity analysis based on the assumptions specified by Developer in the scope for the Optional Interconnection System Reliability Impact Study developed in accordance with Section 3.0 of these Terms and Conditions. The Optional Interconnection System Reliability Impact Study will identify the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, and System Upgrade Facilities, and the estimated cost thereof, that may be required to provide Energy Resource Interconnection Service based upon the assumptions specified by Developer in the scope for the Optional Interconnection System Reliability Impact Study developed in accordance with Section 3.0 of these Terms and Conditions.

8.0 Developer shall provide a deposit in accordance with the LFIP for the performance of

each study that Developer elected to be performed in connection with its Interconnection Request and under these Terms and Conditions. NYISO shall provide a good faith estimate for the time of completion for each of the studies elected or required to be performed in accordance with the LFIP.

- 8.1 Upon Developer's receipt of the final report for each study performed, NYISO shall charge and Developer shall pay to NYISO the actual costs of each respective study incurred by NYISO, as computed on a time and materials basis in accordance with the rates provided to the Developer at the time that NYISO provides the good faith estimate of the cost for each study elected or required to be performed in connection with the Interconnection Request and under these Terms and Conditions.
- 8.2 Any difference between the deposit for and the actual cost of any study performed under these Terms and Conditions shall be paid by or refunded to Developer, as appropriate.

## 9.0 Miscellaneous.

- 9.1 **Accuracy of Information.** Except as Developer may otherwise specify in writing when it provides information to NYISO under these Terms and Conditions, Developer represents and warrants that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. Developer shall promptly provide NYISO with any additional information needed to update information previously provided.
- 9.2 **Disclaimer of Warranty.** In preparing the Studies, NYISO and any subcontractor consultants hired by it shall have to rely on information provided by Developer, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither NYISO nor any subcontractor consultant hired by NYISO makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Studies performed under these Terms and Conditions. Developer acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 9.3 **Limitation of Liability.** In no event shall NYISO or its subcontractor consultants be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with these Terms and Conditions or the Studies performed or any reliance on the Studies by Developer or third parties, even if NYISO or its subcontractor consultants have been advised of the possibility of such damages. Nor shall any NYISO or its subcontractor consultants be liable for any delay in delivery or for the non-performance or delay in performance of its obligations under these Terms and

Conditions.

- 9.4 **Third-Party Beneficiaries.** Without limitation of Sections 8.2 and 8.3 under these Terms and Conditions, Developer further agrees that subcontractor consultants hired by NYISO to conduct or review, or to assist in the conducting or reviewing, one or more of the Studies requested under the Interconnection Request shall be deemed third-party beneficiaries of these Sections 8.2 and 8.3 under these Terms and Conditions.
- 9.5 **Term and Termination.** The obligations to conduct the Studies and under these Terms and Conditions shall be effective from the date hereof and, unless earlier terminated under these Terms and Conditions, shall continue in effect until the Studies are completed (i.e., approved by the NYISO Operating Committee, as applicable). Developer or NYISO may terminate their obligations under these Terms and Conditions upon the withdrawal of Developer's Interconnection Request under Section 30.3.6 of the LFIP.
- 9.6 **Governing Law.** These Terms and Conditions and any study performed thereunder shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.
- 9.7 **Severability.** In the event that any part of these Terms and Conditions are deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from these Terms and Conditions and the obligations under these Terms and Conditions shall continue in full force and effect as if each part was not contained herein.
- 9.8 **Amendment.** No amendment, modification, or waiver of any term or condition hereof shall be effective unless set forth in writing and signed by Developer and NYISO hereto.
- 9.9 **Survival.** All warranties, limitations of liability, and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 9.10 **Independent Contractor.** Developer agrees that NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors shall be considered to be employees of Developer as a result of performing any work under these Terms and Conditions.
- 9.11 **No Implied Waivers.** The failure of Developer or NYISO to insist upon or enforce strict performance of any of the provisions of these Terms and Conditions shall not be construed as a waiver or relinquishment to any extent of such party's right to insist or rely on any such provision, rights, and remedies in that or any other instances; rather, the same shall be and remain in full force and effect.
- 9.12 **Successors and Assigns.** The obligations under these Terms and Conditions, and each and every term and condition hereof, shall be binding upon and inure to the benefit of Developer and NYISO and their respective successors and assigns.

**IN WITNESS THEREOF**, Developer has agreed to accept and be bound by the Terms and Conditions by its duly authorized officers or agents execution on the day and year first below written.

\_\_\_\_\_  
**[Insert name of Developer]**

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

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

**Date:** \_\_\_\_\_



## APPENDIX 1-A TO LFIP – EXTERNAL CRIS RIGHTS REQUEST

1. The undersigned Entity (the “Requestor”) submits this request to obtain External CRIS Rights for the number of Megawatts (“MW”) of External ICAP specified below, pursuant to Section 25.7.11 of Attachment S to the ISO OATT and ISO Procedures.

2. The Requestor provides the following information:

2.1 \_\_\_\_\_ Years - The term of the requested Award Period (minimum five (5) years).

2.2 \_\_\_\_\_ MW of External CRIS requested for each month of Summer Capability Period. The same number of MW must be supplied for all months of each Summer Capability Period throughout the Award Period.

2.3 \_\_\_\_\_ MW of External CRIS requested each month of Winter Capability Period (cannot exceed MW committed for Summer Capability Period). None required, but if Requestor does commit MW to any month of Winter Capability Period, Requestor must specify months requested below.

|                |                          |
|----------------|--------------------------|
| _____ November | <input type="checkbox"/> |
| _____ December | <input type="checkbox"/> |
| _____ January  | <input type="checkbox"/> |
| _____ February | <input type="checkbox"/> |
| _____ March    | <input type="checkbox"/> |
| _____ April    | <input type="checkbox"/> |

2.4 The External Interface(s) to be used for the External ICAP:

\_\_\_\_\_

3. A Requestor may request external CRIS rights by making either a contract commitment or a non-contract commitment for the award period. A requestor must indicate the type of its commitment, as follows:

3.1 \_\_\_\_\_ Contract commitment; or

3.2 \_\_\_\_\_ Non-contract commitment.

4. This External Rights Request shall be submitted to the ISO through the interconnection portal on the NYISO website.

5. Representative of the Requestor to contact, including phone number and e-mail address:

Name (type or print): \_\_\_\_\_

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

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

6. This External CRIS Rights Request is submitted by:

By (signature): \_\_\_\_\_

Name (type or print): \_\_\_\_\_

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

Company: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX 2 to LFIP - CLASS YEAR STUDY AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“Developer”), 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”), and \_\_\_\_\_ a \_\_\_\_\_ organized and existing under the laws of the State of New York (“Connecting Transmission Owner”). Developer, NYISO and Connecting Transmission Owner each may be referred to as a “Party,” or collectively as the “Parties.”

### RECITALS

**WHEREAS**, Developer is [proposing to develop a Large Generating Facility or Class Year Transmission Project/proposing a capacity addition to an existing Generating Facility or Class Year Transmission Project consistent with the Interconnection Request submitted by the Developer dated \_\_\_\_\_, including any project modifications reviewed and approved by the NYISO /owns an existing or proposed facility requesting only Capacity Resource Interconnection Service (“CRIS”)/requesting an increase in Capacity Resource Interconnection Service (“CRIS”)]; and

**WHEREAS**, the NYISO has confirmed that the Developer has satisfied the eligibility requirements for entering a Class Year Interconnection Facilities Study (“Class Year Study”); and

**WHEREAS**, Developer has elected to enter an Interconnection Facilities Study in order to obtain [Energy Resource Interconnection Service (“ERIS”)/ERIS and Capacity Resource Interconnection Service (“CRIS”)/only Capacity Resource Interconnection Service (“CRIS”)/an increase in Capacity Resource Interconnection Service (“CRIS”)] pursuant to Attachments S, X and Z to the NYISO’s Open Access Transmission Tariff (“OATT”), as applicable.

**NOW, THEREFORE**, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

- 1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Section 30.1 of Attachment X to the NYISO’s OATT or Section 25.1.2 of Attachment S to the NYISO’s OATT.
- 2.0 Developer elects to be evaluated for [ERIS/ERIS and CRIS/CRIS only/an increase in CRIS] and NYISO shall cause to be performed an Interconnection Facilities Study consistent with Attachments S and X to the ISO OATT. The terms of the above-referenced OATT Attachments, as applicable, are hereby incorporated by reference herein.
- 3.0 The scope of the Interconnection Facilities Study shall be subject to the assumptions set forth in Attachment A and the data provided in Attachment B to this Agreement.
- 4.0 For Developers seeking ERIS, the Interconnection Facilities Study report (i) shall provide a description, estimated cost of (consistent with Attachment A), schedule for required

facilities to interconnect the facility to the New York State Transmission System (or Distribution System, as applicable) and (ii) shall address the short circuit, instability, and power flow issues identified in the Interconnection System Reliability Impact Study. For Developers seeking CRIS, the Interconnection Facilities Study report (i) shall identify whether System Deliverability Upgrades are required for the facility to be fully deliverable at its requested level of CRIS; and (ii) shall provide a description and estimated cost of any required System Deliverability Upgrades, to the extent required, based on the Developer's election under Section 25.7.7.1 of Attachment S to the ISO OATT. For Developers seeking both ERIS and CRIS, the Interconnection Facilities Study report shall provide all of the information described in this Section 4.0.

- 5.0 The Developer shall provide a deposit of [\$100,000 if requesting evaluation for ERIS or ERIS and CRIS/\$50,000 if requesting only CRIS] for the performance of the Interconnection Facilities Study. The time for completion of the Interconnection Facilities Study is specified in Attachment A.

NYISO shall invoice Developer on a monthly basis for the expenses incurred by NYISO and the Connecting Transmission Owner on the Interconnection Facilities Study each month, as computed on a time and materials basis in accordance with the rates attached hereto. Developer shall pay invoiced amounts to NYISO within thirty (30) Calendar Days of receipt of invoice. NYISO shall continue to hold the amounts on deposit until settlement of the final invoice.

6.0 Miscellaneous.

- 6.1 Accuracy of Information. Except as Developer or Connecting Transmission Owner may otherwise specify in writing when they provide information to NYISO under this Agreement, Developer and Connecting Transmission Owner each represent and warrant that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. Developer and Connecting Transmission Owner shall each promptly provide NYISO with any additional information needed to update information previously provided.
- 6.2 Disclaimer of Warranty. In preparing the Interconnection Facilities Study, the Party preparing such study and any subcontractor consultants employed by it shall have to rely on information provided by the other Parties, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither the Party preparing the Interconnection Facilities Study nor any subcontractor consultant employed by that Party makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Interconnection Facilities Study. Developer acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.

- 6.3 Limitation of Liability. In no event shall any Party or its subcontractor consultants be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with this Agreement or the Interconnection Facilities Study or any reliance on the Interconnection Facilities Study by any Party or third parties, even if one or more of the Parties or its subcontractor consultants have been advised of the possibility of such damages. Nor shall any Party or its subcontractor consultants be liable for any delay in delivery or for the non-performance or delay in performance of its obligations under this Agreement.
- 6.4 Third-Party Beneficiaries. Without limitation of Sections 6.2 and 6.3 of this Agreement, Developer and Connecting Transmission Owner further agree that subcontractor consultants employed by NYISO to conduct or review, or to assist in the conducting or reviewing, an Interconnection Facilities Study shall be deemed third party beneficiaries of these Sections 6.2 and 6.3.
- 6.5 Term and Termination. This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 6.5, shall continue in effect until the later of (1) the Interconnection Facilities Study for Developer's facility is completed and approved by the NYISO Operating Committee; or (2) the Additional SDU Study, as applicable, is completed and approved by the NYISO Operating Committee. Developer or NYISO may terminate this Agreement upon the withdrawal of the Developer's project from the Interconnection Facilities Study pursuant to Section 25.7.7.1 of Attachment S.
- 6.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.
- 6.7 Severability. In the event that any part of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from this Agreement and the Agreement shall continue in full force and effect as if each part was not contained herein.
- 6.8 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 6.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing signed by the Parties hereto.
- 6.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 6.11 Independent Contractor. NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors shall be considered to be employees of Developer or Connecting Transmission Owner as a result of this Agreement.

6.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to insist or rely on any such provision, rights and remedies in that or any other instances; rather, the same shall be and remain in full force and effect.

6.13 Successors and Assigns. This Agreement, and each and every term and condition hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

**New York Independent System Operator, Inc.**

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

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

Date: \_\_\_\_\_

**[Insert name of Connecting Transmission Owner]**

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

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

Date: \_\_\_\_\_

**[Insert name of Developer]**

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

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

Date: \_\_\_\_\_

## Attachment A To Appendix 2 - Class Year Study Agreement

### SCHEDULE FOR CONDUCTING THE INTERCONNECTION FACILITIES STUDY

The NYISO and Connecting Transmission Owner shall use Reasonable Efforts to complete the study and issue an Interconnection Facilities Study report to the Developer within the following number of days after of receipt of an executed copy of this Interconnection Facilities Study Agreement:

- estimated completion date (i.e., Operating Committee approval of the Class Interconnection Facilities Study) for Class Year 20\_\_ Interconnection Facility Study for the Annual Transmission Reliability Assessment required by Attachment S to the ISO OATT: \_\_\_\_/\_\_\_\_/\_\_\_\_\_, if no additional System Deliverability Upgrade studies are required.
- Study work (other than data provision and study review) that may be requested of the Transmission Owner by the NYISO is currently not specified, but will be specified in a Study Work Agreement to be developed between the NYISO and Transmission Owner.
- Pursuant to Article 5.0 of this Agreement, the rates for the study work are attached as Exhibit 1.

If Developer elects to proceed with an Additional SDU Study required for any identified SDUs for the project, the NYISO and Connecting Transmission Owner shall use Reasonable Efforts to complete the Additional SDU Study and issue an Additional SDU Study report to the Developer within the following number of days after Developers notice to the NYISO pursuant to Section 25.5.10 of Attachment S that it elects to proceed with an Additional SDU Study:

- estimated completion date (i.e., Operating Committee approval of the Additional SDU Study): \_\_\_\_/\_\_\_\_/\_\_\_\_\_.
- Additional SDU Study work (other than data provision and study review) that may be requested of the Connecting Transmission Owner by the NYISO is currently not specified, but will be specified in a Study Work Agreement to be developed between the NYISO and Connecting Transmission Owner.
- Pursuant to Article 5.0 of this Agreement, the rates for the study work for the Additional SDU Study are attached as Exhibit 1.

## **Attachment B To Appendix 2 - Interconnection Facilities Study Agreement**

### **DATA FORM TO BE PROVIDED BY DEVELOPER**

#### **WITH THE INTERCONNECTION FACILITIES STUDY AGREEMENT**

1. Provide location plan and simplified (conceptual) one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.

The conceptual breaker one-line diagram is a representation of electrical components that are connecting into the NYSTS or distribution system as applicable. This conceptual breaker one-line diagram should include, at a minimum:

- The Project name, and the Developer name on the diagram;
- The Large Facility address (specific location of the facility);
- The number of inverters or generator units (type, nameplate rating MW and MVA), and configuration of the Large Facility;
- The Large Facility's electrical components (*i.e.*, generation, transformers (GSU, PSU, current transformer, and potential transformers), breakers, switches, cables/lines/feeders, compensation, FACTS, auxiliary load, buses, etc.) as described in the modeling data form;
- The capability and voltage levels of the electrical components, their connection to each other and to the New York State Transmission System or Distribution System;
- The Point of Interconnection (name of the substation name (specify the bus) or transmission/distribution line name and number); and
- References to other diagram sheets if there is more than one diagram sheet (*i.e.*, use references to indicate how the diagrams are interconnected).

Acronyms used in the conceptual breaker one-line diagram should follow ANSI Standard Device Numbers & Common Acronyms.

2. Finalize and specify your Interconnection Service evaluation election for the Class Year Study. Developer should specify either Energy Resource Interconnection Service ("ERIS") alone, both ERIS and some MW level of Capacity Resource Interconnection Service ("CRIS") or CRIS only (e.g., if your facility is already interconnected taking only ERIS, you may elect to be evaluated for CRIS only); provided however, that CRIS requests are subject to the limits specified in Section 25.8.1 of Attachment S to the ISO OATT. Evaluation election:



ERIS: \_\_\_\_\_ at the POI

If requesting ERIS for a multi-unit Large Generating Facility, specify the requested ERIS for each Generator

CRIS: \_\_\_\_\_

If requesting CRIS for a multi-unit Large Generating Facility, specify the requested CRIS for each Generator:

---

For a Resource with Energy Duration Limitations that is requesting CRIS, indicate the maximum injection capability over the selected duration (e.g., 10 MWh over 4 hours:

---

If requesting a CRIS transfer, indicate the transferor PTID(s), MW amount and, for a multi-unit Large Generating Facility, the specific Generator from which and to which the transfer is proposed:

---

3. Proposed Schedule:

|                         |             |
|-------------------------|-------------|
| Begin Construction      | Date: _____ |
| In-Service              | Date: _____ |
| Initial Synchronization | Date: _____ |
| Generation Testing      | Date: _____ |
| Commercial Operation    | Date: _____ |

4. Additional Information Required as Part of this Data Form:

**Additional Information:**

Nameplate MW: \_\_\_\_\_

Nameplate MVA: \_\_\_\_\_

Auxiliary Load MW: \_\_\_\_\_

Auxiliary Load MVAR: \_\_\_\_\_

For temperature sensitive units, provide MW vs. temp curves and indicate maximum summer and winter net capability below:

- Maximum summer net (net MW = gross MW minus auxiliary loads total MW) which can be achieved at 90 degrees F: \_\_\_\_\_
- Maximum winter net (net MW = gross MW minus auxiliary loads total MW) which can be achieved at 10 degrees F : \_\_\_\_\_

1. One set of metering is required for each generation connection to the new ring bus or existing Connecting Transmission Owner station. Number of generation connections: \_\_\_\_
2. On the one-line indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)
3. On the one-line indicate the location of auxiliary power. (Minimum load on CT/PT)  
Amps
4. Will an alternate source of auxiliary power be available during CT/PT maintenance?  
\_\_\_\_\_ Yes      \_\_\_\_\_ No
5. Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? \_\_\_\_\_ Yes      \_\_\_\_\_ No  
(If yes, indicate on one-line diagram).

6. What type of control system or PLC will be located at the Developer's facility?  
\_\_\_\_\_

7. What protocol does the control system or PLC use?  
\_\_\_\_\_

8. Please provide a 7.5-minute quadrangle of the site. Sketch the plant, station, transmission line, and property line.  
\_\_\_\_\_

9. Physical dimensions of the proposed interconnection station:  
\_\_\_\_\_

10. Bus length from generation to interconnection station:  
\_\_\_\_\_

11. Line length from interconnection station to Connecting Transmission Owner's transmission line.

---

12. Tower number observed in the field. (Painted on tower leg):

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13. Number of third-party easements required for transmission lines, if known:

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14. Describe any injection-limiting equipment if the facility is requesting ERIIS below its full output:

---

### **BTM:NG Resources**

15. In addition to the above information, as applicable, for BTM:NG Resources, please also provide the following information:

Developer or Customer-Site Load: \_\_\_\_\_ kW (if none, so state)

Existing load? Yes \_\_\_ No \_\_\_

If existing load with metered load data, provide coincident Summer peak load: \_\_\_\_\_

If new load or existing load without metered load data, provide estimated coincident Summer peak load: \_\_\_\_\_

Is the new or existing load in the Transmission Owner's service area?

\_\_\_\_\_ Yes \_\_\_\_\_ No Local provider: \_\_\_\_\_

### **Resources with Energy Duration Limitations**

In addition to the above information, as applicable, for Resources with Energy Duration Limitations, please also provide the following information:

Energy storage capability (MWh): \_\_\_\_\_

Minimum Duration for full discharge (i.e., injection) (Hours): \_\_\_\_\_

Minimum Duration for full charge (i.e., withdrawal) (Hours): \_\_\_\_\_

Maximum withdrawal from the system (i.e., when charging) (MW): \_\_\_\_\_

Inverter manufacturer, model name, number, and version: \_\_\_\_\_  
\_\_\_\_\_

Maximum sustained injection (in MW) over the Developer-selected duration;

Primary frequency response operating range for electric storage resource:

Minimum State of Charge: \_\_\_\_\_ (%)      Maximum State of Charge: \_\_\_\_\_ (%)

If requesting CRIS, indicate the maximum injection capability over the selected duration (e.g., 2.5 MW over 4 hours for a total of 10 MWh):

## **APPENDIX 2-A TO LFIP – FACILITIES STUDY AGREEMENT FOR EXTERNAL CRIS RIGHTS**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“Requestor”), 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”), and \_\_\_\_\_ a \_\_\_\_\_ organized and existing under the laws of the State of New York (“Connecting Transmission Owner”). Requestor, NYISO and Connecting Transmission Owner each may be referred to as a “Party,” or collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, Requestor has, pursuant to Section 25.7.11 of Attachment S to the ISO OATT, requested External CRIS Rights for a specified number of MW of External CRIS; and

**WHEREAS**, NYISO has determined that Requestor has submitted a complete External CRIS Rights Request, in accordance with the applicable requirements of the NYISO Tariffs and ISO Procedures; and

**WHEREAS**, Requestor has requested NYISO and Connecting Transmission Owner to evaluate the specified number of MW of External ICAP in the currently Open Class Year Deliverability Study to specify the Deliverable MW for its External ICAP, and also to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the System Deliverability Upgrades required for External CRIS Rights.

**NOW, THEREFORE**, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

- 1.0      When used in this Agreement, with initial capitalization, the terms specified shall have the meaning indicated herein, or in Attachment S or Attachment X to the ISO OATT, or in Article Z of the NYISO Services Tariff.

- 2.0 Requestor requests that NYISO and Connecting Transmission Owner evaluate the deliverability of Requestor's External CRIS Rights in accordance with Section 25.7.11 of Attachment S to the ISO OATT. Requestor's External CRIS Rights are not subject to, and shall not be evaluated by applying, the NYISO Minimum Interconnection Standard.
- 3.0 Requestor shall provide a deposit of \$50,000 for the performance of the Class Year Study for its External CRIS Rights. The time for completion of the Class Year Deliverability Study is specified in Attachment A to this Agreement.

NYISO shall invoice Requestor on a monthly basis for the expenses incurred by NYISO and Connecting Transmission Owner on the Class Year Deliverability Study for Requestor each month, as computed on a time and materials basis in accordance with the rates attached hereto. Requestor shall pay invoiced amount to NYISO within thirty (30) Calendar Days of receipt of invoice. NYISO shall continue to hold Requestor's deposit until settlement of the final invoice.

#### 4.0 Miscellaneous

- 4.1 Accuracy of Information. Except as Requestor or Connecting Transmission Owner may otherwise specify in writing when they provide information to NYISO under this Agreement, Requestor and Connecting Transmission Owner each represent and warrant that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. Requestor and Connecting Transmission Owner shall each promptly provide NYISO with any additional information needed to update information previously provided.
- 4.2 Disclaimer of Warranty. In preparing the Class Year Deliverability Study, the Party preparing such study and any subcontractor consultants employed by it shall have to rely on information provided by the other Parties, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither the Party preparing such study nor any subcontractor consultant employed by that Party makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Class Year Deliverability Study for External ICAP. Requestor acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 4.3 Limitation of Liability. In no event shall any Party or its subcontractor consultants be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with this Agreement or the Class Year Deliverability Study for External ICAP, or any reliance on the Class Year Deliverability Study by any Party or third parties, even if one or more of the Parties or its subcontractor consultants have been advised of

the possibility of such damages. Nor shall any Party or its subcontractor consultants be liable for any delay in delivery or for the non-performance or delay in performance of its obligations under this Agreement.

- 4.4 Third-Party Beneficiaries. Without limitation of Sections 4.2 and 4.3 of this Agreement, Requestor and Connecting Transmission Owner further agree that subcontractor consultants hired by NYISO to conduct or review, or to assist in the conducting or reviewing, a Class Year Deliverability Study shall be deemed third party beneficiaries of these Sections 4.2 and 4.3.
- 4.5 Terms and Termination. This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 30.4.5, shall continue in effect until the Class Year Deliverability Study for Requestor's External CRIS Rights is completed and approved by the NYISO Operating Committee. Requestor or NYISO may terminate this Agreement upon the withdrawal of Requestor's External CRIS Rights Request under Section 25.7.11 of Attachment S to the ISO OATT or upon Developer's withdrawal from the Class Year Study pursuant to Section 25.7.7.1 of Attachment S.
- 4.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.
- 4.7 Severability. In the event that any part of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from this Agreement and the Agreement shall continue in full force and effect as if each part was not contained herein.
- 4.8 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 4.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing signed by the Parties hereto.
- 4.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 4.11 Independent Contractor. NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors shall be considered to be employees of Requestor as a result of this Agreement.
- 4.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a wavier or relinquishment to any extent of such Party's right to insist or rely on any such provision, rights and remedies in that or any other instances; rather, the

same shall be and remain in full force and effect.

- 4.13 Successors and Assigns. This Agreement, and each and every term and condition hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

**New York Independent System Operator, Inc.**

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

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

Date: \_\_\_\_\_

**[Insert name of Connecting Transmission Owner]**

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

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

Date: \_\_\_\_\_

**[Insert name of Requestor]**

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

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

Date: \_\_\_\_\_

## **Attachment A To Facilities Study Agreement for External CRIS Rights**

### **SCHEDULE FOR CONDUCTING THE FACILITIES STUDY FOR EXTERNAL CRIS Rights**

NYISO and Connecting Transmission Owner shall use Reasonable Efforts to complete the study and issue a Class Year Deliverability Study report to Requestor within the following number of days after or receipt of an executed copy of this Agreement:

Estimated completion date for Class Year 20\_\_ Deliverability Study required by Section 25.7.11 Attachment S to the ISO OATT: \_\_\_\_/\_\_\_\_/\_\_\_\_\_, assuming no additional detailed studies are required to evaluate System Deliverability Upgrades.



**DATA FORM TO BE PROVIDED BY REQUESTOR  
WITH THE FACILITIES STUDY AGREEMENT FOR EXTERNAL ICAP**

a. \_\_\_\_\_ MW of External ICAP certified to be supplied for each month of Summer Capability Period. The same number of MW must be supplied for all months of each Summer Capability Period throughout the Award Period

b. \_\_\_\_\_ MW of External ICAP certified to be supplied for each month of Winter Capability Period (cannot exceed MW committed for Summer Capability Period). None required, but if Requestor does commit MW to any month of Winter Capability Period, Requestor must specify months covered by commitment.

c. The External Interface(s) proposed to be used for the External ICAP.

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**OTHER ASSUMPTIONS**

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## Appendix 3 to LFIP – LARGE FACILITY MODIFICATION REQUEST

### **Large Facility Modification Request**

1. The undersigned Developer submits this request to modify an Interconnection Request for a Large Generating Facility or Class Year Transmission Project currently in the NYISO's Interconnection Queue.
2. Queue No. (if applicable): \_\_\_\_\_ Project Name:  
\_\_\_\_\_
3. Nature of proposed modification (check all that apply):  
  
\_\_\_\_ Change in Electric Output (MW) of the Large Facility  
  
\_\_\_\_ Modification of Technical Parameters of Large Facility's Technology and Transformer Impedances  
  
\_\_\_\_ Modification to Interconnection Configuration  
  
\_\_\_\_ Technological Change or Advancement  
  
\_\_\_\_ Extension of Commercial Operation Date  
  
\_\_\_\_ Other Modification Not Listed Above
4. Description of proposed modification:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
5. Attach a revised conceptual breaker one-line diagram and a project location geo map, as applicable.
6. If the modification is a decrease in the facility capacity or requested interconnection service, provide an explanation for the decrease, including a description of the injection-limiting equipment with all the necessary parameters of such equipment, as applicable:  
  
\_\_\_\_\_
7. Proposed modification to an Interconnection Request due to a technological advancement, which includes advancements to turbines, inverters, or plant supervisory controls or other similar advancements to the existing technology proposed in the Interconnection Request

(NOTE: a technological advancement will be evaluated under Section 30.4.4.7 of Attachment X to the OATT, which requires a \$10,000 study deposit be submitted with this form).

- a. If the modification is due to a technological advancement to the technology originally proposed, detail the proposed configuration of the technological advancement and the manner of installation:

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- b. Provide the parameters associated with the proposed technological advancement:

| Parameter   | Before Application of Proposed Technological Advancement | After Application of Proposed Technological Advancement |
|---|--|---|
| Total Project MVA   |  |   |
| MVA/Unit  |  |   |
| Subtransient Impedance ( $R'' + jX''$ ) or equivalent fault current limit for inverter-based technology |  |   |
| Total Project MW  |  |   |
| MW/Unit   |  |   |
| Total Project Mvar Capability   |  |   |
| Mvar Capability/Unit  |  |   |
| Unit kV   |  |   |
| Total Project Power Factor  |  |   |
| Unit Power Factor   |  |   |
| Unit Dynamic Model  |  |   |
| Associated Device(s) Dynamic Model  |  |   |
| Any applicable parameter that will change   |  |   |
| Total Project Single Line Diagram   |  |   |

- c. If any of the above parameters would change due to the proposed technological advancement, demonstrate that the proposed incorporation of the technological advancement would result in electrical performance that is equal to or better than the electrical performance expected prior to the technology change and not cause any reliability concerns (*i.e.*, not have a material adverse impact on the transmission system with regard to short circuit capability limits, steady-state thermal and voltage limits, or dynamic system stability and response). Provide support, including any completed studies, that demonstrate that the technological advancement is permissible and/or non-material under Section 30.4.4.7 of Attachment X to the OATT.

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8. For a change to the Commercial Operation Date (COD) of the proposed Large Facility, provide the following:
- a. Original Proposed Commercial Operation Date (Month/Year): \_\_\_\_\_
- b. Revised Proposed Commercial Operation Date (Month/Year): \_\_\_\_\_
- c. For a proposed change four (4) years or more beyond the date that the Developer and all other Developers remaining in the Class Year posted Security as a part of a Class Year Interconnection Facilities Study (*i.e.*, completion of the Class Year), attach an Officer certification and supporting documentation demonstrating that the Developer has made reasonable progress against milestones set forth in the Interconnection Agreement (refer to Section 30.4.4.5.2 of Attachment X to the OATT for specific details for requesting such a change).
9. As it relates to the requested modification of an Interconnection Request, provide any updates to data required in Attachment A to the Interconnection Request – “Large Generating Facility Preliminary Data” or provided during completed stages of the interconnection study process.

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10. The NYISO, in consultation with the Connecting Transmission Owner(s), may request additional information, if necessary, to further assess the proposed modification.

**Attachment A to Appendix 3 – LARGE FACILITY MODIFICATION REQUEST**  
**Terms and Conditions of a Large Facility Modification Request**

These terms and conditions for the review and/or study of a request to modify a proposed Large Generating Facility or Class Year Transmission Project or a material modification to an existing Large Generating Facility or Class Year Transmission Project consistent with the Interconnection Request dated \_\_\_\_\_, including any project modifications reviewed and approved by the NYISO, (“the Project”) and submitted by \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“Developer”), set forth the respective obligations between Developer and 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”) (hereinafter the “Terms and Conditions”). By signing below, Developer confirms its understanding and acceptance of the Terms and Conditions.

**RECITALS**

**WHEREAS**, Developer is proposing to develop the Project; and

**WHEREAS**, Developer requests NYISO to evaluate whether the proposed modification to its [Large Generating Facility or Class Year Transmission Project/proposing a capacity addition to an existing Generating Facility or Class Year Transmission Project] set forth in the Large Facility Modification Request would constitute a Material Modification and/or a Permissible Technological Advancement, as applicable, under Attachment X to the NYISO’s Open Access Transmission Tariff (“OATT”).

**Now, THEREFORE**, in consideration of and subject to the terms and conditions contained herein, Developer and NYISO agree as follows:

- 1.0 When used in these Terms and Conditions, with initial capitalization, the terms specified shall have the meanings indicated in the NYISO’s Commission-approved Standard Large Facility Interconnection Procedures (“LFIP”).
- 2.0 Developer requests NYISO to evaluate whether the proposed modification would constitute a Material Modification and/or a Permissible Technical Advancement, as applicable, and if an additional study(ies) is required pursuant to Section 30.4.4.3 and/or Section 30.4.4.7 of Attachment X to the OATT, NYISO shall perform, or cause to be performed, a study(ies) consistent with Attachment X to the OATT.
- 3.0 The scope of the study(ies) shall be subject to the description and assumptions set forth in the Large Facility Modification Request and the data contained therein or provided upon the request of the NYISO.
- 4.0 For requested modifications other than a technological advancement, NYISO shall commence any necessary additional studies as soon as practicable, but in no event later than thirty (30) Calendar Days after receiving the Large Facility Modification Request and all necessary data. NYISO shall provide a determination of whether the modifications proposed in the Large Facility Modification Request would constitute a

Material Modification for purposes of Section 30.4.4.3 of Attachment X to the OATT.

- 5.0 For a proposed modification based on a technological advancement, the Developer shall provide a deposit of \$10,000, together with the Large Facility Modification Request, for NYISO to perform a review and, if necessary, any additional studies to evaluate a whether technological advancement constitutes a Permissible Technological Advancement under Section 30.4.4.7 of Attachment X to the OATT. NYISO will provide a determination detailing whether a proposed technological advancement would constitute a Permissible Technological Advancement or a Material Modification, as applicable, within thirty (30) calendar days of the latter of receiving a complete Large Facility Modification Request or the study deposit pursuant to Section 30.4.4.7 of Attachment X to the OATT.
- 6.0 Following the issuance of a determination on the requested modification or termination of the study pursuant to Article 7.4, NYISO shall invoice the Developer for the actual costs incurred by NYISO and any subcontractor hired to perform study work, as computed on a time and materials basis in accordance with the rates provided to the Developer at the time that the NYISO notifies the Developer that a study(ies) is required to complete its Large Facility Modification Request. Developer shall pay invoiced amounts to NYISO within thirty (30) days of receipt of such invoice. NYISO shall continue to hold any amounts on deposit, if applicable, until settlement of the final invoice.
- 7.0 Miscellaneous.
- 7.1 Accuracy of Information. Except as Developer may otherwise specify in writing when it provides information to NYISO under these Terms and Conditions, Developer represents and warrants that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. Developer shall promptly provide NYISO with any additional information needed to update information previously provided.
- 7.2 Disclaimer of Warranty. In preparing the Studies, NYISO and any subcontractor consultants hired by it shall have to rely on information provided by Developer, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither NYISO nor any subcontractor consultant hired by NYISO makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Studies performed under these Terms and Conditions. Developer acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 7.3 Limitation of Liability. In no event shall NYISO or its subcontractor consultants be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with these Terms and Conditions or the Studies performed or any reliance on the Studies by Developer or third parties, even if NYISO or its subcontractor consultants have been advised of the possibility of

such damages. Nor shall any NYISO or its subcontractor consultants be liable for any delay in delivery or for the non-performance or delay in performance of its obligations under these Terms and Conditions.

- 7.4 Third-Party Beneficiaries. Without limitation of Sections 7.2 and 7.3 under these Terms and Conditions, Developer further agrees that subcontractor consultants hired by NYISO to conduct or review, or to assist in the conducting or reviewing, the study(ies) requested under the Large Facility Modification Request shall be deemed third-party beneficiaries of these Sections 7.2 and 7.3 under these Terms and Conditions.
- 7.5 Term and Termination. The obligations to conduct the Studies and under these Terms and Conditions shall be effective from the date hereof and, unless earlier terminated under these Terms and Conditions, shall continue in effect until the study(ies) is completed or Developer provides a written request to withdrawl its Large Facility Modification Request. Developer or NYISO also may terminate their obligations under these Terms and Conditions upon the withdrawal of Developer's Interconnection Request under Section 30.3.6 of the LFIP.
- 7.6 Governing Law. These Terms and Conditions and any study performed thereunder shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.
- 7.7 Severability. In the event that any part of these Terms and Conditions are deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from these Terms and Conditions and the obligations under these Terms and Conditions shall continue in full force and effect as if each part was not contained herein.
- 7.8 Amendment. No amendment, modification, or waiver of any term or condition hereof shall be effective unless set forth in writing and signed by Developer and NYISO hereto.
- 7.9 Survival. All warranties, limitations of liability, and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 7.10 Independent Contractor. Developer agrees that NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors shall be considered to be employees of Developer as a result of performing any work under these Terms and Conditions.
- 7.11 No Implied Waivers. The failure of Developer or NYISO to insist upon or enforce strict performance of any of the provisions of these Terms and Conditions shall not be construed as a waiver or relinquishment to any extent of such party's right to insist or rely on any such provision, rights, and remedies in that or any other instances; rather, the same shall be and remain in full force and effect.
- 7.12 Successors and Assigns. The obligations under these Terms and Conditions, and each and every term and condition hereof, shall be binding upon and inure to the benefit of Developer and NYISO and their respective successors and assigns.

**IN WITNESS THEREOF**, Developer has agreed to accept and be bound by the Terms and Conditions by its duly authorized officers or agents execution on the day and year first below written.

\_\_\_\_\_

**[Insert name of Developer]**

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

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

**Date:** \_\_\_\_\_



**Appendix 4 – STANDARD LARGE GENERATOR INTERCONNECTION  
AGREEMENT**

**(Applicable to Generating Facilities that exceed 20 MW)**

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## STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT

### THIS STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT

("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and among \_\_\_\_\_, a [corporate description] organized and existing under the laws of the State/Commonwealth of \_\_\_\_\_ ("Developer" with a Large Generating Facility), 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"), and \_\_\_\_\_ a [corporate description] organized and existing under the laws of the State of New York ("Connecting Transmission Owner"). Developer, the NYISO, or Connecting Transmission Owner each may be referred to as a "Party" or collectively referred to as the "Parties."

### RECITALS

**WHEREAS**, NYISO operates the New York State Transmission System and Connecting Transmission Owner owns certain facilities included in the New York State Transmission System;

**WHEREAS**, Developer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

**WHEREAS**, Developer, NYISO, and Connecting Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the New York State Transmission System;

**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, the body of the LFIP or the body of this Agreement.

**Affected System** shall mean an electric system other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Operator** shall mean the entity that operates an Affected System.

**Affected Transmission Owner** shall mean the New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State

Transmission System where System Deliverability Upgrades, System Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachment P, Attachment X, Attachment Z, or Attachment S to the ISO OATT.

**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.

**Ancillary Services** shall mean those services that are necessary to support the transmission of Capacity and Energy from resources to Loads while maintaining reliable operation of the New York State Transmission System in accordance with Good Utility Practice.

**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 to which the Developer’s Large Generating Facility is directly interconnected, 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.

**Attachment Facilities** shall mean the Connecting Transmission Owner’s Attachment Facilities and the Developer’s Attachment Facilities. Collectively, Attachment Facilities include all facilities and equipment between the Large Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Large Generating Facility to the New York State Transmission System. Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities, Distribution Upgrades, System Upgrade Facilities or System Deliverability Upgrades.

**Balancing Authority** shall mean an entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

**Balancing Authority Area** shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by NYISO, Connecting Transmission Owner or Developer; described in Section 30.2.3 of the Standard Large Facility Interconnection Procedures.

**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.

**Byway** shall mean all transmission facilities comprising the New York State Transmission System that are neither Highways nor Other Interfaces. All transmission facilities in Zone J and Zone K are Byways.

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

**Capacity Region** shall mean one of four subsets of the Installed Capacity statewide markets comprised of (1) Rest of State (i.e., Load Zones A through F); (2) Lower Hudson Valley (i.e., Load Zones G, H and I); (3) New York City (i.e., Load Zone J); and (4) Long Island (i.e., Load Zone K), except for Class Year Interconnection Facility Studies conducted prior to Class Year 2012, for which “Capacity Region” shall be defined as set forth in Section 25.7.3 of Attachment S to the ISO OATT.

**Capacity Resource Interconnection Service (“CRIS”)** shall mean the service provided by NYISO to Developers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with Attachment S 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.

**Commercial Operation** shall mean the status of a Large Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

**Commercial Operation Date** of a unit shall mean the date on which the Large Generating Facility commences Commercial Operation as agreed to by the Parties, notice of which must be provided to the NYISO in the form of Appendix E-2 to this Agreement.

**Confidential Information** shall mean any information that is defined as confidential by Article 22 of this Agreement.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise



possesses an interest in the portion of the New York State Transmission System or Distribution System at the Point of Interconnection, and (iii) is a Party to this Agreement.

**Connecting Transmission Owner's Attachment Facilities** shall mean all facilities and equipment owned, controlled or operated by the Connecting Transmission Owner from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Connecting Transmission Owner's Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

**Contingent Facilities** shall mean those Attachment Facilities and System Upgrade Facilities and/or System Deliverability Upgrades associated with Class Year Projects upon which the Large Facility's Class Year Project Cost Allocations are dependent, and if delayed or not built, could impact the actual costs and timing of the Large Facility's Project Cost Allocation for System Upgrade Facilities or System Deliverability Upgrades.

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 17 of this Agreement.

**Developer** shall mean an Eligible Customer developing a Large Generating Facility, proposing to connect to the New York State Transmission System, in compliance with the NYISO Minimum Interconnection Standard.

**Developer's Attachment Facilities** shall mean all facilities and equipment, as identified in Appendix A of this Agreement, that are located between the Large Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Large Generating Facility to the New York State Transmission System. Developer's Attachment Facilities are sole use facilities.

**Distribution System** shall mean the Connecting Transmission Owner's 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.

**Distribution Upgrades** shall mean the additions, modifications, and upgrades to the Connecting Transmission Owner's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of a Large Facility or Small Generating Facility and render the transmission service necessary to affect the Developer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Attachment Facilities, System Upgrade Facilities, or System Deliverability Upgrades. Distribution Upgrades are sole use facilities and shall not include Stand Alone System Upgrade Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

**Effective Date** shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

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

**Emergency State** shall mean the condition or state that the New York State Power System is in when an abnormal condition occurs that requires automatic or immediate manual action to prevent or limit loss of the New York State Transmission System or Generators that could adversely affect the reliability of the New York State Power System.

**Energy Resource Interconnection Service (“ERIS”)** shall mean the service provided by NYISO to interconnect the Developer’s Large Generating Facility to the New York State Transmission System or to the Distribution System in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive Energy and Ancillary Services from the Large Generating Facility, pursuant to the terms of the ISO OATT.

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

**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.

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

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

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

or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region.

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

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

**Highway** shall mean 115 kV and higher transmission facilities that comprise the following NYCA interfaces: Dysinger East, West Central, Volney East, Moses South, Central East/Total East, and UPNY-ConEd, and their immediately connected, in series, bulk power system facilities in New York State. Each interface shall be evaluated to determine additional “in series” facilities, defined as any transmission facility higher than 115 kV that (a) is located in an upstream or downstream zone adjacent to the interface and (b) has a power transfer distribution factor (DFAX) equal to or greater than five percent when the aggregate of generation in zones or systems adjacent to the upstream zone or zones that define the interface is shifted to the aggregate of generation in zones or systems adjacent to the downstream zone or zones that define the interface. In determining “in series” facilities for Dysinger East and West Central interfaces, the 115 kV and 230 kV tie lines between NYCA and PJM located in LBMP Zones A and B shall not participate in the transfer. Highway transmission facilities are listed in ISO Procedures.

**Initial Synchronization Date** shall mean the date upon which the Large Generating Facility is initially synchronized and upon which Trial Operation begins, notice of which must be provided to the NYISO in the form of Appendix E-1.

**In-Service Date** shall mean the date upon which the Developer reasonably expects it will be ready to begin use of the Connecting Transmission Owner’s Attachment Facilities to obtain back feed power.

**Interconnection Facilities Study** shall mean a study conducted by NYISO or a third party consultant for the Developer to determine a list of facilities (including Connecting Transmission Owner’s Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System Deliverability Upgrades as identified in the Interconnection System Reliability Impact Study), the cost of those facilities, and the time required to interconnect the Large Generating Facility with the New York State Transmission System or with the Distribution System. The scope of the study is defined in Section 30.8 of the Standard Large Facility Interconnection Procedures.

**Interconnection Facilities Study Agreement (“Class Year Study Agreement”)** shall mean the form of agreement contained in Appendix 2 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection Facilities Study.

**Interconnection Request** shall mean a Developer’s request, in the form of Appendix 1 to the Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to interconnect a new Large Generating Facility to the New York State Transmission System or to the Distribution System, or to materially increase the capacity of, or make a material modification to the operating characteristics of, an existing Large Generating Facility that is interconnected with the New York State Transmission System or with the Distribution System.

**Interconnection Study** shall mean any of the following studies: the Optional Interconnection Feasibility Study, the Interconnection System Reliability Impact Study, and the Interconnection Facilities Study described in the Standard Large Facility Interconnection Procedures.

**Interconnection System Reliability Impact Study (“SRIS”)** shall mean an engineering study, conducted in accordance with Section 30.7 of the Standard Large Facility Interconnection Procedures, that evaluates the impact of the proposed Large Generating Facility on the safety and reliability of the New York State Transmission System and, if applicable, an Affected System, to determine what Attachment Facilities, Distribution Upgrades and System Upgrade Facilities are needed for the proposed Large Generating Facility of the Developer to connect reliably to the New York State Transmission System or to the Distribution System in a manner that meets the NYISO Minimum Interconnection Standard in Attachment X to the ISO OATT.

**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.

**Material Modification** shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

**Metering Equipment** shall mean all metering equipment installed or to be installed at the Large Generating Facility pursuant to this Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

**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 S 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 25.9.5 of Attachment S to the ISO OATT. To meet the NYISO Deliverability Interconnection Standard, the Developer must, in accordance with the rules in Attachment S to the ISO OATT, fund or commit to fund any System Deliverability Upgrades identified for its project in the Class Year Deliverability Study.

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

**NYSRC** shall mean the New York State Reliability Council or its successor organization.

**Other Interfaces** shall mean the following interfaces into Capacity Regions: Lower Hudson Valley [i.e., Rest of State (Load Zones A-F) to Lower Hudson Valley (Load Zones G, H and I)]; New York City [i.e., Lower Hudson Valley (Load Zones G, H and I) to New York City (Load Zone J)]; and Long Island [i.e., Lower Hudson Valley (Load Zones G, H and I) to Long Island (Load Zone K)], and the following Interfaces between the NYCA and adjacent Control Areas: PJM to NYISO, ISO-NE to NYISO, Hydro-Quebec to NYISO, and Norwalk Harbor (Connecticut) to Northport (Long Island) Cable.

**Party or Parties** shall mean NYISO, Connecting Transmission Owner, or Developer or any combination of the above.

**Point of Change of Ownership** shall mean the point, as set forth in Appendix A to this Agreement, where the Developer's Attachment Facilities connect to the Connecting Transmission Owner's Attachment Facilities.

**Point of Interconnection** shall mean the point, as set forth in Appendix A to this Agreement, where the Attachment Facilities connect to the New York State Transmission System or to the Distribution System.

**Provisional Interconnection Service** shall mean interconnection service provided by the ISO associated with interconnecting the Developer's Large Facility to the New York State Transmission System (or Distribution System as applicable) and enabling the transmission system to receive electric energy from the Large Facility at the Point of Interconnection, pursuant to the terms of the Provisional Large Facility Interconnection Agreement and, if applicable, the ISO OATT.

**Provisional Large Facility Interconnection Agreement** shall mean the interconnection agreement for Provisional Interconnection Service established between the ISO, Connecting Transmission Owner(s) and the Developer. This agreement shall take the form of the Large Generator Interconnection Agreement, modified for provisional purposes and type of facility.

**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.

**Retired:** A Generator that has permanently ceased operating on or after May 1, 2015 either: i) pursuant to applicable notice; or ii) as a result of the expiration of its Mothball Outage or its ICAP Ineligible Forced Outage.

**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.

**Stand Alone System Upgrade Facilities** shall mean System Upgrade Facilities that are not part of an Affected System that Developer may construct without affecting day-to-day operations of the New York State Transmission System during their construction. NYISO, the Connecting Transmission Owner and the Developer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify them in Appendix A to this Agreement. If NYISO, the Connecting Transmission Owner and the Developer disagree about whether a particular System Upgrade Facility is a Stand Alone System Upgrade Facility, NYISO and the Connecting Transmission Owner must provide the Developer a written technical explanation outlining why NYISO and the Connecting Transmission Owner does not consider the System Upgrade Facility to be a Stand Alone System Upgrade Facility within fifteen (15) Business Days of its determination.

**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.

**Standard Large Generator Interconnection Agreement (“LGIA”)** shall mean this Agreement, which is the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility, that is included in Appendix 4 to 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.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Large Generating Facility and (2) protect the Large Generating Facility from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

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

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

**Trial Operation** shall mean the period during which Developer is engaged in on-site test operations and commissioning of the Large Generating Facility prior to Commercial Operation.

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

### **2.1 Effective Date.**

This Agreement shall become effective upon execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO and Connecting Transmission Owner shall promptly file this Agreement with FERC upon execution in accordance with Article 3.

### **2.2 Term of Agreement.**

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Developer may request (Term to be Specified in Individual Agreements) and shall be automatically renewed for each successive one-year period thereafter.

### **2.3 Termination.**

#### **2.3.1 Written Notice.**

This Agreement may be terminated by the Developer after giving the NYISO and Connecting Transmission Owner ninety (90) Calendar Days advance written notice, or by the NYISO and Connecting Transmission Owner notifying FERC after the Large Generating Facility is Retired.

### **2.3.2 Default.**

Any Party may terminate this Agreement in accordance with Article 17.

### **2.3.3 Compliance.**

Notwithstanding Articles 2.3.1 and 2.3.2, 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 a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the terminating Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment) or charges assessed by the other Parties, as of the date of the other Parties' receipt of such notice of termination, that are the responsibility of the terminating Party under this Agreement. In the event of termination by a Party, 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:

**2.4.1** With respect to any portion of the Connecting Transmission Owner's Attachment Facilities that have not yet been constructed or installed, the Connecting Transmission Owner shall to the extent possible and with Developer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Developer elects not to authorize such cancellation, Developer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Connecting Transmission Owner shall deliver such material and equipment, and, if necessary, assign such contracts, to Developer as soon as practicable, at Developer's expense. To the extent that Developer has already paid Connecting Transmission Owner for any or all such costs of materials or equipment not taken by Developer, Connecting Transmission Owner shall promptly refund such amounts to Developer, less any costs, including penalties incurred by the Connecting Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts.

If Developer terminates this Agreement, it shall be responsible for all costs incurred in association with Developer's interconnection, including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment, and other expenses including any System Upgrade Facilities and System Deliverability Upgrades for which the Connecting Transmission Owner has incurred expenses and has not been reimbursed by the Developer.

**2.4.2** Connecting Transmission Owner may, at its option, retain any portion of such materials, equipment, or facilities that Developer chooses not to accept delivery of, in which case Connecting Transmission Owner shall be responsible for all costs associated with procuring such materials, equipment, or facilities.



**2.4.3** With respect to any portion of the Attachment Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

## **2.5 Disconnection.**

Upon termination of this Agreement, Developer and Connecting Transmission Owner will take all appropriate steps to disconnect the Developer's Large Generating Facility from the New York State Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

## **2.6 Survival.**

This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Developer and Connecting Transmission Owner each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

## **ARTICLE 3. REGULATORY FILINGS**

NYISO and Connecting Transmission Owner shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Developer to contain Confidential Information shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT. If the Developer has executed this Agreement, or any amendment thereto, the Developer shall reasonably cooperate with NYISO and Connecting Transmission Owner with respect to such filing and to provide any information reasonably requested by NYISO and Connecting Transmission Owner needed to comply with Applicable Laws and Regulations.

## **ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE**

### **4.1 Provision of Service.**

NYISO will provide Developer with interconnection service of the following type for the term of this Agreement.

#### **4.1.1 Product.**

NYISO will provide [ ] Interconnection Service to Developer at the Point of Interconnection.

#### **4.1.2 Developer** is responsible for ensuring that its actual Large Generating Facility

output matches the scheduled delivery from the Large Generating Facility to the New York State Transmission System, consistent with the scheduling requirements of the NYISO's FERC-approved market structure, including ramping into and out of such scheduled delivery, as measured at the Point of Interconnection, consistent with the scheduling requirements of the ISO OATT and any applicable FERC-approved market structure.

#### **4.2 No Transmission Delivery Service.**

The execution of this Agreement does not constitute a request for, nor agreement to provide, any Transmission Service under the ISO OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery. If Developer wishes to obtain Transmission Service on the New York State Transmission System, then Developer must request such Transmission Service in accordance with the provisions of the ISO OATT.

#### **4.3 No Other Services.**

The execution of this Agreement does not constitute a request for, nor agreement to provide Energy, any Ancillary Services or Installed Capacity under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff"). If Developer wishes to supply Energy, Installed Capacity or Ancillary Services, then Developer will make application to do so in accordance with the NYISO Services Tariff.

### **ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION**

#### **5.1 Options.**

Unless otherwise mutually agreed to by Developer and Connecting Transmission Owner, Developer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either the Standard Option or Alternate Option set forth below, and such dates and selected option shall be set forth in Appendix B hereto. At the same time, Developer shall indicate whether it elects to exercise the Option to Build set forth in Article 5.1.3 below. If the dates designated by the Developer are not acceptable to the Connecting Transmission Owner, the Connecting Transmission Owner shall so notify the Developer within thirty (30) Calendar Days. Upon receipt of the notification that Developer's designated dates are not acceptable to the Connecting Transmission Owner, the Developer shall notify the Connecting Transmission Owner within thirty (30) Calendar Days whether it elects to exercise the Option to Build if it has not already elected to exercise the Option to Build.

##### **5.1.1 Standard Option.**

The Connecting Transmission Owner shall design, procure, and construct the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, using Reasonable Efforts to complete the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades by the dates set forth in Appendix B hereto. The Connecting 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 Connecting Transmission Owner reasonably expects that it will not be able to complete the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades by the specified dates, the Connecting Transmission Owner shall promptly provide written notice to the Developer and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

#### **5.1.2 Alternate Option.**

If the dates designated by Developer are acceptable to Connecting Transmission Owner, the Connecting Transmission Owner shall so notify Developer and NYISO within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Connecting Transmission Owner's Attachment Facilities by the designated dates. If Connecting Transmission Owner subsequently fails to complete Connecting Transmission Owner's Attachment Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete System Upgrade Facilities or System Deliverability Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Developer and Connecting Transmission Owner for such Trial Operation; or fails to complete the System Upgrade Facilities and System Deliverability Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B hereto; Connecting Transmission Owner shall pay Developer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Developer shall be extended day for day for each day that NYISO refuses to grant clearances to install equipment.

#### **5.1.3 Option to Build.**

Individual or multiple Developers shall have the option to assume responsibility for the design, procurement and construction of Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities on the dates specified in Article 5.1.2, if the requirements in this Article 5.1.3 are met. When multiple Developers exercise this option, multiple Developers may agree to exercise this option provided (1) all Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities constructed under this option are only required for Developers participating in the same Class Year Study and (2) all impacted Developers execute and provide to the NYISO and Connecting Transmission Owner an agreement regarding responsibilities and payment for the construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities planned to be built under this option. NYISO, Connecting Transmission Owner, and the individual Developer or each of the multiple Developers must agree as to what constitutes Stand Alone System Upgrade Facilities and identify such Stand Alone System Upgrade Facilities in Appendix A hereto. Except for Stand Alone System Upgrade Facilities, Developer shall have no right to construct System Upgrade Facilities under this option.

#### **5.1.4 Negotiated Option.**

If the dates designated by Developer are not acceptable to the Connecting Transmission Owner, the Developer and Connecting Transmission Owner shall in good faith attempt to

negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of all facilities other than the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities if the Developer elects to exercise the Option to Build under Article 5.1.3. If the two Parties are unable to reach agreement on such terms and conditions, then, pursuant to Article 5.1.1 (Standard Option), Connecting Transmission Owner shall assume responsibility for the design, procurement and construction of all facilities other than the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities if the Developer elects to exercise the Option to Build.

## **5.2 General Conditions Applicable to Option to Build.**

If Developer assumes responsibility for the design, procurement and construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities, the following conditions apply:

5.2.1 Developer shall engineer, procure equipment, and construct the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Connecting Transmission Owner;

5.2.2 Developer's engineering, procurement and construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities shall comply with all requirements of law to which Connecting Transmission Owner would be subject in the engineering, procurement or construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;

5.2.3 Connecting Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;

5.2.4 Prior to commencement of construction, Developer shall provide to Connecting Transmission Owner and NYISO a schedule for construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities, and shall promptly respond to requests for information from Connecting Transmission Owner or NYISO;

5.2.5 At any time during construction, Connecting Transmission Owner shall have the right to gain unrestricted access to the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities and to conduct inspections of the same;

5.2.6 At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities not meet the standards and specifications provided by Connecting Transmission Owner, the Developer shall be obligated to remedy deficiencies in that portion of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;

5.2.7 Developer shall indemnify Connecting Transmission Owner and NYISO for

claims arising from the Developer's construction of Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities under procedures applicable to Article 18.1 Indemnity;

5.2.8 Developer shall transfer control of Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the Connecting Transmission Owner;

5.2.9 Unless the Developer and Connecting Transmission Owner otherwise agree, Developer shall transfer ownership of Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to Connecting Transmission Owner;

5.2.10 Connecting Transmission Owner shall approve and accept for operation and maintenance the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 5.2; and

5.2.11 Developer shall deliver to NYISO and Connecting Transmission Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or Connecting Transmission Owner to assure that the Attachment Facilities and Stand Alone System Upgrade Facilities are built to the standards and specifications required by Connecting Transmission Owner.

5.2.12 If Developer exercises the Option to Build pursuant to Article 5.1.3, the Developer shall pay the Connecting Transmission Owner the agreed upon amount of [\$ PLACEHOLDER] for the Connecting Transmission Owner to execute the responsibilities enumerated to Connecting Transmission Owner under Article 5.2. The Connecting Transmission Owner shall invoice Developer for this total amount to be divided on a monthly basis pursuant to Article 12.

### **5.3 Liquidated Damages.**

The actual damages to the Developer, in the event the Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades are not completed by the dates designated by the Developer and accepted by the Connecting Transmission Owner pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Developer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Connecting Transmission Owner to the Developer in the event that Connecting Transmission Owner does not complete any portion of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades by the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, in the aggregate, for which Connecting Transmission Owner has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Connecting Transmission Owner Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades for which the Connecting Transmission Owner has assumed

responsibility to design, procure, and construct. The foregoing payments will be made by the Connecting Transmission Owner to the Developer as just compensation for the damages caused to the Developer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this Agreement. Liquidated damages, when the Developer and Connecting Transmission Owner agree to them, are the exclusive remedy for the Connecting Transmission Owner's failure to meet its schedule.

Further, Connecting Transmission Owner shall not pay liquidated damages to Developer if: (1) Developer is not ready to commence use of the Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades to take the delivery of power for the Developer's Large Generating Facility's Trial Operation or to export power from the Developer's Large Generating Facility on the specified dates, unless the Developer would have been able to commence use of the Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades to take the delivery of power for Developer's Large Generating Facility's Trial Operation or to export power from the Developer's Large Generating Facility, but for Connecting Transmission Owner's delay; (2) the Connecting Transmission Owner's failure to meet the specified dates is the result of the action or inaction of the Developer or any other Developer who has entered into a Standard Large Generator Interconnection Agreement with the Connecting Transmission Owner and NYISO, or action or inaction by any other Party, or any other cause beyond Connecting Transmission Owner's reasonable control or reasonable ability to cure; (3) the Developer has assumed responsibility for the design, procurement and construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities; or (4) the Connecting Transmission Owner and Developer have otherwise agreed. In no event shall NYISO have any liability whatever to Developer for liquidated damages associated with the engineering, procurement or construction of Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades.

#### **5.4 Power System Stabilizers.**

The Developer shall procure, install, maintain and operate Power System Stabilizers in accordance with the requirements identified in the Interconnection Studies conducted for Developer's Large Generating Facility. NYISO and Connecting Transmission Owner reserve the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, the Developer shall immediately notify the Connecting Transmission Owner and NYISO. The requirements of this paragraph shall not apply to wind generators.

#### **5.5 Equipment Procurement.**

If responsibility for construction of the Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades is to be borne by the Connecting Transmission Owner, then the Connecting Transmission Owner shall commence design of the Connecting Transmission Owner's Attachment Facilities or System Upgrade

Facilities or System Deliverability Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Developer and Connecting Transmission Owner otherwise agree in writing:

**5.5.1** NYISO and Connecting Transmission Owner have completed the Interconnection Facilities Study pursuant to the Interconnection Facilities Study Agreement;

**5.5.2** The NYISO has completed the required cost allocation analyses, and Developer has accepted its share of the costs for necessary System Upgrade Facilities and System Deliverability Upgrades in accordance with the provisions of Attachment S of the ISO OATT;

**5.5.3** The Connecting Transmission Owner has received written authorization to proceed with design and procurement from the Developer by the date specified in Appendix B hereto; and

**5.5.4** The Developer has provided security to the Connecting Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B hereto.

## **5.6 Construction Commencement.**

The Connecting Transmission Owner shall commence construction of the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

**5.6.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

**5.6.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades;

**5.6.3** The Connecting Transmission Owner has received written authorization to proceed with construction from the Developer by the date specified in Appendix B hereto; and

**5.6.4** The Developer has provided security to the Connecting Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B hereto.

## **5.7 Work Progress.**

The Developer and Connecting Transmission Owner will keep each other, and NYISO, advised periodically as to the progress of their respective design, procurement and construction efforts. Any Party may, at any time, request a progress report from the Developer or Connecting Transmission Owner. If, at any time, the Developer determines that the completion of the Connecting Transmission Owner's Attachment Facilities will not be required until after the specified In-Service Date, the Developer will provide written notice to the Connecting Transmission Owner and NYISO of such later date upon which the completion of the Connecting Transmission Owner's Attachment Facilities will be required.

## **5.8 Information Exchange.**

As soon as reasonably practicable after the Effective Date, the Developer and Connecting Transmission Owner shall exchange information, and provide NYISO the same information, regarding the design and compatibility of their respective Attachment Facilities and compatibility of the Attachment Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.

## **5.9 Other Interconnection Options**

### **5.9.1 Limited Operation.**

If any of the Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Developer's Large Generating Facility, NYISO shall, upon the request and at the expense of Developer, in conjunction with the Connecting Transmission Owner, perform operating studies on a timely basis to determine the extent to which the Developer's Large Generating Facility and the Developer's Attachment Facilities may operate prior to the completion of the Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this Agreement. Connecting Transmission Owner and NYISO shall permit Developer to operate the Developer's Large Generating Facility and the Developer's Attachment Facilities in accordance with the results of such studies.

### **5.9.2 Provisional Interconnection Service.**

Prior to the completion of the Large Facility Interconnection Procedures and prior to completion of requisite Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Distribution Upgrades, or System Protection Facilities, the Developer may request an evaluation for Provisional Interconnection Service. NYISO, in conjunction with the Connecting Transmission Owner, shall determine, through available studies or additional studies as necessary, whether stability, short circuit, thermal, and/or voltage issues would arise if the Developer interconnects without modifications to the Large Generating Facility or the New York State Transmission System (or Distribution System as applicable). NYISO, in conjunction with the Connecting Transmission Owner, shall determine whether any Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Deliverability Upgrades, or System Protection Facilities, which are necessary to meet Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, are in place prior to the commencement of interconnection service from the Large Facility. Where available studies indicate that the Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Deliverability Upgrades, or System Protection Facilities are required for the interconnection of a new, modified and/or expanded Large Facility but such facilities are not currently in place, NYISO, in conjunction with the Connecting Transmission Owner, will perform a study, at the Developer's expense, to confirm the facilities that are required for Provisional Interconnection Service. The maximum permissible output of the Large Facility in the Provisional Large Facility Interconnection Agreement shall be studied, at the Developer's expense, and updated annually.



The NYISO shall issue the study's findings in writing to the Developer and Connecting Transmission Owner(s). Following a determination by NYISO, in conjunction with the Connecting Transmission Owner, that the Developer may reliably provide Provisional Interconnection Service, NYISO shall tender to the Developer and Connecting Transmission Owner, a Provisional Large Facility Interconnection Agreement. NYISO, Developer, and Connecting Transmission Owner may execute the Provisional Large Facility Interconnection Agreement, or the Developer may request the filing of an unexecuted Provisional Large Facility Interconnection Agreement with the Commission. The Developer shall assume all risk and liabilities with respect to changes between the Provisional Large Facility Interconnection Agreement and the Large Generator Interconnection Agreement, including changes in output limits and the cost responsibilities for the Attachment Facilities, System Upgrade Facilities, System Deliverability Upgrades, and/or System Protection Facilities.

#### **5.10 Developer's Attachment Facilities ("DAF").**

Developer shall, at its expense, design, procure, construct, own and install the DAF, as set forth in Appendix A hereto.

##### **5.10.1 DAF Specifications.**

Developer shall submit initial specifications for the DAF, including System Protection Facilities, to Connecting Transmission Owner and NYISO at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Connecting Transmission Owner and NYISO shall review such specifications to ensure that the DAF are compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO and comment on such specifications within thirty (30) Calendar Days of Developer's submission. All specifications provided hereunder shall be deemed to be Confidential Information.

##### **5.10.2 No Warranty.**

The review of Developer's final specifications by Connecting Transmission Owner and NYISO shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the DAF. Developer shall make such changes to the DAF as may reasonably be required by Connecting Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the DAF are compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO.

##### **5.10.3 DAF Construction.**

The DAF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Developer and Connecting Transmission Owner agree on another mutually acceptable deadline, the Developer shall deliver to the Connecting Transmission Owner and NYISO "as-built" drawings, information and documents for the DAF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the DAF, plan and elevation drawings showing the

layout of the DAF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Developer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the DAF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facility. The Developer shall provide to, and coordinate with, Connecting Transmission Owner and NYISO with respect to proposed specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable.

#### **5.11 Connecting Transmission Owner's Attachment Facilities Construction.**

The Connecting Transmission Owner's Attachment Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Connecting Transmission Owner and Developer agree on another mutually acceptable deadline, the Connecting Transmission Owner shall deliver to the Developer "as-built" drawings, relay diagrams, information and documents for the Connecting Transmission Owner's Attachment Facilities set forth in Appendix A.

The Connecting Transmission Owner [shall/shall not] transfer operational control of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the NYISO upon completion of such facilities.

#### **5.12 Access Rights.**

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, either the Connecting Transmission Owner or Developer ("Granting Party") shall furnish to the other of those two Parties ("Access Party") at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the Point of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with the New York State Transmission System; (ii) operate and maintain the Large Generating Facility, the Attachment Facilities and the New York State Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

#### **5.13 Lands of Other Property Owners.**

If any part of the Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities and/or System Deliverability Upgrades is to be installed on property owned

by persons other than Developer or Connecting Transmission Owner, the Connecting Transmission Owner shall at Developer's expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities and/or System Deliverability Upgrades upon such property.

#### **5.14 Permits.**

NYISO, Connecting Transmission Owner and the Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Connecting Transmission Owner shall provide permitting assistance to the Developer comparable to that provided to the Connecting Transmission Owner's own, or an Affiliate's generation, if any.

#### **5.15 Early Construction of Base Case Facilities.**

Developer may request Connecting Transmission Owner to construct, and Connecting Transmission Owner shall construct, subject to a binding cost allocation agreement reached in accordance with Attachment S to the ISO OATT, including Section 25.8.7 thereof, using Reasonable Efforts to accommodate Developer's In-Service Date, all or any portion of any System Upgrade Facilities or System Deliverability Upgrades required for Developer to be interconnected to the New York State Transmission System which are included in the Base Case of the Class Year Study for the Developer, and which also are required to be constructed for another Developer, but where such construction is not scheduled to be completed in time to achieve Developer's In-Service Date.

#### **5.16 Suspension.**

Developer reserves the right, upon written notice to Connecting Transmission Owner and NYISO, to suspend at any time all work by Connecting Transmission Owner associated with the construction and installation of Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities and/or System Deliverability Upgrades required for only that Developer under this Agreement with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Connecting Transmission Owner and NYISO. In such event, Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with Attachment S to the ISO OATT including those which Connecting Transmission Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Connecting Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or

suspending any such material, equipment or labor contract, Connecting Transmission Owner shall obtain Developer's authorization to do so.

Connecting Transmission Owner shall invoice Developer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Developer suspends work by Connecting Transmission Owner required under this Agreement pursuant to this Article 5.16, and has not requested Connecting Transmission Owner to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Connecting Transmission Owner and NYISO, if no effective date is specified.

## **5.17 Taxes.**

### **5.17.1 Developer Payments Not Taxable.**

The Developer and Connecting Transmission Owner intend that all payments or property transfers made by Developer to Connecting Transmission Owner for the installation of the Connecting Transmission Owner's Attachment Facilities and the System Upgrade Facilities and the System Deliverability Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

### **5.17.2 Representations and Covenants.**

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Developer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the New York State Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Connecting Transmission Owner for the Connecting Transmission Owner's Attachment Facilities will be capitalized by Developer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Connecting Transmission Owner's Attachment Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Connecting Transmission Owner's request, Developer shall provide Connecting Transmission Owner with a report from an independent engineer confirming its representation in clause (iii), above. Connecting Transmission Owner represents and covenants that the cost of the Connecting Transmission Owner's Attachment Facilities paid for by Developer will have no net effect on the base upon which rates are determined.

### **5.17.3 Indemnification for the Cost Consequences of Current Tax Liability**

### **Imposed Upon the Connecting Transmission Owner.**

Notwithstanding Article 5.17.1, Developer shall protect, indemnify and hold harmless Connecting Transmission Owner from the cost consequences of any current tax liability imposed against Connecting Transmission Owner as the result of payments or property transfers made by Developer to Connecting Transmission Owner under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Connecting Transmission Owner.

Connecting Transmission Owner shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Developer under this Agreement unless (i) Connecting Transmission Owner has determined, in good faith, that the payments or property transfers made by Developer to Connecting Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Connecting Transmission Owner to report payments or property as income subject to taxation; provided, however, that Connecting Transmission Owner may require Developer to provide security, in a form reasonably acceptable to Connecting Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Developer shall reimburse Connecting Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Connecting Transmission Owner of the amount due, including detail about how the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by the Connecting Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

#### **5.17.4 Tax Gross-Up Amount.**

Developer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Developer will pay Connecting Transmission Owner, in addition to the amount paid for the Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, an amount equal to (1) the current taxes imposed on Connecting Transmission Owner ("Current Taxes") on the excess of (a) the gross income realized by Connecting Transmission Owner as a result of payments or property transfers made by Developer to Connecting Transmission Owner under this Agreement (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Connecting Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Connecting Transmission Owner's composite federal and state tax rates at the time the payments or property transfers are received and Connecting Transmission Owner will be treated as being subject to tax at the

highest marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the Present Value Depreciation Amount shall be computed by discounting Connecting Transmission Owner’s anticipated tax depreciation deductions as a result of such payments or property transfers by Connecting Transmission Owner’s current weighted average cost of capital. Thus, the formula for calculating Developer’s liability to Connecting Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value Depreciation Amount})) / (1 - \text{Current Tax Rate})$ . Developer’s estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades.

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

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

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

#### **5.17.6 Subsequent Taxable Events.**

If, within 10 years from the date on which the relevant Connecting Transmission Owner Attachment Facilities are placed in service, (i) Developer Breaches the covenants contained in Article 5.17.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Connecting Transmission Owner retains ownership of the Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, the Developer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Connecting Transmission Owner, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

#### **5.17.7 Contests.**

In the event any Governmental Authority determines that Connecting Transmission Owner’s receipt of payments or property constitutes income that is subject to taxation, Connecting Transmission Owner shall notify Developer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Developer and at Developer’s sole expense, Connecting Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon

Developer's written request and sole expense, Connecting Transmission Owner may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Connecting Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Connecting Transmission Owner shall keep Developer informed, shall consider in good faith suggestions from Developer about the conduct of the contest, and shall reasonably permit Developer or an Developer representative to attend contest proceedings.

Developer shall pay to Connecting Transmission Owner on a periodic basis, as invoiced by Connecting Transmission Owner, Connecting Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest, including any costs associated with obtaining the opinion of independent tax counsel described in this Article 5.17.7. The Connecting Transmission Owner may abandon any contest if the Developer fails to provide payment to the Connecting Transmission Owner within thirty (30) Calendar Days of receiving such invoice. At any time during the contest, Connecting Transmission Owner may agree to a settlement either with Developer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Connecting Transmission Owner, but reasonably acceptable to Developer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Developer's obligation shall be based on the amount of the settlement agreed to by Developer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. The Connecting Transmission Owner may also settle any tax controversy without receiving the Developer's consent or any such written advice; however, any such settlement will relieve the Developer from any obligation to indemnify Connecting Transmission Owner for the tax at issue in the contest (unless the failure to obtain written advice is attributable to the Developer's unreasonable refusal to the appointment of independent tax counsel).

#### **5.17.8 Refund.**

In the event that (a) a private letter ruling is issued to Connecting Transmission Owner which holds that any amount paid or the value of any property transferred by Developer to Connecting Transmission Owner under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Connecting Transmission Owner in good faith that any amount paid or the value of any property transferred by Developer to Connecting Transmission Owner under the terms of this Agreement is not taxable to Connecting Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Developer to Connecting Transmission Owner are not subject to federal income tax, or (d) if Connecting Transmission Owner receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Developer to Connecting Transmission Owner pursuant to this Agreement, Connecting Transmission Owner shall promptly refund to Developer the following:

- (i) Any payment made by Developer under this Article 5.17 for taxes that is

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

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

(iii) With respect to any such taxes paid by Connecting Transmission Owner, any refund or credit Connecting Transmission Owner receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Connecting Transmission Owner for such overpayment of taxes (including any reduction in interest otherwise payable by Connecting Transmission Owner to any Governmental Authority resulting from an offset or credit); provided, however, that Connecting Transmission Owner will remit such amount promptly to Developer only after and to the extent that Connecting Transmission Owner has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Connecting Transmission Owner's Attachment Facilities.

The intent of this provision is to leave both the Developer and Connecting Transmission Owner, to the extent practicable, in the event that no taxes are due with respect to any payment for Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

#### **5.17.9 Taxes Other Than Income Taxes.**

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

#### **5.18 Tax Status; Non-Jurisdictional Entities.**

##### **5.18.1 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 Connecting 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, NYPA and Consolidated Edison Company of New York, Inc. 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 their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

## **5.18.2 Non-Jurisdictional Entities.**

LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

## **5.19 Modification.**

### **5.19.1 General.**

Either the Developer or Connecting Transmission Owner may undertake modifications to its facilities covered by this Agreement. If either the Developer or Connecting Transmission Owner plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party, and to NYISO, sufficient information regarding such modification so that the other Party and NYISO may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be Confidential Information hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party and NYISO at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Developer to submit an Interconnection Request, the NYISO shall provide, within sixty (60) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the New York State Transmission System, Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades necessitated by such Developer modification and a good faith estimate of the costs thereof. The Developer shall be responsible for the cost of any such additional modifications, including the cost of studying the impact of the Developer modification.

### **5.19.2 Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

### **5.19.3 Modification Costs.**

Developer shall not be assigned the costs of any additions, modifications, or replacements that Connecting Transmission Owner makes to the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO OATT. Developer shall be responsible for the costs of any additions, modifications, or replacements to the Developer's Attachment Facilities that may be necessary to maintain or upgrade such Developer's Attachment Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

## **ARTICLE 6. TESTING AND INSPECTION**

### **6.1 Pre-Commercial Operation Date Testing and Modifications.**

Prior to the Commercial Operation Date, the Connecting Transmission Owner shall test the Connecting Transmission Owner's Attachment Facilities (including required control technologies and protection systems) and System Upgrade Facilities and System Deliverability Upgrades and Developer shall test the Large Generating Facility and the Developer's Attachment Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Developer and Connecting Transmission Owner shall each make any modifications to its facilities that are found to be necessary as a result of such testing. Developer shall bear the cost of all such testing and modifications. Developer shall generate test energy at the Large Generating Facility only if it has arranged for the injection of such test energy in accordance with NYISO procedures.

### **6.2 Post-Commercial Operation Date Testing and Modifications.**

Developer and Connecting Transmission Owner shall each at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice and Applicable Reliability Standards as may be necessary to ensure the continued interconnection of the Large Generating Facility with the New York State Transmission System in a safe and reliable manner. Developer and Connecting Transmission Owner shall each have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

### **6.3 Right to Observe Testing.**

Developer and Connecting Transmission Owner shall each notify the other Party, and the NYISO, in advance of its performance of tests of its Attachment Facilities. The other Party, and the NYISO, shall each have the right, at its own expense, to observe such testing.

### **6.4 Right to Inspect.**

Developer and Connecting Transmission Owner shall each have the right, but shall have

no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Attachment Facilities, the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Developer and Connecting Transmission Owner. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Attachment Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT.

## **ARTICLE 7. METERING**

### **7.1 General.**

Developer and Connecting Transmission Owner shall each comply with applicable requirements of NYISO and the New York Public Service Commission when exercising its rights and fulfilling its responsibilities under this Article 7. Unless otherwise agreed by the Connecting Transmission Owner and NYISO approved meter service provider and Developer, the Connecting Transmission Owner shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Net power flows including MW and MVAR, MWHR and loss profile data to and from the Large Generating Facility shall be measured at the Point of Interconnection. Connecting Transmission Owner shall provide metering quantities, in analog and/or digital form, as required, to Developer or NYISO upon request. Where the Point of Interconnection for the Large Generating Facility is other than the generator terminal, the Developer shall also provide gross MW and MVAR quantities at the generator terminal. Developer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

### **7.2 Check Meters.**

Developer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Connecting Transmission Owner's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this Agreement, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Connecting Transmission Owner or its designee. The installation, operation and maintenance thereof shall be performed entirely by Developer in accordance with Good Utility Practice.

### **7.3 Standards.**

Connecting Transmission Owner shall install, calibrate, and test revenue quality Metering Equipment including potential transformers and current transformers in accordance with applicable ANSI and PSC standards as detailed in the NYISO Control Center Communications Manual and in the NYISO Revenue Metering Requirements Manual.

### **7.4 Testing of Metering Equipment.**

Connecting Transmission Owner shall inspect and test all of its Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by NYISO or Developer, Connecting Transmission Owner shall, at Developer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Connecting Transmission Owner shall give reasonable notice of the time when any inspection or test shall take place, and Developer and NYISO may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Developer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Connecting Transmission Owner's failure to maintain, then Connecting Transmission Owner shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Connecting Transmission Owner shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Developer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment. The NYISO shall reserve the right to review all associated metering equipment installation on the Developer's or Connecting Transmission Owner's property at any time.

### **7.5 Metering Data.**

At Developer's expense, the metered data shall be telemetered to one or more locations designated by Connecting Transmission Owner, Developer and NYISO. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

## **ARTICLE 8. COMMUNICATIONS**

### **8.1 Developer Obligations.**

In accordance with applicable NYISO requirements, Developer shall maintain satisfactory operating communications with Connecting Transmission Owner and NYISO. Developer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Developer shall also provide the dedicated data circuit(s) necessary to provide Developer data to Connecting Transmission Owner and NYISO as set forth in Appendix D hereto. The data circuit(s) shall extend from the Large Generating Facility to the location(s)

specified by Connecting Transmission Owner and NYISO. Any required maintenance of such communications equipment shall be performed by Developer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

## **8.2 Remote Terminal Unit.**

Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Developer, or by Connecting Transmission Owner at Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Connecting Transmission Owner and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Connecting Transmission Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Connecting Transmission Owner and NYISO.

Each Party will promptly advise the appropriate other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by that other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

## **8.3 No Annexation.**

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

# **ARTICLE 9. OPERATIONS**

## **9.1 General.**

Each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards. Each Party shall provide to the other Parties all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

## **9.2 NYISO and Connecting Transmission Owner Obligations.**

Connecting Transmission Owner and NYISO shall cause the New York State Transmission System and the Connecting Transmission Owner's Attachment Facilities to be operated, maintained and controlled in a safe and reliable manner in accordance with this Agreement and the NYISO Tariffs. Connecting Transmission Owner and NYISO may provide operating instructions to Developer consistent with this Agreement, NYISO procedures and Connecting Transmission Owner's operating protocols and procedures as they may change from time to time. Connecting Transmission Owner and NYISO will consider changes to their

respective operating protocols and procedures proposed by Developer.

### **9.3 Developer Obligations.**

Developer shall at its own expense operate, maintain and control the Large Generating Facility and the Developer's Attachment Facilities in a safe and reliable manner and in accordance with this Agreement. Developer shall operate the Large Generating Facility and the Developer's Attachment Facilities in accordance with NYISO and Connecting Transmission Owner requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.

### **9.4 Start-Up and Synchronization.**

Consistent with the mutually acceptable procedures of the Developer and Connecting Transmission Owner, the Developer is responsible for the proper synchronization of the Large Generating Facility to the New York State Transmission System in accordance with NYISO and Connecting Transmission Owner procedures and requirements.

### **9.5 Real and Reactive Power Control and Primary Frequency Response.**

#### **9.5.1 Power Factor Design Criteria.**

**9.5.1.1 Synchronous Generation.** Developer shall design the Large Generating Facility to maintain effective composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging unless the NYISO or the Transmission Owner in whose Transmission District the Large Generating Facility interconnects has established different requirements that apply to all generators in the New York Control Area or Transmission District (as applicable) on a comparable basis, in accordance with Good Utility Practice.

The Developer shall design and maintain the plant auxiliary systems to operate safely throughout the entire real and reactive power design range.

**9.5.1.2 Non-Synchronous Generation.** Developer shall design the Large Generating Facility to maintain composite power delivery at continuous rated power output at the high-side of the generator substation at a power factor within the range of 0.95 leading to 0.95 lagging, unless the NYISO or the Transmission Owner in whose Transmission District the Large Generating Facility interconnects has established a different power factor range that applies to all non-synchronous generators in the New York Control Area or Transmission District (as applicable) on a comparable basis, in accordance with Good Utility Practice. This power factor range standard shall be dynamic and can be met using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors, or a combination of the two. This requirement shall only apply to newly interconnection non-synchronous generators that have not yet executed a Facilities Study Agreement as of September 21, 2016.

The Developer shall design and maintain the plant auxiliary systems to operate safely throughout the entire real and reactive power design range.

#### **9.5.2 Voltage Schedules.**

Once the Developer has synchronized the Large Generating Facility with the New York State Transmission System, NYISO shall require Developer to operate the Large Generating Facility to produce or absorb reactive power within the design capability of the Large Generating Facility set forth in Article 9.5.1 (Power Factor Design Criteria). NYISO's voltage schedules shall treat all sources of reactive power in the New York Control Area in an equitable and not unduly discriminatory manner. NYISO shall exercise Reasonable Efforts to provide Developer with such schedules in accordance with NYISO procedures, and may make changes to such schedules as necessary to maintain the reliability of the New York State Transmission System. Developer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design capability of the Large Generating Facility set forth in Article 9.5.1 (Power Factor Design Criteria) as directed by the Connecting Transmission Owner's system operator or the NYISO. If Developer is unable to maintain the specified voltage or power factor, it shall promptly notify NYISO.

#### **9.5.3 Payment for Reactive Power.**

NYISO shall pay Developer for reactive power or voltage support service that Developer provides from the Large Generating Facility in accordance with the provisions of Rate Schedule 2 of the NYISO Services Tariff.

#### **9.5.4 Voltage Regulators.**

Whenever the Large Generating Facility is operated in parallel with the New York State Transmission System, the automatic voltage regulators shall be in automatic operation at all times. If the Large Generating Facility's automatic voltage regulators are not capable of such automatic operation, the Developer shall immediately notify NYISO, or its designated representative, and ensure that such Large Generating Facility's real and reactive power are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits and NYISO system operating (thermal, voltage and transient stability) limits. Developer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the New York State Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the New York Control Area on a comparable basis.

#### **9.5.5 Primary Frequency Response.**

Developer shall ensure the primary frequency response capability of its Large Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term "functioning governor or equivalent controls" as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Large Generating Facility's

real power output in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Developer is required to install a governor or equivalent controls with the capability of operating: (1) with a maximum 5 percent droop  $\pm 0.036$  Hz deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained response settings from an approved Applicable Reliability Standard providing for equivalent or more stringent parameters. The droop characteristic shall be: (1) based on the nameplate capacity of the Large Generating Facility, and shall be linear in the range of frequencies between 59 and 61 Hz that are outside of the deadband parameter; or (2) based on an approved Applicable Reliability Standard providing for an equivalent or more stringent parameter. The deadband parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Large Generating Facility's real power output in response to frequency deviations. The deadband shall be implemented: (1) without a step to the droop curve, that is, once the frequency deviation exceeds the deadband parameter, the expected change in the Large Generating Facility's real power output in response to frequency deviations shall start from zero and then increase (for under-frequency deviations) or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the frequency deviation; or (2) in accordance with an approved Applicable Reliability Standard providing for an equivalent or more stringent parameter. Developer shall notify NYISO that the primary frequency response capability of the Large Generating Facility has been tested and confirmed during commissioning. Once Developer has synchronized the Large Generating Facility with the New York State Transmission System, Developer shall operate the Large Generating Facility consistent with the provisions specified in Articles 9.5.5.1 and 9.5.5.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Large Generating Facilities.

#### **9.5.5.1 Governor or Equivalent Controls.**

Whenever the Large Generating Facility is operated in parallel with the New York State Transmission System, Developer shall operate the Large Generating Facility with its governor or equivalent controls in service and responsive to frequency. Developer shall: (1) in coordination with NYISO, set the deadband parameter to: (1) a maximum of  $\pm 0.036$  Hz and set the droop parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings from an approved Applicable Reliability Standard that provides for equivalent or more stringent parameters. Developer shall be required to provide the status and settings of the governor and equivalent controls to NYISO and/or the Connecting Transmission Owner upon request. If Developer needs to operate the Large Generating Facility with its governor or equivalent controls not in service, Developer shall immediately notify NYISO and the Connecting Transmission Owner, and provide both with the following information: (1) the operating status of the governor or equivalent controls (i.e., whether it is currently out of service or when it will be taken out of service); (2) the reasons for removing the governor or equivalent controls from service; and (3) a reasonable estimate of when the governor or equivalent controls will be returned to service. Developer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable. Developer shall make Reasonable Efforts to keep outages of the Large Generating Facility's governor or equivalent controls to a minimum whenever the Large Generating Facility is operated in parallel with the New York State Transmission System.



#### **9.5.5.2 Timely and Sustained Response.**

Developer shall ensure that the Large Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, and to the extent the Large Generating Facility has operating capability in the direction needed to correct the frequency deviation. Developer shall not block or otherwise inhibit the ability of the governor or equivalent controls to respond and shall ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, physical energy limitations, outages of mechanical equipment, or regulatory requirements. The Large Generating Facility shall sustain the real power response at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. An Applicable Reliability Standard with equivalent or more stringent requirements shall supersede the above requirements.

#### **9.5.5.3 Exemptions.**

Large Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Articles 9.5.5, 9.5.5.1, and 9.5.5.2 of this Agreement. Large Generating Facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host facility) shall be required to install primary frequency response capability requirements in accordance with the droop and deadband capability requirements specified in Article 9.5.5, but shall be otherwise exempt from the operating requirements in Articles 9.5.5, 9.5.5.1, 9.5.5.2, and 9.5.5.4 of this Agreement.

#### **9.5.5.4 Electric Storage Resources.**

Developer interconnecting a Generating Facility that contains an electric storage resource shall establish an operating range in Appendix C of its LGIA that specifies a minimum state of charge and a maximum state of charge between which the electric storage resource will be required to provide primary frequency response consistent with the conditions set forth in Articles 9.5.5, 9.5.5.1, 9.5.5.2, and 9.5.5.3 of this Agreement. Appendix C shall specify whether the operating range is static or dynamic, and shall consider (1) the expected magnitude of frequency deviations in the interconnection; (2) the expected duration that system frequency will remain outside of the deadband parameter in the interconnection; (3) the expected incidence of frequency deviations outside of the deadband parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5) operational limitations of the electric storage resources due to manufacturer specification; and (6) any other relevant factors agreed to by the NYISO, Connecting Transmission Owner, and Developer. If the operating range is dynamic, then Appendix C must establish how frequently the operating range will be reevaluated and the factors that may be considered during its reevaluation.

Developer's electric storage resource is required to provide timely and sustained primary frequency response consistent with Article 9.5.5.2 of this Agreement when it is online and dispatched to inject electricity to the New York State Transmission System and/or receive

electricity from the New York State Transmission System. This excludes circumstances when the electric storage resource is not dispatched to inject electricity to the New York State Transmission System and/or dispatched to receive electricity from the New York State Transmission System. If Developer's electric storage resource is charging at the time of a frequency deviation outside of its deadband parameter, it is to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which it is charging in accordance with its droop parameter. Developer's electric storage resource is not required to change from charging to discharging, or vice versa, unless the response necessitated by the droop and deadband settings requires it to do so and it is technically capable of making such a transition.

## **9.6 Outages and Interruptions.**

### **9.6.1 Outages.**

#### **9.6.1.1 Outage Authority and Coordination.**

Developer and Connecting Transmission Owner may each, in accordance with NYISO procedures and Good Utility Practice and in coordination with the other Party, remove from service any of its respective Attachment Facilities or System Upgrade Facilities and System Deliverability Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency State, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both the Developer and the Connecting Transmission Owner. In all circumstances either Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

#### **9.6.1.2 Outage Schedules.**

The Connecting Transmission Owner shall post scheduled outages of its transmission facilities on the NYISO OASIS. Developer shall submit its planned maintenance schedules for the Large Generating Facility to Connecting Transmission Owner and NYISO for a minimum of a rolling thirty-six month period. Developer shall update its planned maintenance schedules as necessary. NYISO may direct, or the Connecting Transmission Owner may request, Developer to reschedule its maintenance as necessary to maintain the reliability of the New York State Transmission System. Compensation to Developer for any additional direct costs that the Developer incurs as a result of rescheduling maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost the Developer would have incurred absent the request to reschedule maintenance, shall be in accordance with the ISO OATT. Developer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, the Developer had modified its schedule of maintenance activities other than at the direction of the NYISO or request of the Connecting Transmission Owner.

### **9.6.1.3 Outage Restoration.**

If an outage on the Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades of the Connecting Transmission Owner or Developer adversely affects the other Party's operations or facilities, the Party that owns the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns the facility that is out of service shall provide the other Party and NYISO, to the extent such information is known, information on the nature of the Emergency State, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

**9.6.2 Interruption of Service.** If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO or Connecting Transmission Owner may require Developer to interrupt or reduce production of electricity if such production of electricity could adversely affect the ability of NYISO and Connecting Transmission Owner to perform such activities as are necessary to safely and reliably operate and maintain the New York State Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.6.2:

**9.6.2.1** The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

**9.6.2.2** Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the New York State Transmission System;

**9.6.2.3** When the interruption or reduction must be made under circumstances which do not allow for advance notice, NYISO or Connecting Transmission Owner shall notify Developer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

**9.6.2.4** Except during the existence of an Emergency State, when the interruption or reduction can be scheduled without advance notice, NYISO or Connecting Transmission Owner shall notify Developer in advance regarding the timing of such scheduling and further notify Developer of the expected duration. NYISO or Connecting Transmission Owner shall coordinate with each other and the Developer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Developer, the Connecting Transmission Owner and the New York State Transmission System;

**9.6.2.5** The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Attachment Facilities, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

### **9.6.3 Ride Through Capability and Performance**

The New York State Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Councils in the event of an under-frequency system disturbance. Developer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the Applicable Reliability Councils to ensure frequency “ride through” capability of the New York State Transmission System. Large Generating Facility response to frequency deviations of predetermined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with the NYISO and Connecting Transmission Owner in accordance with Good Utility Practice. Developer shall also implement under-voltage and over-voltage relay set points, or equivalent electronic controls, as required by the Applicable Reliability Councils to ensure voltage “ride through” capability of the New York State Transmission System. The term “ride through” as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the New York State Transmission System during system disturbances within a range of under-frequency, over-frequency, under-voltage, and over-voltage conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other Generating Facilities in the Balancing Authority Area on a comparable basis unless the Transmission Owner in whose Transmission District the Large Generating Facility interconnects has established different requirements that apply on a comparable basis in accordance with Good Utility Practice. For abnormal frequency conditions and voltage conditions within the “no trip zone” as that term is defined by ERO Reliability Standard PRC-024-3, any successor mandatory ride through ERO reliability standards, or any more stringent NPCC or NYSRC requirements applicable to Generating Facilities in the Balancing Authority Area on a comparable basis, the non-synchronous Generating Facility must ensure that, within any physical limitations of the Generating Facility, its control and protection settings are configured or set to (1) continue active power production during disturbance and post disturbance periods at pre-disturbance levels, unless reactive power priority mode is enabled or unless providing primary frequency response or fast frequency response; (2) minimize reductions in active power and remain within dynamic voltage and current limits, if reactive power priority mode is enabled, unless providing primary frequency response or fast frequency response; (3) not artificially limit dynamic reactive power capability during disturbances; and (4) return to pre-disturbance active power levels without artificial ramp rate limits if active power is reduced, unless providing primary frequency response or fast frequency response.

### **9.6.4 System Protection and Other Control Requirements.**

**9.6.4.1 System Protection Facilities.** Developer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or Developer’s Attachment Facilities. Connecting Transmission Owner shall install at Developer’s expense any System Protection Facilities that may be required on the Connecting Transmission Owner’s Attachment Facilities or the New York State Transmission System as a result of the interconnection of the Large Generating Facility and Developer’s Attachment Facilities.

**9.6.4.2** The protection facilities of both the Developer and Connecting Transmission Owner shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.

**9.6.4.3** The Developer and Connecting Transmission Owner shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.

**9.6.4.4** The protective relay design of the Developer and Connecting Transmission Owner shall each incorporate the necessary test switches to perform the tests required in Article 6 of this Agreement. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Developer's Large Generating Facility.

**9.6.4.5** The Developer and Connecting Transmission Owner will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice, ERO and NPCC criteria.

**9.6.4.6** Prior to the In-Service Date, and again prior to the Commercial Operation Date, the Developer and Connecting Transmission Owner shall each perform, or their agents shall perform, a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, the Developer and Connecting Transmission Owner shall each perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

## **9.6.5 Requirements for Protection.**

In compliance with NPCC requirements and Good Utility Practice, Developer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the New York State Transmission System not otherwise isolated by Connecting Transmission Owner's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the New York State Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the New York State Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Developer and Connecting Transmission Owner. Developer shall be responsible for protection of the Large Generating Facility and Developer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Developer shall be solely responsible to disconnect the Large Generating Facility and Developer's other equipment if conditions on the New York State Transmission System could adversely affect the Large Generating Facility.

## **9.6.6 Power Quality.**

Neither the facilities of Developer nor the facilities of Connecting Transmission Owner shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage

or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

## **9.7 Switching and Tagging Rules.**

The Developer and Connecting Transmission Owner shall each provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a nondiscriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

## **9.8 Use of Attachment Facilities by Third Parties.**

### **9.8.1 Purpose of Attachment Facilities.**

Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Attachment Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the New York State Transmission System and shall be used for no other purpose.

### **9.8.2 Third Party Users.**

If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Connecting Transmission Owner's Attachment Facilities, or any part thereof, Developer will be entitled to compensation for the capital expenses it incurred in connection with the Attachment Facilities based upon the pro rata use of the Attachment Facilities by Connecting Transmission Owner, all third party users, and Developer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Attachment Facilities, will be allocated between Developer and any third party users based upon the pro rata use of the Attachment Facilities by Connecting Transmission Owner, all third party users, and Developer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

## **9.9 Disturbance Analysis Data Exchange.**

The Parties will cooperate with one another and the NYISO in the analysis of disturbances to either the Large Generating Facility or the New York State Transmission System by gathering and providing access to any information relating to any disturbance, including information from disturbance recording equipment, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

## **9.10 Phasor Measurement Units**

A Developer shall install and maintain, at its expense, phasor measurement units (“PMUs”) if it meets the following criteria: (1) completed a Class Year after Class Year 2017; and (2) proposes a new Large Facility that either (a) has a maximum net output equal to or greater than 100 MW or (b) requires, as Attachment Facilities or System Upgrade Facilities, a new substation of 230kV or above.

PMUs shall be installed on the Large Facility on the low side of the generator step-up transformer, unless it is a non-synchronous generation facility, in which case the PMUs shall be installed on the Developer side of the Point of Interconnection. The PMUs must be capable of performing phasor measurements at a minimum of 60 samples per second which are synchronized via a high-accuracy satellite clock. To the extent Developer installs similar quality equipment, such as relays or digital fault recorders, that can collect data at least at the same rate as PMUs and which data is synchronized via a high-accuracy satellite clock, such equipment would satisfy this requirement.

Developer shall be required to install and maintain, at its expense, PMU equipment which includes the communication circuit capable of carrying the PMU data to a local data concentrator, and then transporting the information continuously to the Connecting Transmission Owner and the NYISO; as well as store the PMU data locally for thirty (30) Calendar Days. Developer shall provide to Connecting Transmission Owner and the NYISO all necessary and requested information through the Connecting Transmission Owner’s and the NYISO’s synchrophasor system, including the following: (a) gross MW and MVAR measured at the Developer side of the generator step-up transformer (or, for a non-synchronous generation facility, to be measured at the Developer side of the Point of Interconnection); (b) generator terminal voltage and current magnitudes and angles; (c) generator terminal frequency and frequency rate of change; and (d) generator field voltage and current, where available; and (e) breaker status, if available. The Connecting Transmission Owner will provide for the ongoing support and maintenance of the network communications linking the data concentrator to the Connecting Transmission Owner and the NYISO, consistent with ISO Procedures detailing the obligations related to SCADA data.

## **ARTICLE 10. MAINTENANCE**

### **10.1 Connecting Transmission Owner Obligations.**

Connecting Transmission Owner shall maintain its transmission facilities and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

### **10.2 Developer Obligations.**

Developer shall maintain its Large Generating Facility and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

### **10.3 Coordination.**

The Developer and Connecting Transmission Owner shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Attachment Facilities. The Developer and Connecting Transmission Owner shall keep NYISO fully informed of the preventive and corrective maintenance that is planned, and shall schedule all such maintenance in accordance with NYISO procedures.

### **10.4 Secondary Systems.**

The Developer and Connecting Transmission Owner shall each cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of Developer or Connecting Transmission Owner's facilities and equipment which may reasonably be expected to impact the other Party. The Developer and Connecting Transmission Owner shall each provide advance notice to the other Party, and to NYISO, before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

### **10.5 Operating and Maintenance Expenses.**

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Developer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Developer's Attachment Facilities; and (2) operation, maintenance, repair and replacement of Connecting Transmission Owner's Attachment Facilities. The Connecting Transmission Owner shall be entitled to the recovery of incremental operating and maintenance expenses that it incurs associated with System Upgrade Facilities and System Deliverability Upgrades if and to the extent provided for under Attachment S to the ISO OATT.

## **ARTICLE 11. PERFORMANCE OBLIGATION**

### **11.1 Developer's Attachment Facilities.**

Developer shall design, procure, construct, install, own and/or control the Developer's Attachment Facilities described in Appendix A hereto, at its sole expense.

### **11.2 Connecting Transmission Owner's Attachment Facilities.**

Connecting Transmission Owner shall design, procure, construct, install, own and/or control the Connecting Transmission Owner's Attachment Facilities described in Appendix A hereto, at the sole expense of the Developer.



### **11.3 System Upgrade Facilities and System Deliverability Upgrades.**

Connecting Transmission Owner shall design, procure, construct, install, and own the System Upgrade Facilities and System Deliverability Upgrades described in Appendix A hereto. The responsibility of the Developer for costs related to System Upgrade Facilities and System Deliverability Upgrades shall be determined in accordance with the provisions of Attachment S to the ISO OATT.

### **11.4 Special Provisions for Affected Systems.**

For the re-payment of amounts advanced to Affected System Operator for System Upgrade Facilities or System Deliverability Upgrades, the Developer and Affected System Operator shall enter into an agreement that provides for such re-payment, but only if responsibility for the cost of such System Upgrade Facilities or System Deliverability Upgrades is not to be allocated in accordance with Attachment S to the ISO OATT. The agreement shall specify the terms governing payments to be made by the Developer to the Affected System Operator as well as the re-payment by the Affected System Operator.

### **11.5 Provision of Security.**

At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Connecting Transmission Owner's Attachment Facilities, Developer shall provide Connecting Transmission Owner, at Developer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Connecting Transmission Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1 of this Agreement. Such security for payment shall be in an amount sufficient to cover the cost for the Developer's share of constructing, procuring and installing the applicable portion of Connecting Transmission Owner's Attachment Facilities, and shall be reduced on a dollar-for-dollar basis for payments made to Connecting Transmission Owner for these purposes.

In addition:

**11.5.1** The guarantee must be made by an entity that meets the commercially reasonable creditworthiness requirements of Connecting Transmission Owner, and contains terms and conditions that guarantee payment of any amount that may be due from Developer, up to an agreed-to maximum amount.

**11.5.2** The letter of credit must be issued by a financial institution reasonably acceptable to Connecting Transmission Owner and must specify a reasonable expiration date.

**11.5.3** The surety bond must be issued by an insurer reasonably acceptable to Connecting Transmission Owner and must specify a reasonable expiration date.

**11.5.4** Attachment S to the ISO OATT shall govern the Security that Developer provides for System Upgrade Facilities and System Deliverability Upgrades.

## **11.6 Developer Compensation for Emergency Services.**

If, during an Emergency State, the Developer provides services at the request or direction of the NYISO or Connecting Transmission Owner, the Developer will be compensated for such services in accordance with the NYISO Services Tariff.

## **11.7 Line Outage Costs.**

Notwithstanding anything in the ISO OATT to the contrary, the Connecting Transmission Owner may propose to recover line outage costs associated with the installation of Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades on a case-by-case basis.

# **ARTICLE 12. INVOICE**

## **12.1 General.**

The Developer and Connecting Transmission Owner shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Developer and Connecting 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.

## **12.2 Final Invoice.**

Within six months after completion of the construction of the Connecting Transmission Owner's Attachment Facilities and the System Upgrade Facilities and System Deliverability Upgrades, Connecting Transmission Owner shall provide an invoice of the final cost of the construction of the Connecting Transmission Owner's Attachment Facilities and the System Upgrade Facilities and System Deliverability Upgrades, determined in accordance with Attachment S to the ISO OATT, and shall set forth such costs in sufficient detail to enable Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Connecting Transmission Owner shall refund to Developer any amount by which the actual payment by Developer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

## **12.3 Payment.**

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

## **12.4 Disputes.**

In the event of a billing dispute between Connecting Transmission Owner and Developer, Connecting Transmission Owner shall continue to perform under this Agreement as long as Developer: (i) continues to make all payments not in dispute; and (ii) pays to Connecting Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Developer fails to meet these two requirements for continuation of service, then Connecting Transmission Owner may provide notice to Developer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

## **ARTICLE 13. EMERGENCIES**

### **13.1 Obligations.**

Each Party shall comply with the Emergency State procedures of NYISO, the Applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee.

### **13.2 Notice.**

NYISO or, as applicable, Connecting Transmission Owner shall notify Developer promptly when it becomes aware of an Emergency State that affects the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System that may reasonably be expected to affect Developer's operation of the Large Generating Facility or the Developer's Attachment Facilities. Developer shall notify NYISO and Connecting Transmission Owner promptly when it becomes aware of an Emergency State that affects the Large Generating Facility or the Developer's Attachment Facilities that may reasonably be expected to affect the New York State Transmission System or the Connecting Transmission Owner's Attachment Facilities. To the extent information is known, the notification shall describe the Emergency State, the extent of the damage or deficiency, the expected effect on the operation of Developer's or Connecting Transmission Owner's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

### **13.3 Immediate Action.**

Unless, in Developer's reasonable judgment, immediate action is required, Developer shall obtain the consent of Connecting Transmission Owner, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or the Developer's Attachment Facilities in response to an Emergency State either declared by NYISO, Connecting Transmission Owner or otherwise regarding New York State Transmission System.

### **13.4 NYISO and Connecting Transmission Owner Authority.**

#### **13.4.1 General.**

NYISO or Connecting Transmission Owner may take whatever actions with regard to the New York State Transmission System or the Connecting Transmission Owner's Attachment Facilities it deems necessary during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the New York State Transmission System or the Connecting Transmission Owner's Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

NYISO and Connecting Transmission Owner shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or the Developer's Attachment Facilities. NYISO or Connecting Transmission Owner may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency State by taking actions necessary and limited in scope to remedy the Emergency State, including, but not limited to, directing Developer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.4.2; directing the Developer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and the Developer's Attachment Facilities. Developer shall comply with all of the NYISO and Connecting Transmission Owner's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

#### **13.4.2 Reduction and Disconnection.**

NYISO or Connecting Transmission Owner may reduce [ ] Interconnection Service or disconnect the Large Generating Facility or the Developer's Attachment Facilities, when such reduction or disconnection is necessary under Good Utility Practice due to an Emergency State. These rights are separate and distinct from any right of Curtailment of NYISO pursuant to the ISO OATT. When NYISO or Connecting Transmission Owner can schedule the reduction or disconnection in advance, NYISO or Connecting Transmission Owner shall notify Developer of the reasons, timing and expected duration of the reduction or disconnection. NYISO or Connecting Transmission Owner shall coordinate with the Developer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to the Developer and the New York State Transmission System. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Attachment Facilities, and the New York State Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

### **13.5 Developer Authority.**

Consistent with Good Utility Practice and this Agreement, the Developer may take whatever actions or inactions with regard to the Large Generating Facility or the Developer's

Attachment Facilities during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or the Developer's Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Developer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the New York State Transmission System and the Connecting Transmission Owner's Attachment Facilities. NYISO and Connecting Transmission Owner shall use Reasonable Efforts to assist Developer in such actions.

### **13.6 Limited Liability.**

Except as otherwise provided in Article 11.6 of this Agreement, no Party shall be liable to another Party for any action it takes in responding to an Emergency State so long as such action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

## **ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW**

### **14.1 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 Developer 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.

### **14.2 Governing Law.**

**14.2.1** 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.

**14.2.2** This Agreement is subject to all Applicable Laws and Regulations.

**14.2.3** 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 15. NOTICES**

### **15.1 General.**

Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to the other Parties and any instrument required or permitted to be tendered or delivered by a Party in writing to the other Parties shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by

certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F 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.

#### **15.2 Billings and Payments.**

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

#### **15.3 Alternative Forms of Notice.**

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

#### **15.4 Operations and Maintenance Notice.**

Developer and Connecting Transmission Owner shall each notify the other Party, and NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10 of this Agreement.

### **ARTICLE 16. FORCE MAJEURE**

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

**16.2** A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, (including obligations under Article 4 of this Agreement) , 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 17. DEFAULT**

**17.1 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 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.

## **17.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 17, 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 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

### **18.1 Indemnity.**

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

#### **18.1.1 Indemnified Party.**

If a Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1.3, 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.

#### **18.1.2 Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 18, 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.

### **18.1.3 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 18.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

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

### **18.2 No Consequential Damages.**

Other than the liquidated damages heretofore described and the indemnity obligations set forth in Article 18.1, 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.

### **18.3 Insurance.**

Developer and Connecting Transmission Owner shall each, 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:

**18.3.1** Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of New York State.

**18.3.2** 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.

**18.3.3** 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.

**18.3.4** 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.

**18.3.5** 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.

**18.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of Developer and Connecting Transmission Owner shall name the other Party, its parent, 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.

**18.3.7** 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. Developer and Connecting Transmission Owner shall each be responsible for its respective deductibles or retentions.

**18.3.8** 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 the Developer and Connecting Transmission Owner.

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

**18.3.10** The requirements contained herein as to the types and limits of all insurance to be maintained by the Developer and Connecting 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.

**18.3.11** Within [insert term stipulated by the Parties] Calendar Days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) Calendar Days thereafter, Developer and Connecting Transmission Owner shall provide certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

**18.3.12** Notwithstanding the foregoing, Developer and Connecting Transmission Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.1 through 18.3.9 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 18.3.1 through 18.3.9. . In the event that a Party is permitted to self-insure pursuant to this Article 18.3.12, it shall notify the other Party 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 18.3.1 through 18.3.9 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 18.3.1 through 18.3.9.

**18.3.13** Developer and Connecting Transmission Owner agree to report to each other 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.

**18.3.14** Subcontractors of each party must maintain the same insurance requirements stated under Articles 18.3.1 through 18.3.9 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 19. 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, including the Attachment Facilities it owns, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Developer shall have the right to assign this Agreement, without the consent of the NYISO or Connecting Transmission Owner, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that the Developer will promptly notify the NYISO and Connecting Transmission Owner of any such assignment. Any financing arrangement entered into by the Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and Connecting Transmission Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Connecting Transmission Owner with proof that it meets the requirements of Articles 11.5 and 18.3. 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 20. 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; provided that if the Developer (or any third party, but only if such third party is not acting at the direction of the Connecting Transmission Owner) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the rights and obligations of Developer and Connecting Transmission Owner shall be governed solely by the Standard Option (Article 5.1.1).

## **ARTICLE 21. COMPARABILITY**

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

## **ARTICLE 22. CONFIDENTIALITY**

### **22.1 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 22.

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.

### **22.2 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 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

### **22.3 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.

### **22.4 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 22.9 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.

## **22.5 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 Developer, 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 22 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 22.

## **22.6 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.

## **22.7 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.

## **22.8 Standard of Care.**

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

## **22.9 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.

#### **22.10 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.

#### **22.11 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 22. 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 22, 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 22, 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 22.

#### **22.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

## **22.13 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 23. DEVELOPER AND CONNECTING TRANSMISSION OWNER NOTICES OF ENVIRONMENTAL RELEASES**

Developer and Connecting Transmission Owner shall each notify the other Party, 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 Large Generating Facility or the Attachment Facilities, each of which may reasonably be expected to affect the other Party. 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 Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

## **ARTICLE 24. INFORMATION REQUIREMENT**

### **24.1 Information Acquisition.**

Connecting Transmission Owner and Developer shall each submit specific information regarding the electrical characteristics of their respective facilities to the other, and to NYISO, as described below and in accordance with Applicable Reliability Standards.

### **24.2 Information Submission by Connecting Transmission Owner.**

The initial information submission by Connecting Transmission Owner shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include New York State Transmission System information necessary to allow the Developer to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by the Developer and Connecting Transmission Owner. On a monthly basis Connecting Transmission Owner shall provide Developer and NYISO a status report on the construction and installation of Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last

report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

### **24.3 Updated Information Submission by Developer.**

The updated information submission by the Developer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Developer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the Standard Large Facility Interconnection Procedures. It shall also include any additional information provided to Connecting Transmission Owner for the Interconnection Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Developer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Developer's data is different from what was originally provided to Connecting Transmission Owner and NYISO pursuant to an Interconnection Study Agreement among Connecting Transmission Owner, NYISO and Developer and this difference may be reasonably expected to affect the other Parties' facilities or the New York State Transmission System, but does not require the submission of a new Interconnection Request, then NYISO will conduct appropriate studies to determine the impact on the New York State Transmission System based on the actual data submitted pursuant to this Article 24.3. Such studies will provide an estimate of any additional modifications to the New York State Transmission System, Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades based on the actual data and a good faith estimate of the costs thereof. The Developer shall not begin Trial Operation until such studies are completed. The Developer shall be responsible for the cost of any modifications required by the actual data, including the cost of any required studies.

### **24.4 Information Supplementation.**

Prior to the Commercial Operation Date, the Developer and Connecting Transmission Owner shall supplement their information submissions described above in this Article 24 with any and all "as-built" Large Generating Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Developer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit "step voltage" test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Developer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror



the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to the Connecting Transmission Owner and NYISO for each individual generating unit in a station.

Subsequent to the Commercial Operation Date, the Developer shall provide Connecting Transmission Owner and NYISO any information changes due to equipment replacement, repair, or adjustment. Connecting Transmission Owner shall provide the Developer and NYISO any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Connecting Transmission Owner substation that may affect the Developer Attachment Facilities equipment ratings, protection or operating requirements. The Developer and Connecting Transmission Owner shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

## **ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS**

### **25.1 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 25.1 of this Agreement and to enforce their rights under this Agreement.

### **25.2 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.

### **25.3 Audit Rights.**

Subject to the requirements of confidentiality under Article 22 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, calculation of invoiced amounts, and each Party's actions in an Emergency State. 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 25.4 of this Agreement.

## **25.4 Audit Rights Periods.**

### **25.4.1 Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades shall be subject to audit for a period of twenty-four months following Connecting Transmission Owner's issuance of a final invoice in accordance with Article 12.2 of this Agreement.

### **25.4.2 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 25.4.1 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.

## **25.5 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 26. SUBCONTRACTORS**

### **26.1 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.

### **26.2 Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Connecting Transmission Owner be liable for the actions or inactions of the Developer or its subcontractors with respect to obligations of the Developer under Article 5 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.

### **26.3 No Limitation by Insurance.**

The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 27. DISPUTES**

### **27.1 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.

### **27.2 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, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

### **27.3 Arbitration Decisions.**

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

Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

#### **27.4 Costs.**

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

#### **27.5 Termination.**

Notwithstanding the provisions of this Article 27, 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 28. REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### **28.1 General.**

Each Party makes the following representations, warranties and covenants:

##### **28.1.1 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 or states in which the Large Generating Facility, Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades owned by such Party, as applicable, are located; 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.

##### **28.1.2 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).

##### **28.1.3 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.

#### **28.1.4 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 29. MISCELLANEOUS**

#### **29.1 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.

#### **29.2 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.

#### **29.3 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; (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, or such Section to the Standard Large Facility Interconnection Procedures or such Appendix to the Standard Large Facility Interconnection Procedures, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

#### **29.4 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.

#### **29.5 Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, Developer and Connecting Transmission Owner are several, and are neither joint nor joint and several.

#### **29.6 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.

#### **29.7 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.

#### **29.8 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. Termination or Default of this Agreement for any reason by the Developer shall not constitute a waiver of the Developer's legal rights to obtain Capacity Resource Interconnection Service and Energy Resource Interconnection Service from the NYISO and Connecting Transmission Owner in accordance with the provisions of the ISO OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

#### **29.9 Headings.**

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

#### **29.10 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.

#### **29.11 Amendment.**

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

#### **29.12 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.

#### **29.13 Reservation of Rights.**

NYISO and Connecting Transmission Owner shall have the right to make unilateral filings with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Developer 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.

#### **29.14 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.

#### **29.15 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 Developer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the System Upgrade Facilities and System Deliverability Upgrades.

## **29.16 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 of 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* Standard 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.



**IN WITNESS WHEREOF**, the Parties have executed this LGIA 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: \_\_\_\_\_

**[Insert Name of Connecting Transmission Owner]**

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

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

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

Date: \_\_\_\_\_

**[Insert Name of Developer]**

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

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

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

Date: \_\_\_\_\_

## **APPENDICES**

|                     |   |
|---------------------|---|
| <b>Appendix A</b>   | Attachment Facilities and System Upgrade Facilities |
| <b>Appendix B</b>   | Milestones  |
| <b>Appendix C</b>   | Interconnection Details                             |
| <b>Appendix D</b>   | Security Arrangements Details                       |
| <b>Appendix E-1</b> | Initial Synchronization Date                        |
| <b>Appendix E-2</b> | Commercial Operation Date                           |
| <b>Appendix F</b>   | Addresses for Delivery of Notices and Billings      |

## **APPENDIX A – ATTACHMENT FACILITIES AND SYSTEM UPGRADE FACILITIES**

### **1. Attachment Facilities:**

**(a) [insert Developer's Attachment Facilities]:**

**(b) [insert Connecting Transmission Owner's Attachment Facilities]:**

### **2. System Upgrade Facilities:**

**(a) [insert Stand Alone System Upgrade Facilities]:**

**(b) [insert Other System Upgrade Facilities]:**

### **3. System Deliverability Upgrades:**

## **APPENDIX B – MILESTONES**

## **APPENDIX C – INTERCONNECTION DETAILS**

## **APPENDIX D – SECURITY ARRANGEMENTS DETAILS**

Infrastructure security of New York State Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day New York State Transmission System reliability and operational security. The Commission will expect the NYISO, all Transmission Owners, all Developers and all other Market Participants to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

## **APPENDIX E-1 – INITIAL SYNCHRONIZATION DATE**

**[Date]**

**[NYISO Address]**

**[Connecting Transmission Owner Address]**

Re: \_\_\_\_\_ Large Generating Facility

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

On **[Date]** **[Developer]** initially synchronized the Large Generating Facility [specify units, if applicable]. This letter confirms that **[Developer]**'s Initial Synchronization Date was [specify].  
Thank you.

**[Signature]**

**[Developer Representative]**

## APPENDIX E-2 – COMMERCIAL OPERATION DATE

[Date]

[NYISO Address]

[Connecting Transmission Owner Address]

Re: \_\_\_\_\_ Large Generating Facility

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

On [Date] [Developer] has completed Trial Operation of Unit No. \_\_\_\_\_. This letter confirms that [Developer] commenced Commercial Operation of Unit No. \_\_\_\_ at the Large Generating Facility, effective as of [Date plus one day].

Thank you.

[Signature]

[Developer Representative]



## **APPENDIX F – ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

### **Notices:**

NYISO:

[To be supplied.]

Connecting Transmission Owner:

[To be supplied.]

Developer:

[To be supplied.]

### **Billings and Payments:**

Connecting Transmission Owner:

[To be supplied.]

Developer:

[To be supplied.]

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

NYISO:

[To be supplied.]

Connecting Transmission Owner:

[To be supplied.]

Developer:

[To be supplied.]

## **Appendix 5 – Interconnection Procedures for a Wind Generating Plant**

Appendix 5 sets forth procedures specific to a wind generating plant. All other requirements of this LFIP continue to apply to wind generating plant interconnections.

### **A. Special Procedures Applicable to Wind Generators**

The wind plant Developer, in completing the Interconnection Request required by section 30.3.3 of this LFIP, may provide to the ISO a set of preliminary electrical design specifications depicting the wind plant as a single equivalent generator. Upon satisfying these and other applicable Interconnection Request conditions, the wind plant may enter the queue and receive the base case data as provided for in this LFIP. No later than six months after submitting an Interconnection Request completed in this manner, the wind plant Developer must submit completed detailed electrical design specifications and other data (including collector system layout data) needed to allow the ISO to complete the System Reliability Impact Study.

## **32.5      Appendices**

## Appendix 1 - Glossary of Terms

Terms used in the SGIP or SGIA with initial capitalization that are not defined in this Glossary shall have the meanings specified in Attachment X or Attachment S to the ISO OATT, or in Section 2 of the ISO Services Tariff.

**10 kW Inverter Process** – The procedure for evaluating an Interconnection Request for a certified inverter-based Small Generating Facility no larger than 10 kW that uses the Section 32.2 screens. The application process uses an all-in-one document that includes a simplified Interconnection Request, simplified procedures, and a brief set of terms and conditions. See SGIP Appendix 5.

**Affected System** – An electric system other than the transmission system owned, controlled or operated by the ISO or Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Operator** – Affected System Operator shall mean the operator of any Affected System.

**Affected Transmission Owner** – The New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that: (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachment P, Attachment X, Attachment Z, or Attachment S to the ISO OATT.

**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 Standards** – The criteria, requirements and guidelines of the North American Electric Reliability Council, the Northeast Power Coordinating Council, the New York State Reliability Council and related and successor organizations, and the Transmission District to which the Interconnection Customer's Small Generating Facility is directly interconnected, as those criteria, 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 of or validity of any criterion, requirement or guideline as applied to it in the context of Attachment Z to the ISO OATT. For the purposes of the SGIP, this definition of Applicable Reliability Standards shall supersede the definition of Applicable Reliability Standards set out in Attachment X to the ISO OATT.

**Base Case** – The base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the ISO, Connecting Transmission Owner or Interconnection

Customer; described in Section 30.2.3 of the Large Facility Interconnection Procedures, and updated consistent with the rules set forth in Section 25.5.5.1 of Attachment S to the OATT at the start of each Interconnection Study under the Small Generator Interconnection Procedures.

**Business Day** – Monday through Friday, excluding federal holidays.

**Capacity Resource Interconnection Service (“CRIS”)** – The service provided by the ISO to Interconnection Customers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with Attachment S to the ISO OATT; such service being one of the eligibility requirements for participation as an ISO Installed Capacity Supplier.

**Class Year** shall mean the group of Projects included in any particular Class Year Interconnection Facilities Study (Annual Transmission Reliability Assessment and/or Class Year Deliverability Study), in accordance with the criteria specified in Attachment S and in Attachment Z for including such Projects.

**Class Year Project** shall mean an Eligible Class Year Project with an executed Class Year Interconnection Facilities Study Agreement that thereby becomes one of the group of generation and Class Year Transmission Projects included in any particular Class Year Interconnection Facilities Study (Annual Transmission Reliability Assessment and/or Class Year Deliverability Study), in accordance with the criteria specified in Attachment S and in Attachment Z for including such Projects.

**Class Year Transmission Project** shall mean a Developer’s proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which the Developer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures. Class Year Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

**Class Year Start Date** shall mean the deadline for Eligible Class Year Projects to enter a Class Year Interconnection Facilities Study, determined in accordance with Section 25.5.9 of Attachment S.

**Commercial Operation** shall mean the status of a Small Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

**Commercial Operation Date** of a Small Generating Facility shall mean the date on which the Small Generating Facility commences Commercial Operation as agreed to by the Parties.

**Connecting Transmission Owner** – The New York public utility or authority (or its designated agent) that: (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System or Distribution System at the

Point of Interconnection, and (iii) is a Party to the Standard Small Generator Interconnection Agreement.

**Distribution System** – The Transmission Owner’s facilities and equipment used to distribute electricity that are subject to FERC jurisdiction, and are subject to the ISO’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. For the purpose of the SGIP, the term Distribution System shall not include LIPA’s distribution facilities.

**Distribution Upgrades** – The modifications or additions to the Transmission Owner’s existing Distribution System at or beyond the Point of Interconnection that are required for the proposed Project to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard. Distribution Upgrades do not include Interconnection Facilities or System Upgrade Facilities or System Deliverability Upgrades.

**Eligible Class Year Project:** Any Project that: (1) satisfies the criteria for inclusion in the next Class Year Interconnection Facilities Study, as those criteria are specified in Sections 25.5.9 and 25.6.2.3.1 of Attachment S to the OATT, Section 32.1.1.7 of this Attachment Z and/or Section 32.3.5.3.2 of this Attachment Z; or (2) that seeks evaluation in a Class Year Study to obtain or increase CRIS as permitted by Attachment S to the ISO OATT and satisfies the criteria for inclusion in the next Class Year Interconnection Facilities Study specified in Section 25.5.9 of Attachment S to the OATT.

**Energy Resource Interconnection Service** – The service provided by the ISO to interconnect the Interconnection Customer’s Small Generating Facility to the New York State Transmission System or Distribution System in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive Energy and Ancillary Services from the Small Generating Facility, pursuant to the terms of the ISO OATT.

**Fast Track Process** – The procedure for evaluating an Interconnection Request for a certified Small Generating Facility that meets the eligibility requirements of Section 32.2.1 of the SGIP and includes the Section 32.2 screens, customer options meeting, and optional supplemental review.

**Force Majeure** – 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, the absence of any necessary governmental approvals timely applied for, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. For the purposes of this Attachment Z, this definition of Force Majeure shall supersede the definitions of Force Majeure set out in Section 2.11 of the ISO OATT.

**Good Utility Practice** – 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 be acceptable practices, methods, or acts generally accepted in the region.

**Governmental Authority** – 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 the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, the ISO, Affected Transmission Owner, Connecting Transmission Owner or any Affiliate thereof.

**Initial Synchronization Date** shall mean the date upon which the Small Generating Facility is initially synchronized and upon which Trial Operation begins.

**In-Service Date** shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Connecting Transmission Owner's Interconnection Facilities to obtain back feed power.

**Interconnection Customer** – Any entity, including the Connecting Transmission Owner or any of its affiliates or subsidiaries, that proposes to interconnect its Small Generating Facility with the New York State Transmission System or the Distribution System.

**Interconnection Facilities** – The Connecting Transmission Owner's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to the New York State Transmission System or the Distribution System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or System Upgrade Facilities.

**Interconnection Request** – The Interconnection Customer's request, in accordance with these procedures, (i) to interconnect a new Small Generating Facility to the New York State Transmission System or the Distribution System, or (ii) to materially increase the capacity of, or make a material modification to the operating characteristics of, an existing Small Generating Facility that is interconnected to the New York State Transmission System or the Distribution System. For the purposes of this Attachment Z, this definition of Interconnection Request shall supersede the definition of Interconnection Request set out in Attachment X to the ISO OATT. For purposes of the Interconnection Request, a facility comprised of multiple Generators behind the same Point of Injection (as defined in Section 1.16 of the ISO OATT) will be considered a single Small Generating Facility, provided the Interconnection Request identifies a single Interconnection Customer.

**Interconnection Study** – Any study required to be performed under Sections 32.2 or 32.3 of the SGIP.

**Local System Upgrade Facilities** shall mean the System Upgrade Facilities necessary to physically interconnect a proposed Project to the Connecting Transmission Owner's transmission system, consistent with applicable interconnection and system protection design standards. Local System Upgrade Facilities include any electrical facilities required to make the physical connection (e.g., a new ring bus for a line connection or facilities required to create a new bay for a substation connection). Local System Upgrade Facilities also include any system protection or communication facilities that may be required for protection of the Connecting Transmission Owner's transmission facility (line or substation) involved in the interconnection. Local System Upgrade Facilities do not include System Upgrade Facilities required to mitigate any adverse reliability impact(s) of the Project(s) identified through analysis such as power flow, short circuit, or stability (e.g., replacement of a circuit breaker at a nearby substation that becomes overdutied as a result of the Project(s)).

**Material Modification** – A modification that has a material adverse impact on the cost or timing of any Interconnection Request with a later queue priority date.

**Minor Modification** – Modifications that will not have a material adverse impact on the cost or timing of any Interconnection Request.

**New York State Transmission System** - 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.

**NYISO Deliverability Interconnection Standard** – The standard that must be met, unless otherwise provided for by Attachment S to the ISO OATT, by any of the following requesting CRIS: (i) any generation facility larger than 2MW; (ii) any Class Year Transmission Project; (iii) any entity requesting External CRIS Rights, and (iv) any entity requesting a CRIS transfer pursuant to Section 25.9.5 of Attachment S to the ISO OATT. To meet the NYISO Deliverability Interconnection Standard, the Interconnection Customer must, in accordance with the rules in Attachment S to the ISO OATT, fund or commit to fund any System Deliverability Upgrades identified for its Project in the Class Year Deliverability Study.

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

**Open Class Year** – The Class Year open for new members pursuant to the Class Start Date deadline specified in Section 25.5.9 of Attachment S to the OATT.



**Party or Parties** – The ISO, Connecting Transmission Owner, Interconnection Customer or any combination of the above.

**Point of Interconnection** – The point where the Interconnection Facilities connect with the New York State Transmission System or the Distribution System.

**Project:** The proposed facility as described in a single Interconnection Request, to the extent permitted by Attachments X or Z to the ISO OATT, as applicable. For facilities not subject to the ISO's Large Facility Interconnection Procedures in Attachment X to the ISO OATT or Small Generator Interconnection Procedures in Attachment Z to the ISO OATT, the Project refers to the facility as described in a single Class Year Study Agreement or Expedited Deliverability Studies Agreement, to the extent permitted by Attachment S to the ISO OATT.

**Queue Position** – The order of a valid Interconnection Request, Study Request, or Transmission Interconnection Application relative to all other such pending requests, that is established based upon the date and time of receipt of the valid request by the ISO, unless specifically provided otherwise in an applicable transition rule set forth in Attachment P, Attachment X or Attachment Z to the ISO OATT.

**Retired:** A Generator that has permanently ceased operating on or after the effective date of Section 5.18 of the Services Tariff either: i) pursuant to applicable notice; or ii) as a result of the expiration of its Mothball Outage or the expiration of its ICAP Ineligible Forced Outage.

**Small Generating Facility** – The Interconnection Customer's facility, no larger than 20 MW for the production and/or storage for later injection of electricity identified in the Interconnection Request if proposing to interconnect to the New York State Transmission System or Distribution System, but shall not include (i) facilities proposing to simply receive power from the New York State Transmission System or the Distribution System; (ii) facilities proposing to interconnect to the New York State Transmission System or the Distribution System made solely for the purpose of generation with no wholesale sale for resale nor to net metering; (iii) facilities proposing to the New York State Transmission System or the Distribution System made solely for the purpose of net metering; (iv) facilities proposing to interconnect to LIPA's distribution facilities; and (v) the Interconnection Customer's Interconnection Facilities. A facility comprised of multiple Generators will be treated as a single Small Generating Facility if all Generators within the facility are behind the same Point of Interconnection, even if such Generators are different technology types.

**Study Process** – The procedure for evaluating an Interconnection Request that includes the Section 32.3 scoping meeting, feasibility study, system impact study, and facilities study.

**System Deliverability Upgrades** – 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 the existing New York State Transmission System that are required for the proposed Project to connect reliably to the system in a manner that meets the NYISO Deliverability Interconnection Standard for Capacity Resource Interconnection Service.

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

**Trial Operation** shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Small Generating Facility prior to Commercial Operation.

**Upgrades** – The required additions and modifications to the Connecting Transmission Owner's portion of the New York State Transmission System or the Distribution System at or beyond the Point of Interconnection. Upgrades may be System Upgrade Facilities or System Deliverability Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

## **Appendix 2 - SMALL GENERATOR INTERCONNECTION REQUEST (Application Form)**

An Interconnection Request is considered complete when it provides all applicable and correct information required below, together with the required application fee, submitted to the ISO. Per SGIP section 32.1.5, documentation of the site control must be submitted with the Interconnection Request.

### **A. Preamble and Instructions**

An Interconnection Customer who requests an interconnection to the New York State Transmission System or the Distribution System must submit this Interconnection Request through the interconnection portal on the NYISO website. The ISO will send a copy to the Connecting Transmission Owner.

### **B. Processing Fee or Deposit:**

If the Interconnection Request is submitted under the Fast Track Process, the non-refundable processing fee is \$500.

If the Interconnection Request is submitted under the Study Process, whether a new submission or an Interconnection Request that did not pass the Fast Track Process, the Interconnection Customer shall submit to the ISO a non-refundable application fee of \$1,000.

### **C. Interconnection Service Options**

An Interconnection Customer may interconnect its new Small Generating Facility by electing to take either Energy Resource Interconnection Service (“ERIS”) or ERIS and Capacity Resource Interconnection Service (“CRIS”). The rights and obligations associated with each alternative are different. The Interconnection Customer should consult Section 32.1.1.7 of the Small Generator Interconnection Procedures for additional information, and should direct any questions about the alternatives to the ISO.

### **D. Interconnection Customer Information**

Legal Name of the Interconnection Customer (or, if an individual, individual’s name) (must be a single individual or entity)

Name of Interconnection Customer: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Facility Location (if different from above): \_\_\_\_\_

Telephone : \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Additional Contact Information

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**E. Application Information**

Application is for: \_\_\_\_\_ New Small Generating Facility  
\_\_\_\_\_ Capacity addition to Existing Small Generating Facility

If capacity addition to existing facility, please describe: \_\_\_\_\_

\_\_\_\_\_

Will the Small Generating Facility be used for any of the following?

Net Metering? Yes \_\_\_ No \_\_\_

To Supply Power to the Interconnection Customer? Yes \_\_\_ No \_\_\_

To Supply Power to Others Through Wholesale Sales Over the New York State

Transmission System or Distribution System? Yes \_\_\_ No \_\_\_

To Supply Power to a Host Load? Yes \_\_\_ No \_\_\_

For installations at locations with existing electric service to which the proposed Small Generating Facility will interconnect, provide:

\_\_\_\_\_  
(Local Electric Service Provider)

\_\_\_\_\_  
(Existing Account Number)

Local Electric Service Provider Contact Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

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

Project Description: \_\_\_\_\_

Requested Point of Interconnection: \_\_\_\_\_

Coordinates (i.e., latitude and longitude) of the Proposed Point of Interconnection: \_\_\_\_\_

Interconnection Customer's Proposed In-Service Date: \_\_\_\_\_

Interconnection Customer's Proposed Initial Synchronization Date: \_\_\_\_\_

Interconnection Customer's Proposed Commercial Operation Date: \_\_\_\_\_

#### **F. Small Generating Facility Information**

Data apply only to the Small Generating Facility, not the Interconnection Facilities.

1. Describe the composition of assets (including MW level) within the facility, including load reduction assets (e.g., 5 MW wind facility, 2 MW Energy Storage Resource and a load reduction resource with a maximum of 1 MW of load reduction):  
\_\_\_\_\_  
\_\_\_\_\_

2. Maximum Injection Capability of entire Small Generating Facility over 1 hour:

3. If the facility includes a Resource with Energy Duration Limitations, indicate the maximum injection capability for the entire Small Generating Facility over the selected duration (e.g., 10 MW over 4 hours):  
\_\_\_\_\_  
\_\_\_\_\_

4. Provide the following information for each Generator within the Small Generating Facility:

Energy Source: \_\_\_ Solar \_\_\_ Wind \_\_\_ Hydro \_\_\_ Hydro Type (e.g. Run-of-River): \_\_\_\_\_

Diesel \_\_\_ Natural Gas \_\_\_ Fuel Oil \_\_\_ Other (state type) \_\_\_\_\_

Generator Nameplate Rating: \_\_\_\_\_ MW (Typical)      Generator Nameplate MVAR: \_\_\_\_\_

As applicable, for BTM:NG Resources, please also provide the following information:

Interconnection Customer or Customer-Site Load: \_\_\_\_\_ kW (if none, so state)

Existing load? Yes \_\_\_ No \_\_\_

If existing load with metered load data, provide coincident Summer peak load: \_\_\_\_\_

If new load or existing load without metered load data, provide estimated coincident Summer peak load: \_\_\_\_\_

Is the new load or existing load in the Transmission Owner's service area?

\_\_\_\_\_ Yes      \_\_\_\_\_ No      Local provider: \_\_\_\_\_

List components of the Small Generating Facility equipment package that are currently certified:

| Equipment Type | Certifying Entity |
|----------------|-------------------|
| 1. _____       | _____             |

Generator (or solar collector)

Manufacturer, Model Name & Number: \_\_\_\_\_

Version Number: \_\_\_\_\_

Nameplate Output Power Rating in MW: (Summer) \_\_\_\_\_ (Winter) \_\_\_\_\_

Nameplate Output Power Rating in MVA: (Summer) \_\_\_\_\_ (Winter) \_\_\_\_\_

Individual Generator Reactive Capability in kVAR

Leading: \_\_\_\_\_ Lagging: \_\_\_\_\_

If wind, total number of generators in wind farm to be interconnected pursuant to this

Interconnection Request: \_\_\_\_\_

Generator Height: \_\_\_\_\_      \_\_\_ Single phase      \_\_\_ Three Phase

In addition to the above information, as applicable, for Resources with Energy Duration Limitations, please also provide the following information:

Inverter manufacturer, model name, number, and version: \_\_\_\_\_

Energy storage capability (MWh): \_\_\_\_\_

Minimum Duration for full discharge (i.e., injection) (Hours): \_\_\_\_\_

Minimum Duration for full charge (i.e., withdrawal) (Hours): \_\_\_\_\_

Maximum withdrawal from the system (i.e., when charging) (MW): \_\_\_\_\_

Maximum sustained injection (in MW) over the Developer-selected duration:

Primary frequency response operating range for electric storage resource:

Minimum State of Charge: \_\_\_\_\_(%) Maximum State of Charge: \_\_\_\_\_ (%)

a.

If wind, total number of generators in wind farm to be interconnected pursuant to this

Interconnection Request: \_\_\_\_\_

Generator Height: Single phase \_\_\_\_\_ Three Phase \_\_\_\_\_

If an Energy Storage Resource:

Inverter manufacturer, model name, number, and version:

Energy storage capability (MWh):

Minimum Duration for full discharge (i.e., injection) (Hours):

Minimum Duration for full charge (i.e., withdrawal) (Hours):

Maximum withdrawal from the system (i.e., when charging) (MW):

Maximum sustained four-hour injection in MW hours:

Primary frequency response operating range for electric storage resource: \_\_\_\_\_

Minimum State of Charge: \_\_\_\_\_ (%) Maximum State of Charge: \_\_\_\_\_ (%)

### **G. Additional Information**

Enclose copy of site electrical one-line diagram showing the configuration of all Small Generating Facility equipment, current and potential circuits, and protection and control schemes. This one-line diagram must be signed and stamped by a licensed Professional Engineer if the Small Generating Facility is larger than 50 kW.

- Is One-Line Diagram Enclosed? \_\_\_\_ Yes \_\_\_\_ No

Enclose copy of any Site Control documentation that indicates the precise physical location of the proposed Small Generating Facility (e.g., USGS topographic map or other diagram or documentation).

- Site Control Documentation Enclosed? \_\_\_\_ Yes \_\_\_\_ No
- Site Control provided for the following number of acres: \_\_\_\_\_



## **H. Applicant Signature**

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.

For Interconnection Customer:

By (signature): \_\_\_\_\_

Name (type or print): \_\_\_\_\_

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

Company: \_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENT A TO APPENDIX 2 – SMALL GENERATOR INTERCONNECTION REQUEST– Terms and Conditions of Interconnection Study(ies)**

These terms and conditions for the study of a Small Generating Facility or material modification to an existing Small Generating Facility proposed in the Interconnection Request dated \_\_\_\_\_ (“the Project”) and submitted by

\_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“Interconnection Customer”) sets forth the respective obligations between Interconnection Customer and 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”) (hereinafter the “Terms and Conditions”). By signing below, Interconnection Customer confirms its understanding and acceptance of the Terms and Conditions.

### **RECITALS**

**WHEREAS**, the Interconnection Customer is proposing the Project; and

**WHEREAS**, the Interconnection Customer is already interconnected with the New York State Transmission System (or the Distribution System, as applicable) or desires to interconnect the Small Generating Facility with the New York State Transmission System (or the Distribution System, as applicable); and

**WHEREAS**, the Interconnection Customer has requested NYISO to perform one or more of the following studies: Optional Feasibility Study or System Impact Study to assess the impact of the Project on the New York State Transmission System (or Distribution System, as applicable) and any Affected Systems;

**Now, THEREFORE**, in consideration of and subject to the terms and conditions contained herein, the Interconnection Customer and NYISO agree as follows:

- 1.0 When used in under these Terms and Conditions, with initial capitalization, the terms specified shall have the meanings specified in Section 32.1.1.2 of the Small Generator Interconnection Procedures (“SGIP”).
- 2.0 The Interconnection Customer shall elect and NYISO shall cause to be performed, in accordance with the NYISO Open Access Transmission Tariff (“OATT”), one or more of the following: Optional Feasibility Study consistent with Section 32.3.3 of the SGIP, or System Impact Study consistent Section 32.3.4 of the SGIP, collectively referred to as the “Studies.” The terms of the SGIP, as applicable, are incorporated by reference herein.
- 3.0 The scopes for the Studies that the Interconnection Customer elects or is required to be performed in connection with its Interconnection Request and in accordance with the SGIP shall be subject to the assumptions developed by the Interconnection Customer, NYISO, and the Connecting Transmission Owner(s) at the respective scoping meetings for each study and detailed in final written scopes in accordance with Sections 32.3.3.3 and 32.3.4.5 of the SGIP.

4.0 Each study performed in connection with the Interconnection Request and these Terms and Conditions will be based on the technical information provided by the Interconnection Customer in the Interconnection Request and shall build upon the results any study conducted under these Terms and Conditions, if applicable. NYISO reserves the right to request additional information from the Interconnection Customer as may reasonable become necessary consistent with Good Utility Practice during the course of the Studies (including dynamic modeling data). If the Interconnection Customer modifies its designated Point of Interconnection, the Interconnection Request, or the technical information provided in the Interconnection Request, the time to complete the Studies may be extended. The Interconnection Customer shall bear any increased costs to complete the Studies as a result of a modification under this Section 4.0 of these Terms and Conditions.

5.0 Optional Feasibility Study.

5.1 If elected by the Interconnection Customer, the Optional Feasibility Study shall provide, as necessary, the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the Small Generating Facility as proposed:

- If the Interconnection Customer elects to perform an Optional Interconnection Feasibility Study with a limited analysis (i.e., \$10,000 study deposit), the study shall analyze, to the extent selected by the Interconnection Customer:
  - conceptual breaker-level one-line diagram of existing system where Project proposes to interconnect (i.e., how to integrate the Small Generating Facility into the existing system); and/or
  - review of feasibility/constructability of conceptual breaker-level one-line diagram of the proposed interconnection (e.g., space for additional breaker bay in existing substation; identification of cable routing concerns inside existing substation; environmental concerns inside the substation).
- If the Interconnection Customer elects to perform an Optional Interconnection Feasibility Study with a detailed analysis (i.e., \$30,000 study deposit), the study report shall provide, to the extent selected by the Interconnection Customer:
  - conceptual breaker-level one-line diagram of existing New York State Transmission System or Distribution System where the Large Facility proposes to interconnect (i.e., how to integrate the Large Facility into the existing system);
  - review of the feasibility/constructability of a conceptual breaker-level one-line diagram of the proposed interconnection (e.g., space

for additional breaker bay in existing substation or identification of cable routing concerns inside existing substation);

- preliminary review of local protection, communication, and grounding issues associated with the proposed interconnection;
- power flow, short circuit, and/or bus flow analyses; and/or
- preliminary identification of Connecting Transmission Owner Attachment Facilities and Local System Upgrade Facilities with a non-binding good faith cost estimate of the Interconnection Customer's cost responsibility and a non-binding good faith estimated time to construct.

5.2 The Optional Feasibility Study shall model the impact of the Small Generating Facility regardless of purpose in order to avoid the further expense and interruption for reexamination of feasibility and impacts if the Interconnection Customer later changes the purpose for which the Small Generating Facility is being installed.

5.3 The Optional Feasibility Study shall include, at the Interconnection Customer's cost, the feasibility of any interconnection at a proposed Project site where there could be multiple potential Points of Interconnection, as requested by the Interconnection Customer.

## 6.0 System Impact Study.

6.1 The System Impact Study, unless otherwise waived upon the mutual agreement of the Interconnection Customer, NYISO, and the Connecting Transmission Owner(s) in accordance with Section 32.3.4 of the SGIP, shall consist of a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, as necessary. The System Impact Study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. The system impact study report shall provide a list of facilities that are required as a result of the Interconnection Request and non-binding good faith estimates of cost responsibility and time to construct.

6.2 The System Impact Study shall consider all generating facilities and Class Year Transmission Projects (and with respect to paragraph 6.1.3 below, any identified Upgrades associated with such higher queued interconnection) that, on the date the System Impact Study commences under the SGIP,

- are directly interconnected with the New York State Transmission System or distribution facilities;

- are interconnected with Affected Systems and may have an impact on the proposed interconnection;
- have accepted their cost allocation for System Upgrade Facilities and posted security for such System Upgrade Facilities in accordance with Attachment S to the OATT; and
- have no queue position but have executed an interconnection agreement or requested that an unexecuted interconnection agreement be filed with the Federal Energy Regulatory Commission (“FERC”).

6.3 Affected Systems may participate in the preparation of a System Impact Study, with a division of costs among such entities as they may agree. All Affected Systems shall be afforded an opportunity to review and comment on the System Impact Study to the extent the proposed interconnection potentially adversely impacts the Affected System’s electric system. NYISO shall have an additional twenty (20) Business Days to complete a System Impact Study requiring review by Affected Systems.

7.0 The Interconnection Customer shall provide NYISO with a deposit for each study elected or required to be performed in connection with its proposed interconnection in accordance with Section 32.3.3.2 of the SGIP for an Optional Feasibility Study and/or Section 32.3.4.4 of the SGIP for a System Impact Study.

8.0 Any study costs incurred by NYISO shall be based on its actual costs, including applicable taxes, and will be invoiced to the Interconnection Customer after each respective study is completed and delivered to the Interconnection Customer, which will include a summary of professional time. The applicable rates that NYISO shall use to calculate its actual costs shall be provided to the Interconnection Customer at the time that NYISO provides the good faith estimate of the cost for each study elected or required to be performed in connection with the Interconnection Request and under these Terms and Conditions.

9.0 The Interconnection Customer shall pay all invoice amounts in excess of the deposit or other cash security without interest within thirty (30) calendar days after receipt of the invoice. If the deposit or other cash exceeds the invoiced fees, NYISO shall refund such excess amounts within thirty (30) calendar days of the invoice without interest. If the Interconnection Customer disputes an amount to be paid, the Interconnection customer shall pay the disputed amount to NYISO or into an interest bearing escrow account, pending resolution of the dispute in accordance with Section 32.4.2 of the SGIP. To the extent that the dispute is resolved in the Interconnection Customer’s favor, that portion of the disputed amount will be returned to the Interconnection Customer with interest at rates applicable to refunds under the Commission’s regulations. To the extent that the dispute is resolved in NYISO’s favor, the portion of any escrowed funds and interest will be released to NYISO. NYISO and subcontractor consultants hired by NYISO shall not be obligated to perform or continue to perform any Interconnection Study work for the

Interconnection Customer unless the Interconnection Customer has paid all amounts in compliance herewith.

## 10.0 Miscellaneous.

- 10.1 Accuracy of Information. Except as the Interconnection Customer may otherwise specify in writing when it provides information to NYISO under these Terms and Conditions, the Interconnection Customer represents and warrants that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. The Interconnection Customer shall promptly provide NYISO with any additional information needed to update information previously provided.
- 10.2 Disclaimer of Warranty. In preparing the Studies, NYISO and any subcontractor consultants hired by it shall have to rely on information provided by the Interconnection Customer, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither NYISO nor any subcontractor consultant hired by NYISO makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Studies performed under these Terms and Conditions. The Interconnection Customer acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 10.3 Limitation of Liability. In no event shall NYISO or its subcontractor consultants be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with these Terms and Conditions or the Studies performed or any reliance on the Studies by the Interconnection Customer or third parties, even if NYISO or its subcontractor consultants have been advised of the possibility of such damages. Nor shall any NYISO or its subcontractor consultants be liable for any delay in delivery or for the non-performance or delay in performance of its obligations under these Terms and Conditions.
- 10.4 Third-Party Beneficiaries. Without limitation of Sections 10.2 and 10.3 under these Terms and Conditions, the Interconnection Customer further agrees that subcontractor consultants hired by NYISO to conduct or review, or to assist in the conducting or reviewing, one or more of the Studies requested under the Interconnection Request shall be deemed third-party beneficiaries of these Sections 10.2 and 10.3 under these Terms and Conditions.
- 10.5 Term and Termination. The obligations to conduct the Studies and under these Terms and Conditions shall be effective from the date hereof and, unless earlier terminated under these Terms and Conditions, shall continue in effect until the

Studies are completed. The Interconnection Customer or NYISO may terminate their obligations under these Terms and Agreement upon the withdrawal of the Interconnection Customer's Interconnection Request under the SGIP.

- 10.6 Governing Law. These Terms and Conditions and any study performed thereunder shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.
- 10.7 Severability. In the event that any part of these Terms and Conditions are deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from these Terms and Conditions and the obligations under these Terms and Conditions shall continue in full force and effect as if each part was not contained herein.
- 10.8 Amendment. No amendment, modification, or waiver of any term or condition hereof shall be effective unless set forth in writing and signed by the Interconnection Customer and NYISO hereto.
- 10.9 Survival. All warranties, limitations of liability, and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 10.10 Independent Contractor. Developer agrees that NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors shall be considered to be employees of the Interconnection Customer as a result of performing any work under these Terms and Conditions.
- 10.11 No Implied Waivers. The failure of the Interconnection Customer or NYISO to insist upon or enforce strict performance of any of the provisions of these Terms and Conditions shall not be construed as a waiver or relinquishment to any extent of such party's right to insist or rely on any such provision, rights, and remedies in that or any other instances; rather, the same shall be and remain in full force and effect.
- 10.12 Successors and Assigns. The obligations under these Terms and Conditions, and each and every term and condition hereof, shall be binding upon and inure to the benefit of the Interconnection Customer and NYISO and their respective successors and assigns.

**IN WITNESS THEREOF**, the Interconnection Customer has agreed to accept and be bound by the Terms and Conditions by its duly authorized officers or agents execution on the day and year first below written.

---

**[Insert name of Interconnection Customer]**

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

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



**Date:** \_\_\_\_\_ **Appendix 3 - Certification Codes and Standards**

IEEE1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1 testing protocols to establish conformity)

UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems

IEEE Std 929-2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems

NFPA 70 (2002), National Electrical Code

IEEE Std C37.90.1-1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems

IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers

IEEE Std C37.108-1989 (R2002), IEEE Guide for the Protection of Network Transformers

IEEE Std C57.12.44-2000, IEEE Standard Requirements for Secondary Network Protectors

IEEE Std C62.41.2-2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits

IEEE Std C62.45-1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits

ANSI C84.1-1995 Electric Power Systems and Equipment – Voltage Ratings (60 Hertz)

IEEE Std 100-2000, IEEE Standard Dictionary of Electrical and Electronic Terms  
NEMA MG 1-1998, Motors and Small Resources, Revision 3

IEEE Std 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems

NEMA MG 1-2003 (Rev 2004), Motors and Generators, Revision 1

## **Appendix 4 - Certification of Small Generator Equipment Packages**

- 1.0 Small Generating Facility equipment proposed for use separately or packaged with other equipment in an interconnection system shall be considered certified for interconnected operation if: (1) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards referenced below by any Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards listed in SGIP Appendix 3, (2) it has been labeled and is publicly listed by such NRTL at the time of the interconnection application, and (3) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its website and by encouraging such information to be included in the manufacturer's literature accompanying the equipment.
- 2.0 The Interconnection Customer must verify that the intended use of the equipment falls within the use or uses for which the equipment was tested, labeled, and listed by the NRTL.
- 3.0 Certified equipment shall not require further type-test review, testing, or additional equipment to meet the requirements of this interconnection procedure; however, nothing herein shall preclude the need for an on-site commissioning test by the parties to the interconnection nor follow-up production testing by the NRTL.
- 4.0 If the certified equipment package includes only interface components (switchgear, inverters, or other interface devices), then an Interconnection Customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and is consistent with the testing and listing specified for this type of interconnection equipment.
- 5.0 Provided the generator or electric source, when combined with the equipment package, is within the range of capabilities for which it was tested by the NRTL, and does not violate the interface components' labeling and listing performed by the NRTL, no further design review, testing or additional equipment on the customer side of the point of common coupling shall be required to meet the requirements of this interconnection procedure.
- 6.0 An equipment package does not include equipment provided by the utility.
- 7.0 Any equipment package approved and listed in a state by that state's regulatory body for interconnected operation in that state prior to the effective date of these small generator interconnection procedures shall be considered certified under these procedures for use in that state.

**Appendix 5 - Application, Procedures, and Terms and Conditions for  
Interconnecting a Certified Inverter-Based Small Generating Facility No  
Larger than 10 kW ("10 kW Inverter Process")**

- 1.0 The Interconnection Customer ("Customer") completes the Interconnection Request ("Application") and submits it to the ISO. The ISO will send a copy to the Connecting Transmission Owner.
- 2.0 The ISO acknowledges to the Customer receipt of the Application within three Business Days of receipt.
- 3.0 The ISO, in consultation with the Connecting Transmission Owner, evaluates the Application for completeness and notifies the Customer within ten Business Days of receipt that the Application is or is not complete and, if not, advises what material is missing.
- 4.0 The ISO, in consultation with the Connecting Transmission Owner, verifies that the Small Generating Facility can be interconnected safely and reliably using the screens contained in the Fast Track Process in the SGIP. The ISO has 15 Business Days to complete this process. Unless the ISO, in consultation with the Connecting Transmission Owner, determines and demonstrates that the Small Generating Facility cannot be interconnected safely and reliably, the ISO approves the Application and returns it to the Customer, with a copy to the Connecting Transmission Owner. Note to Customer: Please check with the ISO before submitting the Application if disconnection equipment is required.
- 5.0 After installation, the Customer returns the Certificate of Completion to the ISO, and sends a copy to the Connecting Transmission Owner. Prior to parallel operation, the ISO, in consultation with the Connecting Transmission Owner, may inspect the Small Generating Facility for compliance with standards which may include a Connecting Transmission Owner witness test, and may schedule appropriate metering replacement, if necessary. The Customer shall cooperate with the ISO and the Connecting Transmission Owner to assure that the required inspection, witness test and/or metering replacement are completed within the timeframes outlined below.
- 6.0 The ISO notifies the Customer in writing that interconnection of the Small Generating Facility is authorized. If the witness test is not satisfactory, the Connecting Transmission Owner has the right to disconnect the Small Generating Facility. The Customer has no right to operate in parallel until a witness test has been performed, or previously waived on the Application. The Connecting Transmission Owner is obligated to complete this witness test within ten Business Days of the receipt of the Certificate of Completion, unless the Connecting Transmission Owner and Customer agree otherwise. If the Connecting Transmission Owner does not inspect within ten Business Days or by mutual agreement of the Parties, the witness test is deemed waived.

- 7.0 Contact Information – The Customer must provide the contact information for the legal applicant (i.e., the Customer). If another entity is responsible for interfacing with the ISO and Connecting Transmission Owner, that contact information must be provided on the Application.
- 8.0 Ownership Information – Enter the legal names of the owner(s) of the Small Generating Facility. Include the percentage ownership (if any) by any utility or public utility holding company, or by any entity owned by either.
- 9.0 UL1741 Listed – This standard (“Inverters, Converters, and Controllers for Use in Independent Power Systems”) addresses the electrical interconnection design of various forms of generating equipment. Many manufacturers submit their equipment to a Nationally Recognized Testing Laboratory (NRTL) that verifies compliance with UL1741. This “listing” is then marked on the equipment and supporting documentation.
- 10.0 The ISO is available to help resolve any disputes that may arise out of the proposed interconnection, in accordance with the procedures set forth in Section 32.4.2 of the SGIP in Attachment Z of the ISO OATT.

**Application for Interconnecting a Certified Inverter-Based Small Generating Facility  
No Larger than 10kW**

This Application is considered complete when it provides all applicable and correct information required below. Per SGIP section 32.1.5, documentation of the site control must be submitted with the Interconnection Request. Additional information to evaluate the Application may be required.

Processing Fee

A non-refundable processing fee of \$100 must accompany this Application.

Interconnection Customer

Name of Interconnection Customer: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Point of Contact

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

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Owner of the facility (include % ownership by any electric utility): \_\_\_\_\_

Small Generating Facility Information

Location (if different from above): \_\_\_\_\_

Electric Service Company: \_\_\_\_\_

Account Number: \_\_\_\_\_

Inverter Manufacturer: \_\_\_\_\_ Model \_\_\_\_\_

Nameplate Rating: \_\_\_\_\_ (kW) \_\_\_\_\_ (kVA) \_\_\_\_\_ (AC Volts)

Single Phase \_\_\_\_\_ Three Phase \_\_\_\_\_

System Design Capacity: \_\_\_\_\_ (kW) \_\_\_\_\_ (kVA)

Customer-Site Load: \_\_\_\_\_ MW (if none, so state)

Existing load? Yes \_\_\_ No \_\_\_

If existing load with metered load data, provide coincident Summer peak load: \_\_\_\_\_

If new load or existing load without metered load data, provide estimated coincident Summer peak load: \_\_\_\_\_

Prime Mover: Photovoltaic ☐

Reciprocating Engine ☐

Fuel Cell ☐

Turbine ☐ Other \_\_\_\_\_

Energy Source: Solar ☐ Wind ☐ Hydro ☐ Diesel ☐ Natural Gas ☐

Fuel Oil ☐ Other (describe) \_\_\_\_\_

Is the equipment UL1741 Listed? Yes \_\_\_ No \_\_\_

If Yes, attach manufacturer's cut-sheet showing UL1741 listing

Estimated Installation Date: \_\_\_\_\_ Estimated In-Service Date: \_\_\_\_\_

The 10kW Inverter Process is available only for inverter-based Small Generating Facilities no larger than 10kW that meet the codes, standards, and certification requirements of Appendices 3 and 4 of the SGIP, or the ISO, in consultation with the Connecting Transmission Owner, has reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate. If the review or testing raises safety issues, the Small Generating Facility will not be allowed to commence parallel operation until the issues are resolved.

List components of the Small Generating Facility equipment package that are currently certified:

Equipment Type

Certifying Entity

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. \_\_\_\_\_  
5. \_\_\_\_\_

Interconnection Customer Signature

I hereby certify that, to the best of my knowledge, the information provided in this Application is true. I agree to abide by the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return the Certificate of Completion when the Small Generating Facility has been installed.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

---

Contingent Approval to Interconnect the Small Generating Facility

(For ISO and Connecting Transmission Owner use only)

Interconnection of the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return of the Certificate of Completion.

Connecting Transmission Owner Signature:

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Connecting Transmission Owner waives inspection/witness test Yes\_\_\_ No\_\_\_

ISO Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Small Generating Facility Certificate of Completion**

Is the Small Generating Facility owner-installed? Yes\_\_\_ No\_\_\_

Interconnection Customer: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Location of the Small Generating Facility (if different from above):

\_\_\_\_\_

City:\_\_\_\_\_ State:\_\_\_\_\_ Zip Code:\_\_\_\_\_

Telephone:\_\_\_\_\_

E-Mail Address:\_\_\_\_\_

Electrician:

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

Address:\_\_\_\_\_

City:\_\_\_\_\_ State:\_\_\_\_\_ Zip Code:\_\_\_\_\_

Telephone:\_\_\_\_\_

E-Mail Address:\_\_\_\_\_

License number:\_\_\_\_\_

Date Approval to Install Facility granted by the Connecting Transmission Owner:

Inspection:

The Small Generating Facility has been installed and inspected in compliance with the local building/electrical code of \_\_\_\_\_

Signed (Local electrical wiring inspector, or attach signed electrical inspection):

\_\_\_\_\_

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

Date:\_\_\_\_\_

As a condition of interconnection, you are required to send a copy of this form along with a copy of the signed electrical permit to the ISO and the Connecting Transmission Owner (insert contact information below):

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

NYISO:\_\_\_\_\_

Address:\_\_\_\_\_



\_\_\_\_\_  
City, State ZIP: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

Connecting Transmission Owner: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
City, State ZIP: \_\_\_\_\_

E-mail: \_\_\_\_\_

---

Approval to Energize the Small Generating Facility (For ISO and Connecting Transmission Owner use only)

Energizing the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW

ISO Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Connecting Transmission Owner Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

## **Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW (“Terms and Conditions”)**

### **1.0 Construction of the Facility**

The Interconnection Customer (the “Customer”) may proceed to construct (including operational testing not to exceed two hours) the Small Generating Facility when the ISO approves the Interconnection Request (the “Application”) and returns it to the Customer.

### **2.0 Interconnection and Operation**

The Customer may operate Small Generating Facility and interconnect with the Connecting Transmission Owner’s Distribution System once all of the following have occurred:

2.1 Upon completing construction, the Customer will cause the Small Generating Facility to be inspected or otherwise certified by the appropriate local electrical wiring inspector with jurisdiction, and

2.2 The Customer returns the Certificate of Completion to the ISO and the Connecting Transmission Owner, and

2.3 The Connecting Transmission Owner has either:

2.3.1 Completed its inspection of the Small Generating Facility to ensure that all equipment has been appropriately installed and that all electrical connections have been made in accordance with applicable codes. All inspections must be conducted by the Connecting Transmission Owner, at its own expense, within ten Business Days (unless the Parties agree otherwise) after receipt of the Certificate of Completion and shall take place at a time agreeable to the Parties. The Connecting Transmission Owner shall provide a written statement that the Small Generating Facility has passed inspection or shall notify the Customer of what steps it must take to pass inspection as soon as practicable after the inspection takes place; or

2.3.2 If the Connecting Transmission Owner does not schedule an inspection of the Small Generating Facility within ten business days after receiving the Certificate of Completion, the witness test is deemed waived (unless the Parties agree otherwise), unless the Interconnection Customer has not provided a reasonable opportunity for such inspection; or

2.3.3 The Connecting Transmission Owner waives the right to inspect the Small Generating Facility.

2.4 The Connecting Transmission Owner has the right to disconnect the Small Generating Facility in the event of improper installation or failure to return the Certificate of Completion.

2.5 Revenue quality metering equipment must be installed and tested in accordance with applicable ANSI standards.

3.0 **Safe Operations and Maintenance**

The Customer shall be fully responsible to operate, maintain, and repair the Small Generating Facility as required to ensure that it complies at all times with the interconnection standards to which it has been certified.

4.0 **Access**

The Connecting Transmission Owner shall have access to the disconnect switch (if the disconnect switch is required) and metering equipment of the Small Generating Facility at all times. The Connecting Transmission Owner shall provide reasonable notice to the Customer when possible prior to using its right of access.

5.0 **Disconnection**

The Connecting Transmission Owner may temporarily disconnect the Small Generating Facility upon the following conditions, until the conditions no longer exist:

5.1 For scheduled outages upon reasonable notice.

5.2 For unscheduled outages or emergency conditions.

5.3 If the Small Generating Facility does not operate in the manner consistent with these Terms and Conditions, the ISO OATT and Applicable Reliability Standards.

5.4 The Connecting Transmission Owner shall inform the Customer in advance of any scheduled disconnection, or as is reasonable after an unscheduled disconnection.

6.0 **Indemnification**

The Parties shall at all times indemnify, defend, and save the other Parties harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the indemnified Party's action or inactions of its obligations under this agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.0 **Insurance**

The Interconnection Customer and Connecting Transmission Owner shall each follow all applicable insurance requirements imposed by New York State. All insurance policies must be maintained with insurers authorized to do business in New York State, and all policies must be in place ten Business Days prior to the operation of the Inverter-Based Small Generating Facility. The Interconnection Customer and Connecting Transmission Owner shall notify each other whenever

an accident or incident recurs that is covered by such insurance, whether or not such coverage is sought. The Interconnection Customer's insurance requirements shall be specified in an attachment to these Terms and Conditions.

**8.0 Limitation of Liability**

Each Party's liability to the other Parties for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall any Party be liable to any other Parties for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever, except as allowed under paragraph 6.0.

**9.0 Termination**

The agreement to operate in parallel shall become effective when executed by the Parties and shall continue in effect until \_\_\_\_\_. The agreement may be terminated earlier under the following conditions:

**9.1 By the Customer**

By providing written notice to the NYISO and the Connecting Transmission Owner.

**9.2 By the ISO and the Connecting Transmission Owner**

If the Small Generating Facility fails to operate for any consecutive 12 month period or the Customer fails to remedy a violation of these Terms and Conditions.

**9.3 Permanent Disconnection**

In the event this Agreement is terminated, the Connecting Transmission Owner shall have the right to disconnect its facilities or direct the Customer to disconnect its Small Generating Facility.

**9.4 Survival Rights**

This Agreement shall continue in effect after termination to the extent necessary to allow or require any Party to fulfill rights or obligations that arose under the Agreement.

**10.0 Assignment/Transfer of Ownership of the Facility**

This Agreement shall survive the transfer of ownership of the Small Generating Facility to a new owner when the new owner agrees in writing to comply with the terms of this Agreement and so notifies the NYISO and the Connecting Transmission Owner.

Interconnection Customer:

Connecting Transmission Owner:

\_\_\_\_\_

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

New York Independent System Operator, Inc.

\_\_\_\_\_

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

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

Date: \_\_\_\_\_

## Appendix 6 - Facilities Study Agreement

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“Interconnection Customer”), 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”) and \_\_\_\_\_, a \_\_\_\_\_ existing under the laws of the State of New York (“Connecting Transmission Owner”). Interconnection Customer, the NYISO and the Connecting Transmission Owner each may be referred to as a “Party,” or collectively as the “Parties.”

### RECITALS

**WHEREAS**, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on \_\_\_\_\_; and

**WHEREAS**, the Interconnection Customer desires to interconnect the Small Generating Facility with the New York State Transmission System or the Distribution System;

**WHEREAS**, the NYISO has completed a system impact study and provided the results of said study to the Interconnection Customer; and

**WHEREAS**, the Interconnection Customer elects to be evaluated for [ \_\_\_\_\_ ] Interconnection Service, and has requested the NYISO to perform, or cause to be performed, a facilities study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to physically and electrically connect the Small Generating Facility with the New York State Transmission System or the Distribution System.

**NOW, THEREFORE**, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

- 1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in Section 32.1.1.2 of the SGIP.
- 2.0 The Interconnection Customer elects and the NYISO shall cause a facilities study to be performed in accordance with the requirements of Attachment Z of the NYISO Open Access Transmission Tariff.
- 3.0 The scope of the facilities study shall be subject to data provided in Attachment A to this Agreement and shall be made an exhibit thereto.
- 4.0 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the

conclusions of the system impact study(s) and to complete any additional power flow and other analysis, including deliverability analysis, that may be appropriate. The facilities study shall also identify (1) the electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (2) the nature and estimated cost of the Connecting Transmission Owner's Interconnection Facilities and Upgrades necessary to accomplish the interconnection, and (3) an estimate of the time required to complete the construction and installation of such facilities.

- 5.0 The Connecting Transmission Owner may propose to group facilities required for more than one Interconnection Customer in order to minimize facilities costs through economies of scale, but any Interconnection Customer may require the installation of facilities required for its own Small Generating Facility if it is willing to pay the costs of those facilities in accordance with the SGIP.
- 6.0 The Interconnection Customer shall provide to the NYISO a deposit or other commercially reasonable security in an amount equal to the good faith estimated facilities study costs.
- 7.0 Except to the extent required by the ISO OATT Attachment S Class Year study and cost allocation process, in cases where Upgrades are required, the facilities study must be completed within 45 Business Days of the receipt of this Agreement. In cases where no Upgrades are necessary, and the required facilities are limited to Interconnection Facilities, the facilities study must be completed within 30 Business Days.
- 8.0 Once the facilities study is completed, a facilities study report shall be prepared and transmitted to the Interconnection Customer. Barring unusual circumstances, the facilities study must be completed and the facilities study report transmitted within 30 Business Days of the Interconnection Customer's agreement to conduct a facilities study.
- 9.0 Interconnection Customer may, within 30 Calendar Days after receipt of the draft report, provide written comments to the NYISO, which the NYISO shall include in the final report. The NYISO shall issue the final facilities study report within 15 Business Days of receiving Interconnection Customer's comments or promptly upon receiving Interconnection Customer's statement that it will not provide comments. The NYISO may reasonably extend such fifteen-day period upon notice to Interconnection Customer if Interconnection Customer's comments require the NYISO to perform additional analyses or make other significant modifications prior to the issuance of the final facilities study report. Upon request, the NYISO shall provide Interconnection Customer supporting documentation, workpapers, and databases or data developed in the preparation of the facilities study, subject to confidentiality arrangements consistent with Section 32.4.5 of the SGIP.
- 10.0 Within ten Business Days of providing a draft facilities study report to Interconnection Customer, the NYISO, the Connecting Transmission Owner, and Interconnection Customer shall meet to discuss the results of the facilities study.

- 11.0 Except for study costs allocated to the Interconnection Customer as a member of a Class Year, any Connecting Transmission Owner and NYISO that incurs study costs shall be based on their actual costs, including applicable taxes, and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.
- 12.0 The Interconnection Customer shall pay all invoice amounts in excess of the deposit or other security without interest within 30 calendar days after receipt of the invoice. If the deposit or other cash security exceeds the invoiced fees, the NYISO shall refund such excess within 30 calendar days of the invoice without interest. If the Interconnection Customer disputes an amount to be paid the Interconnection Customer shall pay the disputed amount to the NYISO or into an interest bearing escrow account, pending resolution of the dispute in accordance with Section 32.4.2 of the SGIP. To the extent the dispute is resolved in the Interconnection Customer's favor, that portion of the disputed amount will be returned to the Interconnection Customer with interest at rates applicable to refunds under the Commission's regulations. To the extent the dispute is resolved in the NYISO's favor, that portion of any escrowed funds and interest will be released to the NYISO. The Connecting Transmission Owner and the NYISO shall not be obligated to perform or continue to perform any Interconnection Study work for the Interconnection Customer unless the Interconnection Customer has paid all amounts in compliance herewith.
- 13.0 Governing Law, Regulatory Authority, and Rules. The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of New York, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.
- 14.0 Amendment. The Parties may amend this Agreement by a written instrument duly executed by the Parties.
- 15.0 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 where permitted, their assigns.
- 16.0 Waiver
- 16.1 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.
- 16.2 Any waiver at any time by a 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.



Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the NYISO. Any waiver of this Agreement shall, if requested, be provided in writing.

- 17.0 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.
- 18.0 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between 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, another Party.
- 19.0 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.
- 20.0 Subcontractors. 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.
- 20.1 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 the Connecting Transmission Owner be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under 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.
- 20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.
- 21.0 Reservation of Rights. Nothing in this Agreement shall alter the right of the NYISO or Connecting Transmission Owner 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 which rights are expressly reserved herein, and the existing rights of Interconnection Customer to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations are also expressly reserved herein; 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, except to the extent that the Parties otherwise agree as provided herein.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

**[Insert name of Connecting Transmission Owner]**

Signed\_\_\_\_\_

Name (Printed):

\_\_\_\_\_

Title\_\_\_\_\_

**[Insert name of Interconnection Customer]**

Signed\_\_\_\_\_

Name (Printed):

\_\_\_\_\_

Title\_\_\_\_\_

**New York Independent System Operator, Inc.**

Signed\_\_\_\_\_

Name (Printed):

\_\_\_\_\_

Title\_\_\_\_\_

## Attachment A to Facilities Study Agreement

### Data to Be Provided by the Interconnection Customer with the Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged Projects, please indicate future generation, transmission circuits, etc.

On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

Specify your Interconnection Service evaluation election as either Energy Resource Interconnection Service ("ERIS") alone, or for both ERIS and some level of Capacity Resource Interconnection Service ("CRIS"); provided however that CRIS requested in this Facilities Study Agreement may not exceed 2 MW and may only be requested for a Small Generating Facility that is no larger than 2 MW. A request for CRIS above 2 MW or for a facility larger than 2 MW must be requested by entering a Class Year Study or Expedited Deliverability Study, subject to the eligibility and entry requirements for such studies specified by Attachment S to the ISO OATT.

Evaluation Election for ERIS: \_\_\_\_\_

If requesting ERIS for a Small Generating Facility comprised of multiple Generators, specify the allocation of requested ERIS among such Generators:

Evaluation Election for CRIS (only for Projects 2 MW or smaller):

If requesting CRIS for a Small Generating Facility 2 MW or smaller that is comprised of multiple Generators, specify the allocation of requested CRIS among such Generators:

One set of metering is required for each generation connection to the new ring bus or existing Connecting Transmission Owner station. Number of generation connections: \_\_\_\_\_

Will an alternate source of auxiliary power be available during CT/PT maintenance?

Yes \_\_\_\_ No \_\_\_\_

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? Yes \_\_\_\_ No \_\_\_\_

(If Yes, indicate on the one-line diagram).

What type of control system or PLC will be located at the Small Generating Facility?

\_\_\_\_\_

---

What protocol does the control system or PLC use?

---

Please provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.  
Bus length from generation to interconnection station:

---

Physical dimensions of the proposed interconnection station:

---

Line length from interconnection station to Connecting Transmission Owner's transmission line.

---

Tower number observed in the field. (Painted on tower leg):

---

Number of third party easements required for transmission lines, if known:

---

Is the Small Generating Facility located in Connecting Transmission Owner's service area?

Yes \_\_\_\_\_ No \_\_\_\_\_ If No, please provide name of local provider:

---

Please provide the following proposed schedule dates:

Begin Construction

Date: \_\_\_\_\_

In-Service

Date: \_\_\_\_\_

Initial Synchronization

Date: \_\_\_\_\_

Generation Testing

Date: \_\_\_\_\_

Commercial Operation

Date: \_\_\_\_\_

**Appendix 7 - STANDARD SMALL GENERATOR INTERCONNECTION  
AGREEMENT (SGIA) (Applicable To Generating Facilities No Larger  
Than 20 MW)**

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This Standard Small Generator Interconnection Agreement (“Agreement” or “SGIA”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among 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”) and \_\_\_\_\_ a \_\_\_\_\_ organized and existing under the laws of the State of New York (“Connecting Transmission Owner”), and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“Interconnection Customer”) each hereinafter sometimes referred to individually as “Party” or referred to collectively as the “Parties.”

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

## **Article 1 Scope and Limitations of Agreement**

### **1.1 Applicability**

This Agreement shall be used for all Interconnection Requests submitted under the Small Generator Interconnection Procedures (SGIP) except for those submitted under the 10 kW Inverter Process contained in SGIP Attachment 5.

### **1.2 Purpose**

This Agreement governs the terms and conditions under which the Interconnection Customer's Small Generating Facility will interconnect with, and operate in parallel with, the New York State Transmission System or the Distribution System.

### **1.3 Scope of Interconnection Service**

- 1.3.1 The NYISO will provide [ ] Interconnection Service to Interconnection Customer at the Point of Interconnection.
- 1.3.2 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services that the Interconnection Customer may require will be covered under separate agreements, if any, or applicable provisions of NYISO's or Connecting Transmission Owner's tariffs. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity in accordance with the applicable provisions of the ISO OATT and Connecting Transmission Owner's tariff. The execution of this Agreement does not constitute a request for, nor agreement to, provide Energy, any Ancillary Services or Installed Capacity under the NYISO Services Tariff or any Connecting Transmission Owner's tariff. If Interconnection Customer wishes to supply or purchase Energy, Installed Capacity or Ancillary Services, then Interconnection Customer will make application to do so in accordance with the NYISO Services Tariff or Connecting Transmission Owner's tariff.

### **1.4 Limitations**

Nothing in this Agreement is intended to affect any other agreement by and among the NYISO, Connecting Transmission Owner and the Interconnection Customer, except as otherwise expressly provided herein.

### **1.5 Responsibilities of the Parties**

- 1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.
- 1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Small Generating Facility and construct, operate, and maintain its

Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.

- 1.5.3 The Connecting Transmission Owner shall construct, operate, and maintain its Interconnection Facilities and Upgrades covered by this Agreement in accordance with this Agreement, and with Good Utility Practice.
- 1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Small Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the Connecting Transmission Owner or Affected Systems.
- 1.5.5 The Connecting Transmission Owner and Interconnection Customer shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each of those Parties shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Connecting Transmission Owner and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Connecting Transmission Owner's electric system, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Attachments to this Agreement.
- 1.5.6 The NYISO shall coordinate with all Affected Systems to support the interconnection. The Connecting Transmission Owner shall cooperate with the NYISO in these efforts.
- 1.5.7 The Interconnection Customer shall ensure "frequency ride through" capability and "voltage ride through" capability of its Small Generating Facility. The Interconnection Customer shall enable these capabilities such that its Small Generating Facility shall not disconnect automatically or instantaneously from the system or equipment of the Connecting Transmission Owner and any Affected Systems for a defined under-frequency or over-frequency condition, or an under-voltage or over-voltage condition, as tested pursuant to Section 2.1 of this agreement. The defined conditions shall be in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority Area on a comparable basis. The Small Generating Facility's protective equipment settings shall comply with the Transmission Owner's automatic load-shed program. The Transmission Owner

shall review the protective equipment settings to confirm compliance with the automatic load-shed program. The term “ride through” as used herein shall mean the ability of a Small Generating Facility to stay connected to and synchronized with the system or equipment of the Transmission Owner and any Affected Systems during system disturbances within a range of conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority on a comparable basis. The term “frequency ride through” as used herein shall mean the ability of a Small Generating Facility to stay connected to and synchronized with the system or equipment of the Transmission Owner and any Affected Systems during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority Area on a comparable basis. The term “voltage ride through” as used herein shall mean the ability of a Small Generating Facility to stay connected to and synchronized with the system or equipment of the Transmission Owner and any Affected Systems during system disturbances within a range of under-voltage and over-voltage conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority Area on a comparable basis unless the Transmission Owner in whose Transmission District the Small Generating Facility interconnects has established different requirements that apply on a comparable basis in accordance with Good Utility Practice. For abnormal frequency conditions and voltage conditions within the “no trip zone” as that term is defined by ERO Reliability Standard PRC-024-3, any successor mandatory ride through ERO standards, or any more stringent NPCC or NYSRC requirements applicable to Generating Facilities in the Balancing Authority Area on a comparable basis, the non-synchronous Small Generating Facility must ensure that, within any physical limitations of the Small Generating Facility, its control and protection settings are configured or set to (1) continue active power production during disturbance and post disturbance periods at pre-disturbance levels unless reactive power priority mode is enabled or unless providing primary frequency response or fast frequency response; (2) minimize reductions in active power and remain within dynamic voltage and current limits, if reactive power priority mode is enabled, unless providing primary frequency response or fast frequency response; (3) not artificially limit dynamic reactive power capability during disturbances and (4) return to pre-disturbance active power levels without artificial ramp rate limits if active power is reduced, unless providing primary frequency response or fast frequency response.

## **1.6 Parallel Operation Obligations**

Once the Small Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Small Generating Facility in the applicable New York Control Area, including, but not limited to: (1) the rules and procedures concerning the operation of generation set forth in the NYISO tariffs or ISO Procedures or the Connecting Transmission Owner’s tariff; (2) any

requirements consistent with Good Utility Practice or that are necessary to ensure the safe and reliable operation of the Transmission System or Distribution System; and (3) the Operating Requirements set forth in Attachment 5 of this Agreement.

## **1.7 Metering**

The Interconnection Customer shall be responsible for the Connecting Transmission Owner's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. The Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

## **1.8 Reactive Power and Primary Frequency Response**

### **1.8.1 Power Factor Design Criteria**

1.8.1.1 Synchronous Generation. The Interconnection Customer shall design its Small Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the NYISO or the Transmission Owner in whose Transmission District the Small Generating Facility interconnects has established different requirements that apply to all similarly situated generators in the New York Control Area or Transmission District (as applicable) on a comparable basis, in accordance with Good Utility Practice.

1.8.1.2 Non-Synchronous Generation. The Interconnection Customer shall design its Small Generating Facility to maintain a composite power delivery at continuous rated power output at the high-side of the generator substation at a power factor within the range of 0.95 leading to 0.95 lagging, unless the NYISO or the Transmission Owner in whose Transmission District the Small Generating Facility interconnects has established a different power factor range that applies to all similarly situated non-synchronous generators in the New York Control Area or Transmission District (as applicable) on a comparable basis, in accordance with Good Utility Practice. This power factor range standard shall be dynamic and can be met using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors, or a combination of the two. This requirement shall only apply to newly interconnecting non-synchronous generators that have not yet executed a Facilities Study Agreement as of September 21, 2016.

1.8.2 The NYISO is required to pay the Interconnection Customer for reactive power, or voltage support service, that the Interconnection Customer provides from the Small Generating Facility in accordance with Rate Schedule 2 of the NYISO Services Tariff.

1.8.3 Primary Frequency Response. Interconnection Customer shall ensure the primary frequency response capability of its Small Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term “functioning governor or equivalent controls” as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Small Generating Facility’s real power output in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Interconnection Customer is required to install a governor or equivalent controls with the capability of operating: (1) with a maximum 5 percent droop and  $\pm 0.036$  Hz deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained response settings from an approved Applicable Reliability Standard providing for equivalent or more stringent parameters. The droop characteristic shall be: (1) based on the nameplate capacity of the Small Generating Facility, and shall be linear in the range of frequencies between 59 to 61 Hz that are outside of the deadband parameter; or (2) based on an approved Applicable Reliability Standard providing for an equivalent or more stringent parameter. The deadband parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Small Generating Facility’s real power output in response to frequency deviations. The deadband shall be implemented: (1) without a step to the droop curve, that is, once the frequency deviation exceeds the deadband parameter, the expected change in the Small Generating Facility’s real power output in response to frequency deviations shall start from zero and then increase (for under-frequency deviations) or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the frequency deviation; or (2) in accordance with an approved Applicable Reliability Standard providing for an equivalent or more stringent parameter. Interconnection Customer shall notify NYISO that the primary frequency response capability of the Small Generating Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Small Generating Facility with the New York State Transmission System, Interconnection Customer shall operate the Small Generating Facility consistent with the provisions specified in Articles 1.8.3.1 and 1.8.3.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Small Generating Facilities.

1.8.3.1 Governor or Equivalent Controls. Whenever the Small Generating Facility is operated in parallel with the New York State Transmission System, Interconnection Customer shall operate the Small Generating Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall: (1) in coordination with NYISO, set the deadband parameter to: (1) a maximum of  $\pm 0.036$  Hz and set the droop parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings from an approved Applicable Reliability Standard that provides for equivalent or more stringent parameters. Interconnection Customer shall be

required to provide the status and settings of the governor and equivalent controls to NYISO and/or the Connecting Transmission Owner upon request. If Interconnection Customer needs to operate the Small Generating Facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify NYISO and the Connecting Transmission Owner, and provide both with the following information: (1) the operating status of the governor or equivalent controls (i.e., whether it is currently out of service or when it will be taken out of service); (2) the reasons for removing the governor or equivalent controls from service; and (3) a reasonable estimate of when the governor or equivalent controls will be returned to service. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable. Interconnection Customer shall make Reasonable Efforts to keep outages of the Small Generating Facility's governor or equivalent controls to a minimum whenever the Small Generating Facility is operated in parallel with the New York State Transmission System.

1.8.3.2 Timely and Sustained Response. Interconnection Customer shall ensure that the Small Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, and to the extent the Small Generating Facility has operating capability in the direction needed to correct the frequency deviation. Interconnection Customer shall not block or otherwise inhibit the ability of the governor or equivalent controls to respond and shall ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, physical energy limitations, outages of mechanical equipment, or regulatory requirements. The Small Generating Facility shall sustain the real power response at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. An Applicable Reliability Standard with equivalent or more stringent requirements shall supersede the above requirements.

1.8.3.3 Exemptions. Small Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Articles 1.8.3, 1.8.3.1, and 1.8.3.2 of this Agreement. Small Generating Facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host facility) shall be required to install primary frequency response capability requirements in accordance with the droop and deadband capability requirements specified in Article 1.8.3, but shall be otherwise exempt from the operating requirements in Articles 1.8.3, 1.8.3.1, 1.8.3.2, and 1.8.3.4 of this Agreement.

1.8.3.4 Electric Storage Resources. Interconnection Customer interconnecting an electric storage resource shall establish an operating range in Attachment 5 of its SGIA that specifies a minimum state of charge and a maximum state of charge



between which the electric storage resource will be required to provide primary frequency response consistent with the conditions set forth in Articles 1.8.3, 1.8.3.1, 1.8.3.2, and 1.8.3.3 of this Agreement. Attachment 5 shall specify whether the operating range is static or dynamic, and shall consider (1) the expected magnitude of frequency deviations in the interconnection; (2) the expected duration that system frequency will remain outside of the deadband parameter in the interconnection; (3) the expected incidence of frequency deviations outside of the deadband parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5) operational limitations of the electric storage resources due to manufacturer specification; and (6) any other relevant factors agreed to by the NYISO, Connecting Transmission Owner, and Interconnection Customer. If the operating range is dynamic, then Attachment 5 must establish how frequently the operating range will be reevaluated and the factors that may be considered during its reevaluation.

Interconnection Customer's electric storage resource is required to provide timely and sustained primary frequency response consistent with Article 1.8.3.2 of this Agreement when it is online and dispatched to inject electricity to the New York State Transmission System and/or receive electricity from the New York State Transmission System. This excludes circumstances when the electric storage resource is not dispatched to inject electricity to the New York State Transmission System and/or dispatched to receive electricity from the New York State Transmission System. If Interconnection Customer's electric storage resource is charging at the time of a frequency deviation outside of its deadband parameter, it is to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which it is charging in accordance with its droop parameter. Interconnection Customer's electric storage resource is not required to change from charging to discharging, or vice versa, unless the response necessitated by the droop and deadband settings requires it to do so and it is technically capable of making such a transition.

## **1.9 Capitalized Terms**

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of this Agreement. Capitalized terms used herein that are not so defined shall have the meanings specified in Appendix 1 of Attachment Z, Section 25.1.2 of Attachment S, or Section 30.1 of Attachment X of the ISO OATT.

## **Article 2. Inspection, Testing, Authorization, and Right of Access**

### **2.1 Equipment Testing and Inspection**

- 2.1.1 The Interconnection Customer shall test and inspect its Small Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the NYISO and the Connecting Transmission Owner of such activities no fewer than five (5) Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day. The Connecting Transmission Owner may, at its own expense, send qualified personnel to the Small Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the NYISO and Connecting Transmission Owner a written test report when such testing and inspection is completed. The Small Generating Facility may not commence parallel operations if the NYISO, in consultation with the Connecting Transmission Owner, finds that the Small Generating Facility has not been installed as agreed upon or may not be operated in a safe and reliable manner.
- 2.1.2 The NYISO and Connecting Transmission Owner shall each provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the NYISO or Connecting Transmission Owner of the safety, durability, suitability, or reliability of the Small Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Small Generating Facility.

### **2.2 Authorization Required Prior to Parallel Operation**

- 2.2.1 The NYISO, in consultation with the Connecting Transmission Owner, shall use Reasonable Efforts to list applicable parallel Operating Requirements in Attachment 5 of this Agreement. Additionally, the NYISO, in consultation with the Connecting Transmission Owner, shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The NYISO and Connecting Transmission Owner shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.
- 2.2.2 The Interconnection Customer shall not operate its Small Generating Facility in parallel with the New York State Transmission System or the Distribution System without prior written authorization of the NYISO. The NYISO, in consultation with the Connecting Transmission Owner, will provide such authorization once the NYISO receives notification that the Interconnection Customer has complied with all applicable parallel Operating Requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

## **2.3 Right of Access**

- 2.3.1 Upon reasonable notice, the NYISO and/or Connecting Transmission Owner may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Small Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Small Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the NYISO and Connecting Transmission Owner at least five (5) Business Days prior to conducting any on-site verification testing of the Small Generating Facility.
- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the NYISO and Connecting Transmission Owner each shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on them by this Agreement or if necessary to meet their legal obligation to provide service to their customers.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this article.

## **Article 3 Effective Date, Term, Termination, and Disconnection**

### **3.1 Effective Date**

This Agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by the FERC. The NYISO and Connecting Transmission Owner shall promptly file, or cause to be filed, this Agreement with FERC upon execution, if required. If the Agreement is disputed and the Interconnection Customer requests that it be filed with FERC in an unexecuted form, the NYISO shall file, or cause to be filed, this Agreement and the NYISO shall identify the disputed language.

### **3.2 Term of Agreement**

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten years from the Effective Date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with article 3.3 of this Agreement.

### **3.3 Termination**

No termination 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 (if required), which notice has been accepted for filing by FERC.

- 3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the NYISO and Connecting Transmission Owner twenty (20) Business Days written notice. The NYISO may terminate this Agreement after the Small Generating Facility is Retired.
- 3.3.2 Any Party may terminate this Agreement after Default pursuant to article 7.6.
- 3.3.3 Upon termination of this Agreement, the Small Generating Facility will be disconnected from the New York State Transmission System or the Distribution System, as applicable. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this SGIA or such non-terminating Party otherwise is responsible for these costs under this SGIA.
- 3.3.4 The termination of this Agreement shall not relieve any Party of its liabilities and obligations, owed or continuing at the time of the termination. The Interconnection Customer shall pay all amounts in excess of any deposit or other security without interest within thirty (30) calendar days after receipt of the invoice for such amounts. If the deposit or other security exceeds the invoice, the Connecting Transmission Owner shall refund such excess within thirty (30) calendar days of the invoice without interest. If the Interconnection Customer

disputes an amount to be paid the Interconnection Customer shall pay the disputed amount to the Connecting Transmission Owner or into an interest bearing escrow account, pending resolution of the dispute in accordance with Article 10 of this Agreement. To the extent the dispute is resolved in the Interconnection Customer's favor, that portion of the disputed amount will be returned to the Interconnection Customer with interest at rates applicable to refunds under the Commission's regulations. To the extent the dispute is resolved in the Connecting Transmission Owner's favor, that portion of any escrowed funds and interest will be released to the Connecting Transmission Owner.

3.3.5 The limitations of liability, indemnification and confidentiality provisions of this Agreement shall survive termination or expiration of this Agreement.

### **3.4 Temporary Disconnection**

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

#### **3.4.1 Emergency Conditions**

"Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the NYISO or Connecting Transmission Owner, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the New York State Transmission System or Distribution System, the Connecting Transmission Owner's Interconnection Facilities or the electric systems of others to which the New York State Transmission System or Distribution System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Small Generating Facility or the Interconnection Customer's Interconnection Facilities. Under Emergency Conditions, the NYISO or Connecting Transmission Owner may immediately suspend interconnection service and temporarily disconnect the Small Generating Facility. The NYISO or Connecting Transmission Owner shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Small Generating Facility. The Interconnection Customer shall notify the NYISO and Connecting Transmission Owner promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the New York State Transmission System or Distribution System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of each Party's facilities and operations, its anticipated duration, and the necessary corrective action.

#### **3.4.2 Routine Maintenance, Construction, and Repair**

The NYISO or Connecting Transmission Owner may interrupt interconnection service or curtail the output of the Small Generating Facility and temporarily disconnect the Small Generating Facility from the New York State Transmission System or Distribution System when

necessary for routine maintenance, construction, and repairs on the New York State Transmission System or Distribution System. The NYISO or the Connecting Transmission Owner shall provide the Interconnection Customer with five (5) Business Days notice prior to such interruption. The NYISO and Connecting Transmission Owner shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

### **3.4.3 Forced Outages**

During any forced outage, the NYISO or Connecting Transmission Owner may suspend interconnection service to the Interconnection Customer to effect immediate repairs on the New York State Transmission System or the Distribution System. The NYISO shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the NYISO shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

### **3.4.4 Adverse Operating Effects**

The NYISO or Connecting Transmission Owner shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Small Generating Facility may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Small Generating Facility could cause damage to the New York State Transmission System, the Distribution System or Affected Systems, or if disconnection is otherwise required under Applicable Reliability Standards or the ISO OATT. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the NYISO or Connecting Transmission Owner may disconnect the Small Generating Facility. The NYISO or Connecting Transmission Owner shall provide the Interconnection Customer with five Business Day notice of such disconnection, unless the provisions of article 3.4.1 apply.

### **3.4.5 Modification of the Small Generating Facility**

The Interconnection Customer must receive written authorization from the NYISO and Connecting Transmission Owner before making any change to the Small Generating Facility that may have a material impact on the safety or reliability of the New York State Transmission System or the Distribution System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the prior written authorization of the NYISO and Connecting Transmission Owner, the Connecting Transmission Owner shall have the right to temporarily disconnect the Small Generating Facility. If disconnected, the Small Generating Facility will not be reconnected until the unauthorized modifications are authorized or removed.

### **3.4.6 Reconnection**

The Parties shall cooperate with each other to restore the Small Generating Facility, Interconnection Facilities, and the New York State Transmission System and Distribution

System to their normal operating state as soon as reasonably practicable following a temporary disconnection.

## **Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades**

### **4.1 Interconnection Facilities**

- 4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Attachment 2 of this Agreement. The NYISO, in consultation with the Connecting Transmission Owner, shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, the NYISO, and the Connecting Transmission Owner.
- 4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Connecting Transmission Owner's Interconnection Facilities, as set forth in Attachment 2 to this Agreement.

### **4.2 Distribution Upgrades**

The Connecting Transmission Owner shall design, procure, construct, install, and own the Distribution Upgrades described in Attachment 6 of this Agreement. If the Connecting Transmission Owner and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to the Interconnection Customer. The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with owning, operating, maintaining, repairing, and replacing the Distribution Upgrades, as set forth in Attachment 6 to this Agreement.



## **Article 5. Cost Responsibility for System Upgrade Facilities and System Deliverability Upgrades**

### **5.1 Applicability**

No portion of this article 5 shall apply unless the interconnection of the Small Generating Facility requires System Upgrade Facilities or System Deliverability Upgrades.

### **5.2 System Upgrades**

The Connecting Transmission Owner shall procure, construct, install, and own the System Upgrade Facilities and System Deliverability Upgrades described in Attachment 6 of this Agreement. To the extent that design work is necessary in addition to that already accomplished in the Class Year Interconnection Facilities Study for the Interconnection Customer, the Connecting Transmission Owner shall perform or cause to be performed such work. If all the Parties agree, the Interconnection Customer may construct System Upgrade Facilities and System Deliverability Upgrades.

- 5.2.1 As described in Section 32.3.5.3 of the SGIP in Attachment Z of the ISO OATT, the responsibility of the Interconnection Customer for the cost of the System Upgrade Facilities and System Deliverability Upgrades described in Attachment 6 of this Agreement shall be determined in accordance with Attachment S of the ISO OATT, as required by Section 32.3.5.3.2 of Attachment Z. The Interconnection Customer shall be responsible for all System Upgrade Facility costs as required by Section 32.3.5.3.2 of Attachment Z or its share of any System Upgrade Facilities and System Deliverability Upgrades costs resulting from the final Attachment S process, as applicable, and Attachment 6 to this Agreement shall be revised accordingly.
- 5.2.2 Pending the outcome of the Attachment S cost allocation process, if applicable, the Interconnection Customer may elect to proceed with the interconnection of its Small Generating Facility in accordance with Section 32.3.5.3 of the SGIP.

### **5.3 Special Provisions for Affected Systems**

For the repayment of amounts advanced to the Affected System Operator for System Upgrade Facilities or System Deliverability Upgrades, the Interconnection Customer and Affected System Operator shall enter into an agreement that provides for such repayment, but only if responsibility for the cost of such System Upgrade Facilities is not to be allocated in accordance with Attachment S of the ISO OATT. The agreement shall specify the terms governing payments to be made by the Interconnection Customer to the Affected System Operator as well as the repayment by the Affected System Operator.

## **Article 6. Billing, Payment, Milestones, and Financial Security**

### **6.1 Billing and Payment Procedures and Final Accounting**

- 6.1.1 The Connecting Transmission Owner shall bill the Interconnection Customer for the design, engineering, construction, and procurement costs of Interconnection Facilities and Upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by those Parties. The Interconnection Customer shall pay all invoice amounts within thirty (30) calendar days after receipt of the invoice.
- 6.1.2 Within three months of completing the construction and installation of the Connecting Transmission Owner's Interconnection Facilities and/or Upgrades described in the Attachments to this Agreement, the Connecting Transmission Owner shall provide the Interconnection Customer with a final accounting report of any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Connecting Transmission Owner for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Connecting Transmission Owner shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Connecting Transmission Owner within thirty (30) calendar days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Connecting Transmission Owner shall refund to the Interconnection Customer an amount equal to the difference within thirty (30) calendar days of the final accounting report.
- 6.1.3 If the Interconnection Customer disputes an amount to be paid, the Interconnection Customer shall pay the disputed amount to the Connecting Transmission Owner or into an interest bearing escrow account, pending resolution of the dispute in accordance with Article 10 of this Agreement. To the extent the dispute is resolved in the Interconnection Customer's favor, that portion of the disputed amount will be credited or returned to the Interconnection Customer with interest at rates applicable to refunds under the Commission's regulations. To the extent the dispute is resolved in the Connecting Transmission Owner's favor, that portion of any escrowed funds and interest will be released to the Connecting Transmission Owner.

### **6.2 Milestones**

Subject to the provisions of the SGIP, the Parties shall agree on milestones for which each Party is responsible and list them in Attachment 4 of this Agreement. A Party's obligations under this provision may be extended by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure event, it shall immediately notify the other Parties of the reason(s) for not meeting the milestone and: (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) requesting appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone

shall not unreasonably withhold agreement to such an amendment unless: (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

### **6.3 Financial Security Arrangements**

At least twenty (20) Business Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the Connecting Transmission Owner's Interconnection Facilities, the Interconnection Customer shall provide the Connecting Transmission Owner, at the Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the Connecting Transmission Owner and is consistent with the Uniform Commercial Code of the jurisdiction where the Point of Interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Connecting Transmission Owner's Interconnection Facilities and shall be reduced on a dollar-for-dollar basis for payments made to the Connecting Transmission Owner under this Agreement during its term. The Connecting Transmission Owner may draw on any such security to the extent that the Interconnection Customer fails to make any payments due under this Agreement. In addition:

- 6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Connecting Transmission Owner, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.
- 6.3.2 The letter of credit or surety bond must be issued by a financial institution or insurer reasonably acceptable to the Connecting Transmission Owner and must specify a reasonable expiration date.
- 6.3.3 Attachment Z to the ISO OATT shall govern the security that an Interconnection Customer provides for System Upgrade Facilities identified through Interconnection Studies under the Small Generator Interconnection Procedures.
- 6.3.4 Notwithstanding the above, Security posted for System Upgrade Facilities for a Small Generating Facility required to enter the Class Year process, or cash or Security provided for System Deliverability Upgrades, shall meet the requirements for Security contained in Attachment S to the ISO OATT.

## **Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default**

### **7.1 Assignment**

This Agreement, and each and every term and condition hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may be assigned by any Party upon fifteen (15) Business Days prior written notice and opportunity to object by the other Parties; provided that:

- 7.1.1 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 that the Interconnection Customer promptly notifies the NYISO and the Connecting Transmission Owner of any such assignment. 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 of all of its assets, including the Interconnection Facilities it owns, so long as the assignee in such a transaction directly assumes all rights, duties and obligation arising under this Agreement.
- 7.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the NYISO or Connecting Transmission Owner, for collateral security purposes to aid in providing financing for the Small Generating Facility.
- 7.1.3 Any attempted assignment that violates this article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the Interconnection Customer. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

### **7.2 Limitation of Liability**

Each Party's liability to the other Parties for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall any Party be liable to the other Parties for any indirect, special, consequential, or punitive damages.

### **7.3 Indemnity**

- 7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in article 7.2.

- 7.3.2 Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and hold harmless the other Parties (each an “Indemnified Party”) from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, the alleged violation of any Environmental Law, or the release or threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties (any and all of these a “Loss”), arising out of or resulting from: (i) the Indemnified Party’s performance 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 by the Indemnified Party, or (ii) the violation by the Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of a Hazardous Substance.
- 7.3.3 If a Party is entitled to indemnification under this article as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, 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.
- 7.3.4 If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this article, 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.
- 7.3.5 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 this article 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.

#### **7.4 Consequential Damages**

Other than as expressly provided for in this Agreement, no Party shall 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 another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

## **7.5 Force Majeure**

- 7.5.1 As used in this article, a “Force Majeure Event” 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 an act of negligence or intentional wrongdoing.” For the purposes of this article, this definition of Force Majeure shall supersede the definitions of Force Majeure set out in Section 32.10.1 of the ISO OATT.
- 7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (“Affected Party”) shall promptly notify the other Parties, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Parties informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

## **7.6 Breach and Default**

- 7.6.1 No Breach of this Agreement shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event or the result of an act or omission of the other Parties. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the Breaching Party. Except as provided in article 7.6.2, the Breaching Party shall have sixty (60) 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 sixty (60) calendar days, the Breaching Party shall commence such cure within twenty (20) calendar days after notice and continuously and diligently complete such cure within six months from receipt of the Breach notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.
- 7.6.2 If a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, a Default shall exist and the non-defaulting Parties acting together shall thereafter have the right to terminate this Agreement, in accordance with article 3.3 hereof, by written notice to the defaulting Party 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 shall survive termination of this Agreement.

- 7.6.3 In cases where the Interconnection Customer has elected to proceed under Section 32.3.5.3 of the SGIP, if the Interconnection Request is withdrawn or deemed withdrawn pursuant to the SGIP during the term of this Agreement, this Agreement shall terminate.

## **Article 8. Insurance**

- 8.1 The Interconnection Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. Such insurance coverage is specified in Attachment 7 to this Agreement. The Interconnection Customer shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Such insurance shall be obtained from an insurance provider authorized to do business in New York State where the interconnection is located. Certification that such insurance is in effect shall be provided upon request of the Connecting Transmission Owner, except that the Interconnection Customer shall show proof of insurance to the Connecting Transmission Owner no later than ten (10) Business Days prior to the anticipated commercial operation date. An Interconnection Customer of sufficient creditworthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.
- 8.2 The NYISO and Connecting Transmission Owner agree to maintain general liability insurance or self-insurance consistent with the existing commercial practice. Such insurance or self-insurance shall not exclude the liabilities undertaken pursuant to this Agreement.
- 8.3 The Parties further agree to notify one another whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.



## **Article 9. Confidentiality**

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated “Confidential.” For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such. Confidential Information shall include, without limitation, information designated as such by the NYISO Code of Conduct contained in Attachment F to the ISO OATT.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
- 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Parties as it employs to protect its own Confidential Information.
- 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
- 9.3 Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR § 1b.20, if FERC, 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, the Party shall provide the requested information to FERC, within the time provided for in the request for information. In providing the information to FERC, the Party may, consistent with 18 CFR § 388.112, request that the information be treated as confidential and non-public by FERC and that the information be withheld from public disclosure. Each Party is prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC. The Party shall notify the other Parties to this Agreement when it is notified by FERC that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR § 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.
- 9.4 Consistent with the provisions of this article 9, the Parties to this Agreement will cooperate in good faith to provide each other, Affected Systems, Affected System

Operators, and state and federal regulators the information necessary to carry out the terms of the SGIP and this Agreement.

## **Article 10. Disputes**

- 10.1 The NYISO, Connecting Transmission Owner and Interconnection Customer agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.
- 10.2 In the event of a dispute, the Parties will first attempt to promptly resolve it on an informal basis. The NYISO will be available to the Interconnection Customer and Connecting Transmission Owner to help resolve any dispute that arises with respect to performance under this Agreement. If the Parties cannot promptly resolve the dispute on an informal basis, then any Party shall provide the other Parties with a written Notice of Dispute. Such notice shall describe in detail the nature of the dispute.
- 10.3 If the dispute has not been resolved within two (2) Business Days after receipt of the notice, any Party may contact FERC's Dispute Resolution Service ("DRS") for assistance in resolving the dispute.
- 10.4 The DRS will assist the Parties in either resolving their dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. The result of this dispute resolution process will be binding only if the Parties agree in advance. DRS can be reached at 1-877-337-2237 or via the internet at <http://www.ferc.gov/legal/adr.asp>.
- 10.5 Each Party agrees to conduct all negotiations in good faith and will be responsible for one-third of any costs paid to neutral third-parties.
- 10.6 If any Party elects to seek assistance from the DRS, or if the attempted dispute resolution fails, then any Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

## **Article 11. Taxes**

- 11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with FERC policy and Internal Revenue Service requirements.
- 11.2 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 Connecting 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, NYPA and Consolidated Edison Company of New York, Inc. 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 their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.
- 11.3 LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.
- 11.4 Any payments due to the Connecting Transmission Owner under this Agreement shall be adjusted to include any tax liability incurred by the Connecting Transmission Owner with respect to the interconnection request which is the subject of this Agreement. Such adjustments shall be made in accordance with the provisions of Article 5.17 of the LGIA in Attachment X of the ISO OATT. Except where otherwise noted, all costs, deposits, financial obligations and the like specified in this Agreement shall be assumed not to reflect the impact of applicable taxes.

## **Article 12. Miscellaneous**

### **12.1 Governing Law, Regulatory Authority, and Rules**

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of New York, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

### **12.2 Amendment**

The Parties may amend this Agreement by a written instrument duly executed by the Parties, or under article 12.12 of this Agreement.

### **12.3 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 where permitted, their assigns. Notwithstanding the foregoing, any subcontractor of the Connecting Transmission Owner or NYISO assisting either of those Parties with the Interconnection Request covered by this Agreement shall be entitled to the benefits of indemnification provided for under Article 7.3 of this Agreement and the limitation of liability provided for in Article 7.2 of this Agreement.

### **12.4 Waiver**

12.4.1 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.

12.4.2 Any waiver at any time by a 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. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the NYISO. Any waiver of this Agreement shall, if requested, be provided in writing.

### **12.5 Entire Agreement**

This Agreement, including all Attachments, 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, any Party's compliance with its obligations under this Agreement.

## **12.6 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.

## **12.7 No Partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between 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, another Party.

## **12.8 Severability**

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

## **12.9 Security Arrangements**

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. FERC expects the NYISO, the Connecting Transmission Owner, Market Participants, and Interconnection Customers interconnected to electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

## **12.10 Environmental Releases**

Each Party 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 Small Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Parties. The notifying Party shall: (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Parties copies of any publicly available reports filed with any governmental authorities addressing such events.

## **12.11 Subcontractors**

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.

12.11.1 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 to the extent provided for in Articles 7.2 and 7.3 above 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 Connecting Transmission Owner be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under 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.

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

## **12.12 Reservation of Rights**

Nothing in this Agreement shall alter the right of the NYISO or Connecting Transmission Owner 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 which rights are expressly reserved herein, and the existing rights of the Interconnection Customer to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations are also expressly reserved herein; 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, except to the extent that the Parties otherwise agree as provided herein.

## **12.13 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 Small Generator Interconnection Agreement located in Appendix 7 of Attachment Z of 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* Standard Small 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.

## **Article 13. Notices**

### **13.1 General**

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Interconnection Customer:

Interconnection Customer:

Attention:

Address:

City: State: Zip:

Phone:

If to the Connecting Transmission Owner:

Connecting Transmission Owner:

Attention:

Address:

City: State: Zip:

Phone:

If to the NYISO:

Attention:

Address:

City: State: Zip: :

Phone:

### **13.2 Billing and Payment**

Billings and payments shall be sent to the addresses set out below:

Interconnection Customer:

Attention:

Address:

City: State: Zip:

Connecting Transmission Owner:

Attention:



Address:  
City: State: Zip:

### **13.3 Alternative Forms of Notice**

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer:  
Attention:  
Address:  
City: State: Zip:  
Phone:  
E-mail:

If to the Connecting Transmission Owner:

Connecting Transmission Owner:  
Attention:  
Address:  
City: State: Zip:  
Phone:  
E-mail:

If to the NYISO:

Attention:  
Address:  
City: State: Zip:  
Phone:  
E-mail: [interconnectionsupport@nyiso.com](mailto:interconnectionsupport@nyiso.com)

### **13.4 Designated Operating Representative**

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer:

Attention:  
Address:  
City:                      State:              Zip:  
Phone:  
E-mail:

Connecting Transmission Owner's Operating Representative:

Connecting Transmission Owner:

Attention:  
Address:  
City:                      State:              Zip:  
Phone:  
E-mail:

NYISO's Operating Representative:

Attention:  
Address:  
City:                      State:              Zip:  
Phone:  
E-mail: [interconnectionsupport@nyiso.com](mailto:interconnectionsupport@nyiso.com)

### **13.5 Changes to the Notice Information**

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

#### **Article 14. Signatures**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the New York Independent System Operator, Inc.

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

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

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

Date: \_\_\_\_\_

For the Connecting Transmission Owner

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

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

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

Date: \_\_\_\_\_

For the Interconnection Customer

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

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

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

Date: \_\_\_\_\_

## **Attachment 1 - Glossary of Terms**

**Affected System** – An electric system other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Operator** – Affected System Operator shall mean the operator of any Affected System.

**Affected Transmission Owner** – The New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that: (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades or System Upgrade Facilities are installed pursuant to Attachment Z and Attachment S to the ISO OATT.

**Applicable Laws and Regulations** – 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 Standards** – The criteria, requirements and guidelines of the North American Electric Reliability Council, the Northeast Power Coordinating Council, the New York State Reliability Council and related and successor organizations, or the Transmission District to which the Interconnection Customer's Small Generating Facility is directly interconnected, as those criteria, 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 of or validity of any criterion, requirement or guideline as applied to it in the context of Attachment Z to the ISO OATT and this Agreement. For the purposes of this Agreement, this definition of Applicable Reliability Standards shall supersede the definition of Applicable Reliability Standards set out in Attachment X to the ISO OATT.

**Balancing Authority** – An entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

**Balancing Authority Area** – The collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

**Base Case** – The base case power flow, short circuit, and stability data bases used for the Interconnection Studies by NYISO, Connecting Transmission Owner or Interconnection Customer; described in Section 32.2.3 of the Large Facility Interconnection Procedures, and updated consistent with the rules set forth in Section 25.5.5.1 of Attachment S to the OATT at the start of each Interconnection Study under the Small Generator Interconnection Procedures.

**Breach** - The failure of a Party to perform or observe any material term or condition of this Agreement.

**Business Day** – Monday through Friday, excluding federal holidays.

**Capacity Resource Interconnection Service** – The service provided by NYISO to Interconnection Customers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with Attachment S to the ISO OATT; such service being one of the eligibility requirements for participation as a NYISO Installed Capacity Supplier.

**Commercial Operation** shall mean the status of the Small Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation, notice of which must be provided to the NYISO in the form of Attachment 9 to this Agreement.

**Commercial Operation Date** of a Small Generating Facility shall mean the date on which the Large Generating Facility commences Commercial Operation as agreed to by the Parties, notice of which must be provided to the NYISO in the form of Attachment 9 to this Agreement.

**Connecting Transmission Owner** – The New York public utility or authority (or its designated agent) that: (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System or Distribution System at the Point of Interconnection, and (iii) is a Party to the Standard Small Generator Interconnection Agreement.

**Default** – The failure of a Party in Breach of this Agreement to cure such Breach under the Small Generator Interconnection Agreement.

**Distribution System** – The Transmission Owner's 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. For the purpose of this Agreement, the term Distribution System shall not include LIPA's distribution facilities.

**Distribution Upgrades** – The additions, modifications, and upgrades to the Connecting Transmission Owner's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Small Generating Facility and render the transmission service necessary to effect the Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities or System Upgrade Facilities or System Deliverability Upgrades.

**Energy Resource Interconnection Service** – The service provided by NYISO to interconnect the Interconnection Customer's Small Generating Facility to the New York State Transmission System or Distribution System in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive Energy and Ancillary Services from the Small Generating Facility, pursuant to the terms of the ISO OATT.

**Force Majeure** – 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 an act of negligence or intentional wrongdoing. For the purposes of this Agreement, this definition of Force Majeure shall supersede the definitions of Force Majeure set out in Section 32.2.11 of the NYISO Open Access Transmission Tariff.

**Good Utility Practice** – 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 be acceptable practices, methods, or acts generally accepted in the region.

**Governmental Authority** – 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 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 the Interconnection Customer, NYISO, Affected Transmission Owner, Connecting Transmission Owner or any Affiliate thereof.

**Initial Synchronization Date** shall mean the date upon which the Small Generating Facility is initially synchronized and upon which Trial Operation begins, notice of which must be provided to the NYISO in the form of Attachment 9.

**In-Service Date** shall mean the date upon which the Developer reasonably expects it will be ready to begin use of the Connecting Transmission Owner's Interconnection Facilities to obtain back feed power.

**Interconnection Customer** – Any entity, including the Transmission Owner or any of the affiliates or subsidiaries, that proposes to interconnect its Small Generating Facility with the New York State Transmission System or the Distribution System.

**Interconnection Facilities** – The Connecting Transmission Owner's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to the New York State Transmission System or the Distribution System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or System Upgrade Facilities.

**Interconnection Request** – The Interconnection Customer's request, in accordance with the Tariff, to interconnect a new Small Generating Facility, or to materially increase the capacity of,

or make a material modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with the New York State Transmission System or the Distribution System. For the purposes of this Agreement, this definition of Interconnection Request shall supersede the definition of Interconnection Request set out in Attachment X to the ISO OATT.

**Interconnection Study** – Any study required to be performed under Sections 32.2 or 32.3 of the SGIP.

**Material Modification** – A modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

**New York State Transmission System** – 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.

**NYISO Deliverability Interconnection Standard** – The standard that must be met, unless otherwise provided for by Attachment S to the ISO OATT, by any of the following requesting CRIS: (i) any generation facility larger than 2MW in order for that facility to obtain CRIS; (ii) any Class Year Transmission Project proposing to interconnect to the New York State Transmission System and receive Unforced Capacity Delivery Rights; (iii) any entity requesting External CRIS Rights, and (iv) any entity requesting a CRIS transfer pursuant to Section 25.9.5 of Attachment S to the ISO OATT. To meet the NYISO Deliverability Interconnection Standard, the Interconnection Customer must, in accordance with the rules in Attachment S to the ISO OATT, fund or commit to fund any System Deliverability Upgrades identified for its Project in the Class Year Deliverability Study.

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

**Operating Requirements** – Any operating and technical requirements that may be applicable due to Regional Transmission Organization, Independent System Operator, control area, Balancing Authority Area, or the Connecting Transmission Owner's requirements, including those set forth in the Small Generator Interconnection Agreement. Operating Requirements shall include Applicable Reliability Standards.

**Party or Parties** – The NYISO, Connecting Transmission Owner, Interconnection Customer or any combination of the above.

**Point of Interconnection** – The point where the Interconnection Facilities connect with the New York State Transmission System or the Distribution System.

**Reasonable Efforts** – 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.

**Small Generating Facility** – The Interconnection Customer’s facility, no larger than 20 MW for the production and/or storage for later injection of electricity identified in the Interconnection Request if proposing to interconnect to the New York State Transmission System or Distribution System, but shall not include (i) facilities proposing to simply receive power from the New York State Transmission System or the Distribution System; (ii) facilities proposing to interconnect to the New York State Transmission System or the Distribution System made solely for the purpose of generation with no wholesale sale for resale nor to net metering; (iii) facilities proposing to the New York State Transmission System or the Distribution System made solely for the purpose of net metering; (iv) facilities proposing to interconnect to LIPA’s distribution facilities; and (v) the Interconnection Customer’s Interconnection Facilities. A facility will be treated as a single Small Generating Facility if all Generators within the facility are behind a single Point of Interconnection, even if such units are different technology types.

**System Deliverability Upgrades** – 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 the existing New York State Transmission System that are required for the proposed Project to connect reliably to the system in a manner that meets the NYISO Deliverability Interconnection Standard for Capacity Resource Interconnection Service.

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

**Tariff** – The NYISO’s Open Access Transmission Tariff, as filed with the FERC, and as amended or supplemented from time to time, or any successor tariff.

**Trial Operation** shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Small Generating Facility prior to Commercial Operation.

**Upgrades** – The required additions and modifications to the Connecting Transmission Owner’s portion of the New York State Transmission System or the Distribution System at or beyond the Point of Interconnection. Upgrades may be System Upgrade Facilities or System Deliverability Upgrades Distribution Upgrades. Upgrades do not include Interconnection Facilities.



## **Attachment 2 - Detailed Scope of Work, Including Description and Costs of the Small Generating Facility, Interconnection Facilities, and Metering Equipment**

Equipment, including the Small Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by the Interconnection Customer, or the Connecting Transmission Owner. The NYISO, in consultation with the Connecting Transmission Owner, will provide a best estimate itemized cost, including overheads, of its Interconnection Facilities and metering equipment, and a best estimate itemized cost of the annual operation and maintenance expenses associated with its Interconnection Facilities and metering equipment.

**Attachment 3 - One-line Diagram Depicting the Small Generating Facility,  
Interconnection Facilities, Metering Equipment, and Upgrades**

#### **Attachment 4 - Milestones**

In-Service Date:

Critical milestones and responsibility as agreed to by the Parties:

|      | <b>Milestone/Date</b> | <b>Responsible Party</b> |
|------|-----------------------|--------------------------|
| (1)  |                       |                          |
| (2)  |                       |                          |
| (3)  |                       |                          |
| (4)  |                       |                          |
| (5)  |                       |                          |
| (6)  |                       |                          |
| (7)  |                       |                          |
| (8)  |                       |                          |
| (9)  |                       |                          |
| (10) |                       |                          |

**Attachment 5 - Additional Operating Requirements for the New York State Transmission System, the Distribution System and Affected Systems Needed to Support the Interconnection Customer's Needs**

The NYISO, in consultation with the Connecting Transmission Owner, shall also provide requirements that must be met by the Interconnection Customer prior to initiating parallel operation with the New York State Transmission System or the Distribution System.

## **Attachment 6 - Connecting Transmission Owner's Description of its Upgrades and Best Estimate of Upgrade Costs**

The NYISO, in consultation with the Connecting Transmission Owner, shall describe Upgrades and provide an itemized best estimate of the cost, including overheads, of the Upgrades and annual operation and maintenance expenses associated with such Upgrades. The Connecting Transmission Owner shall functionalize Upgrade costs and annual expenses as either transmission or distribution related.

The cost estimate for System Upgrade Facilities and System Deliverability Upgrades shall be taken from the ISO OATT Attachment S cost allocation process or applicable Interconnection Study, as required by Section 32.3.5.3.2 of Attachment Z. The cost estimate for Distribution Upgrades shall include the costs of Distribution Upgrades that are reasonably allocable to the Interconnection Customer at the time the estimate is made, and the costs of any Distribution Upgrades not yet constructed that were assumed in the Interconnection Studies for the Interconnection Customer but are, at the time of the estimate, an obligation of an entity other than the Interconnection Customer.

The cost estimates for Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades are estimates. The Interconnection Customer is ultimately responsible for the actual cost of the Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades needed for its Small Generating Facility, as that is determined under Attachments S, X, and Z of the ISO OATT.

## **Attachment 7 - Insurance Coverage**

**Attachment 8 – Initial Synchronization Date**

**[Date]**

**[NYISO Address]**

**[Connecting Transmission Owner Address]**

Re: \_\_\_\_\_ Small Generating Facility

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

On **[Date]** **[Interconnection Customer]** initially synchronized the Small Generating Facility [specify units, if applicable]. This letter confirms that **[Interconnection Customer]**'s Initial Synchronization Date was [specify].

Thank you.

**[Signature]**

**[Interconnection Customer Representative]**

## Attachment 9 – Commercial Operation Date

[Date]

[NYISO Address]

[Connecting Transmission Owner Address]

Re: \_\_\_\_\_ Small Generating Facility

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

On [Date] [Interconnection Customer] has completed Trial Operation of Unit No. \_\_\_\_\_. This letter confirms that [Interconnection Customer] commenced Commercial Operation of the Small Generating Facility [specify units, as applicable], effective as of **[Date plus one day]**.

Thank you.

[Signature]

[Interconnection Customer Representative]



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## **40.1 Definitions**

Whenever used in these Standard Interconnection Procedures with initial capitalization, the following terms shall have the meanings specified in this Section 40.1. Terms used in these procedures with initial capitalization that are not defined in this Section 40.1 shall have the meanings specified in Section 1 of the ISO OATT, Section 22.1 of Attachment P to the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, Section 30.1 of Attachment Z to the ISO OATT, Appendix 1 to Attachment Z to the ISO OATT, or in Article 2 of the ISO Services Tariff.

**10 kW Inverter Process** shall mean the procedure for evaluating an Interconnection Request for a certified inverter-based Generating Facility no larger than 10 kW that uses the Section 40.23 screens. The application process uses an all-in-one document that includes a simplified Interconnection Request, simplified procedures, and a brief set of terms and conditions as set forth in Appendix 12.

**Acceptance Notice** shall mean the notice by which an Interconnection Customer communicates to the ISO its decision to accept a Project Cost Allocation or Revised Project Cost Allocation.

**Additional SDU Study** shall mean a study that an Interconnection Customer may elect to pursue if the Class Year Deliverability Study or Cluster Study 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 or Cluster Study and not substantially similar to a System Deliverability Upgrade previously identified and cost allocated in a prior Class Year Study or Cluster Study) that requires additional study.

**Additional SDU Study Decision Period** shall mean the period of time following the Additional SDU Study during which an Interconnection Customer must elect whether to accept the Project Cost Allocation and pay cash or post Security for the System Deliverability Upgrades identified for its Project in accordance with the requirements in Section 40.15.

**Affected System** shall mean an electric system within the New York Control Area other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Interconnection Customer** shall mean any entity that submits an interconnection request for a generating facility to a transmission system other than the New York State Transmission System that may cause the need for Affected System Network Upgrades on the New York State Transmission System.

**Affected System Network Upgrades** shall mean the additions, modifications, and upgrades to the New York State Transmission System required to accommodate Affected System Interconnection Customer's proposed interconnection to a transmission system other than the New York State Transmission System.

**Affected System Operator** shall mean the entity that operates an Affected System. Affected System Operator includes the Affected Transmission Owners.

**Affected System Queue Position** shall mean the Queue Position of an Affected System Interconnection Customer in the ISO's Queue in accordance with Section 40.8.3.3 of this Attachment HH.

**Affected System Study** shall mean the ISO's evaluation of the impacts on the New York State Transmission System of Affected System Interconnection Customers' proposed interconnection(s) to another region's transmission system and the ISO's identification of any required Affected System Network Upgrades, as described in Section 40.8.3 to this Attachment HH.

**Affected System Study Agreement** shall mean the agreement contained in Appendix 6 to this Attachment HH that is made between the ISO and Affected System Interconnection Customer to conduct an Affected System Study pursuant to Section 40.8.3 to this Attachment HH.

**Affected System Study Report** shall mean the report issued by the ISO following completion of an Affected System Study pursuant to Section 40.8.3.7 to this Attachment HH.

**Affected Transmission Owner** shall mean the New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the ISO OATT, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, Affected Network Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachment HH or Attachment P to the ISO OATT.

**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 Electric Reliability Organization, the NPCC, and the NYSRC.

**Applicable Reliability Requirements** shall mean the NYSRC Reliability Rules, and other criteria, standards and procedures, as described in Section 40.12.1.2 of this Attachment HH; 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 the Standard Interconnection Procedures. The Applicable Reliability Requirements applied are those in effect when the particular assessment is commenced.

**Application Fee** shall mean the non-refundable fee an Interconnection Customer must submit with its Interconnection Request or CRIS-Only Request pursuant to Section 40.5.5.1.3 to this Attachment HH.

**Application Window** shall mean the time period set forth in Section 40.5.3 to this Attachment HH.

**Attachment Facilities** shall mean the Connecting Transmission Owner's Attachment Facilities and the Interconnection Customer's Attachment Facilities. Collectively, Attachment Facilities include all facilities and equipment between the Generating Facility or Cluster Study Transmission Project and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the New York State Transmission System or Distribution System. Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities, Distribution Upgrades, System Upgrade Facilities, or System Deliverability Upgrades.

**Balancing Authority** shall mean an entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

**Balancing Authority Area** shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the Cluster Study by the ISO, Connecting Transmission Owner, Affected Transmission Owner, Affected System Operator, or Interconnection Customer; described in Section 40.2.6 of this Attachment HH.

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

**Byway** shall mean all transmission facilities comprising the New York State Transmission System that are neither Highways nor Other Interfaces. All transmission facilities in Zone J and Zone K are Byways.

**Calendar Day** shall mean any day including Saturday, Sunday or a federal holiday. If a deadline that is established in Calendar Days in this Attachment HH does not end on a Business Day, the deadline will be extended to the next Business Day.

**Capacity Region** shall mean one of four subsets of the Installed Capacity statewide markets comprised of: (1) Rest of State (*i.e.*, Load Zones A through F); (2) Lower Hudson Valley (*i.e.*, Load Zones G, H and I); (3) New York City (*i.e.*, Load Zone J); and (4) Long Island (*i.e.*, Load Zone K).

**Capacity Resource Interconnection Service ("CRIS")** shall mean the service provided by the ISO to Interconnection Customers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with the requirements in

this Attachment HH; such service being one of the eligibility requirements for participation as an ISO Installed Capacity Supplier.

**Class Year** shall mean the group of Projects included in any particular Class Year Study (Annual Transmission Reliability Assessment and/or Class Year Deliverability Study), in accordance with the criteria specified in Attachments S, X, and Z. Class Year 2023 shall be the final Class Year that is subject to a Class Year Study.

**Class Year Interconnection Facilities Study (“Class Year Study”)** shall mean the last of the successive interconnection studies conducted in the ISO’s Standard Large Facility Interconnection Procedures for proposed interconnections of Small Generating Facilities (if applicable), Large Generating Facilities, and Class Year Transmission Projects with the New York State Transmission System or with the Distribution System in accordance with the requirements in Attachments S, X, and Z to the ISO OATT. The Class Year Study for Class Year 2023 shall be the final Class Year Study conducted by the ISO.

**Cluster** shall mean a group of one or more Projects with validated Interconnection Requests and CRIS-Only Requests that are studied together for the purpose of conducting a Cluster Study.

**Cluster Baseline Assessment (“CBA”)** shall mean an assessment, conducted by the ISO in cooperation with Market Participants, to identify the System Upgrade Facilities and Distribution Upgrades that Transmission Owners are expected to need during the time period covered by the assessment to comply with Applicable Reliability Requirements and to reliably meet the load growth and changes in load pattern projected for the New York Control Area. For purposes of applying the requirements in this Attachment HH, the term Cluster Baseline Assessment include the Annual Transmission Baseline Assessment when the term refers to the assessment performed for a Class Year Study.

**Cluster Project Assessment (“CPA”)** shall mean an assessment, conducted by the ISO in cooperation with Market Participants, to determine the System Upgrade Facilities and Distribution Upgrades required for each Project included in this assessment to interconnect to the New York State Transmission System or Distribution System in compliance with Applicable Reliability Requirements and the NYISO Minimum Interconnection Standard. For purposes of applying the requirements in this Attachment HH, the term Cluster Project Assessment includes the Annual Transmission Reliability Assessment when the term refers to the assessment performed for a Class Year Study.

**Cluster Study** shall mean the study conducted, as applicable, by the ISO, Connecting Transmission Owner, Affected Transmission Owner, Affected System Operator or a third party consultant for the Interconnection Customer to determine a list of facilities (including Connecting Transmission Owner’s Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System Deliverability Upgrades), the cost of those facilities, and the time required to interconnect the Generating Facility or Cluster Study Transmission Project with the New York State Transmission System or with the Distribution System. The Cluster Study includes the Phase 1 Study and the Phase 2 Study.

**Cluster Study Agreement** shall mean the form of agreement contained in Appendix 3 to this

Attachment HH for conducting the Cluster Study.

**Cluster Study CRIS Project** shall mean a Cluster Study Project with an executed Cluster Study Agreement entering a Cluster Study for a CRIS evaluation, that thereby becomes one of the group of Cluster Study Projects included in the Cluster Study Deliverability Study. A Cluster Study CRIS Project may be a CRIS-Only Cluster Study Project that is entering a Cluster Study only for a CRIS evaluation, or it may be a Project seeking both ERIS and CRIS.

**Cluster Study Deliverability Study** shall mean an assessment, conducted by the ISO in cooperation with Market Participants, to determine whether System Deliverability Upgrades are required for Cluster Study CRIS Projects under the NYISO Deliverability Interconnection Standard.

**Cluster Study Project** shall mean a project with a validated Interconnection Request or CRIS-Only Request that thereby becomes one of the group of Projects included in the particular Cluster for that Cluster Study Process.

**Cluster Study Project List** shall mean the list of Cluster Study Projects with validated Interconnection Requests or CRIS-Only Requests that the ISO posts during the Customer Engagement Window in accordance with the requirements in Section 40.7.2.

**Cluster Study Process** shall mean the following processes, conducted in sequence: the Application Window; the Customer Engagement Window (including the Physical Infeasibility Screening and Scoping Meetings therein); the Phase 1 Study; the Phase 2 Study; and, if applicable, the Additional SDU Study.

**Cluster Study Process Start Date** shall mean the date upon which the ISO will open the Application Window for a given Cluster Study Process, which date shall be determined pursuant to Section 40.5.1 of this Attachment HH.

**Cluster Study Transmission Project** shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Cluster Study Transmission Project without having to re-dispatch generation. Cluster Study Transmission Projects shall not include Attachment Facilities, Distribution Upgrades, Network Upgrade Facilities, System Upgrade Facilities, or System Deliverability Upgrades. The term Cluster Study Transmission Project shall include those transmission projects that were classified as a Class Year Transmission Project in the ISO's Standard Large Facility Interconnection Procedures and satisfied the requirements to complete a Class Year Study for purposes of applying the post-interconnection study requirements



applicable to a Cluster Study Transmission Project in this Attachment HH, except as otherwise indicated in this Attachment HH.

**Cluster Study Report** shall mean the report issued following completion of the Phase 2 Study pursuant to Section 40.11.7 to this Attachment HH.

**Clustering** shall mean the process whereby the impact to the New York State Transmission System of a group of Affected System Interconnection Customers which projects are interconnecting to another region are studied together, instead of serially, for the purpose of conducting the Affected System Study.

**Commercial Operation** shall mean the status of a Facility that has commenced generating or transmitting electricity for sale, excluding electricity generated or transmitted during Trial Operation.

**Commercial Operation Date** of a Facility shall mean the date on which the Facility commences Commercial Operation, notice of which must be provided by the Interconnection Customer to the ISO and Connecting Transmission Owner in the form provided in Appendix E-2 to the Standard Interconnection Agreement.

**Commercial Operation Incentive Payment Amount** shall mean the amount a Payment Eligible Project is eligible to receive from the Withdrawal Penalty Fund collected for a particular Cluster Study Process if it enters Commercial Operation pursuant to Section 40.6.5.2.5.

**Confidential Information** shall mean any information that is defined as confidential by Section 40.24.1 to this Attachment HH.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the ISO OATT, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System or Distribution System at the Point of Interconnection, and (iii) is a Party to the Standard Interconnection Agreement.

**Connecting Transmission Owner's Attachment Facilities** shall mean all facilities and equipment owned, controlled or operated by the Connecting Transmission Owner from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Connecting Transmission Owner's Attachment Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone System Upgrade Facilities, or System Upgrade Facilities. For purposes of applying the requirements in this Attachment HH, Connecting Transmission Owner's Attachment Facilities shall include facilities that were categorized as Connecting Transmission Owner's Interconnection Facilities under the ISO's Small Generator Interconnection Procedures and facilities that were categorized as Connecting Transmission Owner's Attachment Facilities under the ISO's Standard Large Generator Interconnection Procedures.

**Contingent Facilities** shall mean those Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and/or System Deliverability Upgrades associated with Cluster Study Projects upon which the Facility's Cluster Study Project Cost Allocations are dependent, and if delayed or not built, could impact the actual costs and timing of the Facility's Project Cost Allocation for System Upgrade Facilities or System Deliverability Upgrades.

**Contingent Project** shall mean an Interconnection Request or CRIS-Only Request that an Interconnection Customer submits during the Application Window of the Cluster Study Process pursuant to Section 40.5.4.1 for a Project that is simultaneously participating in the prior, ongoing Class Year Study, Cluster Study Process, Additional SDU Study, or Small Generator facilities study.

**Contribution Percentage** shall mean the ratio of a Project's measured impact or pro rata contribution to a System Upgrade Facility, Distribution Upgrade, or System Deliverability Upgrades, as applicable, identified in the Cluster Project Assessment, to the sum of the measured impacts or pro rata contributions of all the Projects in the same Cluster Study that have at least a de minimus impact or contribution to the System Upgrade Facility or Distribution Upgrade.

**Cost Estimate Update** shall have the meaning set forth in Section 40.6.3.5.3.2.

**CRIS-Only Cluster Study Project** shall mean a project that is participating in a Cluster Study Process solely to obtain CRIS or an increase in CRIS. For purposes of applying the requirements in this Attachment HH, the term CRIS-Only Cluster Study Project when used in connection with the Class Year Interconnection Facilities Study requirements in Attachment X and S of the OATT shall mean a Class Year Project that participated in a Class Year solely to request CRIS or an increase in CRIS.

**CRIS-Only Request** shall mean Interconnection Customer's request, in the form of Appendix 2 to this Attachment HH, to solely obtain CRIS or an increase in CRIS. For purposes of applying the requirements in this Attachment HH, the term CRIS-Only Request when used in connection with the Class Year Interconnection Facilities Study requirements in Attachment X and S of the OATT shall mean a Class Year Project's request to participate in a Class Year solely to request CRIS or an increase in CRIS.

**CTOAF and SUF Project Cost Allocation** shall have the meaning set forth in Section 40.15.1 to this Attachment HH.

**Customer Engagement Window** shall mean the time period set forth in Section 40.7.1 of this Attachment HH.

**Deliverable MW** shall have the meaning set forth in Section 40.15.1 to this Attachment HH.

**Dispute Resolution** shall mean the procedure described in Section 40.24.5 to this Attachment HH for resolution of a dispute between the Parties.

**Distribution System** shall mean the Transmission Owner's facilities and equipment used to distribute electricity that are subject to FERC jurisdiction, and are subject to the ISO's Standard

Interconnection Procedures in this Attachment HH under FERC Order Nos. 2003 and/or 2006. The term Distribution System shall not include LIPA's distribution facilities.

**Distribution Upgrades** shall mean the modifications or additions to the existing Distribution System at or beyond the Point of Interconnection that are required for the proposed Project to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard. Distribution Upgrades do not include Attachment Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

**Effective Date** shall mean the date on which the Standard Interconnection Agreement, Standard Upgrade Construction Agreement, or Multiparty Standard Upgrade Construction Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

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

**Energy Duration Limitation** shall have the meaning set forth in Section 5.12.14 of the ISO Services Tariff.

**Energy Resource Interconnection Service ("ERIS")** shall mean the service provided by the ISO to interconnect the Interconnection Customer's Generating Facility or Cluster Study Transmission Project to the New York State Transmission System or to the Distribution System, in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive Energy and Ancillary Services from the Generating Facility or Cluster Study Transmission Project, pursuant to the terms of the ISO OATT.

**Engineering & Procurement (E&P) Agreement** shall mean an agreement that authorizes Connecting Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

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

**ERO Planning Standards** shall mean the transmission system planning standards of the Electric Reliability Organization.

**Existing System Representation** shall mean the representation of the New York State Power System developed as specified in Section 40.10.3 of this Attachment HH.

**Expedited Deliverability Study** shall mean a study conducted by the ISO or a third party consultant to determine the extent to which an existing or proposed facility satisfies the NYISO Deliverability Interconnection Standard at its requested CRIS level without the need for System Deliverability Upgrades. The schedule and scope of the study is defined in Sections 40.19.1 and 40.13.1.2 of this Attachment HH.

**Expedited Deliverability Study Agreement** shall mean the agreement contained in Appendix 8 to this Attachment HH to conduct an Expedited Deliverability Study pursuant to Section 40.19.3 of this Attachment HH.

**External Affected System** shall mean an electric system outside of the New York Control Area that may be affected by the proposed interconnection.

**External Affected System Operator** shall mean the entity that operates an External Affected System.

**External CRIS Rights** shall mean a determination of deliverability within the Rest of State Capacity Region (*i.e.*, Load Zones A-F), awarded by the ISO for a term of five (5) years or longer, to a specified number of Megawatts of External Installed Capacity that satisfy the requirements set forth in Section 40.13.11 to Attachment HH, and that can be certified in a Bilateral Transaction used for the NYCA and not a Locality, or sold into the NYCA for an Installed Capacity auction and not in an Installed Capacity auction for a Locality.

**External-to-ROS Deliverability Rights** shall have the meaning set forth in Section 2.5 of the ISO Services Tariff.

**Facility** shall mean either a Generating Facility or a Cluster Study Transmission Project.

**Facility Modification Request** shall mean an Interconnection Customer's request to modify its Facility in the form of Appendix 5 to this Attachment HH.

**Fast Track Process** shall mean the procedure for evaluating an Interconnection Request for a certified Generating Facility that meets the eligibility requirements of Section 40.23.1 of the Attachment HH and includes the Section 40.23 screens, customer options meeting, and optional supplemental review.

**Fast Track Request** shall mean a request in the form of Appendix 13 to this Attachment HH to enter the Fast Track Process set forth in Section 40.23 to this Attachment HH.

**Final Decision Period** shall mean the period of time following the conclusion of the Phase 2 Study during which an Interconnection Customer must elect whether to accept its Project Cost Allocation and provide the related cash or post Security for, as applicable, the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and/or System Deliverability Upgrades identified for its Project in accordance with the requirements in Section 40.15.

**Final Decision Round** shall mean the final round of ISO-communicated cost estimates and Interconnection Customer responses in, as applicable, the Final Decision Period or Additional SDU Study Decision Period, in which all remaining eligible Interconnection Customers issue an Acceptance Notice and provide cash or post Security.

**Force Majeure** shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or

equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

**Generating Facility** shall mean Interconnection Customer's device(s) for the production and/or storage for later injection of electricity identified in the Interconnection Request or CRIS-Only Request, but shall not include: the Interconnection Customer's Attachment Facilities or Distribution Upgrades. A facility comprised of multiple Generators will be treated as a single Generating Facility if the facility proposed in the Interconnection Request or CRIS-Only Request is comprised of multiple Generators behind a single Point of Interconnection, even if such Generators are different technology types.

**Generating Facility Capacity** shall mean the net seasonal capacity of the Generating Facility or the aggregate net seasonal capacity of the Generating Facility consisting of more than one device for a production and/or storage for later injection.

**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 be acceptable practices, methods, or acts generally accepted in the region.

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

**Hazardous Substances** shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

**Headroom** shall mean the functional or electrical capacity of the System Upgrade Facility or the electrical capacity of the System Deliverability Upgrade that is in excess of the functional or electrical capacity actually used by the Interconnection Customer's Project.

**Headroom Security** shall have the meaning set forth in Section 40.17.1.5 to this Attachment HH.

**Heatmap** shall mean the ISO's publicly posted interactive visual representation of estimated incremental injection capacity available at each point of interconnection and related table of metrics in accordance with the requirements in Section 40.4.1.

**Highway** shall mean 115 kV and higher transmission facilities that comprise the following NYCA interfaces: Dysinger East, West Central, Volney East, Moses South, Central East/Total East, and UPNY-ConEd, and their immediately connected, in series, Bulk Power System facilities in New York State. Each interface shall be evaluated to determine additional "in series" facilities, defined as any transmission facility higher than 115 kV that (a) is located in an upstream or downstream zone adjacent to the interface and (b) has a power transfer distribution factor (DFAX) equal to or greater than five percent when the aggregate of generation in zones or systems adjacent to the upstream zone or zones which define the interface is shifted to the aggregate of generation in zones or systems adjacent to the downstream zone or zones which define the interface. In determining "in series" facilities for Dysinger East and West Central interfaces, the 115 kV and 230 kV tie lines between NYCA and PJM located in LBMP Zones A and B shall not participate in the transfer. Highway transmission facilities are listed in ISO Procedures.

**Initial Decision Round** shall mean the 30 calendar day period of, as applicable, the Final Decision Period or Additional SDU Study Decision Period within which an Interconnection Customer must provide an Acceptance Notice or Non-Acceptance Notice to the ISO in response to the first Project Cost Allocation issued by the ISO to the Interconnection Customer.

**Initial Backfeed Date** shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Connecting Transmission Owner's Attachment Facilities to obtain back feed power. Initial Backfeed Date shall include the term In-Service Date as that term is used in Attachments S, X, and Z to the ISO OATT.

**Interconnection Customer** shall mean any entity, including the Connecting Transmission Owner or any of its affiliates or subsidiaries, that submits an Interconnection Request or CRIS-Only Request that is subject to the application of the Standard Interconnection Procedures as set forth in Section 40.2.3 of this Attachment HH or elects to enter an Expedited Deliverability Study. For purposes of applying the requirements in this Attachment HH, an Interconnection Customer shall include an entity that was categorized as a Developer under the ISO's Standard Large Facility Interconnection Procedures or as an Interconnection Customer under the ISO's Small Generator Interconnection Procedures.

**Interconnection Customer's Attachment Facilities** shall mean all facilities and equipment, as identified in Appendix A of the Interconnection Agreement, that are located between the Generating Facility or Cluster Study Transmission Project and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility or Cluster Study Transmission Project to the New York State Transmission System or Distribution System. Interconnection Customer's Attachment Facilities are sole use facilities. For purposes of

applying the requirements in this Attachment HH, Interconnection Customer's Attachment Facilities shall include facilities that were categorized as Developer's Attachment Facilities under the ISO's Standard Large Facility Interconnection Procedures or Interconnection Customer's Interconnection Facilities under the ISO's Small Generator Interconnection Procedures.

**Interconnection Request** shall mean Interconnection Customer's request, in the form of Appendix 1 to this Attachment HH, to interconnect a new Generating Facility or Cluster Study Transmission Project 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 Generating Facility, Cluster Study Transmission Project, or Class Year Transmission Project that is interconnected with the New York State Transmission System or with the Distribution System. For purposes of the Interconnection Request, a facility comprised of multiple Generators behind the same Point of Interconnection may be considered a single Generating Facility, provided the Interconnection Request identifies a single Interconnection Customer. An Interconnection Request submitted pursuant to the ISO's Standard Large Facility Interconnection Procedures in Attachment X to the ISO OATT or the ISO's Small Generator Interconnection Procedures in Attachment Z to the ISO OATT shall be subject to the transition requirements set forth in Section 40.3.1 to this Attachment HH.

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

**Local System Upgrade Facilities** shall mean the System Upgrade Facilities necessary to physically interconnect a proposed Project to the Connecting Transmission Owner's transmission system, consistent with applicable interconnection and system protection design standards. Local System Upgrade Facilities include any electrical facilities required to make the physical connection (e.g., a new ring bus for a line connection or facilities required to create a new bay for a substation connection). Local System Upgrade Facilities also include any system protection or communication facilities that may be required for protection of the Connecting Transmission Owner's and/or Affected Transmission Owner's transmission facility (line or substation) involved in the interconnection. Local System Upgrade Facilities do not include System Upgrade Facilities required to mitigate any adverse reliability impact(s) of the Project(s) identified through analysis such as power flow, short circuit, or stability (e.g., replacement of a circuit breaker at a nearby substation that becomes overdutied as a result of the Project(s)).

**Material Modification** shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with an equal or later Queue Position.

**Merchant Transmission Facility** shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which the costs of construction will be recovered through negotiated rates instead of cost-based rates and not subject to the competitive evaluation and selection process for purposes of cost allocation under Attachment Y to the ISO OATT. Merchant Transmission Facilities shall not include Attachment Facilities, Distribution Upgrades, Network Upgrade Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

**Metering Equipment** shall mean all metering equipment installed or to be installed at the Generating Facility or Cluster Study Transmission Project pursuant to the Standard Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

**Minor Modification** shall mean, for purposes of the Fast Track Process requirements, modifications that will not have a material adverse impact on the cost or timing of any Interconnection Request.

**Multiparty Affected System Study Agreement** shall mean the agreement contained in Appendix 7 to this Attachment HH that is made among the ISO and multiple Affected System Interconnection Customers to conduct an Affected System Study pursuant to Section 40.8.3 of this Attachment HH.

**Non-Acceptance Event** shall have the meaning set forth in Section 40.15.2.9 of this Attachment HH.

**Non-Acceptance Notice** shall mean the notice by which an Interconnection Customer communicates to the ISO its decision not to accept a Project Cost Allocation or Revised Project Cost Allocation.

**Notice of Dispute** shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Interconnection Procedures, the Standard Interconnection Agreement, the Standard Upgrade Construction Agreement, or the Multiparty Standard Upgrade Construction Agreement, or its performance.

**Notice of SDUs Requiring Additional Study** shall have the meaning set forth in Section 40.14.1 of this Attachment HH.

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

**NPCC Basic Design and Operating Criteria** shall mean the transmission system design and operating criteria of the Northeast Power Coordinating Council.

**NYISO Deliverability Interconnection Standard** shall mean the standard that must be met, unless otherwise provided in this Attachment HH, by (i) any generation facility larger than 2MW in order for that facility to obtain CRIS; (ii) any Cluster Study Transmission Project; (iii) any entity requesting External CRIS Rights, and (iv) any entity requesting a CRIS transfer pursuant to Section 40.18.4 to Attachment HH. To meet the NYISO Deliverability Interconnection Standard, the Interconnection Customer must, in accordance with the rules in this Attachment HH, pay cash or post Security for any System Deliverability Upgrades identified for its Project in the Cluster Study Deliverability Study.

**NYISO Load and Capacity Data Report** shall mean the annual ISO survey of power demand and supply in New York State, published pursuant to Section 6-106 of the Energy Law of New York State.



**NYISO Minimum Interconnection Standard** shall mean the reliability standard that must be met by any Generating Facility or Cluster Study Transmission Project that is subject to the Standard Interconnection Procedures that is proposing to connect to the New York State Transmission System or to the Distribution System to obtain ERIS. The standard is designed to ensure reliable access by the proposed Project to the New York State Transmission System or to the Distribution System, as applicable. The standard does not impose any deliverability test or deliverability requirement on the proposed interconnection.

**NYSRC Reliability Rules** shall mean the reliability rules of the New York State Reliability Council.

**Other Interfaces** shall mean the following interfaces into Capacity Regions: Lower Hudson Valley *i.e.*, Rest of State (Load Zones A-F) to Lower Hudson Valley (Load Zones G, H and I); New York City *i.e.*, Lower Hudson Valley (Load Zones G, H and I) to New York City (Load Zone J); and Long Island *i.e.*, Lower Hudson Valley (Load Zones G, H and I) to Long Island (Load Zone K), and the following Interfaces between the NYCA and adjacent Control Areas: PJM to NYISO, ISO-NE to NYISO, Hydro-Quebec to NYISO, and Norwalk Harbor (Connecticut) to Northport (Long Island) Cable.

**Overage Cost** shall mean the dollar amount by which the total cost of, as applicable, System Upgrade Facilities, Distribution Upgrades, and/or System Deliverability Upgrades identified in the Cluster Project Assessment exceeds the total cost of System Upgrade Facilities considered in the Cluster Baseline Assessment for the same Cluster for a given Cluster Study.

**Overage Cost Percentage** shall mean the ratio of the Overage Cost to the total cost of System Upgrade Facilities, Distribution Upgrades, or System Deliverability Upgrades, as applicable, identified in the Cluster Project Assessment.

**Party or Parties** shall mean, as applicable, the ISO, Interconnection Customer, Affected System Interconnection Customer, Connecting Transmission Owner, Affected System Operator, Affected Transmission Owner, or any combination of the above.

**Payment Eligible Project** shall mean a Cluster Study Project eligible to recover certain study costs from the Withdrawal Penalty Funds collected by the ISO for that Cluster Study Process as defined in Section 40.6.5.2.2.

**Pending Project** shall have the meaning set forth in Section 40.5.4.1.1 to this Attachment HH.

**Permissible Technological Advancement** shall mean advancements to turbines, inverters, or plant supervisory controls or other similar advancements to the existing technology proposed in the Interconnection Request, provided that such advancements result in electrical performance that is equal or better than the electrical performance prior to the technological change and do not (i) increase the capability of the Facility (i) change the generation technology or fuel type of the Facility, (ii) have a material adverse impact on the New York State Transmission System or Distribution System, and (iii) degrade the electrical characteristics of the generating equipment proposed in the Interconnection Request (*e.g.*, the ratings, impedances, efficiencies, capabilities, and performance of the equipment under steady state and dynamic conditions).

**Phase 1 Cost Estimates Summary Report** shall mean the ISO report that summarizes the cost estimates identified in the Phase 1 Studies performed by the Connecting Transmission Owners and Affected Transmission Owners.

**Phase 1 Entry Decision Period** shall mean the period of time following the conclusion of the Customer Engagement Window during which an Interconnection Customer must satisfy the requirements for its Cluster Study Project to enter the Phase 1 Study or be withdrawn. The Phase 1 Entry Decision Period requirements are set forth in Section 40.7.5 to this Attachment HH.

**Phase 1 Study** shall mean the first part of the Cluster Study as set forth in Section 40.10 in which the Connecting Transmission Owners and Affected Transmission Owners will perform design and engineering studies to identify the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, and Local System Upgrade Facilities required to reliably interconnect the Cluster Study Project with the New York State Transmission System or Distribution System in accordance with Applicable Reliability Requirements and to provide cost estimates for and a preliminary schedule to construct the facilities.

**Phase 1 Study Start Date** shall mean the start date for the Phase 1 Study process as set forth in Section 40.10.1.

**Phase 2 Entry Decision Period** shall mean the period of time following the conclusion of the Phase 1 Study during which an Interconnection Customer must satisfy the requirements for its Cluster Study Project to enter the Phase 2 Study or be withdrawn. The Phase 2 Entry Decision Period requirements are set forth in Section 40.10.8 to this Attachment HH.

**Phase 2 Study** shall mean the second part of the Cluster Study as set forth in Sections 40.11, 40.12, and 40.13 in which the ISO will identify the System Upgrade Facilities and Distribution Upgrades required for the reliable interconnection of Cluster Study Projects to the New York State Transmission System or to the Distribution System in compliance with the NYISO Minimum Interconnection Standard and, for Cluster Study Projects requesting CRIS, will assess their requested CRIS in compliance with the NYISO Deliverability Interconnection Standard and identify any required System Deliverability Upgrades. The Connecting Transmission Owner, Affected Transmission Owner, or Affected System Operator will determine the cost estimates for and a preliminary schedule to construct the facilities, along with updating, as needed, the identification of and cost estimates of the facilities identified in the Phase 1 Study.

**Phase 2 Study Start Date** shall mean the start date for the Phase 2 Study process as set forth in Section 40.11.1.

**Physical Infeasibility** shall have the meaning set forth in Section 40.7.3.2 to this Attachment HH.

**Physical Infeasibility Screening** shall mean the assessment performed by the applicable Transmission Owner during the Customer Engagement Window of whether the proposed interconnection of a Cluster Study Project is Physically Infeasible. The Physical Infeasibility Screening requirements are set forth in Section 40.7.3 to this Attachment HH.

**Point of Change of Ownership** shall mean the point where the Interconnection Customer's Attachment Facilities connect to the Connecting Transmission Owner's Attachment Facilities, as set forth in Appendix A to the Standard Interconnection Agreement.

**Point of Interconnection** shall mean the point where the Attachment Facilities connect to the New York State Transmission System or to the Distribution System, as set forth in Appendix A to the Standard Interconnection Agreement.

**Pre-Application Report** shall mean the report issued following an Interconnection Customer's completion of the Pre-Application Request Form pursuant to Section 40.4.2 of this Attachment HH.

**Pre-Application Request Form** shall mean a request in the form of Appendix 4 to this Attachment HH for a Pre-Application Report.

**Project** shall mean the proposed facility as described in a single Interconnection Request or CRIS-Only Request, to the extent permitted by this Attachment HH. For facilities not subject to the ISO's Standard Interconnection Procedures in Attachment HH to the ISO OATT, the Project refers to the facility as described in a single Cluster Study Agreement or Expedited Deliverability Study Agreement, to the extent permitted by this Attachment HH.

**Project Cost Allocation** shall mean the dollar figure estimate for an Interconnection Customer's share of the cost of the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, and System Upgrade Facilities required for the reliable interconnection of its Project to the New York State Transmission System or to the Distribution System and/or the share of the cost of the System Deliverability Upgrades required for the Interconnection Customer's Project to meet the NYISO Deliverability Interconnection Standard.

**Proportional Impact Method** shall mean the technical analysis conducted by the ISO to determine the degree to which each Facility in the Cluster Study contributes to the need for a specific System Upgrade Facility, Distribution Upgrade, or System Deliverability Upgrade as set forth in Section 40.12.2 to this Attachment HH.

**Provisional Interconnection Service** shall mean interconnection service provided by the ISO associated with interconnecting the Interconnection Customer's Facility to the New York State Transmission System (or Distribution System as applicable) and enabling the transmission system to receive electric energy from the Facility at the Point of Interconnection, pursuant to the terms of the Provisional Interconnection Agreement and, if applicable, the ISO OATT.

**Provisional Standard Interconnection Agreement** shall mean the interconnection agreement for Provisional Interconnection Service established between the ISO, Connecting Transmission Owner(s) and the Interconnection Customer. This agreement shall take the form of the Standard Interconnection Agreement, modified for provisional purposes and type of facility.

**Queue** shall mean the ISO's list of: (i) projects that possess an Interconnection Request or CRIS-Only Request participating in the ISO's Standard Interconnection Procedures set forth in this Attachment HH, (ii) projects with a valid Transmission Interconnection Application participating in the Transmission Interconnection Procedures in Attachment P to the ISO OATT, (iii) projects

with a valid Study Request participating in Section 3.7 of the ISO OATT, (iv) load projects submitted in accordance with Section 3.9 of the ISO OATT, (v) projects subject to an Affected System Study, and (vi) projects that prior to the effective date of the Standard Interconnection Procedures were participating in the ISO's Standard Large Facility Interconnection Procedures in Attachment X to the ISO OATT or the Small Generator Interconnection Procedures in Attachment Z to the ISO OATT and retain their Queue Position in accordance with the transition requirements set forth in Section 40.3 to this Attachment HH.

**Queue Position** shall mean the unique number and/or letter designation in the Queue for a valid Interconnection Request, CRIS-Only Request, Study Request, Load request, or Transmission Interconnection Application that satisfies the applicable requirements for inclusion in the Queue.

**Readiness Deposits** shall mean Readiness Deposit 1 and Readiness Deposit 2.

**Readiness Deposit 1** shall mean a deposit paid by Interconnection Customer for its Cluster Study Project to enter the Phase 1 Study as set forth in Section 40.7.5 to this Attachment HH.

**Readiness Deposit 2** shall mean a deposit paid by Interconnection Customer for its Cluster Study Project to enter the Phase 2 Study as set forth in Section 40.10.8 to this Attachment HH.

**Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Interconnection Procedures, Standard Interconnection Agreement, Standard Upgrade Construction Agreement, or Multiparty Standard Upgrade Construction 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.

**Regulatory Limitations** shall mean a federal, state, Tribal, or local law, other than permitting and siting requirements, that makes it infeasible to obtain Site Control prior to an Interconnection Customer's submission of its Interconnection Request as set forth in ISO Procedures.

**Retired** shall mean a Generator that has permanently ceased operating on or after the effective date of Section 5.18 of the ISO Services Tariff either: i) pursuant to applicable notice; or ii) as a result of the expiration of its Mothball Outage or the expiration of its ICAP Ineligible Forced Outage.

**Revised Project Cost Allocation** shall mean the revised dollar figure cost estimate and related information provided by the ISO to an Interconnection Customer following receipt by the ISO of a Non-Acceptance Notice, or upon the occurrence of a Security Posting Default by another member of the respective Cluster.

**Scoping Meeting** shall mean the group meeting during the Customer Engagement Window among representatives of the Interconnection Customers in the Cluster for a given Cluster Study Process, the ISO, Connecting Transmission Owners, and Affected Transmission Owners conducted for the purpose of discussing Interconnection Customers' Interconnection Requests and CRIS-Only Requests and providing available information including any transmission data and earlier study evaluations that would be reasonably expected to impact their proposed interconnections.

**SDU Project Cost Allocation** shall have the meaning set forth in Section 40.15.1 to Attachment HH.

**Security** shall mean, under the interconnection facilities cost allocation rules set out in this Attachment HH, an Interconnection Customer must signify its willingness to pay the Connecting Transmission Owner, Affected Transmission Owner(s), and/or Affected System Operator(s) for the Interconnection Customer's share of the required Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System Deliverability Upgrades by posting Security for the full amount of the Interconnection Customer's share within a specified time frame. The Security can be a bond, irrevocable letter of credit, parent company guarantee or other form of security from an entity with an investment grade rating, executed for the benefit of the Connecting Transmission Owner, Affected Transmission Owner(s), and/or Affected System Operator(s), meeting the requirements of the cost allocation rules in this Attachment HH, and meeting the commercially reasonable requirements of the Connecting Transmission Owner, Affected Transmission Owner(s), and/or Affected System Operator(s).

**Security Posting Default** shall mean a failure by one or more Interconnection Customers to post Security in, as applicable, the Final Decision Period or Additional SDU Study Decision Period, as required by this Attachment HH.

**Site Control** shall mean the necessary land right sufficient to develop, construct, operate, and maintain the Facility over a term of at least ten (10) years from the date of the submission of the Interconnection Request. Site Control may be demonstrated by documentation establishing: (1) ownership of, a leasehold interest in, or a right to develop a site of sufficient size to construct and operate the Facility; (2) an option to purchase or acquire a leasehold site of sufficient size to construct and operate the Facility; or (3) any other documentation that clearly demonstrates the right of Interconnection Customer to occupy a site of sufficient size to construct and operate the Facility. The term "necessary land right" restricts the use of the site for mutually exclusive projects, but does not restrict multi-use applications of the site in addition to its use for the Facility, such as agriculture, ranching, etc. The ISO will maintain acreage requirements and other applicable parameters for each facility type on its OASIS or public website.

**Site Control Deposit** shall mean the deposit provided by the Interconnection Customer to satisfy the Site Control requirement due to a Regulatory Limitation as set forth in Section 40.5.5.1.5.1 to this Attachment HH.

**Stand Alone System Upgrade Facilities** shall mean System Upgrade Facilities that are not part of an Affected System that an Interconnection Customer may construct without affecting day-to-day operations of the New York State Transmission System during their construction. The ISO, the Connecting Transmission Owner, and the Interconnection Customer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify them in Appendix A to the Standard Interconnection Agreement. If the ISO, the Connecting Transmission Owner, and the Interconnection Customer disagree about whether a particular System Upgrade Facility is a Stand Alone System Upgrade Facility, the ISO and the Connecting Transmission Owner must provide the Interconnection Customer a written technical explanation outlining why the ISO and

the Connecting Transmission Owner do not consider the System Upgrade Facility to be a Stand Alone System Upgrade Facility within fifteen (15) Business Days of its determination.

**Standard Interconnection Procedures (“Interconnection Procedures” or “IP”)** shall mean the interconnection procedures applicable to an Interconnection Request or a CRIS-Only Request pertaining to a Generating Facility or Cluster Study Transmission Project that are included in this Attachment HH of the ISO OATT.

**Standard Interconnection Agreement (“IA”)** shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Generating Facility or Cluster Study Transmission Project, that is included in Appendix 15 to this Attachment HH of the ISO OATT. For purposes of applying the requirements in this Attachment HH, the term Standard Interconnection Agreement shall include, as applicable, Standard Large Generator Interconnection Agreement and Small Generator Interconnection Agreement.

**Standard Upgrade Construction Agreement** shall mean the agreement contained in Appendix 16 to this Attachment HH that is made, as applicable, among (i) the ISO, (ii) the Affected System Operator or Affected Transmission Owner, and (iii) the Interconnection Customer or Affected System Interconnection Customer to facilitate the construction of and to set forth cost responsibility for necessary System Upgrades Facilities, System Deliverability Upgrades, or Affected System Network Upgrades on the New York State Transmission System or Distribution System.

**Standard Multiparty Upgrade Construction Agreement** shall mean the agreement contained in Appendix 17 to this Attachment HH that is made, as applicable, among (i) the ISO, (ii) the Affected System Operator, Affected Transmission Owner, or Connecting Transmission Owner, and (iii) multiple Interconnection Customers or Affected System Interconnection Customers to facilitate the construction of and to set forth cost responsibility for necessary System Upgrade Facilities, System Deliverability Upgrades, or Affected System Network Upgrades on the New York State Transmission System or Distribution System.

**Study Deposit** shall mean the study deposit the Interconnection Customer must submit with its Interconnection Request or CRIS-Only Request pursuant to Section 40.5.5.1.4 to this Attachment HH.

**Subsequent Decision Round** shall mean a seven calendar day period of, as applicable, the Final Decision Period or Additional SDU Study Decision Period, within which an Interconnection Customer must provide an Acceptance Notice or Non-Acceptance Notice to the ISO in response to the Revised Project Cost Allocation issued by the ISO to the Interconnection Customer.

**Synchronization Date** shall mean the date upon which the Generating Facility or Cluster Study Transmission Project is initially synchronized and upon which Trial Operation begins, notice of which must be provided by the Interconnection Customer to the ISO and Connecting Transmission Owner in the form of Appendix E-1 of the Standard Interconnection Agreement. Synchronization Date shall include the term Initial Synchronization Date as that term is used in Attachments S, X, and Z to 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 that are required for the proposed Project to connect reliably to the system in a manner that meets the NYISO Deliverability Interconnection Standard for Capacity Resource Interconnection Service.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Generating Facility or Cluster Study Transmission Project and (2) protect the Generating Facility or Cluster Study Transmission Project from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

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

**Transition Cluster Study** shall mean the Cluster Study conducted during the Transition Cluster Study Process.

**Transition Cluster Study Process** shall mean the first Cluster Study Process conducted in accordance with the Standard Interconnection Procedures requirements in this Attachment HH.

**Transition Cluster Study Process Start Date** shall mean the date upon which the ISO will open the Application Window for the Transition Cluster Study Process, which date shall be determined pursuant to Section 40.5.1.1 to this Attachment HH.

**Trial Operation** shall mean the period during which an Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility or Cluster Study Transmission Project prior to Commercial Operation.

**UCAP Deration Factor (“UCDF”)** shall have the meaning set forth in Sections 40.13.8.2.1.3 and 40.13.8.2.2.2 of this Attachment HH.

**Upgrades** shall mean the required additions and modifications to the Connecting Transmission Owner’s portion of the New York State Transmission System or the Distribution System at or beyond the Point of Interconnection. Upgrades may be System Upgrade Facilities or System Deliverability Upgrades or Distribution Upgrades. Upgrades do not include Attachment Facilities.

**Withdrawal Penalty** shall mean the penalties assessed by the ISO to an Interconnection Customer that chooses to withdraw or is deemed withdrawn by the ISO from the ISO's Queue or whose Generating Facility or Cluster Study Transmission Project does not otherwise reach Commercial Operation. The calculation of the Withdrawal Penalty is set forth in Section 40.6.5.1 to this Attachment HH.

**Withdrawal Penalty Funds** shall mean the amount of the Withdrawal Penalties that the ISO has collected from Cluster Study Projects for a given Cluster Study Process.



**40.5 Cluster Study Process Start Date/Application Window/ Interconnection Requests/ Interconnection Service Options**

**40.5.1 Start Date for Transition Cluster Study Process and Subsequent Cluster Study Processes**

40.5.1.1 The Transition Cluster Study Process shall commence on the Transition Cluster Study Process Start Date, which shall be August 1, 2024.

40.5.1.2 Each subsequent Cluster Study Process shall commence on the Cluster Study Process Start Date for that Cluster Study Process.

40.5.1.3 For Cluster Study Processes after the Transition Cluster Study Process, the Cluster Study Process Start Date shall be fifteen (15) Calendar Days prior to the scheduled date for the ISO's presentation in the prior study process of the Cluster Study Report for the Operating Committee's approval. The date will be set as follows. Within thirty (30) Calendar Days of the commencement of the Phase 2 Study of the Transition Cluster Study Process or a subsequent Cluster Study Process, the ISO will provide a preliminary schedule for the next Cluster Study Process, including a preliminary Cluster Study Process Start Date, based on the then-scheduled date for the ISO's presentation of the Cluster Study Report to the Operating Committee. Sixty (60) Calendar Days prior to the latest scheduled date of the ISO's presentation of the Cluster Study Report to the Operating Committee, the ISO shall provide the final Cluster Study Process Start Date using that scheduled Operating Committee date.

If the ongoing Cluster Study, including the Final Decision Round of the Final Decision Period, takes longer than scheduled to be completed, then the ISO shall extend the Customer Engagement Window for the next Cluster Study Process by the number of additional days required to complete the prior Cluster Study, including its Final Decision Period.

40.5.1.4 The ISO shall provide notice of the Transition Cluster Study Process Start Date and subsequent Cluster Study Process Start Dates and schedule by: (i) sending notice of the start date and schedule to those registered through the ISO to be on the distribution lists for the NYISO Operating Committee and its subcommittees and (ii) posting notice on its website of the start date.

#### **40.5.2 Transition Cluster Study Process**

The Transition Cluster Study Process shall be conducted in accordance with the requirements for the Cluster Study Process set forth in this Attachment HH except as otherwise indicated in this Attachment HH.

#### **40.5.3 Application Window Duration**

40.5.3.1 The Application Window shall commence, as applicable, on the Transition Cluster Study Process Start Date or Cluster Study Process Start Date.

40.5.3.2 The Application Window shall be a forty-five (45) Calendar Day period for a Cluster Study Process; *provided, however*, the period shall be a seventy-five (75) Calendar Day period for the Transition Cluster Study Process.

#### **40.5.4 Submission of Interconnection Request or CRIS-Only Request in Application Window**

The ISO will only process an Interconnection Request or CRIS-Only Request that is submitted by an Interconnection Customer during an Application Window, except for CRIS-Only Requests to obtain or increase CRIS that are not subject to a Cluster Study Process. An Interconnection Customer may submit an Interconnection Request or CRIS-Only Request for a project that is subject to the Standard Interconnection Procedures as set forth in Section 40.2.3 to join the Cluster evaluated for that particular Cluster Study Process. To submit an

Interconnection Request or CRIS-Only Request, an Interconnection Customer must satisfy the applicable submission requirements in Section 40.5.5.

#### **40.5.4.1 Contingent Projects**

40.5.4.1.1 If a project is participating in a Class Year Study, Cluster Study, Additional SDU Study, or Small Generator facilities study that is ongoing during the Application Window for the next Cluster Study Process (“Pending Project”), then the Interconnection Customer may submit during that Application Window for the next Cluster Study Process an Interconnection Request or CRIS-Only Request for a Cluster Study Project that is the same as its Pending Project (*e.g.*, same technical data, modeling, Point of Interconnection, and site), which project shall be labeled as a “Contingent Project” with its own Queue Position. An Interconnection Customer’s submission of a Contingent Project will not replace, or require the withdrawal, of the Interconnection Request or CRIS-Only Request for the Pending Project.

40.5.4.1.2 The Interconnection Customer must satisfy for the Contingent Project all of the same Interconnection Request or CRIS-Only Request requirements set forth in Section 40.5.5 as are required for an entirely new project, including, but not limited to, satisfying the non-refundable Application Fee, Study Deposit, and Site Control requirements.

40.5.4.1.3 The Contingent Project shall be subject to all of the same requirements in the Cluster Study Process as an entirely new project except as otherwise set forth in Sections 40.5.4.1.3.1 to 40.5.4.1.3.4.

40.5.4.1.3.1 If the Pending Project is a Class Year Project or Cluster Study Project only requesting ERIS:

- (i) if the Interconnection Customer accepts the SUF Project Cost Allocation or the CTOAF and SUF Project Cost Allocation required for the ERIS for the

Pending Project in the Final Decision Round of the applicable Class Year Study or Cluster Study, then the ISO shall withdraw the Contingent Project, and the Contingent Project shall not be assessed a Withdrawal Penalty for this withdrawal; or

(ii) if the Interconnection Customer withdraws the Pending Project prior to the applicable Final Decision Round or does not accept the cost allocation described in subpart (i), then the Contingent Project shall continue as a Cluster Study Project in the new Cluster Study Process, shall be subject to all of the same requirements in the Cluster Study Process as any other project, including the option to modify its Point of Interconnection pursuant to Section 40.7.2.3, and will be subject to any applicable Withdrawal Penalties if it withdraws or is deemed withdrawn.

40.5.4.1.3.2 If the Pending Project is a Class Year Project or Cluster Study Project only requesting CRIS:

(i) if the Interconnection Customer accepts the SDU Project Cost Allocation or Deliverable MWs for the fully requested CRIS amount for the Pending Project in the Final Decision Round of the later of the applicable Class Year Study, Cluster Study, or Additional SDU Study, then the ISO shall withdraw the Contingent Project, and the Contingent Project shall not be assessed a Withdrawal Penalty for this withdrawal; or

(ii) if the Interconnection Customer withdraws the Pending Project prior to the applicable Final Decision Round, does not accept the cost allocation or Deliverable MWs described in subpart (i), or the Additional SDU Study in which

its Pending Project is participating is not completed, then the Contingent Project shall continue as a CRIS-Only Cluster Study Project in the new Cluster Study Process for purposes of obtaining the megawatts of requested CRIS that it did not obtain in the prior study and shall be subject to all of the same requirements in the Cluster Study Process as any other project, including any applicable Withdrawal Penalties if it withdraws or is deemed withdrawn by the ISO.

40.5.4.1.3.3 If the Pending Project is a Class Year Project or Cluster Study Project requesting both ERIS and CRIS:

(i) if the Interconnection Customer (A) accepts the SUF Project Cost Allocation or the CTOAF and SUF Project Cost Allocation for the ERIS for the Pending Project in the Final Decision Round of the later of the applicable Class Year Study, Cluster Study, or Additional SDU Study, and (B) accepts the SDU Project Cost Allocation or the Deliverable MWs required for the fully requested CRIS amount for the Pending Project in the later of the applicable Class Year Study, Cluster Study, or Additional SDU Study, then the ISO shall withdraw the Contingent Project, and the Contingent Project shall not be assessed a Withdrawal Penalty for this withdrawal; or

(ii) if the Interconnection Customer withdraws the Pending Project prior to the applicable Final Decision Round for ERIS or does not accept the cost allocation described in subpart (i)(A), then the Contingent Project shall continue as a Cluster Study Project in the new Cluster Study Process, shall be subject to all of the same requirements in the Cluster Study Process as any other project, including the option to modify its Point of Interconnection pursuant to Section

40.7.2.3, and will be subject to any applicable Withdrawal Penalties if it withdraws or is deemed withdrawn by the ISO, or

(iii) if: (A) the Interconnection Customer accepts the cost allocation for ERIS as described in subpart (i), but (B) does not accept the SDU Project Cost Allocation or the Deliverable MWs required for the fully requested CRIS amount described in subpart (i) or the Additional SDU Study in which its Pending Project is participating is not completed, then the Contingent Project shall be converted into a CRIS-Only Cluster Study Project for its evaluation in the Cluster Study Process for the megawatts of requested CRIS not obtained by the Pending Project in the prior study. In such case, the ISO shall, upon Interconnection Customer's request, refund to Interconnection Customer any refundable cash portion of, or coordinate with Interconnection Customer to amend any letter of credit or surety bond for, any Study Deposit amount, Readiness Deposit(s), and Site Control Deposit that the Interconnection Customer provided for the Contingent Project that are not required for a CRIS-Only Cluster Study Project. If Interconnection Customer informs the ISO that it will not proceed as a CRIS-Only Cluster Study Project prior to electing to enter the Phase 1 Study, then the ISO shall withdraw the project, and the project shall not be assessed a Withdrawal Penalty for this withdrawal.

40.5.4.1.3.4 If the Pending Project is a Small Generating Facility subject to a Small Generator facilities study:

(i) if: (A) the facilities study is completed prior to the end of the Application Window for the Transition Cluster Study Process, and (B) the

Interconnection Customer accepts its cost allocation for the System Upgrade Facilities cost allocation following the issuance of the final report in accordance with Section 32.3.5.7 of Attachment Z, then the ISO shall withdraw the Contingent Project, and the Contingent Project shall not be assessed a Withdrawal Penalty; or

(ii) if: (A) the Interconnection Customer withdraws the Pending Project prior to the completion of the facilities study, (B) the Interconnection Customer does not accept the cost allocation for the Pending Project described in subpart (i), or (C) the facilities study for the Pending Project is not completed prior to the end of the Application Window for the Transition Cluster Study Process and is terminated by the ISO, then the Contingent Project shall continue as a Cluster Study Project in the new Cluster Study Process, shall be subject to all of the same requirements in the Cluster Study Process as any other project, including the option to modify its Point of Interconnection pursuant to Section 40.7.2.3, and will be subject to any applicable Withdrawal Penalties if it withdraws or is deemed withdrawn by the ISO.

#### **40.5.5 Submission Requirements for Interconnection Request or CRIS-Only Request**

40.5.5.1 To submit an Interconnection Request or CRIS-Only Request, an Interconnection Customer must submit to the ISO the following during, and no later than the close of, the Application Window.

40.5.5.1.1 Interconnection Customer must submit, as applicable, (i) a completed Interconnection Request in accordance with Appendix 1 to these Standard Interconnection Procedures, including the required technical data, modeling, and

conceptual one-line project layout, or (ii) a completed CRIS-Only Request in accordance with Appendix 2 to these Standard Interconnection Procedures.

40.5.5.1.2 Interconnection Customer submitting a CRIS-Only Cluster Study Project must provide documentation demonstrating that it is in service or has completed one of the following, as applicable: a Class Year Study or Cluster Study for ERIS, a completed facilities study for Small Generating Facilities processed under the Small Generator Interconnection Procedures pursuant to Section 40.3.1, or a utility interconnection study if the facility is not subject to the ISO interconnection procedures under Attachment HH.

40.5.5.1.3 Interconnection Customer must submit a non-refundable Application Fee in cash in the amount of \$10,000 in accordance with Section 40.2.4.1; *provided, however*, that the Application Fee shall be \$5,000 for a CRIS-Only Cluster Study Project. The Application Fee shall be divided between the ISO and Connecting Transmission Owner(s) as follows: 75% allocated to the ISO and 25% allocated to the Connecting Transmission Owner; *provided, however*, that for a CRIS-Only Cluster Study Project, 100% of the Application Fee will be allocated to the ISO.

40.5.5.1.4 Interconnection Customer must submit a Study Deposit in accordance with the requirements in Section 40.2.4 in the following amount based on the size of the proposed Facility in the Interconnection Request: (A) \$100,000 for a Facility smaller than 80 MW, (B) \$150,000 for a Facility greater than or equal to 80 MW and smaller than 200 MW, or (C) \$250,000 for a Facility greater than or equal to 200 MW; *provided, however*, that the Study Deposit amount shall be \$50,000 for a CRIS-Only Cluster Study Project. The MW value used to calculate the Study Deposit



amount will be based on the requested ERIIS amount at the Point of Interconnection for the Cluster Study Project. The ISO shall hold the Study Deposit for the duration of Interconnection Customer's participation in the Cluster Study Process, subject to the requirements set forth in Sections 40.6.5, 40.7.6, 40.10.9, 40.15.4, 40.15.5, and 40.24.3 to this Attachment HH.

40.5.5.1.5 Except as set forth in Section 40.5.5.1.5.1, Interconnection Customer:

- (i) must demonstrate with its Interconnection Request through its submission of materials permitted in ISO Procedures full Site Control of the Facility consistent with the acreage and other parameters for the Facility's technology type set forth in ISO Procedures and (ii) include an attestation in the form set forth in ISO Procedures from an officer of the company indicating the amount of acreage covered by these Site Control materials and that such acreage is consistent with the acreage and other parameters for the Facility's technology type set forth in ISO Procedures. If: (i) the Facility is a new technology type not addressed in the ISO Procedures or (ii) the Site Control documentation provided by the Interconnection Customer is for less acreage than required for the Facility's technology type in ISO Procedures, the Interconnection Customer must instead provide under this Section 40.5.5.1.5 an attestation in the form set forth in ISO Procedures from an officer of the company sufficiently describing and explaining the special circumstances of the project that permits a different acreage amount for Site Control than the requirements in the ISO Procedures, along with a licensed professional engineer (electrical or civil) signed and stamped site plan that depicts that the Site Control provided by the Interconnection Customer can support the proposed arrangement of its Facility.

40.5.5.1.5.1 An Interconnection Customer may submit (1) a signed affidavit from an officer of the company indicating that Site Control is unobtainable due to Regulatory Limitations as such term is defined in ISO Procedures; (2) documentation sufficiently describing and explaining the source and effects of such Regulatory Limitations, including a description of any conditions that must be met to satisfy the Regulatory Limitations and the anticipated time by which Interconnection Customer expects to satisfy the regulatory requirements; and (3) a Site Control Deposit of \$10,000 per MW, subject to a minimum of \$500,000 and a maximum of \$2,000,000 in accordance with the requirements in Section 40.2.4.2. The MW value used to calculate the Site Control Deposit amount will be based on the requested ERIS amount at the Point of Interconnection for the Cluster Study Project.

40.5.5.1.5.2 Interconnection Requests from multiple Interconnection Customers for multiple Generating Facilities that share a site must include a contract or other agreement that allows for shared land use.

40.5.5.1.6 Interconnection Customer must indicate whether the Interconnection Request or CRIS-Only Request shall be studied for Energy Resource Interconnection Service and/or for Capacity Resource Interconnection Service, as further detailed in Section 40.5.6 below.

40.5.5.1.7 Interconnection Customer must specify a single Point of Interconnection for the Interconnection Request, except: (i) for a Cluster Study Transmission Project, or (ii) for a Generating Facility proposing to interconnect at two Points of Interconnection within the same Capacity Region.

40.5.5.1.8 An Interconnection Customer that submitted an Interconnection Request for an inverter-based resource that is greater than 20 MW must submit the form set forth in ISO Procedures concerning the attestations required by NYSRC Reliability Rule B.5.

40.5.5.2 The expected Commercial Operation Date of the new Facility or proposed increase in capacity of the existing Facility provided at the time of the submission of the Interconnection Request shall be no more than ten (10) years from the date the Interconnection Request is received by the ISO. Extensions of Commercial Operation Dates are governed by Section 40.6.3.4.

40.5.5.3 Except as permitted by the Contingent Project rules in Section 40.5.4.1, an Interconnection Customer, or an Interconnection Customer and one of its Affiliates, cannot submit an Interconnection Request for a mutually exclusive Cluster Study Project with projects in the Queue or projects proceeding in the same Application Window.

40.5.5.4 An Interconnection Customer that submits to the ISO a Site Control Deposit due to demonstrated Regulatory Limitations must demonstrate that it is taking identifiable steps to satisfy the necessary regulatory requirements from the applicable federal, state, local and/or tribal entities prior to entering the Phase 2 Study. Such deposit will be held by the ISO until Interconnection Customer provides the required Site Control demonstration for its project in the Cluster Study Process. Interconnection Customers facing qualifying Regulatory Limitations must demonstrate full Site Control within one-hundred eighty (180) Calendar Days of the effective date of the Standard Interconnection Agreement.

40.5.5.5 Interconnection Customer shall promptly inform the ISO of any material change to Interconnection Customer's demonstration of Site Control under Section 40.5.5.1.5. If the

ISO determines, based on Interconnection Customer's information, that Interconnection Customer no longer satisfies the Site Control requirement, the ISO shall give Interconnection Customer fifteen (15) Business Days to demonstrate satisfaction with the applicable requirement subject to the ISO's approval. Absent such, the ISO shall deem the Interconnection Request withdrawn pursuant to Section 40.6.4.

40.5.5.6 Interconnection Customer shall submit a separate Interconnection Request for each site unless the Facility is a proposed Facility comprised of multiple Generators behind a single Point of Injection, in which case the Interconnection Customer must submit a single Interconnection Request. The Interconnection Request for a Facility comprised of multiple Generators behind a single Point of Injection must be submitted by a single Interconnection Customer. An Interconnection Customer may submit multiple Interconnection Requests for a single site to the extent permitted by the Site Control requirements in this Attachment HH. The Interconnection Customer must satisfy all Interconnection Request submission requirements for each Interconnection Request even when more than one request is submitted for a single site.

#### **40.5.6 Types of Interconnection Service**

##### **40.5.6.1 Two Types of Service**

Two types of interconnection service may be requested under the Standard Interconnection Procedures: (1) Energy Resource Interconnection Service for interconnection in compliance with the NYISO Minimum Interconnection Standard; and (2) Capacity Resource Interconnection Service for interconnection in compliance with the NYISO Deliverability Interconnection Standard.

#### **40.5.6.2 Service Elections, Generally**

All Facilities must interconnect in compliance with the NYISO Minimum Interconnection Standard. In addition, Facilities must also comply with the NYISO Deliverability Interconnection Standard before Generating Facilities can become qualified Installed Capacity Suppliers and before Cluster Study Transmission Projects can receive Unforced Capacity Deliverability Rights. An Interconnection Customer initially states its election to be evaluated in the Cluster Study for ERIS alone, or for both ERIS and CRIS, as a part of its Interconnection Request. For Projects comprised of multiple Generators, an Interconnection Customer must request a single ERIS value for the Facility and also specify the ERIS of the multiple Generators comprising the Facility as requested by Interconnection Customer in its Interconnection Request. For projects comprised of multiple Generators, the total ERIS for the Facility may be less than the sum of the ERIS for the individual Generators. The requested ERIS of the individual Generators is subject to the following limitations: (1) the requested ERIS for the Energy Storage Resource in a Co-located Storage Resource or Hybrid Storage Resource cannot exceed the lesser of the Point of Injection limit or its nameplate; and (2) the requested ERIS for each Resource in a Co-located Storage Resource or Hybrid Storage Resource other than the Energy Storage Resource cannot exceed the lesser of (a) the Point of Injection limit plus the full withdrawal capability of the Energy Storage Resource or (b) the relevant Resource's nameplate. An existing Generating Facility requesting only CRIS must request CRIS in a Cluster Study or an Expedited Deliverability Study unless it is requesting CRIS pursuant to Section 40.5.6.6.

#### **40.5.6.3 ERIS Elections**

A Facility that obtains ERIS, but not CRIS, will not be permitted to become an eligible Installed Capacity Supplier to receive Unforced Capacity Deliverability Rights. Such a Facility will be eligible to participate only in the Energy and applicable Ancillary Services markets.

When an Interconnection Customer elects ERIS, its project will be evaluated in the Cluster Study at full output (i.e., the maximum capacity the Facility is capable of injecting at the Point of Interconnection), unless the Interconnection Customer requests ERIS below the full Generating Facility Capacity of a Generating Facility or full facility capacity for a Cluster Study Transmission Project. If the Interconnection Customer requests ERIS below the full Generating Facility Capacity of the Facility, the ISO shall study the Facility at the requested ERIS for purposes of Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and associated costs. However, if the maximum capacity that the Facility is capable of injecting at the Point of Interconnection is limited (i.e., through the use of control system, power relay(s), or other similar device settings or adjustments), then the Interconnection Customer must obtain the ISO's and Connecting Transmission Owner's agreement, with such agreement not to be unreasonably withheld, that the manner in which the Interconnection Customer proposes to implement such a limit will not adversely affect the safety and reliability of the New York State Transmission System (or Distribution System as applicable). If the ISO and Connecting Transmission Owner do not agree with the proposed manner to limit output, then the Interconnection Customer can either withdraw its Interconnection Request or modify its Interconnection Request to specify the maximum capacity that the Facility is capable of injecting into the New York State Transmission System (or Distribution System as applicable) without such limitations. The ISO and Connecting Transmission Owner, based on Good Utility Practice and related engineering considerations and after accounting for any control technology proposed

by the Interconnection Customer, may require further studies of the Facility at its full output to ensure the safety and reliability of the New York State Transmission System (or Distribution System as applicable), with the additional study costs borne by the Interconnection Customer. The ISO and Connecting Transmission Owner shall provide the Interconnection Customer with an explanation of its determination to perform studies at the Facility's full capacity before beginning such studies. If the ISO and Connecting Transmission Owner determine that additional System Upgrade Facilities are necessary after the additional studies are complete, the ISO and Connecting Transmission Owner must: (1) specify which additional System Upgrade Facilities costs are based on which studies; and (2) provide a detailed explanation of why the additional System Upgrade Facilities are necessary. The Interconnection Customer may be responsible for additional System Upgrade Facilities and/or additional control technologies, as well as testing and validation of those technologies consistent with Article 6 of its Standard Interconnection Agreement. The necessary control technologies and protection systems, as well as any potential penalties for exceeding the level of ERIS established in the executed, or requested to be filed unexecuted, Standard Interconnection Agreement, shall be set forth in Appendix C of the executed, or requested to be filed unexecuted, Standard Interconnection Agreement.

When an Interconnection Customer interconnects under ERIS only, the Interconnection Customer may at a later date request CRIS in accordance with the Standard Interconnection Procedures.

#### **40.5.6.4 CRIS Elections**

When an Interconnection Customer requests CRIS, the amount of CRIS requested shall be stated in MW of Installed Capacity ("ICAP"), and cannot exceed the permissible levels set

forth in Section 40.5.6.5. When an Interconnection Customer elects CRIS, the ISO will evaluate the deliverability of the Facility by applying the test methodology described in Section 40.13; *provided, however*, requests for CRIS for a Facility 2 MW or smaller or for an increase in CRIS permitted by Section 40.5.6.6 will not be evaluated for deliverability under the NYISO Deliverability Interconnection Standard. The ISO will apply this test methodology to identify the System Deliverability Upgrades, if any, needed to make the Facility deliverable at its requested CRIS MW level and will also identify the MW of Installed Capacity, if any, that are deliverable from the Facility with no System Deliverability Upgrades. A Facility electing CRIS will be able to become a qualified Installed Capacity Supplier or receive Unforced Capacity Deliverability Rights to the extent of its deliverable capacity, once it has paid cash or provided Security for any required System Deliverability Upgrades in accordance with the relevant provisions of Attachment HH to the ISO OATT. An Interconnection Customer qualifying for CRIS will have two CRIS values: one for the summer capability period and one for the winter capability period. The CRIS value, in MW of Installed Capacity, for the summer capability period will be set using the deliverability test methodology and procedures described in Section 40.13 of this Attachment HH. The CRIS value for the winter capability period, also in MW of Installed Capacity, will be set in accordance with Section 40.13.6 of this Attachment HH.

#### **40.5.6.5 Maximum Requested CRIS**

The maximum permissible MW of CRIS an Interconnection Customer may request are subject to the following limitations:

- (i) if the Facility is a proposed BTM:NG Resource, the requested MW level of CRIS cannot exceed its Net ICAP;



- (ii) if the Facility is a proposed Resource with Energy Duration Limitations, the requested MW level of CRIS cannot exceed the minimum of the following: (a) its expected maximum injection capability in MW for the Interconnection Customer-selected duration; (b) the nameplate capacity of the Project (i.e., injection capability of the Project expressed in MW); or (c) the sum of the Project's requested and existing ERIS, as applicable;
- (iii) if the Facility is a Cluster Study Transmission Project requesting External-to-ROS Deliverability Rights, the requested MW level of CRIS cannot exceed the anticipated increase in transfer capability created by its associated Cluster Study Transmission Project;
- (iv) if the Facility is comprised of multiple Generators of the same or different technology type (*e.g.*, Co-located Storage Resource, Hybrid Storage Resource or single technology facility with multiple units), the requested MW level of CRIS must be requested at the Facility level (i.e., corresponding to the Facility as described in the Interconnection Request or CRIS-Only Request, as applicable), and shall be allocated among the multiple Generators, as requested by Interconnection Customer; provided, however, the requested MW level of CRIS cannot exceed the minimum of the following: (a) the expected maximum injection capability in MW for the Facility as described in the Interconnection Request or CRIS-Only Request, as applicable, including all co-located Generators sharing the same injection limit (*e.g.*, the entire Co-located Storage Resource, entire Hybrid Storage Resource, entire Distributed Energy Resource, or entire multi-unit single technology resource); *provided, however*, if the Project includes a Resource with

Energy Duration Limitation, its expected maximum injection capability in MW is limited by the Interconnection Customer-selected duration; (b) the nameplate capacity of the Facility (i.e., collective injection capability of all units within the proposed Facility expressed in MW); or (c) the sum of the Facility's requested and existing ERIS, as applicable; and

- (v) if the above subsections do not apply to the Facility, the requested MW level of CRIS cannot exceed the nameplate capacity of the Facility.

For existing facilities proposing a modification to add a Generator of the same or different technology co-located at the same Point of Interconnection for which the Interconnection Customer requests CRIS, the collective CRIS of the resources within what will be the modified facility (*e.g.*, the resulting Co-located Storage Resource, Hybrid Storage Resource or Distributed Energy Resource) cannot exceed the injection limit of the co-located Facility.

#### **40.5.6.6 Increases In Established CRIS Values**

Any facility with an established CRIS value may at a later date request an increase in CRIS not to exceed the levels permitted by Section 40.5.6.5 of Attachment HH. An increase in CRIS may be requested by submitting (1) a CRIS-Only Request; (2) an Expedited Deliverability Study Request; or (3) a request for up to 2 MW of CRIS during the operating life of a facility in accordance with ISO Procedures, such request not being subject to a deliverability evaluation in a Cluster Study or Expedited Deliverability Study; *provided, however*, such request is subject to the limitations on permissible CRIS MW levels set forth in Section 40.5.6.5 of this Attachment HH, and, for facilities comprised of multiple Generators, this CRIS request is permitted only at the facility level, not at the individual Generator level. A Project that receives a CRIS increase

pursuant to this Section 40.5.6.6, to the extent it later combines with another Generator(s) to become a co-located resource (*e.g.*, Co-located Storage Resource; Hybrid Storage Resource or a Distributed Energy Resource), is not eligible for any additional CRIS increase above a single increase up to 2 MW, without proceeding through a deliverability evaluation in a Cluster Study or Expedited Deliverability Study.

For purposes of this Section 40.5.6.6, an “established CRIS value” for facilities subject to a CRIS set and reset period pursuant to Section 40.18.2.5.4, Section 40.18.2.6.1.1, Section 40.18.2.6.1.2, Section 40.18.2.7.2, or Section 40.18.2.7.3 of Attachment HH to the ISO OATT is the final CRIS value established after the termination of the CRIS set and reset period.

#### **40.5.7 Validation of Interconnection Request or CRIS-Only Request**

##### **40.5.7.1 Acknowledgment and Assessment of Interconnection Request or CRIS-Only Request**

40.5.7.1.1 Within ten (10) Business Days of the ISO’s receipt of an Interconnection Request or CRIS-Only Request submission within an Application Window that includes all of the items required for such request set forth in Section 40.5.5 above (or within fifteen (15) Business Days for the Transition Cluster Study Process), the ISO shall:

- (i) acknowledge receipt of the received Interconnection Request or CRIS-Only Request;
- (ii) confirm whether all of the elements of the Interconnection Request or CRIS-Only Request comply with the requirements in Section 40.5.5; except that for purposes of the validation, the ISO will not review for deficiencies: (i) the Facility model, for which any deficiencies will be addressed pursuant to Section 40.5.7.4, and (ii) any Transmission Owner-specific information submitted by the Interconnection Customer pursuant to Section 40.5.7.3,

which information will be reviewed by the applicable Transmission Owner pursuant to Section 40.5.7.3;

- (iii) confirm receipt of the Interconnection Customer's payment of the Application Fee and Study Deposit;
- (iv) identify the Connecting Transmission Owner(s) with which the Facility is proposing to connect and any Affected Transmission Owner(s) that the ISO is aware of;
- (v) make available the information submitted with the Interconnection Request or the CRIS-Only Request and its acknowledgement to the Connecting Transmission Owner(s) and any identified Affected Transmission Owner(s) for their confirmation within the ISO's review period that they are the appropriate Connecting Transmission Owner or Affected Transmission Owner for the Interconnection Request or CRIS-Only Request;
- (vi) if the Interconnection Request is to interconnect to a distribution facility, consult with the Connecting Transmission Owner to determine whether the Standard Interconnection Procedures apply; and
- (vii) notify Interconnection Customer whether the Interconnection Request or CRIS-Only Request is valid or includes any deficiencies.

#### 40.5.7.1.2 Cluster Study Agreement

40.5.7.1.2.1 As soon as practicable after the ISO determines in the Application Window that an Interconnection Request or CRIS-Only Request is valid or within ten (10) Business Days of the ISO making this determination in the Customer Engagement Window, the ISO will tender an executable version of the Cluster Study Agreement for

that Interconnection Request or CRIS-Only Request in the form set forth in Appendix 3 to this Attachment HH to the Interconnection Customer, the Connecting Transmission Owner(s), and any identified Affected Transmission Owner(s) or Affected System Owners.

40.5.7.1.2.2 The Interconnection Customer, Connecting Transmission Owner(s), and any Affected Transmission Owner(s) or Affected System Operator(s) must execute the Cluster Study Agreement within ten (10) Calendar Days of the NYISO's tender of the agreement.

40.5.7.1.2.3 If the ISO subsequently identifies additional or other Connecting Transmission Owner(s), Affected Transmission Owner(s), or Affected System Operator(s) for the Interconnection Request or CRIS-Only Request, the ISO will tender as soon as practicable an amended version of the Cluster Study Agreement, which the parties must execute within ten (10) Calendar Days of the NYISO's tender of the agreement.

#### **40.5.7.2 Addressing Deficiencies in Interconnection Request or CRIS-Only Request**

40.5.7.2.1 An Interconnection Request or CRIS-Only Request will not be considered to be a valid request until all items in Section 40.5.5 have been received during the Application Window and confirmed by the ISO. If an Interconnection Request or CRIS-Only Request fails to meet the requirements set forth in Section 40.5.5, the ISO shall notify the Interconnection Customer and Connecting Transmission Owner within the time period set forth in Section 40.5.7.1 of the reasons for such failure and that the Interconnection Request or CRIS-Only Request does not constitute a valid request.

40.5.7.2.2 The Interconnection Customer shall provide to the ISO the information required to address a deficiency identified by the ISO in accordance with Section 40.5.7.2.1 or this Section 40.5.7.2.3 within ten (10) Business Days after receipt of such notice (or within fifteen (15) Business Days for the Transition Cluster Study Process), but no later than the close of the Application Window. The Interconnection Customer's submission shall be limited to addressing the identified deficiency(ies). Within ten (10) Business Days of an Interconnection Customer's submission of the additional information concerning the identified deficiency (or within fifteen (15) Business Days for the Transition Cluster Study), the ISO will review the Interconnection Customer's submitted information and, if it determines the identified deficiency has not been addressed, will notify the Interconnection Customer of the remaining deficiency, which the Interconnection Customer must address in accordance with this Section 40.5.7.2.2. The ISO shall promptly forward such additional information provided by the Interconnection Customer to the Connecting Transmission Owner and Affected Transmission Owner.

40.5.7.2.3 If the ISO determines that Interconnection Customer's Interconnection Request or CRIS-Only Request is valid or that the Interconnection Customer has addressed any deficiencies identified by the ISO within the timeframe set forth in Section 40.5.7.2.2, the ISO shall notify the Interconnection Customer that the Interconnection Request or CRIS-Only Request is valid, and such Interconnection Request or CRIS-Only Request shall proceed as part of the ISO's Queue for further processing pursuant to the procedures in this Attachment HH. If Interconnection Customer fails to submit additional information required by the ISO within the timeframe set forth in Section 40.5.7.2.2 or fails to fully address any deficiencies in its Interconnection Request or CRIS-Only Request prior to the completion of the Application Window, the ISO shall deem the Interconnection Request or CRIS-Only Request withdrawn

pursuant to Section 40.6.4 (without the cure period provided in Section 40.6.4). Notwithstanding the ISO's validation of an Interconnection Request, an Interconnection Customer for that Interconnection Request must also satisfy the requirements for any Transmission Owner-specific technical information in accordance with the requirements in Section 40.5.7.3 and any subsequent information requests in accordance with the requirements in Section 40.5.7.4.

#### **40.5.7.3 Transmission Owner Review of Interconnection Customer's Submission of Transmission Owner-Specific Technical Information**

40.5.7.3.1 Within ten (10) Business Days of the ISO's notification to the Interconnection Customer that the Interconnection Request for its Cluster Study Project is validated pursuant to Section 40.5.7.2.3, the Interconnection Customer must submit to the Connecting Transmission Owner and Affected Transmission Owner identified for its Cluster Study Project any technical information requested by the Transmission Owner for purposes of Connecting Transmission Owner's and/or Affected Transmission Owner's performance of the Phase 1 Study.

40.5.7.3.2 The Transmission Owner shall review Interconnection Customer's submission of the information submitted pursuant to Section 40.5.7.3.1 and shall identify any deficiencies within fourteen (14) Calendar Days of the Interconnection Customer's provision of such information in accordance with Section 40.5.7.3.1 and within ten (10) Calendar Days of any additional information submission by the Interconnection Customer pursuant to Section 40.5.7.3.3. The Transmission Owner's review of this information request is separate from the ISO's review of the validity of the Interconnection Request.

40.5.7.3.3 If the Transmission Owner identifies any deficiency, Interconnection Customer shall provide additional information to the Transmission Owner to cure such deficiency within ten (10) Calendar Days.

40.5.7.3.4 If the ISO, in consultation with the Connecting Transmission Owner or Affected Transmission Owner, determines that Interconnection Customer has not cured a deficiency in the Transmission Owner-specific information prior to five (5) Business Days of the scheduled conclusion of the Customer Engagement Window, the Interconnection Request shall be withdrawn pursuant to Section 40.6.4 (without the cure period provided in Section 40.6.4).

#### **40.5.7.4 Subsequent Information Request**

At any time following the ISO's validation of an Interconnection Request or CRIS-Only Request, if the ISO, Connecting Transmission Owner, or Affected Transmission Owner finds: (i) that the technical data provided by Interconnection Customer, including the Facility model, is incomplete or contains errors or (ii) that it requires additional information from Interconnection Customer to perform its responsibilities required under this Attachment HH, then such entity shall request that Interconnection Customer provide such information. Interconnection Customer shall submit such information within ten (10) Business Days of the information request. If Interconnection Customer: (i) fails to timely submit the requested information or (ii) does not address any deficiencies with its Facility model prior to the Scoping Meeting in the Customer Engagement Window, the Interconnection Customer's Interconnection Request or CRIS-Only Request shall be withdrawn from the Queue.

#### **40.5.8 OASIS Posting**

40.5.8.1 The ISO will maintain on its OASIS or a publicly accessible portion of its website a list of all valid Interconnection Requests and CRIS-Only Requests. The list will identify, for each Interconnection Request or CRIS-Only Request, as applicable: (i) the maximum summer and winter megawatt electrical output; (ii) the location by county and state; (iii) the station or transmission line or lines where the interconnection will be made; (iv) the



projected Initial Backfeed Date, Synchronization Date and Commercial Operation Date; (v) the status of the Interconnection Request or CRIS-Only Request, including Queue Position; (vi) the identity of the Interconnection Customer; (vii) the availability of any studies related to the Interconnection Request or CRIS-Only Request; (viii) the date of the Interconnection Request; (ix) the type of Facility to be constructed; and (x) for Interconnection Requests that have not resulted in a completed interconnection, an explanation as to why it was not completed. The ISO shall also post any known deviations in date proposed by the Facility in this Section 40.5.8.1(iv), above. Phase 1 Study reports, the Phase 1 Cost Estimate Summary Report, and the Cluster Study Report shall be posted to the ISO password-protected website as soon as practicable following the conclusion, as applicable, of the Phase 1 Study or Phase 2 Study.

## **40.6 Queue Position/ Modification/ Withdrawal/ Withdrawal Penalties**

### **40.6.1 Queue Position**

#### **40.6.1.1 Assignment of Queue Position**

The ISO shall assign a Queue Position for an Interconnection Customer's Interconnection Request or CRIS-Only Request based upon the date and time of the ISO's receipt during the Application Window of the Interconnection Customer's complete submission of an Interconnection Request or CRIS-Only Request pursuant to Sections 40.5.4 and 40.5.5. If the ISO validates the Interconnection Request or CRIS-Only Request pursuant to Section 40.5.7, then the Interconnection Request or CRIS-Only Request shall retain its assigned Queue Position based on the date and time the submission was originally filed.

#### **40.6.1.2 Higher Queue Position**

A higher "Queue Position" assigned to an Interconnection Request or CRIS-Only Request is one that has been placed "earlier" in the Queue in relation to another Interconnection Request or CRIS-Only Request that is assigned a lower Queue Position. All Interconnection Requests and CRIS-Only Requests submitted and validated in a single Application Window that are a part of a single Cluster for the Cluster Study Process shall be considered equally queued as between the Interconnection Requests and CRIS-Only Requests within the same Cluster; *provided, however*, that an Interconnection Request's individual Queue Position will be used to determine priority as between Interconnection Requests in the same Cluster in the event of a Physical Infeasibility determination as set forth in Section 40.7.3. Interconnection Requests and CRIS-Only Requests that are part of a particular Class Year Study or Cluster Study shall be considered to have a higher Queue Position than Interconnection Requests and CRIS-Only Requests that are part of a subsequent Cluster Study.

#### **40.6.2 Transferability of Queue Position**

An Interconnection Customer may transfer its Queue Position for its Interconnection Request or CRIS-Only Request to another entity only if: (i) such entity acquires the specific Facility identified in the Interconnection Request or CRIS-Only Request, (ii) the Point of Interconnection does not change, (iii) for an Interconnection Request, the acquiring entity demonstrates Site Control for its Project, (iv) the transferring Interconnection Customer is up-to-date on payments to the ISO, and (v) the acquiring entity submits any deposits required for its Interconnection Request or CRIS-Only Request under this Attachment HH. As a result of such a transfer, the acquiring entity shall become the Interconnection Customer of the specific Facility identified in the Interconnection Request or CRIS-Only Request. After such transfer, the ISO will refund to the transferring Interconnection Customer any refundable cash portion of the Study Deposit, Readiness Deposit(s), or Site Control Deposit or provide written authorization for Interconnection Customer to request that the bank cancel any remaining letter of credit or surety bond provided as a deposit.

#### **40.6.3 Modifications**

An Interconnection Customer may request an ISO determination as to whether an Interconnection Customer's proposed modification to any information provided in the Interconnection Request or CRIS-Only Request for its project is permitted or is a Material Modification by submitting to the ISO: (i) a Facility Modification Request in the form of Appendix 5 to these Standard Interconnection Procedures, (ii) a study deposit in cash in the amount of \$10,000, and (iii) any supporting information or documentation required under this Section 40.6.3; *provided, however*, that an Interconnection Customer is not required to provide a study deposit to submit a permitted extension of its Commercial Operation Date pursuant to

Section 40.6.3.4, a change to its Point of Interconnection pursuant to Section 40.6.3.1, a name change for the Cluster Study Project, or a name change for the Interconnection Customer. Any proposed modification to any information provided in the Interconnection Request or CRIS-Only Request must be accompanied by any resulting updates to the models included in such requests to the extent required in the Facility Modification Request. Except as otherwise provided in Sections 40.6.3.1 and 40.6.3.7, an Interconnection Customer cannot request a modification to the information provided in its validated Interconnection Request or CRIS-Only Request for its Cluster Study Project until the completion of the later of the Final Decision Period or Additional SDU Study Decision Period in which its Cluster Study Project is participating. Except as otherwise indicated in Section 40.6.3.1, the Interconnection Customer shall retain its Queue Position if its requested modification is permitted in accordance with Sections 40.6.3.4 or is determined not to be Material Modifications pursuant to this Section 40.6.3.

40.6.3.1        Within five (5) Business Days after the ISO posts the Cluster Study Project List during the Customer Engagement Window pursuant to Section 40.7.2, the Interconnection Customer may propose a modification to the Point of Interconnection in its Interconnection Request in accordance with the requirements in Section 40.7.2.3 to this Attachment HH.

40.6.3.2        Upon the ISO's receipt of an Interconnection Customer's Facility Modification Request, the ISO shall commence and perform any necessary additional studies as soon as practicable, but in no event shall the ISO commence such studies later than thirty (30) Calendar Days after receiving Interconnection Customer's complete Facility Modification Request; *provided, however*, that: (i) the ISO will not perform a study for a proposed modification to a Point of

Interconnection pursuant to Section 40.6.3.1; (ii) for a modification subject to the Commercial Operation Date extension requirements in Section 40.6.3.5, the ISO and Connecting Transmission Owner shall assess the proposed modification in accordance with the requirements in 40.6.3.5; and (iii) for a proposed technological change pursuant to Section 40.6.3.7, the ISO shall assess the proposed modification in accordance with the requirements in Section 40.6.3.7. Any additional studies resulting from such modification shall be done at Interconnection Customer's cost.

40.6.3.3 Prior to making any modification other than those specifically permitted by Section 40.6.3.4, Interconnection Customer shall first request that the ISO evaluate whether such modification is a Material Modification in accordance with the requirements in this Section 40.6.3. In response to Interconnection Customer's request, the ISO shall evaluate the proposed modifications, including performing any studies required by this Section 40.6.3, prior to making them and inform the Interconnection Customer in writing of whether the modifications would constitute a Material Modification. Any change to the Point of Interconnection except the change deemed acceptable under Section 40.6.3.1 or so allowed elsewhere shall constitute a Material Modification. Any change in requested CRIS from the requested CRIS set forth in the Interconnection Request or CRIS-Only Request or any request for CRIS not included in the Interconnection Request (*i.e.*, if the Interconnection Request included only a request for ERIS) or CRIS-Only Request shall constitute a Material Modification. Except as otherwise set forth in Section 40.6.3.1 above, any modification to a

Cluster Study Project during a Cluster Study Process for which it is a member of the Cluster shall constitute a Material Modification. For proposed modifications deemed to be Material Modifications, the Interconnection Customer may withdraw the proposed modification request or proceed with a new Interconnection Request or CRIS-Only Request in a subsequent Cluster Study Process for such modification.

40.6.3.4 Extensions of the proposed Commercial Operation Date will not be Material Modifications if the proposed Commercial Operation Date is within four (4) years from the following date:

40.6.3.4.1 For all Facilities that participated in a Cluster Study Process, the date the Interconnection Customer and all other Interconnection Customers remaining in the Final Decision Period for the Cluster Study provided the required cash or Security in the Final Decision Round of the Final Decision Period (i.e., the completion of the Cluster Study).

40.6.3.4.2 For all Large Facilities and for Small Generating Facilities that participated in a Class Year Interconnection Facilities Study subject to Attachment S to the ISO OATT, the date the Interconnection Customer and all other Interconnection Customers remaining in the Class Year provided the required cash or Security as part of a Class Year Interconnection Facilities Study (i.e., completion of the Class Year).

40.6.3.4.3 For Small Generating Facilities that were subject to the Small Generator Interconnection Procedures in Attachment Z to the ISO OATT and did not

participate in a Class Year Interconnection Facilities Study or Cluster Study, the date the ISO tendered the SGIA to the Interconnection Customer.

40.6.3.5 An Interconnection Customer may request an extension of its Commercial Operation Date beyond the limit specified in Section 40.6.3.4 or beyond the limit of a previous extension that the ISO determined was not a Material Modification. Such request for an extension will not be a Material Modification only if the ISO determines that all three components of the extension requirements set forth in Sections 40.6.3.5.1, 40.6.3.5.2, and 40.6.3.5.3 have been met.

40.6.3.5.1 An Interconnection Customer must satisfy the first component of the extension requirements by meeting the requirements set forth in Section 40.6.3.5.1.1, 40.6.3.5.1.2, or 40.6.3.5.1.3 for an extension of its Commercial Operation Date.

40.6.3.5.1.1 Interconnection Customer's requested extension of its Commercial Operation Date for its Facility is on or before May 2, 2028; or

40.6.3.5.1.2 Interconnection Customer demonstrates (via an officer certification) that both: (i) its Facility cannot meet the timeframe in Section 40.6.3.4 or a previously granted extension due to: (A) its technology type, or (B) the sequencing of work on the transmission or distribution system that is beyond its control (e.g., unavailability of required system outages, delays in the completion of facilities included in the base case of the Small Generator facilities study, Class Year Study, or Cluster Study for the Facility that are required for the Facility to enter Commercial Operation at the Point of

Interconnection), and (ii) its project is still progressing to the extent reasonably possible; or

40.6.3.5.1.3 An Interconnection Customer demonstrates (via an officer certification) that it has made reasonable progress in the development of its project against milestones set forth in the Interconnection Agreement or Section 40.6.3.5.2 (*e.g.*, (i) completion of engineering design, (ii) major equipment orders, (iii) commencement and continuation of construction of the Facility and associated Attachment Facilities, Distribution Upgrades, or System Upgrade Facilities, as applicable, (iv) completion of applicable permitting process, (v) application of the applicable primary siting permitting process deemed complete with demonstration that project is on course to obtain final permit in time to meet requested Commercial Operation Date).

40.6.3.5.1.4 Upon the ISO's request, an Interconnection Customer shall promptly provide the ISO with information concerning its demonstration that its project is progressing to the extent reasonably possible pursuant to Section 40.6.3.5.1.2 or has made reasonable progress pursuant to Section 40.6.3.5.1.3.

40.6.3.5.1.5 An Interconnection Customer that relied on its satisfaction of certain milestones to extend its Commercial Operation Date in accordance with the requirements in this Section 40.6.3.5.1 must demonstrate satisfaction of additional milestones for any subsequent requested extensions.

40.6.3.5.2 As the second component of the extension requirements, Interconnection Customer must also provide the ISO with a milestone schedule for the interconnection of the Project that it has agreed upon with the Connecting



Transmission Owner that meets the requested extended Commercial Operation Date. The Connecting Transmission Owner's agreement to the revised milestone schedule shall not be unreasonably withheld.

40.6.3.5.3 As the third component of the extension requirements, the ISO, in consultation with the Connecting Transmission Owner or Affected Transmission Owner, must either determine that: (i) a Cost Estimate Update is not required to update the cost estimates of the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, or System Upgrade Facilities identified in the Small Generator facilities study, Class Year Study, or Cluster Study for the Facility, or (ii) if the ISO, in consultation with the Connecting Transmission Owner or Affected Transmission Owner, determines that a Cost Estimate Update is required, the Interconnection Customer must agree in writing that the Cost Estimate Update be performed, that it will be responsible for the costs of such evaluation, and that its extended Commercial Operation Date shall be subject to its acceptance of, and its posting of any additional Security, of any increase in the cost estimate as described in Section 40.6.3.5.3.3.

40.6.3.5.3.1 To determine whether a Cost Estimate Update is required and when such study will be performed, the ISO, in consultation with the Connecting Transmission Owner and/or any Affected Transmission Owner(s), will consider the requested length of the extension, the duration in time since the cost estimates were determined in a Small Generator facilities study, Class Year Study, or Cluster Study, the updated milestone schedule for the Project

agreed upon by the Interconnection Customer and Connecting Transmission Owner, and whether the interconnection facilities are shared with other projects. If the ISO determines, in consultation with the Connecting Transmission Owner and/or any Affected Transmission Owner(s), that a Cost Estimate Update is required, the ISO will provide the Interconnection Customer its basis for requiring such update. The need and timeframe for the update will be included in the interconnection agreement or an amended version of the interconnection agreement for the project, unless the Cost Estimate Update will be performed prior to the execution, or the unexecuted filing, of the interconnection agreement.

40.6.3.5.3.2 The Connecting Transmission Owner or Affected Transmission Owner will perform, at Interconnection Customer's expense, any Cost Estimate Update agreed upon with the Interconnection Customer to update the cost estimates of the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, or System Upgrade Facilities identified in the Small Generator facilities study, Class Year Study, or Cluster Study for the Facility. If the Connecting Transmission Owner or Affected Transmission Owner determines that equipment identified in the applicable interconnection study for the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, or System Upgrade Facilities for Interconnection Customer's project is no longer available, the Connecting Transmission Owner or Affected Transmission Owner may, as part of its Cost

Estimate Update, identify and provide the cost estimate for any replacement equipment.

40.6.3.5.3.3 If the Cost Estimate Update identifies revised cost estimates, including for any replacement equipment, the Interconnection Customer will only be permitted to proceed with its requested Commercial Operation Date extension if it accepts within ten (10) Business Days of the conclusion of the Cost Estimate Update its cost allocation for, and provides cash or posts Security to, the Connecting Transmission Owner for, the revised cost estimates. In such case, the updated cost estimates will be included in the interconnection agreement for the project. If the project has an effective interconnection agreement, the parties will amend the agreement to include this information. Any updated cost estimate and Security provided in accordance with this section shall be subject to the Security forfeiture requirements in Section 40.16.1 and the requirements for future cost responsibility set forth in Section 40.16.3.

40.6.3.6 As soon as it becomes apparent to Interconnection Customer that the most recent proposed Initial Backfeed Date posted on the Queue is infeasible, and also prior to the expiration of the proposed Initial Backfeed Date posted on the ISO Queue, Interconnection Customer is obligated to provide the ISO with notice of any proposed extensions of the proposed Initial Backfeed Date, proposed Synchronization Date, or proposed Commercial Operation Date.

40.6.3.7 Technological Change Procedure. A technological change that satisfies the definition of a Permissible Technology Advancement or that the ISO

determines is not a Material Modification under this Technological Change Procedure is a permissible modification that will not result in an Interconnection Customer losing its Queue Position if it elects to proceed with the requested modification; provided however, if an Interconnection Customer in an ongoing Cluster Study requests a technological change, such request (1) must be submitted to the ISO within no later than five (5) Business Days after the ISO posts the Cluster Study Project List during the Customer Engagement Window pursuant to Section 40.7.2 of this Attachment HH and (2) must fully satisfy the requirements in Section 40.6.3.7.1 of this Attachment HH no later than the conclusion of this five (5) Business Day period. Technological changes proposed after five (5) Business Days after the ISO posts the Cluster Study Project List will be deemed material during the remainder of the Cluster Study.

40.6.3.7.1 An Interconnection Customer seeking to modify its proposed Facility based upon a change to the turbines, inverters, or plant supervisory controls or other similar advancements to the existing technology proposed in the Interconnection Customer's Interconnection Request shall submit, in accordance with Section 40.6.3, a Facility Modification Request, study deposit, and any support relied on by the Interconnection Customer to show that the change is a Permissible Technological Advancement or not a Material Modification. Upon receipt of a Facility Modification Request that identifies a request for a technological change, the ISO, in consultation with the Connecting Transmission Owner(s) to the extent practicable, shall first conduct a review of the technological change and supporting information to determine whether such

change constitutes a Permissible Technological Advancement. The ISO shall commence such review within thirty (30) Calendar Days after receiving notice of Interconnection Customer's complete Facility Modification Request. If the Facility Modification Request demonstrates that the proposed technological change satisfies the definition of Permissible Technological Advancement and does not result in a change to the electrical characteristics that is (i) greater than two (2) percent voltage drop at the Point of Interconnection or (ii) greater than 100 amperes short circuit contribution, then no additional study is required and the technological change shall constitute a Permissible Technological Advancement.

40.6.3.7.2 If the ISO identifies that additional studies are required to determine whether the technological change constitutes a Permissible Technological Advancement, the ISO shall reject the requested technological change; however, the Interconnection Customer may resubmit a Facility Modification Request for the same technological change at the conclusion of the Cluster Study Process.

#### **40.6.4 Withdrawal**

40.6.4.1 The Interconnection Customer may withdraw its Interconnection Request or CRIS-Only Request at any time by written notice of such withdrawal to the ISO. In addition, if the Interconnection Customer fails to adhere to all requirements of these Standard Interconnection Procedures, except as provided in Section 40.24.5 (Disputes), the ISO shall deem the Interconnection Request or CRIS-Only Request to be withdrawn and shall provide written notice to the Interconnection Customer of the deemed withdrawal and an explanation of

the reasons for such deemed withdrawal. Upon receipt of such written notice, the Interconnection Customer shall have a cure period of fifteen (15) Business Days in which to either respond with information or actions that cures the deficiency or to notify the ISO of its intent to pursue Dispute Resolution; except that:

(i) for a failure to timely make a payment or submit or maintain a deposit required by Attachment HH, an Interconnection Customer shall have a ten (10) Business Day cure period to submit payment or deposit in an acceptable form to the ISO, and

(ii) the cure period set forth in this Section 40.6.4.1 does not extend specific deadlines set forth in Section 40.5.7.2 for an Interconnection Customer to cure a deficiency in its Interconnection Request or CRIS-Only Request identified by the ISO or in Section 40.5.7.3.3 for an Interconnection Customer to cure a deficiency in its submission of the required Transmission Owner-specific information.

40.6.4.2 Withdrawal shall result in the loss of the Interconnection Customer's Queue Position. If an Interconnection Customer disputes the withdrawal and loss of its Queue Position, then during Dispute Resolution, the Interconnection Customer's Interconnection Request or CRIS-Only Request is eliminated from the Queue until such time that the outcome of Dispute Resolution would restore its Queue Position. An Interconnection Customer that withdraws or is deemed to have withdrawn its Interconnection Request or CRIS-Only Request shall pay to the ISO and Connecting Transmission Owner all costs that the ISO and Connecting Transmission Owner prudently incurred with respect to that Interconnection Request or CRIS-Only Request prior to the receipt of notice described above. The Interconnection Customer must pay all monies due to the ISO and Connecting Transmission Owner before it is allowed to obtain any Cluster Study data or results.

40.6.4.3 If Interconnection Customer withdraws its Interconnection Request or CRIS-Only Request, or is deemed withdrawn by the ISO, pursuant to this Section 40.6.4, the ISO shall (i) update the OASIS Queue posting to remove the Queue Position for the Interconnection Request or CRIS-Only Request, and (ii) conduct a final reconciliation of Interconnection Customer's costs and any applicable Withdrawal Penalties and follow the process set forth in 40.24.3 for returning or cancelling deposits. The ISO shall also refund to the Interconnection Customer the refundable cash portion of the Interconnection Customer's Site Control Deposit, if applicable, or provide written authorization for Interconnection Customer to request that the bank cancel any remaining letter of credit or surety bond provided as a deposit.

40.6.4.4 In the event of such withdrawal, the ISO and Connecting Transmission Owner, subject to non-disclosure arrangements consistent with Section 40.24.1, shall provide, at Interconnection Customer's request, supporting documentation, workpapers, and databases or data that the ISO and Connecting Transmission Owner developed in the preparation of the applicable study conducted up to the date of withdrawal of the Interconnection Request or CRIS-Only Request.

#### **40.6.5 Withdrawal Penalties**

##### **40.6.5.1 Interconnection Requests and CRIS-Only Requests Subject to Withdrawal Penalties**

40.6.5.1.1 If an Interconnection Customer withdraws its Interconnection Request or CRIS-Only Request, or such Interconnection Request or CRIS-Only Request is deemed withdrawn by the ISO, either during the Application Window or during the Customer Engagement Window up to five (5) Business Days after the ISO posts the Cluster Study Project List in the Customer Engagement Window pursuant to Section 40.7.2.2, the Interconnection Request or CRIS-Only Request shall not be subject to a Withdrawal Penalty.

40.6.5.1.2 If an Interconnection Customer withdraws its Interconnection Request or CRIS-Only Request, or such Interconnection Request or CRIS-Only Request is deemed withdrawn by the ISO, after the periods sets forth in Sections 40.6.5.1.1, the Interconnection Request or CRIS-Only Request may be subject to a Withdrawal Penalty as determined based on when in the Cluster Study Process the Interconnection Request or CRIS-Only Request withdraws or is deemed withdrawn by the ISO as detailed in Sections 40.7.6, 40.10.9, and 40.15.5 to this Attachment HH. If the Interconnection Customer has accepted its Project Cost Allocation and paid cash or posted Security in the Final Round of the Final Decision Period or Additional SDU Study Decision Period for any required Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrades Facilities, and/or System Deliverability Upgrades, the Interconnection Customer's Security will be subject to the forfeiture requirements in Section 40.16.1.

#### **40.6.5.2            Distribution of Withdrawal Penalties**

40.6.5.2.1 For each Cluster Study Process, the ISO shall hold all Withdrawal Penalty Funds that it has collected from any Cluster Study Project(s) participating in the Cluster for that study that withdraw or are deemed withdrawn by the ISO at or before the completion of the later of: (i) the Final Decision Period or (ii) the Additional SDU Study Decision Period for that Cluster Study Process. The ISO shall post the balance of Withdrawal Penalty Funds held by the ISO but not yet dispersed on its OASIS or a publicly accessible portion of its website and update this posting on a quarterly basis.

40.6.5.2.2 The ISO shall first use any collected Withdrawal Penalty Funds to offset the study costs of the Cluster Study Process, as applicable, that were incurred by those Interconnection Customers: (i) for the Cluster Study Project(s) in that Cluster that accepted their



Project Cost Allocation and paid cash or posted Security (if any required) for any Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, and/or System Upgrade Facilities identified in the study process and (ii) for the CRIS-Only Cluster Study Project(s) in that Cluster: (A) that accepted their Deliverable MW or Project Cost Allocation and paid cash or posted Security (if any required) for any System Deliverability Upgrades or (B) that participated in an Additional SDU Study that was not completed for that Cluster Study Process ("Payment Eligible Projects").

40.6.5.2.3 Within one hundred fifty (150) Calendar Days of the completion of the later of, as applicable, the Final Decision Period or Additional SDU Study Decision Period for the Cluster Study Process, the ISO shall refund to the Interconnection Customers of each Payment Eligible Project a share of the Withdrawal Penalty Funds to offset the study costs it incurred in that Cluster Study Process. The ISO shall calculate the refund payment for each individual Payment Eligible Project by dividing the total Withdrawal Penalty Funds amount by the number of Payment Eligible Projects. The ISO shall then provide this refund payment to the Interconnection Customer for each Payment Eligible Project; *provided, however*, that an Interconnection Customer shall not receive from the ISO a higher study refund payment for its Payment Eligible Project than the total payments it made to the ISO for the actual study costs of the Payment Eligible Project in that particular Cluster Study Process.

40.6.5.2.4 If, after the ISO makes the payments required by Section 40.6.5.2.3, there remains Withdrawal Penalty Funds for that Cluster, the ISO shall then calculate and apply the Commercial Operation Incentive Payment Amount for that Cluster.

40.6.5.2.5 The ISO shall calculate the Commercial Operation Incentive Payment Amount for a Cluster by dividing the remaining Withdrawal Penalty Funds by the total number of Payment Eligible Projects except for CRIS-Only Cluster Study Projects.

40.6.5.2.6 The ISO shall hold the remaining Withdrawal Penalty Funds for the Cluster until the Commercial Operation Incentive Payment Amount has been applied for each Payment Eligible Project, except CRIS-Only Cluster Study Projects, as follows. If a Payment Eligible Project enters Commercial Operation, the ISO shall pay the Interconnection Customer for that Payment Eligible Project the Commercial Operation Incentive Payment Amount. If a Payment Eligible Project withdraws or is deemed withdrawn by the ISO prior to entering Commercial Operation, it shall forfeit at that time its Commercial Operation Incentive Payment Amount, which amount the ISO shall use to offset the ISO's administration costs.

40.6.5.2.7 The following is an example of the distribution of the Withdrawal Penalty Fund pursuant to this Section 40.6.5.2.

40.6.5.2.7.1 Assume at the conclusion of a Cluster Study Process that there are ten Payment Eligible Projects and \$2,000,000 in Withdrawal Penalty Funds. The ISO will first determine the share of study costs that will be refunded to the Payment Eligible Projects by dividing the \$2,000,000 by 10, which results in a refund payment share for each project of \$200,000. The ISO would make this refund payment to each Payment Eligible Project up to the amount in actual study cost such project paid in that Cluster Study Process. Accordingly, if a Payment Eligible Project only paid \$100,000 in actual study costs during the Cluster Study Process, its refund payment would be limited to \$100,000, and the remaining \$100,000 would be subject to the second stage of the Withdrawal Penalty Fund distribution.

40.6.5.2.7.2 Assume for this second stage, that \$500,000 remained following the study cost refund payments. The ISO would then calculate the Commercial Operation Incentive Payment Amount. This would be calculated as the remaining \$500,000 divided by 10 or a \$50,000 amount for which each Payment Eligible Project would be eligible. Assume 7 of the 10 Payment Eligible Projects entered into Commercial Operation. In such case, those 7 projects would each receive the \$50,000 Commercial Operation Incentive Payment Amount. The remaining \$150,000 associated with the 3 projects that did not enter Commercial Operation would be forfeited and used by the ISO to offset its administration costs.

## **40.7 Customer Engagement Window/ Phase 1 Entry Decision Period**

### **40.7.1 Customer Engagement Window Start Date, Duration, and Scope**

40.7.1.1 The Customer Engagement Window for the Cluster Study Process shall commence on the first Business Day after the end date of the Application Window.

40.7.1.2 The Customer Engagement Window period shall be a seventy (70) Calendar Day period for a Cluster Study Process; except as follows:

(i) for the Transition Cluster Study Process, this period shall complete at the later of: (A) a ninety (90) Calendar Day period and (B) the completion of the Final Decision Period for the Class Year Study for Class Year 2023; and

(ii) for subsequent Cluster Study Processes, this period shall be extended to the extent required by Section 40.5.1.3.

40.7.1.3 During the Customer Engagement Window: (i) the ISO shall complete its review and validation of Interconnection Requests submitted, but not validated, during the Application Window, (ii) the ISO shall post the Cluster Study Project List in accordance with the requirements in Section 40.7.2, (iii) the Connecting Transmission Owner shall perform the Physical Infeasibility Screening of the proposed interconnections of the Cluster Study Projects in accordance with the requirements in Section 40.7.3, and (iv) the ISO shall conduct the Scoping Meeting in accordance with the requirements in Section 40.7.4.

### **40.7.2 Posting of Cluster Study Project List**

40.7.2.1 Within ten (10) Business Days of the commencement of the Customer Engagement Window, the ISO shall post on its OASIS, or a publicly accessible portion of its website, the Cluster Study Project List, which is a list of the validated Interconnection Requests and CRIS-Only Requests for that Cluster. The list shall identify for each Interconnection

Request and each CRIS-Only Request: (1) the requested amount of Energy Resource Interconnection Service and/ Capacity Resource Interconnection Service; (2) the location by county and state; (3) the substation or transmission line or lines of the requested Point of Interconnection; (4) the proposed Initial Backfeed Date; (5) the type of Interconnection Service requested; (6) the type of Facility to be constructed, including fuel types, such as coal, natural gas, solar, wind, storage, or combined resource; (7) the number of proposed generator leads; (8) Queue Position; (9) whether the Interconnection Request or CRIS-Only Request is for a Contingent Project; and (10) the applicable Connecting Transmission Owner and any identified Affected Transmission Owners.

40.7.2.2 If an Interconnection Customer withdraws its Interconnection Request or CRIS-Only Request, or such Interconnection Request or CRIS-Only Request is deemed withdrawn by the ISO, during the Customer Engagement Window up to five (5) Business Days after the ISO posts the Cluster Study Project List, the Interconnection Request shall not be subject to a Withdrawal Penalty as set forth in Section 40.7.6.2.

40.7.2.3 Within five (5) Business Days after the ISO posts the Cluster Study Project List, the Interconnection Customer may propose a modification to the Point of Interconnection in its Interconnection Request for its Cluster Study Project other than for a Contingent Project; *provided, however,* that such modification cannot modify the electrical characteristics of its Cluster Study Project. The Interconnection Customer shall submit to the ISO any requested change to the Point of Interconnection through the Facility Modification Request set forth in Appendix 5. If the Interconnection Customer submits a Facility Modification Request requesting to change the Point of Interconnection, then the ISO shall modify the priority designation of the Queue Position assigned to its Interconnection Request pursuant to Section 40.6.1.1 based on the

date and time of the ISO's receipt of the Interconnection Customer's submission of the completed Facility Modification Request form requesting the change and will notify the Connecting Transmission Owner and Affected Transmission Owner of this change when notifying the Interconnection Customer of its modified Queue Position

### **40.7.3 Physical Infeasibility Screening**

40.7.3.1 During the Customer Engagement Window, the Connecting Transmission Owner and any Affected Transmission Owner(s) identified pursuant to Section 40.5.7.1.1 in connection with the proposed interconnection of a Cluster Study Project (except for CRIS-Only Cluster Study Projects) shall review the proposed interconnection of the Cluster Study Project to assess whether the proposed Point of Interconnection is Physically Infeasible as defined in Section 40.7.3.2 and shall provide the ISO their written assessment.

40.7.3.2 An Interconnection Request shall be deemed Physically Infeasible if:

- (1) (i) the substation for the selected Point of Interconnection does not have any available bus positions and (ii) (a) is not expandable electrically or within the existing substation footprint, or (b) adjacent usable vacant land is not available, or (c) proposals by Interconnection Customer are inconsistent with Good Utility Practice or Applicable Reliability Requirements; or
- (2) a viable tie line cable route(s) cannot be established from either the Point of Change of Ownership to the Point of Interconnection or, where these points are the same, a viable route cannot be established within or from the fence line; or
- (3) (i) the project capacity exceeds the ratings of equipment at the substation selected for the Point of Interconnection, (ii) replacement equipment that would be adequately rated for the project capacity is not commercially available from an approved supplier and

within applicable specifications set by the Transmission Owner, and (iii) an alternative upgrade is not physically feasible (e.g., higher voltage Point of Interconnection substation). For purposes of this subpart (3), “commercially available” equipment shall mean equipment manufactured by an approved supplier of a particular Connecting Transmission Owner and conforming with engineering specifications and procedures of the Connecting Transmission Owner. This section does not create an obligation of a Transmission Owner to acquire through eminent domain or otherwise any real property, subject to the Land of Other Property Owners requirements in Section 5.13 of the Standard Interconnection Agreement in Appendix 15 to this Attachment HH.

40.7.3.3 The ISO shall issue a report with the results of the Physical Infeasibility Screening for that Cluster. If, as a result of the Physical Infeasibility Screening or at any time in the Cluster Study Process, the ISO determines, in consultation with the Connecting Transmission Owner or Affected Transmission Owner, that the proposed interconnection of a Cluster Study Project is Physically Infeasible as defined in Section 40.7.3.2, then the ISO shall notify the Interconnection Customer that the proposed interconnection of its Cluster Study Project is Physically Infeasible and shall withdraw the Interconnection Request for the project pursuant to Section 40.6.4.

40.7.3.4 If: (i) more than one Interconnection Request in a Cluster proposes to interconnect at the same Point of Interconnection on the New York State Transmission System or Distribution System and (ii) all of the Interconnection Requests proposing to interconnect at that location are not able in the aggregate to interconnect due to a Physical Infeasibility, then an Interconnection Request with a Queue Position with a higher designated priority shall have priority over an Interconnection Request with a Queue Position with a lower designated priority

(including as between Interconnection Requests within the same Cluster) for access to that Point of Interconnection for purposes of Physical Infeasibility determinations.

40.7.3.5 For purposes of applying Section 40.7.3.4 if one or more of the Cluster Study Projects proposing to interconnect at the same Point of Interconnection are Contingent Projects, the Transmission Owner shall perform two Physical Infeasibility assessments.

40.7.3.5.1 For the first Physical Infeasibility assessment, the Transmission Owner (i) will assume all Pending Projects, including those associated with Contingent Projects, that their associated Pending Projects have accepted their Project Cost Allocation and provided the required cash or Security in, as applicable, the ongoing Class Year Study, Cluster Study, Additional SDU Study, or Small Generator Interconnection Procedures facilities study and (ii) will assess whether, with these Pending Projects assumed in the baseline of the system used in the assessment, there are Physical Infeasibility issues for any remaining Cluster Study Projects that are not Contingent Projects. This first assessment will be used for determining which Interconnection Requests for the Cluster Study Projects that are not Contingent Projects are Physically Infeasible if the Pending Project(s) proceed to accept their Project Cost Allocation and provide the required cash or Security in, as applicable, the ongoing Class Year Study, Cluster Study, Additional SDU Study, or Small Generator Interconnection Procedures facilities study.

40.7.3.5.2 For the second Physical Infeasibility assessment, the Transmission Owner: (i) will assume for all Pending Projects, including those associated with Contingent Projects, that the Pending Projects do not accept their Project Cost Allocation and/or do not provide the required cash or Security in, as applicable, the ongoing Class Year Study, Cluster Study, or Additional SDU Study, or Small Generator Interconnection Procedures facilities study and (ii)



assuming all of the Pending Projects are not used in the baseline of the system used in the assessment, will assess all Cluster Study Projects, including Contingent Projects, equally for their access to the Point of Interconnection and will apply the priority rules in Section 40.7.3.4.

#### **40.7.4 Scoping Meeting**

During the Customer Engagement Window, and after the ISO posts the Physical Infeasibility screening report, the ISO shall hold a group Scoping Meeting with all Interconnection Customers with validated Interconnection Requests and CRIS-Only Requests included in the Cluster for that Cluster Study Process, along with the Connecting Transmission Owners and any Affected Transmission Owner(s) identified in connection with the Interconnection Requests. The ISO will provide notice of the Scoping Meeting by sending notice to the contact list of the Cluster Study Projects included in the Cluster Study Project List and the applicable Connecting Transmission Owners, Affected Transmission Owners, and Affected System Operators. In setting the date for the Scoping Meeting, the ISO will consult with the Transmission Owners concerning the timeframe for completion of the Physical Infeasibility Screening, with the Scoping Meeting to take place no later than the last Business Day before the close of the Customer Engagement Window.

The purpose of the Scoping Meeting shall be to reinforce the roles and responsibilities of all parties in the interconnection process, including to discuss the study scope for the Cluster Study, the schedule, and the work plan, to exchange information including any transmission data that would reasonably be expected to impact such interconnection options, to discuss the results of the Physical Infeasibility Screening, including summarizing potential Physical Infeasibility issues, and to analyze such information. The ISO, Connecting Transmission Owner, Affected Transmission Owner(s), and Interconnection Customer will also bring to the meeting personnel

and other resources as may be reasonably required to accomplish the purpose of the meeting in the time allocated for the meeting. The duration of the meeting shall be sufficient to accomplish its purpose. If the Scoping Meeting consists of more than one Interconnection Customer, the ISO shall issue, no later than fifteen (15) Business Days after the commencement of the Customer Engagement Window, and Interconnection Customer shall execute, a non-disclosure agreement prior to a group Scoping Meeting, which will provide for confidentiality of commercially sensitive information identified in the Scoping Meeting pertaining to any other Interconnection Customers. Before holding a Scoping Meeting with an Affiliate of a Connecting Transmission Owner and that Connecting Transmission Owner, the ISO shall post on its OASIS an advance notice of its intent to do so.

#### **40.7.5 Phase 1 Entry Decision Period**

40.7.5.1 The Phase 1 Entry Decision Period for the Cluster Study Process shall commence on the first Business Day after the end date of the Customer Engagement Window.

40.7.5.2 The Phase 1 Entry Decision Period shall be a five (5) Business Day period.

40.7.5.3 A Cluster Study Project will be included in the Phase 1 Study if, during the Phase 1 Entry Decision Period, the Interconnection Customer for the Cluster Study Project:

(i) notifies the ISO of its election for its Cluster Study Project to proceed to the Phase 1 Study;

(ii) submits to the ISO an updated proposed Initial Backfeed Date, an updated proposed Synchronization Date, and an updated proposed Commercial Operation Date; and

(iii) provides the ISO with the Readiness Deposit 1 for its Cluster Study Project in accordance with the requirements in Section 40.2.4.2. The Readiness Deposit 1 shall be \$4,000 per MW based on the requested ERIS amount at the Point of Interconnection for the Cluster

Study Project; *provided, however*, that a CRIS-Only Cluster Study Project is not required to provide Readiness Deposit 1 to proceed to the Phase 1 Study.

#### **40.7.6 Withdrawal and Withdrawal Penalties**

40.7.6.1 If an Interconnection Customer does not satisfy the requirements in Section 40.7.5.3 for the Cluster Study Project to proceed to the Phase 1 Study, then the ISO shall withdraw the Interconnection Request or CRIS-Only Request for the Cluster Study Project from the ISO's Queue pursuant to the Withdrawal requirements in Section 40.6.4.

40.7.6.2 If an Interconnection Customer withdraws the Interconnection Request or CRIS-Only Request for a Cluster Study Project, or the Interconnection Request or CRIS-Only Request is deemed withdrawn by the ISO, from the ISO's Queue during the Customer Engagement Window or at the Phase 1 Entry Decision Period, the Interconnection Customer for the Cluster Study Project, including a CRIS-Only Cluster Study Project, shall pay a Withdrawal Penalty in an amount equal to twenty-five percent (25%) of its initial Study Deposit amount for the project; except for the following:

(i) if the Interconnection Request or CRIS-Only Request was withdrawn or was deemed withdrawn by the ISO during the Customer Engagement Window up to five (5) Business Days after the ISO posted the Cluster Study Project List pursuant to Section 40.7.2.2, then the Cluster Study Project shall not be assessed a Withdrawal Penalty;

(ii) if the ISO determined that the Cluster Study Project cannot move forward due to Physical Infeasibility pursuant to Section 40.7.3, then the Cluster Study Project shall not be assessed a Withdrawal Penalty; and

(iii) if the Interconnection Request or CRIS-Only Request was for: (A) a Contingent Project that was withdrawn by the ISO pursuant to Section 40.5.4.1.3 or (B)

for a Contingent Project that was converted to a CRIS-Only Cluster Study Project and informs the ISO of its election to withdraw prior to the Phase 1 Study pursuant to Section 40.5.4.1.3, then the Interconnection Request or CRIS-Only Request shall not be assessed a Withdrawal Penalty.

40.7.6.2.1 The ISO shall invoice, and Interconnection Customer shall pay, any Withdrawal Penalty as set forth in Section 40.24.3.

40.7.6.3 The ISO shall apply the collected Withdrawal Penalty Funds pursuant to Section 40.6.5.

## **40.8 Affected Systems**

### **40.8.1 Coordination with Affected Systems within the New York Control Area**

40.8.1.1 The ISO will coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems within the New York Control Area with Affected System Operators, as soon as they are identified – either by their own accord, by the Connecting Transmission Owner, by the ISO, or by members of the ISO’s Operating Committee or Transmission Planning Advisory Subcommittee of the ISO’s Operating Committee.

40.8.1.2 The ISO will include those results on Affected System Operators’ and Affected Transmission Owners’ systems in the Cluster Study within the time frame specified in these Standard Interconnection Procedures. The ISO will also include results, if available, on other Affected Systems in the New York Control Area. The ISO will invite such Affected System Operators to all meetings held with the Interconnection Customer as required by these Standard Interconnection Procedures. The Interconnection Customer will cooperate with the ISO in all matters related to the conduct of studies and the determination of modifications to Affected Systems. An Affected System Operator shall cooperate with the ISO and Connecting Transmission Owner with whom interconnection has been requested in all matters related to the type and/or conduct of studies and the determination of modifications to Affected Systems.

40.8.1.3 Upon completion of a Cluster Study in which an Interconnection Customer accepts its Project Cost Allocation for System Upgrade Facilities and/or System Deliverability Upgrades and pays cash or posts Security for such upgrades as required by this Attachment HH, the ISO will tender, as applicable, a Standard Upgrade Construction Agreement or Standard Multiparty Upgrade Construction Agreement to the Interconnection Customer(s) and Affected

Transmission Owner(s) or Affected System Operator(s) in accordance with the requirements in Section 40.21 to this Attachment HH for the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades on the Affected System.

40.8.1.4 For identified Affected Transmission Owner(s) of facilities that are electrically adjacent to the Point of Interconnection and that have design criteria, operational criteria, or other local planning criteria applicable to either (1) the substation to which the Interconnection Customer proposes to interconnect; or (2) the substation that will be required to be built to accommodate the interconnection, the ISO shall provide such Affected Transmission Owner(s) with the opportunity to review and provide comments on all study scopes, study reports and drafts thereof for the project, and will be included on communications regarding the project and meetings discussing the project or any of its studies, where such communications or meetings involve the ISO, Interconnection Customer and Connecting Transmission Owner.

#### **40.8.2 Coordination with External Affected Systems**

40.8.2.1 The ISO will identify potential impacts on External Affected Systems during the Customer Engagement Window once the Cluster Study Projects participating in the Cluster for that Cluster Study Process have been confirmed. If the ISO subsequently identifies additional potential impacts on an External Affected System during its performance of the Cluster Study, the ISO will notify the External Affected System Operator of the impacts.

40.8.2.2 At the time of initial notification, the ISO must provide an impacted Interconnection Customer with a list of potential Affected Systems, along with relevant contact information for such systems.

40.8.2.3 The ISO will coordinate the conduct of any studies required to determine the impact of the Interconnection Request on External Affected Systems with External Affected

System Operators. Interconnection Customer will cooperate with the ISO and External Affected System Operator in all matters related to the conduct of studies and the determination of modifications to the External Affected Systems.

### **40.8.3 Study of Impacts to New York State Transmission System of an Affected System Interconnection Customer's Proposed Interconnection to Another Region's Transmission System**

#### **40.8.3.1 Applicability**

This Section 40.8.3 outlines the duties of the ISO when it receives notification that an Affected System Interconnection Customer's proposed interconnection to another region's transmission system may impact the New York State Transmission System. If the New York State Transmission System may be impacted by a proposed interconnection on another region's transmission system, the ISO shall cooperate with the other region in all matters related to the conduct of studies and the determination of modifications to the New York State Transmission System.

#### **40.8.3.2 Response to Notification**

##### **40.8.3.2.1 Response to Initial Notification**

When the ISO receives initial notification based on the applicable interconnection study or restudy in another region that an Affected System Interconnection Customer's proposed interconnection to another region's transmission system may impact the New York State Transmission System, the ISO must respond in writing within twenty (20) Business Days whether it intends to conduct an Affected System Study. By fifteen (15) Business Days after the ISO responds with its affirmative intent to conduct an Affected System Study, the ISO shall share with Affected System Interconnection Customer(s) and its host region a

non-binding good faith estimate of the cost and the schedule to complete the Affected System Study.

#### 40.8.3.2.2 Response to Notification of Restudy

Within five (5) Business Days of receipt of notification of a restudy of the applicable interconnection study in another region, the ISO will send written notification to Affected System Interconnection Customer(s) involved in the restudy and the host transmission provider that the ISO intends to delay a planned or in-progress Affected System Study until after completion of the restudy. If the ISO decides to delay the Affected System Study, it is not required to meet its obligations under this Section 40.8.3 until the time that it receives notification from the host transmission provider that the restudy is complete. If the ISO decides to move forward with its Affected System Study despite the restudy, then it must meet all of the requirements in this Section 40.8.3.

#### **40.8.3.3 Affected System Queue Position**

The ISO must assign an Affected System Queue Position to Affected System Interconnection Customer(s) that require(s) an Affected System Study. Such Affected System Queue Position shall be assigned based upon the date of execution of the Affected System Study Agreement. Consistent with Section 40.8.3.7, the ISO shall study the Affected System Interconnection Customer(s) that are all interconnecting in a particular region via Clustering, and all Affected System Interconnection Customers studied in the same Cluster under Section 40.8.3.7 shall be equally queued. For Affected System Interconnection Customers that are equally queued, the Affected System Queue Position shall have no bearing on the assignment of Affected System Network Upgrades identified in the applicable Affected System Study. The



costs of the Affected System Network Upgrades shall be allocated among the Affected System Interconnection Customers in accordance with Section 40.8.3.9.

**40.8.3.4 Affected System Study Agreement/Multiparty Affected System Study Agreement.**

Unless otherwise agreed, the ISO shall provide to Affected System Interconnection Customer(s) an Affected System Study Agreement or Multiparty Affected System Study Agreement, in the form of Appendix 6 or Appendix 7 to this Attachment HH, as applicable, within ten (10) Business Days of the ISO sharing the schedule for the Affected System Study per Section 40.8.3.2.

The ISO shall invoice the Affected System Interconnection Customer(s) for the actual cost of the Affected System Study in accordance with the invoicing requirements in Section 40.24.3. The ISO shall notify Affected System Interconnection Customer's host region of any failure to pay.

**40.8.3.5 Execution of Affected System Study Agreement/Multiparty Affected System Study Agreement.**

Affected System Interconnection Customer(s) shall execute the Affected System Study Agreement/Multiparty Affected System Study Agreement, deliver the executed agreement to the ISO, and provide the Affected System Study deposit in the amount of \$100,000 in accordance with the requirements in Section 40.2.4 within ten (10) Business Days of receipt. If the ISO notifies Affected System Interconnection Customer(s) that it will delay the Affected System Study pursuant to Section 40.8.3.2.2, Affected System Interconnection Customer(s) are neither required to execute and return the previously tendered Affected System Study/Multiparty Affected System Study Agreement nor provide the Affected System Study deposit for the previously tendered Affected System Study/Multiparty Affected System Study Agreement.

If Affected System Interconnection Customer does not provide all required technical data when it delivers the Affected System Study Agreement/Multiparty Affected System Study Agreement, the ISO shall notify the deficient Affected System Interconnection Customer, as well as its host region, of the technical data deficiency within ten (10) Business Days of the receipt of the executed Affected System Study Agreement/Multiparty Affected System Study Agreement, and the deficient Affected System Interconnection Customer shall cure the technical data deficiency within ten (10) Business Days of receipt of the notice: *provided, however*, that such deficiency does not include failure to deliver the executed Affected System Study Agreement/Multiparty Affected System Study Agreement or deposit for the Affected System Study Agreement/Multiparty Affected System Study Agreement. If Affected System Interconnection Customer does not cure the technical data deficiency within the cure period or fails to execute the Affected System Study Agreement/Multiparty Affected System Study Agreement or provide the deposit, the Affected System Interconnection Customer shall lose its Affected System Queue Position.

#### **40.8.3.6 Scope of Affected System Study**

40.8.3.6.1 The Affected System Study will use the most recent Annual Transmission Reliability Assessment or Cluster Project Assessment available at the time of the commencement of the Affected System Study. The ISO shall coordinate with the Affected System Interconnection Customer(s)' host region as necessary to align to the extent possible the network system modeling between the regions for purposes of the Affected System Study.

40.8.3.6.2 For the Affected System Study, the ISO shall first evaluate the impact that any Affected System Interconnection Customer's proposed interconnection to another region's transmission system will have on the reliability of the New York State Transmission System and

identify any required Affected System Network Upgrades, to the extent not Physically Infeasible. The Affected System Study shall consist, as applicable, of a power flow, stability, and short circuit analysis. The Affected System Study will state the assumptions upon which it is based; state the results of the analyses; and provide the potential impediments to Affected System Interconnection Customer's receipt of interconnection service on its host region's transmission system, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. The ISO will notify the Affected System Interconnection Customer(s) and its host region of this preliminary information. The Affected System Study will not assess deliverability. The ISO has no obligation to study impacts of Affected System Interconnection Customers of which it is not notified.

40.8.3.6.3 If the Affected System Study identifies needs that require Affected System Network Upgrades, the ISO will next perform, as applicable, short circuit/fault duty, steady state (thermal and voltage), and stability analysis to identify the Affected System Network Upgrades that are required for the reliability of the New York State Transmission System in accordance with the NYISO Transmission Interconnection Standard (as defined in Attachment P to the ISO OATT). For purposes of determining necessary Affected System Network Upgrades, the Affected System Study shall consider the level of interconnection service requested in megawatts by Affected System Interconnection Customer, unless otherwise required to study the full generating facility capacity due to safety or reliability concerns. The Affected System Study, as applicable, shall determine a +30%/-15% estimate of the costs of the equipment, engineering and design work, procurement and construction work and commissioning of the Affected System Network Upgrades identified in the Affected System Study in accordance with Good Utility

Practice and, for each of these cost categories, shall specify and estimate the cost of the required work. The Affected System Study will calculate cost estimates based on the assumption that the activities for which the cost estimates are calculated are performed by the Affected Transmission Owner or Affected System Operator and shall be subject to reasonable exclusions (*e.g.*, environmental, subsurface conditions, permitting, site acquisition costs).

The ISO will allocate the costs of any Affected System Network Upgrades to the Affected System Interconnection Customer(s) in accordance with the Cluster Project Assessment rules in Section 40.12.2. The Affected System Study shall provide a list of the required Affected System Network Upgrades with a dollar figure for each Affected System Interconnection Customer's allocated share of the costs of the Affected System Network Upgrades as determined in accordance with Section 40.8.3.9. The Affected System Study shall also include a preliminary schedule showing the estimated time required to complete the engineering and design, procurement, construction, installation and commissioning phases for the required Affected System Network Upgrades identified in the study.

During the Affected System Study, the ISO shall update and refine the description of Affected System Network Upgrades identified pursuant to Section 40.8.3.6.2, including the equipment, work and related cost and time estimates necessary to construct the required Affected System Network Upgrades, and identify any additional Affected System Network Upgrades that are necessary in accordance with the NYISO Transmission Interconnection Standard (as defined in described in Attachment P) based on, among other things, changes in the Base Case since the ISO's determination pursuant to Section 40.8.3.6.2.

#### **40.8.3.7 Affected System Study Procedures**

The ISO shall use Clustering in conducting the Affected System Study and shall use existing studies to the extent practicable, when multiple Affected System Interconnection Customers that are part of a single Cluster may cause the need for Affected System Network Upgrades. The ISO shall complete the Affected System Study and provide the Affected System Study Report to Affected System Interconnection Customer(s) and its host region within three hundred (300) Calendar Days after the receipt of (i) the completed Affected System Study Agreement without any deficiencies and related study deposit from Affected System Interconnection Customer(s); and (ii) the network system model(s) from its host region. If during a clustered Affected System Study one or more Affected System Interconnection Customers withdraw, or are deemed withdrawn by the ISO, from the Affected System Study, the ISO may toll the three hundred (300) Calendar Day period for that Affected System Study for any remaining Affected System Interconnection Customers by up to sixty (60) Calendar Days to enable the ISO to update its study work in light of the withdrawn projects.

At the request of Affected System Interconnection Customer, the ISO shall notify Affected System Interconnection Customer as to the status of the Affected System Study. If the ISO is unable to complete the Affected System Study within the requisite time period, it shall notify Affected System Interconnection Customer(s) and its host region, and shall provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, the ISO shall provide Affected System Interconnection Customer(s) with all supporting documentation, workpapers and relevant power flow, short circuit and stability databases for the Affected System Study, subject to confidentiality arrangements consistent with Section 40.24.1.

The ISO must study an Affected System Interconnection Customer using the Energy Resource Interconnection Service modeling standard used for Interconnection Requests on its own transmission system, regardless of the level of interconnection service that Affected System Interconnection Customer is seeking from its host region.

#### **40.8.3.8 Meeting with the ISO**

Within ten (10) Business Days of providing the Affected System Study Report to Affected System Interconnection Customer(s), the ISO, Affected System Interconnection Customer(s), and Affected Transmission Owner or Affected System Operator shall meet to discuss the results of the Affected System Study.

#### **40.8.3.9 Affected System Cost Allocation and Decision Period**

The ISO shall allocate the costs of Affected System Network Upgrades identified during the Affected System Study to Affected System Interconnection Customer(s) using the proportional impact method for allocating System Upgrade Facilities set forth in Section 40.12.2 to this Attachment HH.

#### **40.8.3.10 Iterative Decision Period for Project Cost Allocation and Security Posting**

40.8.3.10.1 Within five (5) Business Days after the completion of the meeting set forth in Section 40.8.3.8, the ISO shall commence an iterative decision period process for the Affected System Interconnection Customer(s) consistent with the requirements for conducting the Final Decision Period process in Sections 40.15.2 – 40.15.4 by which the Affected System Interconnection Customer may accept its allocated costs for the Affected System Network Upgrades and pay cash or post Security to the Affected Transmission Owner or Affected System Operator for its allocated amount. If an Affected System Interconnection Customer does not accept its allocated cost or pay cash or post Security for such amount in any of the rounds of the

iterative decision process, its Affected System Queue Position shall be withdrawn consistent with the requirements in Section 40.6.4.

40.8.3.10.2 The iterative decision process will be repeated until none of the remaining eligible Affected System Interconnection Customers provide a Non-Acceptance Notice or commits a Security Posting Default as those terms are defined in 40.15.

40.8.3.10.3 If an Affected System Interconnection Customer accepted its allocated costs for the Affected System Network Upgrades and paid cash or posted Security for the allocated amount in the final decision round of the decision process consistent with the requirements in Section 40.15, including the requirements concerning the posting of Security, then the Affected System Interconnection Customer shall be subject to the Security forfeiture requirements in Section 40.16.1 and the future cost responsibility requirements in Section 40.16.3 for purposes of the Affected System Network Upgrades.

**40.8.3.11 Tender of Standard Upgrade Construction Agreement/Standard Multiparty Upgrade Construction Agreement.**

As soon as practicable after the Affected System Interconnection Customer accepts its cost allocation for any Affected System Network Upgrades and pays cash or post security in accordance with Section 40.8.3.10, the ISO shall tender to Affected System Interconnection Customer(s) and, as applicable, the Affected System Operator or Affected Transmission Owner a Standard Upgrade Construction Agreement/Standard Multiparty Upgrade Construction Agreement, as applicable, in the form of Appendix 16 or 17 to this Attachment HH in accordance with the requirements in Section 40.21 to this Attachment HH.

**40.8.3.12 Restudy.**

If restudy of the Affected System Study is required pursuant to Section 40.8.3.10, the ISO shall notify Affected System Interconnection Customer(s) and conduct such restudy in

accordance with the requirements in Section 40.8.3.10. Any cost of restudy shall be borne by the Affected System Interconnection Customer(s) being restudied.



## **40.9 Cluster Study Overview/ NYISO Minimum Interconnection Standard/ NYISO Deliverability Interconnection Standard/ Cluster Study Cost Allocation Rules Overview**

### **40.9.1 Cluster Study Overview**

The Cluster Study shall consist of:

(i) the ISO's development of the Existing System Representation used for the Cluster Study as set forth in Sections 40.10.3;

(ii) the Connecting Transmission Owners' and Affected Transmission Owners' performance of the Phase 1 Study for the Cluster Study Projects as set forth in Section 40.10.4;

(iii) the Phase 2 Study Entry Decision Period in which Interconnection Customers elect whether to satisfy the requirements for their Cluster Study Projects to proceed to the Phase 2 Study as set forth in Section 40.10.8;

(iv) the ISO's performance of the Phase 2 Study, in conjunction with the Connecting Transmission Owner and Affected Transmission Owner, for the Cluster Study Projects as set forth in Sections 40.11 through 40.14, including: (A) the ISO's development of the Cluster Baseline Assessment and Cluster Project Assessment used for the Cluster Study as set forth in Section 40.12, (B) the ISO's assessment of the reliable interconnection of the Cluster Study Projects requesting ERIS in accordance with the NYISO Minimum Interconnection Standard as set forth in Section 40.12, (C) the ISO's assessment of the deliverability of Cluster Study Projects, including CRIS-Only Cluster Study Projects, requesting CRIS in accordance with the NYISO Deliverability Interconnection Standard in the Cluster Study Deliverability Study in accordance with Section 40.13, and (D) if applicable, the ISO's performance of an Additional SDU Study in accordance with Section 40.14; and

(v) the Final Decision Period at the conclusion of the Phase 2 Study and, if applicable, the Additional SDU Study Decision Period, at the conclusion of any Additional SDU Study as set forth in Section 40.15.

#### **40.9.2 Timeframes**

40.9.2.1 The timeframe for the ISO's, Connecting Transmission Owners', and Affected Transmission Owners' performance of their responsibilities for the Phase 1 Study and Phase 2 Study will be scheduled for each Cluster Study Process as follows:

(i) The scheduled duration of the Phase 1 Study process will be a one hundred ninety (190) Calendar Day period between the Phase 1 Study Start Date and the ISO's presentation to its Operating Committee for its approval of the Phase 1 Cost Estimates Summary Report ("Scheduled Phase 1 Study Timeframe"). Within this period, the scheduled duration for the key individual components of the Phase 1 Study process are set forth in Section 40.10.

(ii) The scheduled duration of the Phase 2 Study process will be a two hundred seventy (270) Calendar Day period between the Phase 2 Study Start Date and the ISO's presentation of the draft Cluster Study Report to the Operating Committee for its approval ("Scheduled Phase 2 Study Timeframe"). Within this period, the scheduled duration for the key individual components of the Phase 2 Study process are set forth in Section 40.11.

40.9.2.2 If the ISO, Connecting Transmission Owner, or Affected Transmission Owner is unable to complete an individual component of the Cluster Study Process in accordance with that component's timeframe established in this Attachment HH, the entity responsible for performing that component shall complete it as soon as practicable, and the ISO shall notify Interconnection Customers of any anticipated resulting delay in the overall timeframe of, as applicable, the Phase 1 Study or Phase 2 Study. The ISO shall address any failure of the

responsible entity to achieve a study component within a tariff-prescribed time period through the requirements set forth in Section 40.9.3.

### **40.9.3 Study Metrics and Penalties for Study Delays**

#### **40.9.3.1 Metrics and Reporting Obligation**

##### **40.9.3.1.1 Publicly Posted Study Metrics for Cluster Study Process**

40.9.3.1.1.1 Within thirty (30) Calendar Days of the completion of the Phase 2 Entry Decision Period for a given Cluster Study Process, the ISO will post on a publicly accessible portion of its website the following statistics related to processing of Cluster Studies performed in accordance with this Attachment HH:

(A) Number of individual Phase 1 Study reports completed during the Phase 1 Study process for a given Cluster Study Process;

(B) Number of individual Phase 1 Study reports during the Phase 1 Study process for a given Cluster Study Process that were finalized beyond the timeframe set forth in Section 40.10.5 of this Attachment HH;

(C) For each individual Phase 1 Study report completed during the Phase 1 Study for a given Cluster Study Process: (i) the details of the Interconnection Request posting on the ISO's Queue; (ii) the identity of Connecting Transmission Owner(s) and Affected Transmission Owner(s), as applicable; (iii) the total time (in Calendar Days) from the Phase 1 Study Start Date to the date the ISO provided the applicable Transmission Owner with an updated Cluster Study Project List and the finalized CPA short-circuit base case pursuant to Section 40.10.4.1; (iv) if the total time calculated for Section 40.9.3.1.1.1(C)(iii) is greater than the time period for the ISO to provide the required materials to the applicable Transmission Owner as set forth in Section 40.10.4.1, the

reasons for the delay; (v) the total time (in Calendar Days) from the date the ISO provided to the applicable Transmission Owner with an updated Cluster Study Project List and the finalized CPA short-circuit base case to the date when the applicable Transmission Owner provides the individual final version of the Phase 1 Study report to the ISO and the Interconnection Customer; and (vi) if the total time calculated for Section 40.9.3.1.1.1(C)(v) is greater than the time period set forth in Section 40.10.5 for the Transmission Owner to provide the final report, the reasons for the delay reported to the ISO by the applicable Transmission Owner;

(D) Total time (in Calendar Days) from the Phase 1 Study Start Date to the date when the ISO presents the Phase 1 Cost Estimates Summary Report to the ISO Operating Committee; and

(E) Number of Interconnection Requests or CRIS-Only Requests withdrawn from the ISO's Queue during the period between the commencement of the Customer Engagement Window and the completion of the Phase 2 Entry Decision Period for the given Cluster Study.

For purposes of this section, the Phase 1 Study process includes (i) individual Phase 1 Study reports for each Cluster Study Project, including reports from the Connecting Transmission Owner(s) and any applicable Affected Transmission Owners; and (ii) a Phase 1 Cost Estimates Summary Report compiled by the ISO from cost estimates identified for all Cluster Study Projects in the Phase 1 Study. An individual Phase 1 Study report for a Cluster Study Project is deemed complete on the date upon which the applicable Transmission Owner provides the final version of the study report to the ISO and the Interconnection Customer in accordance with Section 40.10.5. A Phase

1 Cost Estimates Summary Report is deemed complete on the date upon which the Phase 1 Cost Estimates Summary Report is presented to the ISO's Operating Committee in accordance with Section 40.10.6.

Connecting Transmission Owners and Affected Transmission Owners shall timely provide any information reasonably requested by the ISO to complete the study metrics specified in this Section 40.9.3.1.1.

40.9.3.1.1.2 Within thirty (30) Calendar Days of the completion of the Phase 2 Study Final Decision Period for a given Cluster Study Process, the ISO will post on a publicly accessible portion of its website the following statistics related to processing of Cluster Studies performed in accordance with this Attachment HH:

(A) For each updated individual Phase 1 Study report completed during the Phase 2 Study for a given Cluster Study Process: (i) the details of the Interconnection Request posting on the ISO's Queue; (ii) the identity of Connecting Transmission Owner(s) and Affected Transmission Owner(s), as applicable; (iii) the total time (in Calendar Days) from the Phase 2 Study Start Date to the date the ISO provided the applicable Transmission Owner with an updated Cluster Study Project List and an updated CPA short-circuit base case pursuant to Section 40.11.2.2; (iv) if the total time calculated for Section 40.9.3.1.1.2(A)(iii) is greater than the time period for the ISO to provide the required materials to the applicable Transmission Owner as set forth in Section 40.11.2.2, the reasons for the delay; (v) the total time (in Calendar Days) from the date the ISO provided to the applicable Transmission Owner with an updated Cluster Study Project List and the updated CPA short-circuit base case to the date when the applicable Transmission Owner provides the individual final, updated version of the Phase 1 Study

report to the ISO and the Interconnection Customer; and (vi) if the total time calculated for Section 40.9.3.1.1.2(A)(v) is greater than the time period set forth in Section 40.11.2.2 for the Transmission Owner to provide the final updated report, the reasons for the delay reported to the ISO by the applicable Transmission Owner;

(B) For each individual Phase 2 Study report completed during the Phase 2 Study for a given Cluster Study Process: (i) the details of the Interconnection Request or CRIS-Only Request posting on the ISO's Queue; (ii) the identity of Connecting Transmission Owner(s) and Affected Transmission Owner(s), as applicable; (iii) the total time (in Calendar Days) from the Phase 2 Study Start Date to the date the ISO provided the applicable Transmission Owner with any System Upgrade Facilities, Distribution Upgrades, and System Deliverability Upgrades identified by the ISO for a Cluster Study Project and their major electrical characteristics pursuant to Section 40.11.4.1; (iv) if the total time calculated for Section 40.9.3.1.1.2(B)(iii) is greater than the time period for the ISO to provide the applicable Transmission Owner with the identified upgrades and their major electrical characteristics as set forth in Section 40.11.4.1, the reasons for the delay; (v) the total time (in Calendar Days) from the date the ISO provided to the applicable Transmission Owner the identified upgrades and their major electrical characteristics for a Cluster Study Project to the date when the applicable Transmission Owner provides the individual final version of the Phase 2 Study report to the ISO and the Interconnection Customer; and (vi) if the total time calculated for Section 40.9.3.1.1.2(B)(v) is greater than the time period set forth in Section 40.11.4.3 for the Transmission Owner to provide the final report, the reasons for the delay reported to the ISO by the applicable Transmission Owner;

(C) Total time (in Calendar Days) from the Phase 2 Study Start Date to the date when the ISO presents the summary Cluster Study Report to the ISO's Operating Committee;

(D) Total time (in Calendar Days) for the Phase 1 Study process and Phase 2 Study process of the given Cluster Study Process (excluding the Phase 2 Entry Decision Period); and

(E) Number of Interconnection Requests or CRIS-Only Requests withdrawn from the ISO's Queue during the period between the commencement of the Phase 2 Study and the completion of the Final Decision Period.

For purposes of this section, the Phase 2 Study process is deemed complete on the date upon which the Cluster Study Report is presented to the ISO's Operating Committee.

Connecting Transmission Owners and Affected Transmission Owners shall timely provide any information reasonably requested by the ISO to complete the study metrics specified in this Section 40.9.3.1.2.

#### **40.9.3.1.2 Publicly Posted Study Metrics for Interconnection Requests and CRIS-Only Requests Withdrawn from the Queue**

40.9.3.1.2.1 On an annual basis, the ISO will post on a publicly accessible portion of its website the following statistics, or an update to previously posted statistics, related to the Interconnection Requests and CRIS-Only Requests that withdraw or are deemed withdrawn by the ISO from the Queue for each Cluster Study Process during that prior year in accordance with this Attachment HH:

(A) Number of validated Interconnection Requests and CRIS-Only Requests for a given Cluster Study Process;

(B) Number of Interconnection Requests and CRIS-Only Requests in the Cluster Study Process withdrawn from the Queue after the commencement of the Phase 1 Study, but before commencement of the Phase 2 Study;

(C) Number of Interconnection Requests and CRIS-Only Requests in the Cluster Study Process withdrawn from the Queue after the commencement of the Phase 2 Study, but prior to the completion of the Final Decision Period for the Cluster Study;

(D) Number of Interconnection Requests and, if applicable, CRIS-Only Requests withdrawn from the Queue after the completion of the Final Decision Period for the Cluster Study, but before execution of a Standard Interconnection Agreement or an Interconnection Customer requesting the filing of an unexecuted, new Standard Interconnection Agreement; and

(E) Number of Interconnection Requests and, if applicable, CRIS-Only Requests withdrawn from the Queue after execution of a Standard Interconnection Agreement or an Interconnection Customer requesting the filing of an unexecuted, new Standard Interconnection Agreement.

#### **40.9.3.1.3 Informational Reports of Study Processing Times**

40.9.3.1.3.1 If: (A) the duration of the Phase 1 Study process between the Phase 1 Study Start Date and the ISO's presentation to its Operating Committee of the Phase 1 Cost Estimates Summary Report (the "Actual Phase 1 Study Timeframe") exceeds the Scheduled Phase 1 Study Timeframe or (B) the duration of the Phase 2 Study process between the Phase 2 Study Start Date and the ISO's presentation of the draft Cluster Study Report to the Operating Committee for its approval (the "Actual Phase 2 Study Timeframe") exceeds the Scheduled Phase 2 Study Timeframe for a given Cluster Study



Process , the ISO will file a report with the Commission: describing (i) the reason(s), as applicable, that the Actual Phase 1 Study Timeframe exceeded the Scheduled Phase 1 Study Timeframe and/or the Actual Phase 2 Study Timeframe exceeded the Scheduled Phase 2 Study Timeframe for that process ; and (ii) steps taken to remedy these specific issues and, if applicable, prevent such delays in the future. A report must be filed at the Commission within sixty-five (65) Business Days following, as applicable, (i) the completion of the Phase 2 Entry Decision Period for a late Phase 1 Study process, and (ii) the completion of the Final Decision Period for a late Phase 2 Study process. The ISO will also aggregate the total number of its and Transmission Owners' employee hours and third party consultant hours expended towards a late Phase 1 Study process or a late Phase 2 Study process. The ISO will post this information within sixty-five (65) Business Days following, as applicable: (i) the completion of the Phase 2 Entry Decision Period for a late Phase 1 Study process, and (ii) the completion of the Final Decision Period for a late Phase 2 Study process. Connecting Transmission Owners and Affected Transmission Owners shall timely provide any information reasonably requested by the ISO to complete the report and the aggregation of employee and consultant hours.

#### **40.9.3.2 Penalties for Failure to Meet Study Deadlines**

40.9.3.2.1 Commencing with the first Cluster Study Process for which penalties may be applied as set forth in Section 40.9.3.2.10, the ISO and/or Transmission Owners shall be subject to a penalty to the extent required in this Section 40.9.3.2 if the Phase 1 Study process, the Phase 2 Study process, or an Affected System Study is not completed within the applicable deadline set forth in this Section 40.9.3.2.

40.9.3.2.2 If: (A) the Actual Phase 1 Study Timeframe exceeds the Scheduled Phase 1 Study Timeframe, (B) the Actual Phase 2 Study Timeframe exceeds the Scheduled Phase 2 Study Timeframe, or (C) the duration of the Affected System Study (excluding the final decision period) (the “Actual Affected System Study Timeframe”) exceeds the three hundred (300) Calendar Days scheduled duration for this study as established in Section 40.8.3.7 (“Scheduled Affected System Study Timeframe”), the ISO will take the following action, unless the study process is completed within the ten (10) Business Day grace period set forth in Section 40.9.3.2.8 or within an agreed upon extended period as set forth in Section 40.9.3.2.9:

40.9.3.2.2.1 The ISO will prepare a Draft Penalty Summary within twenty (20)

Business Days of, as applicable: (i) the completion of the Phase 2 Entry Decision Period for a delayed Phase 1 Study process, (ii) the completion of the Final Decision Period for a delayed Phase 2 Study process, and (iii) the completion of the Final Decision Period for a delayed Affected System Study. Each Draft Penalty Summary will compute the total penalty amount and the allocation of such penalty amount among the ISO and the Transmission Owners.

40.9.3.2.2.2 The ISO will calculate the penalty amount by multiplying: (i) the daily penalty amount set forth in Section 40.9.3.2.6 by (ii) the number of Business Days that, as applicable,: (A) the Actual Phase 1 Study Timeframe exceeded the Scheduled Phase 1 Study Timeframe with any agreed upon extension(s) as set forth in Section 40.9.3.2.9, (B) the Actual Phase 2 Study Timeframe exceeded the Scheduled Phase 2 Study Timeframe with any agreed upon extension(s) as set forth in Section 40.9.3.2.9, or (C) the Actual Affected System Study Timeframe

exceeded the Scheduled Affected System Study Timeframe with any agreed upon extension(s) as set forth in Section 40.9.3.2.9.

40.9.3.2.2.3 The ISO will allocate the computed penalty amount among itself and each individual Transmission Owner based on the delays of each party in completing the portions of, as applicable, the Phase 1 Study process or Phase 2 Study process for which each party is explicitly responsible for under this Attachment HH and/or under any contract to implement these responsibilities between the ISO and the applicable Transmission Owner.

40.9.3.2.2.4 The Transmission Owners will have twenty (20) Business Days to review the Draft Penalty Summary and to provide any comments to the ISO. The ISO will then have ten (10) Business Days to finalize the Penalty Summary.

40.9.3.2.3 The ISO and/or Transmission Owner must pay the penalty set forth in the Penalty Summary, as applicable, for each late Phase 1 Study process or Phase 2 Study process as follows:

40.9.3.2.3.1 For a penalty resulting from a late Phase 1 Study process, the ISO and/or Transmission Owner shall pay the penalty set forth in the Penalty Summary on a pro rata basis per Interconnection Request or CRIS-Only Request for all Interconnection Customer(s) included in the Cluster during the Phase 1 Study that satisfied the Phase 2 Entry Decision Period requirements in Section 40.10.8.3 to enter into the Phase 2 Study in proportion to the final study costs for the Phase 1 Study process for each Interconnection Request or CRIS-Only Request.

40.9.3.2.3.2 For a penalty resulting from a late Phase 2 Study process, the ISO and/or Transmission Owner shall pay the penalty set forth in the Penalty Summary on a pro rata

basis per Interconnection Request or CRIS-Only Request to all Interconnection Customer(s) included in the Cluster during the Phase 2 Study that accepted any required cost allocation identified in the study and paid cash or posted security, if any, for their allocated amount, in proportion to the final study cost for the Phase 2 Study process for each Interconnection Request or CRIS-Only Request.

40.9.3.2.4 The ISO must pay the penalty set forth in the Penalty Summary for a late Affected Systems Study on a pro rata basis to all Affected System Interconnection Customer(s) included in the relevant Affected System Study that accepted any required cost allocation identified in the study and paid cash or posted security, if any, for their allocated amount, in proportion to each Affected System Interconnection Customer's final study cost.

40.9.3.2.5 Unless otherwise indicated in this Section 40.9.3.2, the study delay penalty for each late study set forth in Sections 40.9.3.2.3 and 40.9.3.2.4 shall be distributed no later than ninety (90) Business Days after, as applicable: (i) the completion of the Phase 2 Entry Decision Period for a penalty resulting from a late Phase 1 Study process; (ii) the completion of the Final Decision Period for a penalty resulting from a late Phase 2 Study process, or (iii) the completion of the Final Decision Period for a penalty resulting from a late Affected System Study.. If a Transmission Owner is responsible for paying a penalty amount and has not appealed the penalty amount, it shall make such payment to the ISO within sixty-five (65) Business Days after, as applicable: (i) the completion of the Phase 2 Entry Decision Period for a penalty resulting from a late Phase 1 Study process; (ii) the completion of the Final Decision Period for a penalty resulting from a late Phase 2 Study process, or (iii) the completion of the Final Decision Period for a penalty resulting from a

late Affected System Study . The ISO will be responsible for distributing the penalty amount to the applicable Interconnection Customers.

40.9.3.2.6 For penalties assessed in accordance with this Section 40.9.3.2, the penalty amount will be equal to: (i) \$2,000 per Business Day for delays of, as applicable, the Phase 1 Study process or the Phase 2 Study process beyond the applicable deadline set forth in this Section 40.9.3.2 and (ii) \$2,000 per Business Day for delays of Affected System Studies beyond the applicable deadline set forth in this Section 40.9.3.2. The total amount of penalties assessed under this Section 40.9.3.2 for a given Cluster Study (i.e., the combined total amounts of any penalties for a late Phase 1 Study process and any penalties for a late Phase 2 Study process) shall not exceed one hundred percent (100%) of the initial study deposit(s) received for all of the Interconnection Requests and CRIS-Only Requests in the Cluster for that Cluster Study. The total amount of a penalty assessed under this Section 40.9.3.2 for an Affected System Study shall not exceed one hundred percent (100%) of the study deposit(s) that the ISO collects for conducting the Affected System Study.

40.9.3.2.7 The ISO and/or each Transmission Owner may appeal to the Commission any penalties set forth in the Penalty Summary that will be imposed under this Section 40.9.3.2. The Transmission Owner's right to appeal includes the right to challenge the ISO's allocation of penalty amounts in the Penalty Summary. Any such appeal must be filed no later than sixty-five (65) Business Days after, as applicable, (i) the completion of the Phase 2 Entry Decision Period for a penalty resulting from a late Phase 1 Study process; (ii) the completion of the Final Decision Period for a penalty resulting from a late Phase 2 Study process, or (iii) the completion of the Final Decision Period for a

penalty resulting from a late Affected System Study. While an appeal to the Commission is pending, the ISO and/or Transmission Owner shall remain liable for the penalty, but need not distribute the penalty until sixty (60) Calendar Days after the later of: (1) the deadline for filing a rehearing request has ended, if no requests for rehearing of the Commission's order on the appeal have been filed, or (2) the date that the Commission issues a substantive order on any requests for rehearing. The Transmission Owner shall make any penalty payment to the ISO within fifteen (15) Calendar Days of this date. The Commission may excuse the ISO and/or Transmission Owner from penalties under this Section 40.9.3.2 for good cause..

40.9.3.2.8 No penalty will be assessed under this Section 40.9.3.2 where a study is delayed by ten (10) Business Days or less. If the study is delayed by more than ten (10) Business Days, the penalty amount will be calculated from the first Business Day the applicable study misses its deadline.

40.9.3.2.9 If (a) a Phase 1 Study process, a Phase 2 Study process, or an Affected System Study will not be completed within the applicable deadline set forth in this Section 40.9.3.2 or an extended deadline for the study established pursuant to this Section 40.9.3.2.9 and (b) unless ten percent (10%) or more of the total number of Interconnection Requests and CRIS-Only Requests included in the relevant Phase 1 Study process or Phase 2 Study process or of the total number of projects in the Affected System Study vote affirmatively against an extension, the deadline for that study process shall be extended thirty (30) Business Days from the original deadline. In such a scenario, no penalty will be assessed for missing the original deadline.

40.9.3.2.10 No penalties shall be assessed until the third Cluster Study Process cycle after the Commission-approved effective date of the Standard Interconnection Procedures (i.e., the second Cluster Study Process following the completion of the Transition Cluster Study Process).

40.9.3.2.11 The ISO must maintain on its OASIS or its public website summary statistics related to penalties assessed under this Section 40.9.3.2, updated quarterly. For each calendar quarter, the ISO must calculate and post (1) the total amount of penalties assessed under this Section 40.9.3.2 during the previous reporting quarter and (2) the highest penalty assessed under this Section 40.9.3.2 paid to a single Interconnection Customer or Affected System Interconnection Customer during the previous reporting quarter. The ISO must post on its OASIS or its website these penalty amounts for each calendar quarter within thirty (30) Calendar Days of the end of the calendar quarter. The ISO must maintain the quarterly measures posted on its OASIS or its website for three (3) calendar years with the first required posting to be the third Cluster Study Process cycle after the Commission-approved effective date of the Standard Interconnection Procedures (i.e., the second Cluster Study Process following the completion of the Transition Cluster Study Process).

#### **40.9.4 No Prioritization of Cluster Study Projects**

There will be no prioritization of the Projects grouped and studied together in a Cluster Study, except as otherwise indicated in Section 40.6.1.2 or as set forth in Section 40.7.3.4 in the event of a Physical Infeasibility determination. Each Project in a Cluster Study will, with other Projects in the same Cluster Study, share in the then currently available functional or electrical capability of the transmission system, and share in the cost of the System Upgrade Facilities

required to interconnect its respective Project and, for Interconnection Customers seeking CRIS, System Deliverability Upgrades required under the NYISO Deliverability Interconnection Standard, in accordance with the rules set forth herein. For purposes of this Section 40.9.4, the “then currently available functional or electrical capability of the transmission system” is the functional or electrical capability of the transmission system currently available in the applicable base case.

#### **40.9.5 Interconnection Facilities Covered by the Cluster Study**

##### **40.9.5.1 Interconnection Standards**

The interconnection facilities covered by the Cluster Study and its cost allocation rules are (i) those required for the proposed project to reliably interconnect to the New York State Transmission System or to the Distribution System in a manner that meets the NYISO Minimum Interconnection Standard for ERIS, and (ii) those required for the project to meet the NYISO Deliverability Interconnection Standard for CRIS.

##### **40.9.5.2 Interconnection Facilities**

The interconnection facilities covered by the Cluster Study and its cost allocation rules include the following types of facilities: Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades.

#### **40.9.6 NYISO Minimum Interconnection Standard**

##### **40.9.6.1 Scope and Purpose of Standard**

Each Facility must be evaluated under the NYISO Minimum Interconnection Standard in a Cluster Study.

40.9.6.1.1 The NYISO Minimum Interconnection Standard is designed to ensure reliable access by the proposed project to the New York State Transmission



System and to the Distribution System. The NYISO Minimum Interconnection Standard does not impose any deliverability test or deliverability requirement on the proposed project. Application of these rules, including the Cluster Baseline Assessment and the Cluster Project Assessment, to allocate responsibility for the cost of new transmission facilities to permit interconnection is not intended to affect the NYISO Minimum Interconnection Standard.

40.9.6.1.2 Consequently, the NYISO Minimum Interconnection Standard is not intended to address in any way the allocation of responsibility for the cost of upgrades and other new facilities associated with transmission service and the delivery of power across the Transmission System, the reduction of Congestion, economic transmission system upgrades, or the mitigation of Transmission System overloads associated with the delivery of power.

40.9.6.1.3 It is not anticipated that the installation of any interconnection facilities covered by the NYISO Minimum Interconnection Standard will improve the deliverability of power, reduce Congestion, or mitigate overloads associated with the delivery of power. If the installation of any facilities by an Interconnection Customer does improve deliverability, reduce Congestion and create Incremental Transmission Congestion Contracts, or mitigate overloads, then that situation will be handled in accordance with the relevant provisions of the ISO OATT, including Sections 3.7 and 4.5, and applicable FERC precedent.

#### **40.9.7 NYISO Deliverability Interconnection Standard**

#### **40.9.7.1 Scope and Purpose of Standard**

Each proposed or existing facility larger than 2 MW, and each facility with CRIS that requests an increase to its CRIS, must meet the NYISO Deliverability Interconnection Standard before it can receive CRIS or Unforced Capacity Deliverability Rights, unless otherwise provided for in this Attachment HH. For purposes of this Section 40.9.7.1, a facility comprised of multiple Generators is a single “facility.”

40.9.7.1.1 The NYISO Deliverability Interconnection Standard is designed to ensure that the Project is deliverable throughout the New York Capacity Region(s) where the Project will interconnect or is interconnected. The NYISO Deliverability Interconnection Standard is also designed to ensure that the Interconnection Customer of the Project restores the transfer capability of any Other Interfaces degraded by its interconnection.

40.9.7.1.2 Each Project electing CRIS will be allowed to become an Installed Capacity Supplier, or will be allowed to receive Unforced Capacity Deliverability Rights or External-to-ROS Deliverability Rights, in accordance with the rules of the ISO’s Installed Capacity market, up to the amount of its deliverable capacity, as that amount is determined in accordance with the rules in this Attachment HH, once the Interconnection Customer of the Project has paid cash or posted Security for any required System Deliverability Upgrades in accordance with the rules in this Attachment HH.

#### **40.9.8 Overview of Cost Allocation Rules for Cluster Study**

##### **40.9.8.1 Purpose of the Rules**

As set forth in this Attachment HH, the Cluster Study will (1) allocate responsibility among Interconnection Customers, Transmission Owners, and Load Serving Entities (“LSEs”),

as described herein, for the cost of the new interconnection facilities that are required for the reliable interconnection of Projects to the New York State Transmission System and to the Distribution System in compliance with the requirements of the type of interconnection service elected by the Interconnection Customer; and (2) allocate responsibility for the cost of interconnection facilities required for Capacity Resource Interconnection Service and interconnection in compliance with the NYISO Deliverability Interconnection Standard. Section 40.12 of this Attachment HH describes the rules to estimate and allocate responsibility for the cost of the interconnection facilities required for Energy Resource Interconnection Service and interconnection in compliance with the NYISO Minimum Interconnection Standard. Section 40.13 of this Attachment HH describes the rules to estimate and allocate responsibility for the cost of interconnection facilities required for CRIS and interconnection in compliance with the NYISO Deliverability Interconnection Standard. Every Interconnection Customer is responsible for the cost of the new interconnection facilities required for the reliable interconnection of its Project in compliance with the NYISO Minimum Interconnection Standard, as that responsibility is determined by these rules. In addition, every Interconnection Customer electing CRIS is also responsible for the cost of the interconnection facilities required pursuant to the NYISO Deliverability Interconnection Standard, as that responsibility is determined by these rules.

As described herein, the intent of the cost allocation rules for the Cluster Study in this Attachment HH is that each Interconnection Customer be held responsible for the net impact of the interconnection of its Project on the reliability of the New York State Transmission System. An Interconnection Customer is held responsible for the cost of the interconnection facilities that are required by its Project, facilities that would not be required but for its Project. However, an Interconnection Customer is not responsible for the cost of facilities that are, without considering

the impact of its Project, required to maintain the reliability of the New York State Transmission System. Transmission Owners are, in accordance with the ISO OATT and FERC precedent, responsible for the cost of the facilities that are, without considering the impact of Interconnection Customer's Project, required to maintain the reliability of the New York State Transmission System.

#### **40.9.8.2 Attachment Facilities**

Each Interconnection Customer is responsible for 100% of the cost of the Attachment Facilities required for the reliable interconnection of its Project in compliance with the NYISO Minimum Interconnection Standard, as that responsibility is determined by these rules.

#### **40.9.8.3 Distribution Upgrades**

Each Interconnection Customer is responsible for 100% of the cost of the Distribution Upgrades required for the reliable interconnection of its Project in compliance with the NYISO Minimum Interconnection Standard, as that responsibility is determined by these rules.

#### **40.9.8.4 Side Agreements**

These cost allocation rules will not preclude or supersede any binding cost allocation agreements that are executed between or among Interconnection Customers, Connecting Transmission Owners, and/or Affected Transmission Owners; *provided, however*, that no such agreements will increase the cost responsibility or cause a material adverse change in the circumstances as determined by these rules of any Interconnection Customer or Transmission Owner who is not a party to such agreement.

#### **40.9.8.5 Costs Covered By Attachment HH**

The interconnection facility cost allocated by these rules is comprised of all costs and overheads associated with the design, procurement, and installation of the new interconnection facilities. These rules do not address in any way the allocation of responsibility for the cost of operating and maintaining the new interconnection facilities once they are installed. Nor do these rules address in any way the ownership of the new interconnection facilities.

#### **40.9.8.6 Dispatch Costs**

Interconnection Customers, Connecting Transmission Owners, and Affected Transmission Owners will not be charged directly for any redispatch cost that may be caused by the temporary removal of transmission facilities from service to install new interconnection facilities, as such cost is reflected in Locational Based Marginal Prices. Nor will existing generators be paid for any lost opportunity cost that may be incurred when their units are dispatched down or off in connection with the installation of new interconnection facilities.

#### **40.9.8.7 Transmission Owners' Cost Recovery**

Any Connecting Transmission Owner or Affected Transmission Owner implementation and construction of (i) System Upgrade Facilities as identified in the Cluster Baseline Assessment or Cluster Project Assessment, or (ii) System Deliverability Upgrades as identified in the Cluster Study Deliverability Study, shall be in accordance with the ISO OATT, Commission-approved ISO Related Agreements, the Federal Power Act and Commission precedent, and therefore shall be subject to the Connecting Transmission Owner's or Affected Transmission Owner's right to recover, pursuant to appropriate financial arrangements contained in agreements or Commission-approved tariffs, all reasonably incurred costs, plus a reasonable return on investment.

#### **40.9.9 LIPA's Prospective Assumption of Cluster Study Responsibilities**

##### **40.9.9.1 LIPA Assumption of Cluster Study and Supporting Analyses**

Commencing with the first Cluster Study Process following the Transitional Cluster Study, if LIPA is identified as the Connecting Transmission Owner or an Affected Transmission Owner for an Interconnection Request or CRIS-Only Request participating in the Cluster Study, LIPA will perform the responsibilities established in this Attachment HH, for, as applicable, a Connecting Transmission Owner or Affected Transmission Owner in the performance of the Phase 1 Study, Phase 2 Study, and Additional SDU Study concerning the Interconnection Request or CRIS-Only Request, in accordance with Section 40.9.9.2. LIPA's distribution system is not included within the defined scope of the Distribution System. In the event that it is determined that LIPA's distribution system may be materially affected by a Cluster Study Project, analysis of the need for any distribution upgrades to address such material impacts shall be undertaken by LIPA as part of the Phase 1 Study and Phase 2 Study established in this Attachment HH, the procedures for which will be adopted pursuant to Section 40.9.9.2.

##### **40.9.9.2 Applicable Procedures**

Unless LIPA's Board of Trustees exercises its authority, under applicable state law, to adopt comparable standards and procedures for LIPA's responsibilities in the performance of the Cluster Study for the Long Island Transmission District, LIPA shall voluntarily follow the Cluster Study procedures set forth in this Attachment HH. For purposes of any comparability procedures for LIPA's responsibilities in the performance of the Cluster Study adopted by LIPA's Board of Trustees, such procedures shall be consistent with the applicable Connecting Transmission Owners and Affected Transmission Owners procedures for the performance of the Phase 1 Study, Phase 2 Study, and Additional SDU Study established in this Attachment HH. Upon adoption by the LIPA Board of Trustees, such procedures for the Cluster Study within the

Long Island Transmission District shall be provided to the NYISO for filing with FERC on an informational basis and subject to confirmation that the adopted procedures meet the comparability standard under the Commission's reciprocity policy for the provision of interconnection service by non-jurisdictional utilities.

#### **40.9.9.3        Disputes**

With respect to any dispute arising out of, or relating to, LIPA's performance of its responsibilities under this Attachment HH that is not resolved through the dispute resolution requirements in Section 40.24.5, any succeeding action at law or equity seeking resolution of such dispute that: (i) is within the primary or exclusive jurisdiction of FERC, shall be brought in the first instance at FERC, or (ii) is raised solely within the jurisdiction of LIPA's Board of Trustees, shall be raised in the courts of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules or the United States District Court of the Eastern District of New York, as applicable.

## **40.10 Phase 1 Study Process, Development of System Models, and Phase 2 Entry Decision Period**

### **40.10.1 Phase 1 Study Process Start Date and Duration**

40.10.1.1 The Phase 1 Study process for the Cluster Study Process shall commence on the first Business Day after the end date of the Phase 1 Entry Decision Period.

40.10.1.2 The scheduled duration of the Phase 1 Study process shall be set forth in Section 40.9.2.

40.10.1.3 The Phase 1 Study process period shall conclude with the ISO's Operating Committee's approval of the Phase 1 Cost Estimates Summary Report.

### **40.10.2 ISO Development Work for Cluster Study Existing System Representation and Base Cases**

40.10.2.1.1 The ISO will develop the Existing System Representation in accordance with the requirements in Section 40.10.3. The Existing System Representation is the foundation of the CBA and CPA base cases. The ISO shall develop the Existing System Representation and auxiliary files for a given Cluster Study during the Application Window and Customer Engagement Window for that Cluster Study Process. The Existing System Representation will be completed for a given Cluster Study after the conclusion of the Final Decision Period for the prior Class Year Study or Cluster Study and prior to the commencement of the Phase 1 Study for the ongoing Cluster Study Process.

40.10.2.1.2 Using the Existing System Representation, the ISO will develop the CBA in accordance with the requirements in Section 40.12.1. The CBA evaluates the pre-existing baseline system before the Cluster Study Projects are included and identifies any System Upgrade Facilities and associated cost estimates for the baseline system. The CBA is used to determine the cost allocation of required facilities between Transmission Owners and Cluster



Study Projects. The ISO will commence the development of the CBA base cases (*e.g.*, short-circuit, steady state) for a given Cluster Study during the Application Window and/or the Customer Engagement Window for that Cluster Study Process. The ISO will be responsible for developing and completing each CBA base case. The ISO shall provide Transmission Owners at least five (5) Business Days to review and provide comments on the draft of each CBA base case and at least five (5) Business Days to review and provide comments on any updates the ISO makes to the draft base case to address the Transmission Owner's comments.

40.10.2.1.3 The ISO will develop the CPA in accordance with the requirements in Section 40.12.2. The CPA evaluates the condition of the system with the Cluster Study Projects added to the baseline system, identifies the System Upgrade Facilities required for the Cluster Study Projects collectively, and then performs a design, preliminary engineering, and estimation of costs and time to construct for each System Upgrade Facility. The CPA determines the cost allocation of required facilities among the Cluster Study Projects. The ISO will commence the development of the CPA base cases for a given Cluster Study during the Customer Engagement Window. The ISO will be responsible for developing and completing each CPA base case. The ISO shall provide Transmission Owners at least 5 Business Days to review and provide comments on the draft of each CBA base case and at least 5 Business Days to review and provide comments on any updates the ISO makes to the draft base case to address the Transmission Owner's comments.

### **40.10.3 Existing System Representation**

40.10.3.1 The ISO shall include in the Existing System Representation for purposes of the CBA and CPA for a given Cluster Study or Expedited Deliverability Study:

(i) the following facilities included in the ISO's most recent NYISO Load and Capacity Data Report: all generation identified as existing and all transmission facilities identified as existing and/or firm, excluding those facilities that are subject, as applicable, to Class Year Study or Cluster Study cost allocation but for which Class Year Study or Cluster Study cost allocations have not been accepted or for which cash or Security for the allocated amount has not been provided;

(ii) all proposed Projects, together with their associated System Upgrade Facilities and System Deliverability Upgrades, as applicable, that have accepted their cost allocation and paid cash or posted Security for their allocated amount in a prior Class Year Study or Cluster Study cost allocation process or for their facilities study in accordance with the Small Generator Interconnection Procedures in Attachment Z; *provided, however*, that System Deliverability Upgrades where construction has been deferred pursuant to Section 40.13.12.3.1 will only be included if construction of the System Deliverability Upgrades has been triggered under Section 40.13.12.3.1;

(iii) all Affected System Network Upgrades for which the Affected System Interconnection Customer has accepted its cost allocation and paid cash or posted Security in accordance with Section 40.8.3.10;

(iv) all proposed generators that interconnect to the distribution system through studies conducted outside of the NYISO's interconnection procedures (*e.g.*, the New York State Standardized Interconnection Requirements ("NYSSIR") process or a utility's individual interconnection procedures) and have been identified as firm in accordance with ISO Procedures;

(v) all generation and transmission retirements and derates identified in the NYISO Load and Capacity Data Report as scheduled to occur during the five-year cost allocation study planning period;

(vi) Transmission Projects that are proposed under Attachments Y or FF of the ISO OATT and have met the following milestones prior to the start date of the Customer Engagement Window for that Cluster Study Process: (1) have been triggered under the Reliability Planning Process, selected under the Short-Term Reliability Process, selected under the Public Policy Transmission Planning Process, or approved by beneficiaries under the Economic Planning Process, (2) have, if applicable, a completed System Impact Study in accordance with Attachment P to the ISO OATT, and (3) are making reasonable progress under the applicable OATT Attachments Y or FF planning process;

(vii) Transmission Projects that are not proposed under Attachments Y or FF to the ISO OATT that have completed a Facilities Study and posted Security for Network Upgrade Facilities as required in Section 22.11.1 of Attachment P to the ISO OATT (if applicable);

(viii) transmission projects that are not subject to the Transmission Interconnection Procedures, the Standard Large Facility Interconnection Procedures, or the Standard Interconnection Procedures (*i.e.*, new transmission facilities or upgrades proposed by a Transmission Owner in its Local Transmission Owner Plan or NYPA transmission plan) identified as “firm” by the Connecting Transmission Owner before the start date of the Customer Engagement Window for the Cluster Study Process and either (1) have commenced a Facilities Study in accordance with Section 3.7 of the OATT (if applicable) and have an Article VII application deemed complete (if applicable); or (2) are under construction and scheduled to be in-service within 12 months after the Cluster Study Process Start Date; and

(ix) all other changes to existing facilities – other than changes that are subject to, as applicable, Class Year Study or Cluster Study cost allocation but that have not accepted their Class Year or Cluster Study cost allocation or have not paid cash or posted Security for their accepted cost allocation – that are identified in the NYISO Load and Capacity Data Report or reported before the start date of the Customer Engagement Window for the Cluster Study Process by Market Participants to the ISO as scheduled to occur during the five year cost allocation study planning period.

40.10.3.2 Facilities in a Mothball Outage, an ICAP Ineligible Forced Outage, or Inactive Reserves will be modeled as in, and not removed from, the Existing System Representation.

40.10.3.3 If the ISO has triggered multiple Transmission Projects under its Reliability Planning Process, the ISO will include in the base case the selected Transmission Project until or unless that project is halted or its Development Agreement is terminated, in which case the ISO will include in the base case the regulated backstop solution.

40.10.3.4 The point of interconnection of a Retired generator with a terminated interconnection agreement is available to proposed facilities on a non-discriminatory basis pursuant to the ISO's applicable interconnection and transmission expansion processes and procedures. A Retired generator with an interconnection agreement that remains in effect after it is Retired will retain its right to the specific point of interconnection as provided for in the interconnection agreement and access to this point will not be available for new facilities.

#### **40.10.4 Phase 1 Study Scope and Procedures**

40.10.4.1 Within five (5) Business Days of the Phase 1 Study Start Date, the ISO will provide to the Connecting Transmission Owners and Affected Transmission Owners an updated Cluster Study Project List and the finalized CPA short-circuit base case. Upon the ISO's

submission of these materials, (i) the Connecting Transmission Owner identified by the ISO pursuant to Section 40.5.7.1.1 on which system a Cluster Study Project proposes to interconnect shall commence and perform a Phase 1 Study for that project, and (ii) any Affected Transmission Owner identified by the ISO pursuant to Section 40.5.7.1.1 which system is impacted by the proposed interconnection of a Cluster Study Project shall commence and perform a separate Phase 1 Study for that project, unless the Affected Transmission Owner indicates that no study is required or agrees with the Connecting Transmission Owner to include its input with the Connecting Transmission Owner's Phase 1 Study report. For the Transition Cluster Study, if, within ten (10) Business Days of the start of the Customer Engagement Window, a Connecting Transmission Owner or Affected Transmission Owner demonstrates to the ISO good cause that it is unable to perform or use a contractor to perform (i) a Phase 1 Study in accordance with the requirements in Sections 40.10.4 and 40.10.5, and/or (ii) the Transmission Owner's responsibilities for the Phase 2 Study in accordance with the requirements in Section 40.11.2.2 and 40.11.4, or (iii) the Transmission Owner's responsibilities for the Additional SDU Study in accordance with the requirements in Section 40.14.2.2, then the ISO will use a third party contractor pursuant to Section 40.24.4 to perform the studies in accordance with the requirements in, as applicable, Sections 40.10.4, 40.10.5, 40.11.2.2, 40.11.4, and 40.14.2.2 provided that the Connecting Transmission Owner or Affected Transmission Owner will use commercially reasonable efforts, and coordinate directly with the ISO or its contractor (as applicable), to support the development of and performance of the studies and the completion of the draft and final studies within the timeframes in, as applicable, Sections 40.10.4, 40.10.5, 40.11.2.2, 40.11.4, and 40.14.2.2. The Phase 1 Studies for all of the Cluster Study Projects participating in a given Cluster shall be performed to the extent practicable on a concurrent basis

during the Phase 1 Study period; *provided, however*, that a Phase 1 Study will not be performed for a CRIS-Only Cluster Study Project.

40.10.4.2 For purposes of the Phase 1 Study, the Connecting Transmission Owner or Affected Transmission Owner shall perform a design and engineering study to identify the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, and Local System Upgrade Facilities, along with the related metering, protection, and telecommunication facilities, required to reliably interconnect the Cluster Study Project with the New York State Transmission System or Distribution System in accordance with Applicable Reliability Requirements to the extent such upgrades are not Physically Infeasible. The Phase 1 Study will evaluate any potential control equipment proposed by the Interconnection Customer for requests for ERIS that are lower than the full output of the Facility and will identify any required interconnection facilities for system protection and coordination purposes. The Phase 1 Study will also identify the electrical switching configuration of the connection equipment, including, without limitation: the transformer, switchgear, meters, and other station equipment, and shall evaluate the use of static synchronous compensators, static VAR compensators, advanced power flow control devices, transmission switching, synchronous condensers, voltage source converters, advanced conductors, and tower lifting. The Connecting Transmission Owner or Affected Transmission Owner, as applicable, shall evaluate each identified alternative transmission technology and determine whether the above technologies should be used, consistent with Good Utility Practice, Applicable Reliability Requirements, and Applicable Laws and Regulations. The Connecting Transmission Owner or Affected Transmission Owner, as applicable, shall include an explanation of the results of the evaluation for each technology in the Phase 1 Study report, as applicable.

40.10.4.3 The Phase 1 Study shall determine a +30%/-15% estimate of the costs of the equipment, engineering and design work, procurement and construction work and commissioning of the required Local System Upgrade Facilities, Distribution Upgrades, and Connecting Transmission Owner's Interconnection Facilities that are identified in the study in accordance with Good Utility Practice and, for each of these cost categories, shall specify and estimate the cost of the work to be done at each substation and/or transmission or, if applicable, distribution line to physically and electrically connect each facility in the Cluster to the New York State Transmission System and Distribution System. The Transmission Owner will calculate cost estimates based on the assumption that the activities for which the cost estimates are calculated are the responsibility of the Transmission Owner and shall be subject to reasonable exclusions (*e.g.*, environmental, subsurface conditions, permitting, site acquisition costs). The categories of costs excluded from the estimates shall be identified in the Phase 1 Study report and the Standard Interconnection Agreement. The Phase 1 Study shall also include a preliminary schedule showing the estimated time required to complete the engineering and design, procurement, construction, installation and commissioning phases for the required Local System Upgrade Facilities, Distribution Upgrades, and Connecting Transmission Owner's Interconnection Facilities identified in the study.

40.10.4.4 Upon request, the Connecting Transmission Owner or Affected Transmission Owner shall provide each Cluster Study Project for which it has performed a Phase 1 Study supporting documentation, workpapers, and databases or data developed in the preparation of the Phase 1 Study, subject to non-disclosure arrangements consistent with Section 40.24.1.

40.10.4.5 The ISO, Connecting Transmission Owner, Affected Transmission Owner, or Affected System Operator, as applicable, may use subgroups in the Phase 1 Study or Phase 2 Study. The criteria used to define and determine subgroups will be set forth in ISO Procedures.

40.10.4.6 Prior to the end of the Application Window of a given Cluster Study Process, the ISO and Transmission Owners shall enter into appropriate agreements concerning the performance of that Cluster Study, which terms shall not be inconsistent with the requirements in this Attachment HH.

#### **40.10.5 Phase 1 Study Reports**

The Connecting Transmission Owner or Affected Transmission Owner shall provide its draft Phase 1 Study report for a Cluster Study Project to the Interconnection Customer and the ISO no later than one hundred fifty (150) Calendar Days after the date the ISO provided it with the updated Cluster Study Project List and the CPA short-circuit base case pursuant to Section 40.10.4.1. The ISO shall establish a period of at least ten (10) Business Days for the Interconnection Customer, Affected Transmission Owner(s), and the ISO to review and provide comments on the draft report. The Connecting Transmission Owners and Affected Transmission Owners shall review comments and issue a finalized Phase 1 Study report to the ISO no later than one hundred eighty (180) Calendar Days after the date the ISO provided it with the updated Cluster Study Project List and the CPA short-circuit base case pursuant to Section 40.10.4.1.

#### **40.10.6 Stakeholder Review of the Phase 1 Cost Estimates Summary Report**

Following the ISO's receipt of the draft Phase 1 Study reports, the ISO will present a draft Phase 1 Cost Estimates Summary Report that summarizes the cost estimates identified for Cluster Study Projects in the draft Phase 1 Studies to the ISO's Operating Committee's Transmission Planning Advisory Subcommittee. Following its receipt of the finalized Phase 1



Study reports, the ISO will update the draft Phase 1 Cost Estimates Summary Report and present the final Phase 1 Cost Estimates Summary Report to stakeholders for approval at the ISO's Operating Committee.

#### **40.10.7 Preparatory Work for Phase 2 Study**

##### **40.10.7.1 Bus Flow Analysis and Individual Breaker Analysis**

40.10.7.1.1 Within sixty (60) Calendar Days of the Phase 1 Study Start Date, the ISO will provide to the Connecting Transmission Owners the finalized CBA and CPA steady state base cases. Except as otherwise indicated in Section 40.10.7.1.3, upon the ISO's submission of these base cases, the Connecting Transmission Owner shall be responsible for performing the bus flow analysis, as applicable, for its system for purposes of the ISO's thermal analysis for the Phase 2 Study and coordinating with the ISO for the development of any required solutions within the timeframe set forth in Section 40.10.7.1.4.

40.10.7.1.2 During the Phase 1 Study process, the ISO, in consultation with the Connecting Transmission Owner, will determine whether an assessment of individual breakers on the Connecting Transmission Owner's system is required. Except as otherwise indicated in Section 40.10.7.1.3, upon this determination, the Connecting Transmission Owner shall be responsible for performing the individual breaker analysis for its system for purposes of the ISO's short-circuit analysis for the Phase 2 Study and coordinating with the ISO for the development of any required solutions within the timeframe set forth in Section 40.10.7.1.4.

40.10.7.1.3 A Connecting Transmission Owner may elect for the ISO to perform the bus flow analysis and/or the individual breaker analysis for that Connecting Transmission Owner's system by notifying the ISO of this election within fifteen (15) Business Days of the start date of the Customer Engagement Window. If a Connecting Transmission Owner makes this election, it

must provide the ISO with the ratings of its equipment and the one-line diagrams for the Cluster Study Projects proposing to connect to its system within sixty (60) Calendar Days of the Phase 1 Study Start Date to enable the ISO to perform the analysis, provided that the ISO and Connecting Transmission Owner may agree that this information is only required for certain projects. The ISO shall then be responsible for performing the bus flow analysis and/or individual breaker analysis for the Connecting Transmission Owner's system within the timeframe set forth in Section 40.10.7.1.4.

40.10.7.1.4 The Connecting Transmission Owner or ISO, as applicable, may commence the bus flow analysis during the Phase 1 Study and must complete the analysis and the Connecting Transmission Owner must identify any required solutions no later than sixty (60) Calendar Days after the Phase 2 Study Start Date. The Connecting Transmission Owner or ISO, as applicable, may commence the individual breaker analysis during the Phase 1 Study and must complete the analysis and the ISO must identify any required solutions no later than sixty (60) Calendar Days after the Phase 2 Study Start Date. Within this time period, the Connecting Transmission Owner or ISO performing the analysis must provide the other entity (*i.e.*, the ISO or Connecting Transmission Owner) a period of at least ten (10) Business Days to review and provide comments on the draft results of the analysis.

#### 40.10.7.2 Cost Recovery

To the extent the ISO, Connecting Transmission Owner(s), and Affected Transmission Owners commence study work for the Phase 2 Study during the Phase 1 Study period, Interconnection Customers shall be responsible for such study costs.

### **40.10.8 Phase 2 Entry Decision Period**

40.10.8.1 The Phase 2 Entry Decision Period for the Cluster Study Process shall commence on the first Business Day after the ISO's Operating Committee's approval of the Phase 1 Cost Estimates Summary Report in accordance with Section 40.10.6.

40.10.8.2 The Phase 2 Entry Decision Period shall be a ten (10) Business Day period.

40.10.8.3 A Cluster Study Project shall be included in the Phase 2 Study if, during the Phase 2 Entry Decision Period, the Interconnection Customer for the Cluster Study Project notifies the ISO of its election to proceed to the Phase 2 Study, and, as applicable:

- (i) satisfies the Readiness Deposit 2 requirements for its Cluster Study Project as determined in accordance with Section 40.10.8.4; *provided, however*, that a CRIS-Only Cluster Study Project is not required to provide Readiness Deposit 2 to proceed to the Phase 2 Study; and
- (ii) if Interconnection Customer submitted a Site Control Deposit with its Interconnection Request in lieu of demonstrating Site Control in accordance with Section 40.5.5.1.5.1, Interconnection Customer must satisfy the requirements in Section 40.5.5.4.

40.10.8.4 The Readiness Deposit 2 for a Cluster Study Project is the greater of: (i) the Readiness Deposit 1 amount for the Cluster Study Project, and (ii) 20% of the cost estimate determined in the Phase 1 Study for any Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, and Local System Upgrade Facilities for the Cluster Study Project.

40.10.8.4.1 To satisfy the Readiness Deposit 2 requirement for the Cluster Study Project, the Interconnection Customer must submit to the ISO during the Phase 2 Entry Decision Period in accordance with the requirements in Section 40.2.4.2 the incremental

difference, if any, between the Readiness Deposit 1 amount that it previously submitted for the project and the Readiness Deposit 2 amount for the project calculated pursuant to this Section 40.10.8.4. If the Readiness Deposit 1 amount for the project is the same as the Readiness Deposit 2 amount calculated pursuant to this Section 40.10.8.4, Interconnection Customer is not required to take any action during the Phase 2 Entry Decision Period to satisfy the Readiness Deposit 2 requirement.

40.10.8.4.2 The Readiness Deposit 1 amount for the Cluster Study Project and the incremental difference for the project, if any, submitted by the Interconnection Customer pursuant to this Section 40.10.8.4 shall, in total, constitute the Readiness Deposit 2 for the Cluster Study Project and replace the Readiness Deposit 1 for the project.

#### **40.10.9 Withdrawal and Withdrawal Penalties**

40.10.9.1 If an Interconnection Customer does not satisfy the requirements in Section 40.10.8.3 for the Cluster Study Project to proceed to the Phase 2 Study, then the ISO shall withdraw the Interconnection Request or CRIS-Only Request for the Cluster Study Project from the ISO's Queue pursuant to the Withdrawal requirements in Section 40.6.4.

40.10.9.2 If an Interconnection Customer withdraws the Interconnection Request or CRIS-Only Request for a Cluster Study Project, or the Interconnection Request or CRIS-Only Request for the Cluster Study Project is deemed withdrawn by the ISO, from the ISO's Queue during the Phase 1 Study or at the Phase 2 Entry Decision Period, the Interconnection Customer for the Cluster Study Project shall pay a Withdrawal Penalty in an amount equal to fifty percent (50%) of its initial Study Deposit and ten percent (10%) of its Readiness Deposit 1 for the project; except for the following:

(i) a CRIS-Only Cluster Study Project shall only pay a Withdrawal Penalty in the amount of fifty percent (50%) of its initial Study Deposit amount;

(ii) if the ISO determined that the Cluster Study Project cannot move forward due to Physical Infeasibility pursuant to Section 40.7.3, then the Cluster Study Project shall not be assessed a Withdrawal Penalty; and

(iii) if the Interconnection Request or CRIS-Only Request was for a Contingent Project that was withdrawn by the ISO pursuant to Section 40.5.4.1.3, then the Interconnection Request or CRIS-Only Request shall not be assessed a Withdrawal Penalty.

40.10.9.3 The ISO shall invoice, and Interconnection Customer shall pay, for any Withdrawal Penalty as set forth in Section 40.24.3.

40.10.9.4 The ISO shall apply the collected Withdrawal Penalty Funds pursuant to Section 40.6.5.

## **40.12 Cluster Baseline Assessment and Cluster Project Assessment**

### **40.12.1 Cluster Baseline Assessment (CBA) for Cost Allocation Between Interconnection Customers and Connecting Transmission Owners**

The cost of System Upgrade Facilities is first allocated between Interconnection Customers and Connecting Transmission Owners in accordance with the rules that are discussed below in this Section 40.12.1. For purposes of this 40.12.1, the requirements applicable to Connecting Transmission Owner also apply to Affected Transmission Owner or Affected System Operator.

40.12.1.1 The cost of System Upgrade Facilities is allocated between Interconnection Customers and Connecting Transmission Owners based upon the results of a Cluster Baseline Assessment of the five-year need for System Upgrade Facilities. The Cluster Baseline Assessment, as described in these rules, will be conducted by the ISO in cooperation with Market Participants. No Market Participant will have decisional control over any determinative aspect of the Cluster Baseline Assessment. The ISO will have decisional control over the entire Cluster Baseline Assessment. If, at any time, the ISO decides that it needs specific expert services from entities such as Market Participants, consultants or engineering firms for it to conduct the Cluster Baseline Assessment, then the ISO will enter into appropriate contracts with such entities for such input. As it conducts each Cluster Baseline Assessment, the ISO will provide regularly scheduled status reports and working drafts, with supporting data, to the ISO Operating Committee to ensure that all affected Market Participants have an opportunity to contribute whatever information and input they believe might be helpful to the process. Each completed Cluster Baseline Assessment will be

reviewed and approved by the ISO Operating Committee as part of the Cluster Study Report in accordance with 40.11.7. Each Cluster Baseline Assessment is reviewable by the ISO Board of Directors in accordance with provisions of the Commission-approved ISO Agreement.

40.12.1.1.1 The purpose of the Cluster Baseline Assessment is to identify the System Upgrade Facilities that Transmission Owners are expected to need during the five-year period covered by the assessment to reliably meet the load growth and changes in the load pattern projected for the New York Control Area, with cost estimates for the System Upgrade Facilities.

#### **40.12.1.2 Procedure for Cluster Baseline Assessment**

The Cluster Baseline Assessment procedure used to identify the System Upgrade Facilities that will ensure that New York State Transmission System facilities are sufficient to reliably serve existing load and meet load growth and changes in load patterns in compliance with NYSRC Reliability Rules, NPCC Basic Design and Operating Criteria, NERC Planning Standards, ISO rules, practices and procedures, and the applicable Transmission Owner criteria included in FERC Form No. 715 (collectively “Applicable Reliability Requirements”). In order for the ISO to recognize any revisions to Transmission Owner criteria as Applicable Reliability Requirements under this Attachment HH, the Transmission Owner shall present proposed revisions to such criteria to the ISO Operating Committee or one of its subcommittees. To the extent such revised criteria are not inconsistent with Order No. 2003 or the ISO’s interconnection procedures set forth in this Attachment HH to the OATT, the ISO will accept such revised criteria. The procedure will use the Applicable Reliability Requirements in effect when the Cluster Baseline Assessment is commenced. The procedure will be:

40.12.1.2.1 The ISO will first develop the Existing System Representation.

40.12.1.2.2 The ISO will then utilize the Existing System Representation to develop existing system improvement plans with each Transmission Owner. These improvement plans will use ISO data from the annual NYISO Load and Capacity Data Report to project system load growth and changes in load patterns, including those that reflect demand side management, and will identify the System Upgrade Facilities needed year-by-year for the existing system to reliably serve projected load in the Transmission Owner's Transmission District for a five-year period. The ISO will integrate these existing system improvement plans into the Cluster Baseline Assessment to ensure that the System Upgrade Facilities needed for a five-year period are identified on a New York State Transmission System-wide basis. The Cluster Baseline Assessment will identify each anticipated System Upgrade Facility project, its estimated cost, its anticipated in-service date, and the status of the project (in construction, budget approval received, budget approval pending).

40.12.1.2.3 The ISO will identify in the Cluster Baseline Assessment the System Upgrade Facilities needed to reliably meet projected load growth and changes in load pattern without the interconnection of any proposed Cluster Study Projects, except for those proposed Projects included in the Existing System Representation pursuant to Section 40.10.3.

40.12.1.2.4 The ISO will perform thermal, voltage, and stability analyses, as appropriate, to determine the normal and emergency transfer capabilities of the statewide existing system.



40.12.1.2.5 The ISO will rely on the most recent resource reliability analysis of the existing system. If no Reliability Needs are required under the study assumptions used in the most recent resource reliability analysis, the existing system will be deemed to meet Applicable Reliability Requirements for purposes of the Cluster Study.

40.12.1.2.6 If the transmission and generation facilities included in the Existing System Representation, combined with previously approved and accepted System Upgrade Facilities, are insufficient to meet Applicable Reliability Requirements on a year by year basis, then the ISO will develop feasible generic solutions that satisfy the Applicable Reliability Requirements, in accordance with Section 40.12.1.3, below.

40.12.1.2.7 If the existing system meets Applicable Reliability Requirements, the ISO will perform short-circuit analysis to determine whether there is sufficient interrupting capability in the existing system. If there are any breaker overloads, the ISO will determine the System Upgrade Facilities needed to mitigate the short circuit overloads.

40.12.1.2.8 A reassessment of Sections 40.12.1.2.4 through 40.12.1.2.6 shall be reassessed and, to the extent required by Good Utility Practice, repeated if the improvement plan impacts the transmission transfer capability of the system. The results of the short-circuit analysis will be treated in the same manner as the results of thermal, voltage and stability analyses for all purposes under these cost allocation rules.

40.12.1.2.9 Each Cluster Baseline Assessment conducted by the ISO will be reviewed and approved by the ISO Operating Committee, and its effectiveness will be subject to the approval of the ISO Operating Committee. In its report to the ISO Operating Committee, the ISO shall explain its reasons for all of its recommendations.

40.12.1.2.10 Each most recently completed Cluster Baseline Assessment will be reviewed during the next Cluster Study Process by the ISO and updated, as necessary, following the criteria and procedures described herein.

40.12.1.3 In developing solutions as required by Section 40.12.1.3.6, the ISO will, as it develops its own generic solutions, also utilize the following procedures:

40.12.1.3.1 The ISO will first select as generic solutions proposed Cluster Study Projects sufficient to meet Applicable Reliability Requirements on a year by year basis. If a proposed Cluster Study Project is larger than necessary, the ISO shall select that portion or segment of the project that is sufficient to meet but not exceed Applicable Reliability Requirements. If the proposed Cluster Study Project is not capable of being segmented or if the Cluster Study Project cannot meet Applicable Reliability Requirements on a year by year basis, the ISO shall not select it.

40.12.1.3.2 If the generation and transmission facilities included in the Existing System Representation, together with any proposed Cluster Study Projects that qualify as solutions pursuant to Section 40.12.1.3.1, above, are not sufficient to meet Applicable Reliability Requirements, the ISO shall complete the development of its own generic solutions, taking into account any generic

solutions proposed pursuant to Section 40.12.1.3.3, below, for inclusion in the CBA.

40.12.1.3.3 Market Participants may also propose generic solutions for inclusion in the CBA. The Market Participant proposing such solutions shall provide the ISO with all data necessary for the ISO to determine the feasibility of such proposed generic solutions.

40.12.1.3.4 The ISO shall develop and consider alternative sets of proposed generic solutions that fairly represent the range of feasible solutions to Applicable Reliability Requirements.

40.12.1.3.5 The ISO shall determine the feasibility of additional generic solutions developed pursuant to Sections 40.12.1.3.2, 40.12.1.3.3, and 40.12.1.3.4, according to the following criteria:

40.12.1.3.5.1 The ISO shall select only solutions that are based on proven technologies that have actually been licensed and financed, are under construction or have already been built in similar locations.

40.12.1.3.5.2 The ISO shall select as additional generic solutions only facilities that can reasonably be placed in service in time to meet Applicable Reliability Requirements on a year by year basis. In making this determination, the ISO shall consider the size and type of facility, access to fuel, access to transmission facilities, transmission upgrade requirements, construction time, and Good Utility Practice.

40.12.1.3.6 The ISO will submit its proposed generic solutions and the alternatives that it considered to Market Participants and to an independent expert for review

and will make the results of the expert's review available to Market Participants.

The independent expert shall review the feasibility of the proposed generic solutions developed pursuant to Sections 40.12.1.3.2, 40.12.1.3.3, and 40.12.1.3.4, and of generic solutions based on the segmentation of any Cluster Study Project under Section 40.12.1.3.1, according to the criteria set forth in Section 40.12.1.3.5.

40.12.1.3.6.1 If the independent expert concludes that one or more generic solutions is not feasible, the ISO shall eliminate that solution from further review.

40.12.1.3.6.2 If the ISO does not adopt the expert's recommendations, it will state in its report to the ISO Operating Committee its reasons for not adopting those recommendations.

40.12.1.3.7 Subject to Section 4.12.1.3.7.1, below, in the event that more than one generic solution or set of solutions satisfies the feasibility requirement of Section 40.12.1.3.5 and 40.12.1.3.6, the ISO shall compare the System Upgrade Facilities that would be necessary to interconnect each such generic solution and shall adopt the solution that is most consistent with Good Utility Practice. For these purposes, in comparing alternative solutions, a generic solution that satisfies sub-load pocket deficiencies shall normally be selected first.

40.12.1.3.7.1 The ISO shall be responsible for determining whether any generic solution or proposed Cluster Study Project meets Applicable Reliability Requirements.

40.12.1.4 With the exception of those upgrades that were previously allocated to, and accepted by Cluster Study Projects as a part of the Cluster Project Assessment in the Final Decision Round of previous Class Years or Cluster Studies, Interconnection Customers are not responsible for the cost of any System Upgrade Facilities that are identified in the Cluster Baseline Assessment, or any System Upgrade Facilities that resolve in whole or in part a deficiency in the system identified in the Cluster Baseline Assessment.

40.12.1.5 Interconnection Customers are responsible for 100% of the cost of the System Upgrade Facilities that are not already identified in the Cluster Baseline Assessment and are required for their Projects to reliably interconnect to the transmission system in a manner that meets the NYISO Minimum Interconnection Standard. The System Upgrade Facilities necessary to accommodate Cluster Study Projects will be determined by the Phase 1 Study and the Cluster Project Assessment. The criteria and procedures that will be followed to conduct the Cluster Project Assessment are discussed in Section 40.12.2 below.

40.12.1.5.1 If a Connecting Transmission Owner, Affected Transmission Owner, Affected System Operator, or Interconnection Customer elects to construct System Upgrade Facilities that are larger or more extensive than the minimum facilities required to reliably interconnect the proposed Cluster Study Project, and are reasonably related to the interconnection of the proposed project, then the entity that make such election is responsible for the cost of those System Upgrade Facilities in excess of the minimum System Upgrade Facilities required by the Cluster Study Project. If there is Headroom associated with these larger System

Upgrade Facilities and an Interconnection Customer of any subsequent project interconnects and uses the Headroom within ten (10) years of its creation, such subsequent Interconnection Customer shall pay the Connecting Transmission Owner, Affected Transmission Owner, Affected System Operator, or the Interconnection Customer for this Headroom in accordance with these rules, including Section 40.17.

40.12.1.6 The System Upgrade Facilities cost for which an Interconnection Customer is responsible will be determined on a “net” basis; that is, the Interconnection Customer’s System Upgrade Facilities cost will be determined net of the benefits, or System Upgrade Facility cost reductions, that result from the construction and operation of its project and the related upgrades. The net cost responsibility of an Interconnection Customer will not be less than zero. Also, the cost responsibility of the Connecting Transmission Owner for System Upgrade Facilities will be no greater than it would have been without the Interconnection Customer’s project. Specifically, the Connecting Transmission Owner shall not be required to pay (in total) more than 100% of the cost of installing a specific piece of equipment.

40.12.1.6.1 The purpose of this approach is to allocate to the Interconnection Customer the responsibility for the cost of the net impact of its project on the needs of the New York State Transmission System for System Upgrade Facilities. Thus, an Interconnection Customer is responsible for the cost of the System Upgrade Facilities that are required by, or caused by, its project. An Interconnection Customer is not responsible for the cost of System Upgrade

Facilities that would be required anyway, without the construction of its project.

If an Interconnection Customer's project reduces the cost of System Upgrade

Facilities that would be required anyway, that beneficial cost reducing impact will be recognized.

40.12.1.6.2 The net System Upgrade Facilities cost and cost reduction benefits of an Interconnection Customer's project are determined by the ISO by comparing and netting the results of a Cluster Baseline Assessment with the corresponding Cluster Project Assessment in accordance with these rules.

40.12.1.6.3 The net System Upgrade Facilities cost and cost reduction benefits of an Interconnection Customer's project are comprised of those costs and cost reduction benefits caused by (1) the construction of System Upgrade Facilities not contained in the Cluster Baseline Assessment, and (2) eliminating or reducing the need for the construction of System Upgrade Facilities contained in the Cluster Baseline Assessment, due to the construction of System Upgrade Facilities associated with the proposed project.

40.12.1.6.4 The Interconnection Customer's net cost responsibility will be determined using constant dollars. That is, when netting the cost of System Upgrade Facilities required for its project, as identified in the Cluster Project Assessment, with those identified in the Cluster Baseline Assessment, the cost of System Upgrade Facilities in the out-years of the Cluster Baseline Assessment and the out-years of the Cluster Project Assessment will be discounted to a current year value for netting. The cost of out-year System Upgrade Facilities will be

discounted to a current value using the weighted average cost of capital of the Connecting Transmission Owner.

#### **40.12.2 Cluster Project Assessment (CPA) for Cost Allocation Among Interconnection Customers**

The Interconnection Customer's share of the cost of System Upgrade Facilities is allocated among Interconnection Customers based upon the ISO Cluster Project Assessment. The Cluster Project Assessment will be conducted by the ISO to ensure New York State Transmission System compliance with Applicable Reliability Requirements. The ISO will conduct the Cluster Project Assessment, as described in these rules, in cooperation with Market Participants. No Market Participant will have decisional control over any determinative aspect of the Cluster Project Assessment. The ISO will have decisional control over the entire Cluster Project Assessment. If, at any time, the ISO decides that it needs specific expert services from entities such as Market Participants, consultants or engineering firms for it to conduct the Cluster Project Assessment, then the ISO will enter into appropriate contracts with such entities for such input. As it conducts each Cluster Project Assessment, the ISO will provide regularly scheduled status reports and working drafts, with supporting data, to the Operating Committee to ensure that all affected Market Participants have an opportunity to contribute whatever information and input they believe might be helpful to the process. Each completed Cluster Project Assessment will be reviewed and approved by the Operating Committee as part of the Cluster Study Report in accordance with Section 40.11.7. Each Cluster Project Assessment is reviewable by the ISO Board of Directors in accordance with the provisions of the Commission-approved ISO Agreement.

40.12.2.1 The Cluster Project Assessment for each Cluster Study will identify the applicable Connecting Transmission Owner's Attachment Facilities, Distribution



Upgrades and System Upgrade Facilities (collectively, “interconnection facilities”) required for all Cluster Study Projects, with cost estimates, as applicable for the required interconnection facilities.

40.12.2.1.1 For System Upgrade Facilities identified in the Cluster Study, the NYISO, in consultation with the applicable Transmission Owner(s), shall calculate each Interconnection Customer’s share of the costs as follows:

(a) Local System Upgrade Facilities, including all switching stations, shall be allocated first per capita to interconnection facilities interconnecting to the substation at the same voltage level, and then per capita to each Facility sharing the interconnection facility. The System Upgrade Facilities identified through the Cluster Project Assessment will only be those System Upgrade Facilities that are not already included in a Cluster Baseline Assessment. If a Distribution Upgrade is identified in the Cluster Project Assessment, the ISO shall apply the same requirements applicable to System Upgrade Facilities in this Section 40.12.2 to the Distribution Upgrade.

40.12.2.1.2 The costs of any needed Connecting Transmission Owner’s Attachment Facilities and Distribution Upgrades identified in the Cluster Study Process will be directly assigned to Interconnection Customer(s) using such facilities. Where Interconnection Customers in the same Cluster Study agree to share Connecting Transmission Owner’s Attachment Facilities and Distribution Upgrades, the cost of such interconnection facilities shall be allocated based on the number of Facilities sharing use of such interconnection facilities on a per capita basis (*i.e.*, on a per Facility basis), unless parties mutually agree to a different cost sharing

arrangement.40.12.2.2For each Cluster Project Assessment, the ISO will utilize the Existing System Representation used for the corresponding Cluster Baseline Assessment.

40.12.2.3 In the case of a new non-Local System Upgrade Facility that has a functional capacity not readily measured in amperes or other discrete electrical units, such as a System Upgrade Facility dedicated to system protection, the *pro rata* impact of each project in the Cluster Study on the reliability of the transmission system will be based upon the number of Projects in the Cluster Study contributing to the need for the new System Upgrade Facility. The *pro rata* impact of each project in the Cluster Study needing such a new System Upgrade Facility will be equal. Accordingly, the *pro rata* contribution of each of the Projects to the need for the new System Upgrade Facility will be equal to  $(1/a)$ , where “a” is the total number of Projects in the Cluster needing the new System Upgrade Facility.

40.12.2.4 In the case of a new non-Local System Upgrade Facility that has a capacity readily measured in amperes or other discrete electrical units, the impact of each project in the Cluster Study will be stated in terms of its *pro rata* contribution to the total electrical impact on each individual System Upgrade Facility in the Cluster Study of all Projects that have at least a *de minimus* impact, as described in Section 40.12.2.5 of these rules. The contribution to electrical impact will be measured in various ways depending on the nature of the transmission problem primarily causing the need for the individual System Upgrade Facility.

- 40.12.2.4.1 Contribution to short-circuit current for interrupting duty beyond the rating of equipment.
- 40.12.2.4.2 Contribution to MW loading on the critical element for thermal overloads under the test conditions that cause the need for a System Upgrade Facility. MW contribution will be calculated by multiplying the associated distribution factor by the declared maximum MW of the project. The distribution factor is calculated by *pro rata* displacement of New York System load by the added generation.
- 40.12.2.4.3 Contribution to voltage drop on the most critical bus for voltage problems. A critical bus will be defined as representative for voltage conditions during a specific contingency. The *pro rata* impact of each project is measured as the ratio of the voltage drop at the critical bus caused by the project when none of the other Projects are represented, to the voltage drop at the critical bus when all of the Projects in the Cluster Study are represented.
- 40.12.2.4.4 Contribution to transient stability problems as measured by the fault current calculated for the most critical stability test that is causing the need for the System Upgrade Facility.
- 40.12.2.5 For each individual electrical impact standard listed in subsections 40.12.2.5.1.1 through 40.12.2.5.1.4 below, an Interconnection Customer will not be responsible for the cost associated with a corresponding System Upgrade Facility if its project's contribution is less than the *de minimus* impacts defined below. The costs of Projects that would otherwise have been allocated to certain Interconnection Customers' Projects but for the sub-*de minimus* impact

exemption, shall be allocated 100 %to the other Interconnection Customers in the Class Year according to their *pro rata* contribution.

40.12.2.5.1 *De minimus* impact is defined in terms of any one of the factors listed below in this subsection. Examples of computations used to determine *de minimus* impact are shown in ISO Procedures.

40.12.2.5.1.1 **Short Circuit Contribution:** Equal to or greater than 100 amperes of the existing rating of the equipment that needs to be replaced.

40.12.2.5.1.2 **Thermal Loadings:** Equal to or greater than 10 MW on the most limiting monitored element under the most critical contingency that is causing the need for transmission improvements.

40.12.2.5.1.3 **Voltage Effects:** Equal to or greater than 2% of the voltage drop occurring with all Cluster Study Projects at the most critical bus.

40.12.2.5.1.4 **Stability Effects:** Equal to or greater than 100 amperes of the fault current for the most critical stability test that is causing the need for the System Upgrade Facility.

40.12.2.6 The *pro rata* contribution of each project in the Cluster Study to each of the System Upgrade Facilities identified in the Cluster Project Assessment shall be determined as follows.

40.12.2.6.1 First, in accordance with Section 40.12.1.6 of these rules, the total cost of System Upgrade Facilities identified in the Cluster Project Assessment is compared and netted with the total cost of System Upgrade Facilities identified in the Cluster Baseline Assessment. If the total cost of System Upgrade Facilities identified in the Cluster Project Assessment does not exceed the total cost of

System Upgrade Facilities identified in the Cluster Baseline Assessment, then there is no cost to be allocated among Cluster Study Projects.

40.12.2.6.2 If the total cost of System Upgrade Facilities identified in the Cluster Project Assessment does exceed the total cost of System Upgrade Facilities identified in the Cluster Baseline Assessment by some amount, then this amount (“Overage Cost”) is a cost to be allocated among Cluster Study Projects. Appendix 9 to this Attachment HH sets out an example of an allocation of Overage Cost among Cluster Study Projects.

40.12.2.6.3 The Overage Cost represents a percentage of the total cost of System Upgrade Facilities identified in the Cluster Project Assessment (“Overage Cost Percentage”).

40.12.2.6.4 Each System Upgrade Facility identified in the Cluster Project Assessment has a cost specified for it in the Cluster Project Assessment.

40.12.2.6.5 The *pro rata* contribution of each project in the Cluster Study to a System Upgrade Facility identified in the Cluster Project Assessment represents a percentage contribution to the need for that System Upgrade Facility (“Contribution Percentage”).

40.12.2.6.6 An individual Cluster Study Project’s *pro rata* responsibility for the cost of each System Upgrade Facility identified in the Cluster Project Assessment is the product of (a) the Overage Cost Percentage; (b) the Cluster Study Project’s Contribution Percentage for the particular System Upgrade Facility; and (c) the cost of the particular System Upgrade Facility as specified in the Cluster Project Assessment.

40.12.2.6.7 If the least cost solution identified is to install one System Upgrade Facility (*e.g.*, a series reactor) rather than replacing a number of System Upgrade Facilities (*e.g.*, breakers), the ISO staff will determine each Cluster Study Project's Contribution Percentage by calculating what each Cluster Study Project's *pro rata* contribution would have been on the System Upgrade Facilities not replaced (*e.g.*, breakers) and applying that percentage to the System Upgrade Facility that is installed (*e.g.*, series reactor).

## **40.13 Deliverability Studies and Cost Allocation Methodology for CRIS**

### **40.13.1 Cluster Study Deliverability Study and Non-Cluster Study Expedited Deliverability Study**

An Interconnection Customer requesting CRIS for a Project larger than 2 MW may elect to enter either the Cluster Study Process pursuant to the requirements in Section 40.5.4 to this Attachment HH or an Expedited Deliverability Study pursuant to the requirements in Section 40.19 to this Attachment HH; *provided, however*, that an Interconnection Customer may not be evaluated in both studies simultaneously (*i.e.*, an Interconnection Customer with CRIS being evaluated in a Cluster Study Process may not enter an Expedited Deliverability Study for evaluation of the same CRIS request until the Cluster Study has completed. An Interconnection Customer with CRIS being evaluated in an Expedited Deliverability Study may not enter a Cluster Study for evaluation of the same CRIS request until the Expedited Deliverability Study has completed).

A Cluster Study deliverability evaluation first evaluates whether a Project satisfies the NYISO Deliverability Interconnection Standard at its full amount of requested CRIS. If a Project is not deliverable for its full amount of requested CRIS, the Cluster Study proceeds to identify and cost allocate System Deliverability Upgrades required to make the Project fully deliverable for the full amount of requested CRIS.

An Expedited Deliverability Study only evaluates whether a Project satisfies the NYISO Deliverability Interconnection Standard at its full amount of requested CRIS; it does not identify or cost allocate System Deliverability Upgrades. An Interconnection Customer evaluated in an Expedited Deliverability Study and deemed undeliverable at its full amount of requested CRIS may (1) enter a Cluster Study Process in a subsequent Application Window in accordance with the requirements in Section 40.5 to obtain a Project Cost Allocation for required System

Deliverability Upgrades; or (2) enter into a subsequent Expedited Deliverability Study or a Cluster Study Process with the same or different CRIS request.

#### **40.13.1.1 Cost Allocation Among Interconnection Customers in a Cluster**

Each Project in a Cluster Study Deliverability Study – *i.e.*, a Cluster Study CRIS Project – will share in the then currently available deliverability capability of the New York State Transmission System and will also share in the cost of any System Deliverability Upgrades required for its Project to qualify for CRIS at the requested level. The total cost of the System Deliverability Upgrades required for all the Projects in the Cluster for the Cluster Study will be allocated among the Projects in the Cluster based on the *pro rata* impact of each Cluster Study CRIS Project on the deliverability of the New York State Transmission System, that is, the *pro rata* contribution of each Project in the Cluster Study Deliverability Study to the total cost of each of the System Deliverability Upgrades identified in the Cluster Study Deliverability Study. In addition to this allocation of cost responsibility for System Deliverability Upgrades among the Projects in a Cluster, the cost of certain Highway System Deliverability Upgrades will be shared with Load Serving Entities and subsequent Interconnection Customers, as described below in Section 40.13.12 of these rules.

#### **40.13.1.2 Expedited Deliverability Study**

The Expedited Deliverability Study shall be performed concurrently for all Projects that meet the entry requirements set forth in Section 40.19 of this Attachment HH as a combined Expedited Deliverability Study.



#### **40.13.2 Categories of transmission facilities**

For purposes of applying the NYISO Deliverability Interconnection Standard, transmission facilities comprising the New York State Transmission System will be categorized as Byways, Highways or Other Interfaces.

##### **40.13.2.1 Byways**

The Interconnection Customer of a Cluster Study CRIS Project will pay its *pro rata* share of one hundred percent (100%) of the cost of the System Deliverability Upgrades to any Byway needed to make the Cluster Study CRIS Project deliverable in accordance with these rules. The System Deliverability Upgrades on the Byway(s) will be identified by the ISO, with input from the Connecting Transmission Owner and from the Affected Transmission Owner(s), in the Cluster Study Deliverability Study.

The Transmission Owner(s) responsible for constructing a System Deliverability Upgrade on a Byway shall request Incremental TCCs with respect to the System Deliverability Upgrade in accordance with the requirements of Section 19.2.4 of Attachment M of the ISO OATT. An Interconnection Customer paying to upgrade a Byway will receive the right to accept any Incremental TCCs awarded by the ISO in proportion to its contribution to the total cost of the System Deliverability Upgrade. The ISO shall round any non-whole MW quantities to a whole number of Incremental TCCs in a manner that ensures that the sum of all individual allocations to eligible entities is equal to the total number of Incremental TCCs awarded to the System Deliverability Upgrade; *provided, however*, that an Interconnection Customer will not be entitled to receive any Incremental TCCs if the whole number value determined by the ISO for the Interconnection Customer's proportionate share is zero. If an Interconnection Customer elects to accept its proportionate share of any Incremental TCCs resulting from the System

Deliverability Upgrade, the Interconnection Customer shall be the Primary Holder of such Incremental TCCs. If an Interconnection Customer declines an award of its proportionate share of any Incremental TCCs resulting from the System Deliverability Upgrade, or subsequently terminates the Incremental TCCs it elected to receive in accordance with Section 19.2.4.9 of Attachment M of the ISO OATT, the declined or terminated Incremental TCCs will be deemed reserved to the extent necessary to facilitate the potential for transfers to subsequent Interconnection Customers that pay for the use of Headroom pursuant to this Attachment HH on a System Deliverability Upgrade that has been awarded Incremental TCCs. Incremental TCCs that are declined or terminated by an Interconnection Customer and not otherwise deemed reserved will be deemed permanently terminated. Incremental TCCs related to a System Deliverability Upgrade that were previously deemed reserved as a result of prior declination or termination will be deemed permanently terminated when the Headroom on the System Deliverability Upgrade ceases to exist or is otherwise reduced to zero in accordance with Section 40.17.1.4.3 of this Attachment HH.

An Interconnection Customer paying to upgrade a Byway will be eligible to receive Headroom payments in accordance with these rules. A subsequent Interconnection Customer paying for use of Headroom on a System Deliverability Upgrade on a Byway will be entitled to receive Incremental TCCs, to the extent Incremental TCCs have been awarded by the ISO for the System Deliverability Upgrade, in proportion to its contribution to the total cost of the System Deliverability Upgrade, as determined based on its required Headroom payments. The ISO shall round any non-whole MW quantities to a whole number of Incremental TCCs in a manner that ensures that the sum of all individual allocations to eligible entities is equal to the total number of Incremental TCCs awarded to the System Deliverability Upgrade; *provided, however*, that a

subsequent Interconnection Customer will not be entitled to receive any Incremental TCCs if the whole number value determined by the ISO for the subsequent Interconnection Customer's proportionate share is zero. If an Interconnection Customer that initially paid for a System Deliverability Upgrade on a Byway elected to receive its proportionate share of any Incremental TCCs related to the System Deliverability Upgrade and continues to hold such Incremental TCCs, any Incremental TCCs that a subsequent Interconnection Customer is eligible to receive will be made available by reducing the Incremental TCCs related to the System Deliverability Upgrade held by the Interconnection Customer that initially paid for the System Deliverability Upgrade in proportion to the Headroom payments received by such Interconnection Customer from the subsequent Interconnection Customer making such Headroom payments. If an Interconnection Customer that initially paid for a System Deliverability Upgrade on a Byway declined to receive its proportionate share of any Incremental TCCs related to the System Deliverability Upgrade or subsequently terminated the Incremental TCCs it elected to receive, any Incremental TCCs that a subsequent Interconnection Customer is eligible to receive will be made available from the Incremental TCCs related to the System Deliverability Upgrade that were previously deemed reserved as a result of prior declination or termination in proportion to the Headroom payments received by the Interconnection Customer that initially paid for the System Deliverability Upgrade from the subsequent Interconnection Customer making such Headroom payments. If a subsequent Interconnection Customer elects to accept its proportionate share of any Incremental TCCs, the subsequent Interconnection Customer shall be the Primary Holder of such Incremental TCCs; *provided, however*, that Incremental TCCs that were previously deemed reserved and are transferred to a subsequent Interconnection Customer will become effective on the first day of the Capability Period that commences following the next

Centralized TCC Auction conducted after the subsequent Interconnection Customer makes the necessary Headroom payment and elects to receive its proportionate share of Incremental TCCs. If a subsequent Interconnection Customer declines an award of its proportionate share of any Incremental TCCs resulting from its Headroom payments, or subsequently terminates the Incremental TCCs it elected to receive in accordance with Section 19.2.4.9 of Attachment M of the ISO OATT, the declined or terminated Incremental TCCs will be deemed permanently terminated.

Any Incremental TCCs resulting from a System Deliverability Upgrade on a Byway, regardless of the Primary Holder thereof, may not be sold or transferred through a Centralized TCC Auction, Reconfiguration Auction or the Secondary Market.

#### **40.13.2.2 Highways**

The Interconnection Customer of a Cluster Study CRIS Project will pay an allocated share of the cost of the System Deliverability Upgrades to any Highway needed to make the Cluster Study Project deliverable in accordance with these rules. The System Deliverability Upgrades on the Highway or Highways, and the Interconnection Customer's allocated share of the cost of those System Deliverability Upgrades, will be identified by the ISO, with input from the Connecting Transmission Owner and from the Affected Transmission Owner(s), in the Cluster Study Deliverability Study.

The Transmission Owner(s) responsible for constructing a Highway System Deliverability Upgrade shall request Incremental TCCs with respect to the Highway System Deliverability Upgrade in accordance with the requirements of Section 19.2.4 of Attachment M of the ISO OATT. An Interconnection Customer paying for Highway System Deliverability Upgrades will receive the right to accept any Incremental TCCs awarded by the ISO, in

proportion to its contribution to the to the total cost of the Highway System Deliverability Upgrade. The ISO shall round any non-whole MW quantities to a whole number of Incremental TCCs in a manner that ensures that the sum of all individual allocations to eligible entities is equal to the total number of Incremental TCCs awarded to the Highway System Deliverability Upgrade; *provided, however*, that an Interconnection Customer will not be entitled to receive any Incremental TCCs if the whole number value determined by the ISO for the subsequent Interconnection Customer's proportionate share is zero. If an Interconnection Customer elects to accept its proportionate share of any Incremental TCCs resulting from the Highway System Deliverability Upgrade, the Interconnection Customer shall be the Primary Holder of such Incremental TCCs. If an Interconnection Customer declines an award of its proportionate share of any Incremental TCCs resulting from the Highway System Deliverability Upgrade, or subsequently terminates the Incremental TCCs it elected to receive in accordance with Section 19.2.4.9 of Attachment M of the ISO OATT, the declined or terminated Incremental TCCs will be deemed reserved to the extent necessary to facilitate the potential for transfers to subsequent Interconnection Customers that pay for the use of Headroom pursuant to this Attachment HH on a Highway System Deliverability Upgrade that has been awarded Incremental TCCs. Incremental TCCs that are declined or terminated by an Interconnection Customer and not otherwise deemed reserved will be deemed permanently terminated. Incremental TCCs related to a Highway System Deliverability Upgrade that were previously deemed reserved as a result of prior declination or termination will be deemed permanently terminated when the Headroom on the Highway System Deliverability Upgrade ceases to exist or is otherwise reduced to zero in accordance with Section 40.17.1.4.3 of this Attachment HH.

The Transmission Owner(s) responsible for constructing a Highway System Deliverability Upgrade shall also be awarded, and be the Primary Holder of, any Incremental TCCs related to the portion of a Highway System Deliverability Upgrade funded by Load Serving Entities pursuant to Section 40.13.12 of this Attachment HH, in proportion to the contribution of the Load Serving Entities to the total cost of the Highway System Deliverability Upgrade. The ISO shall round any non-whole MW quantities to a whole number of Incremental TCCs in a manner that ensures that the sum of all individual allocations to eligible entities is equal to the total number of Incremental TCCs awarded to the Highway System Deliverability Upgrade; *provided, however*, that no Incremental TCCs will be awarded to the Transmission Owner(s) responsible for constructing a Highway System Deliverability Upgrade for the portion of a Highway System Deliverability Upgrade funded by Load Serving Entities if the whole number value determined by the ISO for the Load Serving Entities' proportionate share is zero.

An Interconnection Customer paying for a Highway System Deliverability Upgrade will be eligible to receive Headroom payments in accordance with these rules to the extent that it pays for System Deliverability Upgrade capacity in excess of that required to provide the requested level of CRIS and Load Serving Entities have not funded a portion of the costs of the Highway System Deliverability Upgrade pursuant to Section 40.13.12 of this Attachment HH. If Load Serving Entities have funded a portion of a Highway System Deliverability Upgrade pursuant to Section 40.13.12 of this Attachment HH, the Transmission Owner(s) responsible for constructing the Highway System Deliverability Upgrade will be eligible to receive any and all Headroom payments related to the System Deliverability Upgrade in accordance with these rules on behalf, and for the benefit, of the Load Serving Entities that funded a portion of the System Deliverability Upgrade.

A subsequent Interconnection Customer paying for use of Headroom on System Deliverability Upgrades will be entitled to receive Incremental TCCs, to the extent Incremental TCCs have been awarded by the ISO for the System Deliverability Upgrade, in proportion to its contribution to the total cost of the Highway System Deliverability Upgrade, as determined based on its required Headroom payments. The ISO shall round any non-whole MW quantities to a whole number of Incremental TCCs in a manner that ensures that the sum of all individual allocations to eligible entities is equal to the total number of Incremental TCCs awarded to the Highway System Deliverability Upgrade; *provided, however*, that a subsequent Interconnection Customer will not be entitled to receive any Incremental TCCs if the whole number value determined by the ISO for the Interconnection Customer's proportionate share is zero. If: (i) an Interconnection Customer that initially paid for a Highway System Deliverability Upgrade paid for capacity in excess of that required to provide its requested level of CRIS; (ii) Load Serving Entities have not funded a portion of the costs of the Highway System Deliverability Upgrade pursuant to Section 40.13.12 of this Attachment HH; and (iii) the Interconnection Customer elected to receive its proportionate share of any Incremental TCCs related to the System Deliverability Upgrade and continues to hold such Incremental TCCs, any Incremental TCCs that a subsequent Interconnection Customer is eligible to receive will be made available by reducing the Incremental TCCs related to the System Deliverability Upgrade held by the Interconnection Customer that initially funded the System Deliverability Upgrade in proportion to the Headroom payments received by such Interconnection Customer from the subsequent Interconnection Customer making such Headroom payments. If: (i) an Interconnection Customer that initially paid for a Highway System Deliverability Upgrade paid for capacity in excess of that required to provide its requested level of CRIS; (ii) Load Serving Entities have not

funded a portion of the costs of the Highway System Deliverability Upgrade pursuant to Section 40.13.12 of this Attachment HH; and (iii) the Interconnection Customer declined to receive its proportionate share of any Incremental TCCs related to the System Deliverability Upgrade or subsequently terminated the Incremental TCCs it elected to receive, any Incremental TCCs that a subsequent Interconnection Customer is eligible to receive will be made available from the Incremental TCCs related to the System Deliverability Upgrade that were previously deemed reserved as a result of prior declination or termination in proportion to the Headroom payments received by the Interconnection Customer that initially paid for the System Deliverability Upgrade from the subsequent Interconnection Customer making such Headroom payments. If Load Serving Entities have funded a portion of a Highway System Deliverability Upgrade pursuant to Section 40.13.12 of this Attachment HH, any Incremental TCCs that a subsequent Interconnection Customer is eligible to receive will be made available by reducing the Incremental TCCs related to the System Deliverability Upgrade held by the Transmission Owner(s) responsible for constructing the System Deliverability Upgrade. If a subsequent Interconnection Customer elects to accept its proportionate share of any Incremental TCCs, the subsequent Interconnection Customer shall be the Primary Holder of such Incremental TCCs; *provided, however,* that Incremental TCCs that were previously deemed reserved and are transferred to a subsequent Interconnection Customer will become effective on the first day of the Capability Period that commences following the next Centralized TCC Auction conducted after the subsequent Interconnection Customer makes the necessary Headroom payment and elects to receive its proportionate share of Incremental TCCs. If a subsequent Interconnection Customer declines an award of its proportionate share of any Incremental TCCs resulting from its Headroom payments, or subsequently terminates the Incremental TCCs it elected to receive in



accordance with Section 19.2.4.9 of Attachment M of the ISO OATT, the declined or terminated Incremental TCCs will be deemed permanently terminated.

Any Incremental TCCs resulting from a Highway System Deliverability Upgrade, regardless of the Primary Holder thereof, may not be sold or transferred through a Centralized TCC Auction, Reconfiguration Auction or the Secondary Market.

#### **40.13.2.3 Other Interfaces**

If the Cluster Study CRIS Project degrades the transfer capability of any one of the Other Interfaces below the transfer capability identified in the current CBA, then the Interconnection Customer will pay its *pro rata* share of one hundred percent (100%) of the cost of the System Deliverability Upgrades needed to restore the transfer capability of the Other Interfaces degraded by its proposed Project to what the transfer capability of those Other Interfaces would have been without its Project, as that transfer capability was measured in the current CBA. Where two or more Projects would cause degradation of an Other Interface's transfer capability, the cost of the necessary System Deliverability Upgrades to restore the original transfer capability of the interface shall be shared on a *pro rata* basis, based on the MW of degradation that each Project would cause.

#### **40.13.3 Capacity Regions**

40.13.3.1 The deliverability test will be applied within each of the four (4) Capacity Regions: (1) Rest of State (*i.e.*, Load Zones A through F); (2) Lower Hudson Valley (*i.e.*, Load Zones G, H and I); (3) New York City (*i.e.*, Load Zone J); and (4) Long Island (*i.e.*, Load Zone K). To be declared deliverable a Cluster Study Project must only be deliverable, at its requested CRIS MW, throughout each of the Capacity Regions in which the Project is interconnected or is interconnecting, or, if requesting CRIS for External-to-ROS Deliverability Rights, throughout

the Rest of State Capacity Region. For example, a proposed Cluster Study Project from an external Control Area interconnecting in the Rest of State Capacity Region (*i.e.*, Load Zones A-F) will be required to demonstrate deliverability throughout the Rest of State Capacity Region (*i.e.*, Load Zones A-F), but will not be required to demonstrate deliverability to or within any of the following Capacity Regions: Lower Hudson Valley (*i.e.*, Load Zones G, H and I); New York City (*i.e.*, Load Zone J); or Long Island (*i.e.*, Load Zone K).

40.13.3.2 A proposed Cluster Study Transmission Project internal to the NYCA that is requesting CRIS for Unforced Capacity Deliverability Rights must be deliverable both throughout the Capacity Region to which it proposes to inject Energy and throughout the Capacity Region from which it proposes to withdraw Energy. For example, a Cluster Study Transmission Project that proposes to withdraw Energy from the Rest of State Capacity Region (*i.e.*, Load Zones A-F) and inject Energy into New York City (*i.e.*, Load Zone J) must demonstrate deliverability throughout the Rest of State Capacity Region and demonstrate deliverability throughout the New York City Capacity Region.

#### **40.13.4 Participation in Capacity Markets**

40.13.4.1 An Interconnection Customer, in order to be eligible to become an Installed Capacity Supplier or receive Unforced Capacity Deliverability Rights or External-to-ROS Deliverability Rights, must obtain CRIS pursuant to the procedures set forth in this Attachment HH. An Interconnection Customer must enter a Cluster Study Deliverability Study or Expedited Deliverability Study in order to obtain CRIS, unless otherwise provided for in this Attachment HH. The MW amount of CRIS requested by an Interconnection Customer, stated in MW of Installed Capacity (“ICAP”), cannot exceed the MW levels specified in Section 40.5.6.5 of this Attachment HH. All requests for CRIS must be in tenths of a MW.

The ISO will perform the Cluster Study Deliverability Study and Expedited Deliverability Study in accordance with these rules and with input of Market Participants, to determine the deliverability of the Projects requesting CRIS in each study. The Expedited Deliverability Study will only determine the extent to which the Project is deliverable at the full amount of requested CRIS. The Cluster Study Deliverability Study will determine deliverability at the full amount of requested CRIS and, if not deliverable, will identify and allocate the cost of the System Deliverability Upgrades needed to make deliverable each Cluster Study CRIS Project. In order to be eligible to become an Installed Capacity Supplier or receive Unforced Capacity Deliverability Rights or External-to-ROS Deliverability Rights, an Interconnection Customer must: (i) be found fully deliverable at the requested CRIS level in an Expedited Deliverability Study or (ii) in a Cluster Study, either (1) accept its deliverable MW in a Cluster Study or Expedited Deliverability Study; or (2) pay cash or post Security, in accordance with these rules, for the System Deliverability Upgrades needed for its Project to be deliverable at the requested level of CRIS.

#### **40.13.5 The Pre-Existing System**

Where the Existing System Representation demonstrates deliverability issues, an Interconnection Customer electing CRIS need only address the incremental deliverability of its CRIS request, not the deliverability of the pre-existing system depicted in the Existing System Representation. Likewise, Transmission Owners will not be responsible for curing any pre-existing deliverability issues.

#### **40.13.6 CRIS Values**

Through a Class Year Study, an Interconnection Customer may elect no CRIS, partial CRIS, or full CRIS for its Project by satisfying the applicable sections of this Attachment HH.

Through an Expedited Deliverability Study, an Interconnection Customer may elect CRIS or partial CRIS to the extent its requested CRIS is deliverable pursuant to the NYISO Deliverability Interconnection Standard.

Each Project qualifying for CRIS will have two CRIS values per Project: one for the Summer Capability Period and one for the Winter Capability Period. For Projects comprised of multiple Generators, the Project's CRIS, subject to the maximum permissible requested CRIS pursuant to Section 40.5.6.5 of this Attachment HH, shall be allocated among the multiple Generators, and shall be allocated among the multiple Generators, as requested by Interconnection Customer (to the extent permissible under Section 40.5.6.5 of this Attachment HH). The Project's CRIS and allocation of CRIS among its units, as applicable, will be specified by ISO in the Class Year Deliverability Study report approved by the ISO Operating Committee in accordance with Section 40.11.7.

The Project's CRIS value for the Summer Capability Period will be set using the deliverability test methodology and procedures described below. The Project's CRIS value for the Winter Capability Period will be determined by the applicable process below:

**40.13.6.1 Winter CRIS will be calculated as follows:**

Winter CRIS MW = (Summer CRIS MW x Maximum Net Output at 10 degrees Fahrenheit)/Maximum Net Output at 90 degrees Fahrenheit

Where:

Maximum Net Output at 10 degrees Fahrenheit = the Project's maximum net output at 10 degrees Fahrenheit determined pursuant to the Project's ISO-approved temperature curve; and

Maximum Net Output at 90 degrees Fahrenheit = the Project's maximum net output at 90 degrees Fahrenheit determined pursuant to the Project's ISO-approved temperature curve.

40.13.6.1.1 For facilities with Summer CRIS, the following additional provision applies: For such facilities for which there is an ISO-accepted temperature curve used for determining the Project's DMNC, Winter CRIS will be calculated using such temperature curve, provided the capability represented by the curve does not exceed the Project's ERIS. For facilities for which there is not an ISO-accepted temperature curve used for determining the Project's DMNC, Winter CRIS will be set equal to the Project's Summer CRIS unless the Project provides a temperature curve to the ISO by December 16, 2017, that the ISO subsequently determines is acceptable.

40.13.6.1.2 For facilities first obtaining Summer CRIS on or after December 16, 2017, the Winter CRIS will be determined using the most recent temperature curve provided to and accepted by the ISO, either during the interconnection process or at the time the Summer CRIS is first obtained.

40.13.6.2 Upon an increase to a Project's Summer CRIS pursuant to a permissible increase in Summer CRIS under Sections 40.5.6.6 or 40.18.3 of this Attachment HH (increases in CRIS not requiring a Class Year Study) or pursuant to an increase in Summer CRIS evaluated in a Cluster Study for which an Interconnection Customer accepts its Project Cost Allocation for System Deliverability Upgrades and posts Security therefore (if applicable) or accepts its Deliverable MWs, the Winter CRIS will be determined using the formula set forth in Section 40.13.6.1, wherein the Summer CRIS MW will be the increased Summer CRIS MW.

#### **40.13.7 Deliverability Study Procedures**

##### **40.13.7.1 Cluster Study Deliverability Study Procedures**

The ISO will conduct the Cluster Study Deliverability Study, as described in these rules, in cooperation with Market Participants. No Market Participant will have decisional control over any determinative aspect of the Cluster Study Deliverability Study. The ISO will have decisional control over the entire Cluster Study Deliverability Study. If, at any time, the ISO decides that it needs specific expert services from entities such as Market Participants, consultants or engineering firms for it to conduct the Cluster Study Deliverability Study, then the ISO will enter into appropriate contracts with such entities for such input. The ISO shall utilize existing studies to the extent practicable when it performs the study, including but not limited to SRIS deliverability analyses performed pursuant to Section 30.7.3.2 and 30.7.4.2 of Attachment X to the OATT. As it conducts each Cluster Study Deliverability Study, the ISO will provide regularly scheduled status reports and working drafts, with supporting data, to the ISO Operating Committee or an ISO Operating Committee subcommittee to ensure that all affected Market Participants have an opportunity to contribute whatever information and input they believe might be helpful to the process. Each completed Cluster Study Deliverability Study will be reviewed and approved by the ISO Operating Committee when the ISO Operating Committee approves the CPA for the same Cluster Study in accordance with Section 40.11.7. Each Cluster Study Deliverability Study is reviewable by the ISO Board of Directors in accordance with the provisions of the Commission-approved ISO Agreement.

If the ISO determines that an Additional SDU Study is required pursuant to Section 40.14 of this Attachment HH, the ISO will notify all Cluster Study Projects that such Additional SDU Study will be conducted, with such notice to be provided as soon as practicable after the ISO

receives notice from Interconnection Customers in response to the Notice of SDUs Requiring Additional Study pursuant to Section 40.14.1 of this Attachment HH.

#### **40.13.7.2 Expedited Deliverability Study Procedures**

The ISO will conduct the Expedited Deliverability Study, as described in these rules in cooperation with Market Participants. No Market Participant will have decisional control over any determinative aspect of the Expedited Deliverability Study. The ISO will have decisional control over the entire Expedited Deliverability Study. If, at any time, the ISO decides that it needs specific expert services from entities such as Market Participants, consultants or engineering firms for it to conduct the Expedited Deliverability Study, then the ISO will enter into appropriate contracts with such entities for such input. The ISO shall utilize existing studies to the extent practicable when it performs the study. As it conducts each Expedited Deliverability Study, the ISO will provide regularly scheduled status reports and working drafts, with supporting data, to the ISO Operating Committee or an ISO Operating Committee subcommittee to ensure that all affected Market Participants have an opportunity to contribute whatever information and input they believe might be helpful to the process. Each completed Expedited Deliverability Study will be reviewed and approved by the ISO Operating Committee. Each Expedited Deliverability Study is reviewable by the ISO Board of Directors in accordance with the provisions of the Commission-approved ISO Agreement.

#### **40.13.8 Deliverability Test Methodology for Highways and Byways**

##### **40.13.8.1 Definition of NYCA Deliverability**

The NYCA transmission system shall be able to deliver the aggregate of NYCA capacity resources to the aggregate of the NYCA load under summer peak load conditions. This is accomplished in the Cluster Study through ensuring the deliverability of each Cluster Study

CRIS Project, in the Capacity Region(s) where the Project interconnects. This is accomplished in the Expedited Deliverability Study through ensuring the deliverability of each Cluster Study CRIS Request, in the Capacity Region where the Project interconnects.

#### **40.13.8.2 NYCA Deliverability Testing Methodology**

##### **40.13.8.2.1 Cluster Study**

40.13.8.2.1.1 The current CBA for the Cluster Study, developed in accordance with ISO Procedures, will serve as the starting point for the deliverability baseline for testing under summer peak system conditions, subject to ISO Procedures and the following:

All Cluster Study CRIS Projects will be evaluated on an aggregate Cluster basis. Deliverability will be determined through a shift from generation to generation within the Capacity Regions in New York State. Each Capacity Region will be tested on an individual basis.

40.13.8.2.1.2 Each entity requesting External CRIS Rights may request in the Application Window through a CRIS-Only Request, in the form of Appendix 2 to this Attachment HH a certain number of MW to be evaluated for deliverability pursuant to Section 40.13.11 of this Attachment HH. The MW of an entity requesting External CRIS Rights will not be derated for the deliverability analysis.

40.13.8.2.1.3 Each Interconnection Customer requesting CRIS will request that a certain number of MW be evaluated for deliverability, such MW not to exceed the maximum levels set forth in Section 40.6.5 of this Attachment HH. The MW requested by an Interconnection Customer will represent Installed Capacity, and



will be derated for the deliverability analysis, as set forth in this Section

40.13.8.2.1.3. The CRIS MW requested by a Resource with an Energy Duration Limitation will represent Installed Capacity based on the Interconnection Customer-selected duration (*i.e.*, its expected maximum injection capability in MW hours for the Interconnection Customer-selected duration). The CRIS MW requested by a Cluster Study Transmission Project seeking Unforced Capacity Deliverability Rights will represent Installed Capacity at the point of injection. At the conclusion of the analysis, the ISO will reconvert only the deliverable MW and report them in terms of MW of Installed Capacity using the same derating factor utilized at the beginning of the deliverability analysis.

Facilities requesting CRIS and existing facilities with CRIS will be modeled in the deliverability analysis at MW levels described herein. A derated generator capacity incorporating availability is used. This derated generator capacity is calculated for each resource using a UCAP Deration Factor (“UCDF”). The UCDF used is an average value based on historical performance on a Capacity Region basis, as determined in accordance with ISO Procedures. The UCDF for all generators that are not Intermittent Power Resources (resources that are not Intermittent Power Resources include Energy Storage Resources) or Limited Control Run of River Hydro is the average EFORD. All generators that are not Intermittent Power Resources or Limited Control Run of River Hydro in the same Capacity Region will use the same UCDF. The UCDF for Intermittent Power Resources and Limited Control Run of River Hydro will be calculated

based on historical production data by resource type in accordance with ISO Procedures.

Facilities comprised of Generators of different technologies will be derated using a blended UCDF that combines the UCDF of the individual Generators within the Project; *provided, however*, that if the Project includes load reduction, the load reduction will not impact the UCDF of the Project. The UCDF factor for proposed Projects will be applied to the requested CRIS level. For facilities modeled in the CBA, the UCDF will be applied to their CRIS level.

The CRIS MW requested by a Cluster Study Transmission Project or held by an existing facility with Unforced Capacity Deliverability Rights will not be derated at the point of injection (*i.e.*, sink) for the deliverability analysis. However, the withdrawal capability (*i.e.*, source) of such a facility that is internal to the NYCA will be modeled in the deliverability analysis at the MW of CRIS plus losses of the facility expected to occur at its CRIS injection level, in the manner set forth in Section 40.13.8.2.1.13.

Existing CRIS that will be modeled in the Cluster Study shall include: existing CRIS for facilities not being evaluated in the Cluster Study regardless of outage state, unless (1) that CRIS will expire no later than twelve (12) months (*i.e.*, three hundred sixty-five (365) Calendar Days) after the Phase 1 Study Start Date, except where the facility has provided notice of a proposed CRIS transfer anticipated to be finalized no later than twelve (12) months (*i.e.*, three hundred sixty-five (365) Calendar Days) of the Phase 1 Study Start Date; or (2) the CRIS is associated with a Retired facility that cannot transfer such rights prior to CRIS

expiration. For purposes of this Section 40.13.8.2.1.3, “existing CRIS” for Projects that have undergone, as applicable, a prior Class Year Study or Cluster Study deliverability evaluation is CRIS obtained upon completion of a Class Year Study or Cluster Study through which the Interconnection Customer accepted its deliverable MW or accepted its Project Cost Allocation and posted Security for System Deliverability Upgrades, as applicable. For Projects that undergo an Expedited Deliverability Study deliverability evaluation, “existing CRIS” is CRIS that is obtained upon completion of an Expedited Deliverability Study through which the Interconnection Customer was deemed to have accepted its Deliverable MW in an Expedited Deliverability Study completed prior to the Class Year Study Start Date.

40.13.8.2.1.4 Load uncertainties will be addressed in accordance with ISO Procedures by taking the impact of Load Forecast Uncertainty (“LFU”) from the most recent base case IRM and applying it to load.

40.13.8.2.1.5 Deliverability base case conditioning steps will be consistent with those used for the Reliability Planning Process and Area Transmission Review transfer limit calculation methodology.

40.13.8.2.1.6 In deliverability testing, Emergency transfer criteria and contingency testing will be in conformance with NYSRC rules and correspond to that used in the Reliability Planning Process studies.

40.13.8.2.1.7 The ISO will monitor all transmission facilities that are part of the New York State Transmission System.

40.13.8.2.1.8 When either the voltage or stability transfer limit of an interface calculated in the CBA is more binding than the calculated thermal transfer limit, then the lower of the CBA voltage or stability transfer limit will be included in the deliverability testing as a proxy limit.

40.13.8.2.1.9 External system imports will be adjusted as necessary to eliminate or minimize overloads, other than the following external system imports: (i) the grandfathered import contract rights listed in Attachment E to the Installed Capacity Manual, (ii) the operating protocols set forth in Schedule C of Attachment CC to the ISO OATT, (iii) the appropriate rules for reflecting PJM service to RECo load, (iv) the Existing Transmission Capacity for Native Load listed for the New York State Electric & Gas Corporation in Table 3 of Attachment L to the ISO OATT, and (v) any External CRIS Rights awarded pursuant to Section 40.13.11 of this Attachment HH, either as a result of the conversion of grandfathered rights over the Quebec (via Chateauguay) Interface or as a result of a Cluster Study Deliverability Study, until, as of the Phase 1 Study Start Date, the time available to renew the External CRIS Rights has expired, as described in Section 40.18.2.4 of this Attachment HH.

40.13.8.2.1.10 Flows associated with generators physically located in the NYCA but selling capacity out of the market will be modeled as such in the deliverability base cases.

40.13.8.2.1.11 Resources and demand are brought into balance in the baseline. If resources are greater than demand in the Capacity Region, existing generators within the Capacity Region are prorated down. If resources are lower than

demand in the Capacity Region, additional external resources are included in the model.

40.13.8.2.1.12 PARs within the applicable Capacity Region will be adjusted as necessary, in either direction and within their angle capability, to eliminate or minimize overloads without creating new ones. PARs controlling external ties and ties between the Capacity Regions will be modeled, within their angle capability, to hold the individual tie flows to their respective deliverability baseline schedules, which shall be set recognizing firm commitments and operating protocol set forth in Schedule C of Attachment CC to the ISO OATT.

40.13.8.2.1.13 Deliverability testing will proceed as follows – The generation/load mix is split into two groups of generation and load, one upstream and one downstream for each zone or sub-zone tested within the Capacity Region. All elements that are part of the New York State Transmission System within the Capacity Region will be monitored. For a Cluster Study Transmission Project seeking Unforced Capacity Deliverability Rights, the MW of requested CRIS plus losses of the facility at the point of withdrawal are modeled as negative generation in the Capacity Region (*i.e.*, as a proxy generating facility withdrawing power from the New York State Transmission System in the Capacity Region.) If there is excess generation upstream (that is, more upstream generation than is necessary to serve the upstream load plus LFU), then the generation excess, considering generator derate factors described in Section 40.13.8.2.1.3 above, is assumed to displace downstream generation. If the dispatch of the upstream excess generation causes an overload, this overload is flagged as a potential deliverability problem and will

be used to determine the amount of capacity that is assigned CRIS status and the overload mitigation.

40.13.8.2.1.14 For Highway interfaces, the Cluster Study Projects in the current Cluster Study Deliverability Study, whether or not they are otherwise deliverable, will not be considered deliverable if their aggregate impact degrades the transfer capability of the interface more than the lesser of 25 MW or 2 percent (2%) of the transfer capability identified in the CBA and results in an increase to the NYCA LOLE determined for the CBA of .01 or more. The Cluster Study CRIS Projects causing the degradation will be responsible, on a *pro rata* basis, for restoring transfer capability only to the extent their aggregate degradation of transfer capability, compared to that in the CBA, would not occur but for the Cluster CRIS Projects.

#### **40.13.8.2.2 Expedited Deliverability Study**

40.13.8.2.2.1 The current Class Year CPA, developed in accordance with ISO Procedures, will serve as the starting point for the deliverability baseline for testing under summer peak system conditions, subject to ISO Procedures and the following: All projects in the Expedited Deliverability Study will be evaluated on an aggregate Expedited Deliverability Study basis. Deliverability will be determined through a shift from generation to generation within the Capacity Regions in New York State. Each Capacity Region will be tested on an individual basis.

40.13.8.2.2.2 Each Interconnection Customer requesting CRIS will request that a certain number of MW be evaluated for deliverability, such MW not to exceed the

maximum levels set forth in Section 40.5.6.5 of this Attachment HH. The MW requested by an Interconnection Customer will represent Installed Capacity, and will be derated for the deliverability analysis, as set forth in this Section 40.13.8.2.2.2. The CRIS MW requested by a Resource with an Energy Duration Limitation will represent Installed Capacity based on the Interconnection Customer-selected duration (*i.e.*, its expected maximum injection capability in MW hours for the Interconnection Customer-selected duration). The CRIS MW requested by a Cluster Study Transmission Project seeking Unforced Capacity Deliverability Rights will represent Installed Capacity at the point of injection. At the conclusion of the analysis, the ISO will reconvert only the deliverable MW and report them in terms of MW of Installed Capacity using the same derating factor utilized at the beginning of the deliverability analysis.

Facilities requesting CRIS and existing facilities with CRIS will be modeled in the deliverability analysis at MW levels described herein. A derated generator capacity incorporating availability is used. This derated generator capacity is calculated for each resource using a UCAP Deration Factor (“UCDF”). The UCDF used is an average value based on historical performance on a Capacity Region basis, as determined in accordance with ISO Procedures. The UCDF for all generators that are not Intermittent Power Resources (resources that are not Intermittent Power Resources include Energy Storage Resources) or Limited Control Run of River Hydro is the average EFORD. The UCDF for Intermittent Power Resources and Limited Control Run of River Hydro will be calculated based on historical production data by resource type in accordance with

ISO Procedures. Facilities comprised of Generators of different technologies will be derated using a blended UCDF that combines the UCDF of the individual Generators within the Project; *provided, however*, that if the Project includes load reduction, the load reduction will not impact the UCDF of the Project.

The CRIS MW requested by a Cluster Study Transmission Project or held by an existing facility with Unforced Capacity Deliverability Rights will not be derated at the point of injection (*i.e.*, sink) for the deliverability analysis.

However, the withdrawal capability (*i.e.*, source) of such a facility that is internal to the NYCA will be modeled in the deliverability analysis at the MW of CRIS plus losses of the facility expected to occur at its CRIS injection level, in the manner set forth in Section 40.13.8.2.2.13.

The UCDF factor for proposed Projects will be applied to the requested CRIS level. For facilities modeled in the CPA, the UCDF will be applied to their CRIS level.

40.13.8.2.2.3 CRIS that will be modeled in the Expedited Deliverability Study shall include: (1) existing CRIS, including CRIS obtained in a previous Expedited Deliverability Study, for facilities not being evaluated in the instant Expedited Deliverability Study, regardless of outage state, unless (i) the CRIS will expire no later than four (4) months (*i.e.*, one hundred twenty (120) Calendar Days) after the Expedited Deliverability Study Start Date, except where the facility has provided notice of a proposed CRIS transfer anticipated to be finalized no later than four (4) months (*i.e.*, one hundred twenty (120) Calendar Days) after the Expedited Deliverability Study Start Date; or (ii) the CRIS is associated with a Retired



facility that cannot transfer such rights prior to CRIS expiration; and (2) CRIS requested by Projects in, as applicable, the Class Year Study(ies) or Cluster Study(ies) pending during the Expedited Deliverability Study. For purposes of this Section 40.13.8.2.2.3, “existing CRIS” is CRIS that has not expired and CRIS that has been obtained by Projects through Attachment HH. For Projects that undergo a Class Year Study or Cluster Study deliverability evaluation, “existing CRIS,” is CRIS obtained, upon completion of a Class Year Study or Cluster Study through which the Interconnection Customer accepted deliverable MW or accepted its Project Cost Allocation and posted Security for System Deliverability Upgrades, as applicable. For Projects that undergo an Expedited Deliverability Study deliverability evaluation, “existing CRIS,” is CRIS obtained, upon completion of an Expedited Deliverability Study through which the Interconnection Customer was deemed to have accepted its deliverable MW.

40.13.8.2.2.4 Load uncertainties will be addressed in accordance with ISO Procedures by taking the impact of Load Forecast Uncertainty (“LFU”) from the most recent base case IRM and applying it to load.

40.13.8.2.2.5 Deliverability base case conditioning steps will be consistent with those used for the Reliability Planning Process and Area Transmission Review transfer limit calculation methodology.

40.13.8.2.2.6 In deliverability testing, Emergency transfer criteria and contingency testing will be in conformance with NYSRC rules and correspond to that used in the NYISO Reliability Planning Process studies.

40.13.8.2.2.7 The ISO will monitor all transmission facilities that are part of the New York State Transmission System.

40.13.8.2.2.8 When either the voltage or stability transfer limit of an interface calculated in the CPA is more binding than the calculated thermal transfer limit, then the lower of the CPA voltage or stability transfer limit will be included in the deliverability testing as a proxy limit.

40.13.8.2.2.9 External system imports will be adjusted as necessary to eliminate or minimize overloads, other than the following external system imports: (i) the grandfathered import contract rights listed in Attachment E to the Installed Capacity Manual, (ii) the operating protocols set forth in Schedule C of Attachment CC to the ISO OATT, (iii) the appropriate rules for reflecting PJM service to RECo load, (iv) the Existing Transmission Capacity for Native Load listed for the New York State Electric & Gas Corporation in Table 3 of Attachment L to the ISO OATT, (v) any External CRIS Rights awarded pursuant to Section 40.13.11, either as a result of the conversion of grandfathered rights over the Quebec (via Chateauguay) Interface or as a result of a Class Year Deliverability Study or a Cluster Study Deliverability Study, until, as of the Expedited Deliverability Study start date, the time available to renew the External CRIS Rights has expired, as described in Section 40.18.2.4.

40.13.8.2.2.10 Flows associated with generators physically located in the NYCA but selling capacity out of the market will be modeled as such in the deliverability base cases.

40.13.8.2.2.11 Resources and demand are brought into balance in the baseline. If

resources are greater than demand in the Capacity Region, existing generators within the Capacity Region are prorated down. If resources are lower than demand in the Capacity Region, additional external resources are included in the model.

40.13.8.2.2.12 PARs within the applicable Capacity Region will be adjusted as necessary,

in either direction and within their angle capability, to eliminate or minimize overloads without creating new ones. PARs controlling external ties and ties between the Capacity Regions will be modeled, within their angle capability, to hold the individual tie flows to their respective deliverability baseline schedules, which shall be set recognizing firm commitments and operating protocol set forth in Schedule C of Attachment CC to the ISO OATT.

40.13.8.2.2.13 Deliverability testing will proceed as follows - The generation/load mix is

split into two groups of generation and load, one upstream and one downstream for each zone or sub-zone tested within the Capacity Region. For a Cluster Study Transmission Project seeking Unforced Capacity Deliverability Rights, the MW of requested CRIS plus losses of the facility at the point of withdrawal are modeled as negative generation in the Capacity Region (*i.e.*, as a proxy generating facility withdrawing power from the New York State Transmission System in the Capacity Region). All elements that are part of the New York State Transmission System within the Capacity Region will be monitored. If there is excess generation upstream (that is, more upstream generation than is necessary to serve the upstream load plus LFU), then the generation excess, taking into account

generator derate factors described in Section 40.13.8.2.2.2 above, is assumed to displace downstream generation. If the dispatch of the upstream excess generation causes an overload, this overload is flagged as a potential deliverability problem and will be used to determine the amount of partial CRIS, if any, for the applicable Projects in the Expedited Deliverability Study.

40.13.8.2.2.14 For Highway interfaces, the Projects in an Expedited Deliverability Study, whether or not they are otherwise deliverable, will not be considered deliverable if their aggregate impact degrades the transfer capability of the interface more than the lesser of 25 MW or 2 percent (2%) of the transfer capability identified in the CPA. To the extent possible, the ISO will determine partial CRIS, if any, for any applicable Project in the Expedited Deliverability Study.

## **40.13.9 Deliverability Test Methodology for Other Interfaces**

### **40.13.9.1 Cluster Study Deliverability Test Methodology for Other Interfaces**

The Cluster Study Projects in the current Cluster Study Deliverability Study, whether or not they are otherwise deliverable across Highways and Byways, will not be considered deliverable if their aggregate impact degrades the transfer capability of any Other Interface more than the lesser of 25 MW or 2 percent (2%) of the transfer capability of the Other Interface identified in the CBA. Each Interconnection Customer will be responsible for its *pro rata* Cluster share of one hundred percent (100%) of the cost of System Deliverability Upgrades needed to restore transfer capability on the Other Interfaces impacted by the Cluster Study CRIS Projects but only to the extent that the degradation of transfer capability on the Other Interfaces, compared to that measured in the current CBA for the Cluster Study, would not occur but for the aggregate impact of the Cluster Study Projects. Where two or more Projects contribute to the

degradation of the transfer capability of an Other Interface, each Project Interconnection Customer shall pay for a share of the required System Deliverability Upgrades based on its contribution to the degradation of the transfer capability. To the extent possible, the ISO will determine partial CRIS, if any, for any applicable Project in the Cluster Study.

#### **40.13.9.2 Expedited Deliverability Study Test Methodology for Other Interfaces**

The Projects in an Expedited Deliverability Study, whether or not they are otherwise deliverable across Highways and Byways, will not be considered deliverable if their aggregate impact degrades the transfer capability of any Other Interface more than the lesser of 25 MW or 2 percent (2%) of the transfer capability of the Other Interface identified in the CBA. To the extent possible, the ISO will determine partial CRIS, if any, for any applicable Project in the Expedited Deliverability Study.

#### **40.13.10 Deliverability of External Installed Capacity**

External Installed Capacity not associated with Unforced Capacity Deliverability Rights, External-to-ROS Deliverability Rights or External CRIS Rights will be subject to the deliverability test in Section 40.13.8 and 40.13.9 of this Attachment HH, but not as a part of the Cluster Study Deliverability Study. As described in detail in Section 5.12.2 of the ISO Services Tariff, the deliverability of External Installed Capacity not associated with Unforced Capacity Deliverability Rights, External-to ROS Deliverability Rights or External CRIS Rights will be evaluated separately as a part of the annual process under the ISO Services Tariff that sets import rights for the upcoming Capability Year, to determine the amount of External Installed Capacity that can be imported to the New York Control Area.

#### **40.13.11 CRIS Rights for External Installed Capacity**

An entity, by following the procedures and satisfying the requirements described in this Section 40.13.11, may obtain External CRIS Rights. While the External CRIS Rights are in effect, External Installed Capacity associated with External CRIS Rights is not subject to (1) the deliverability determination described above in Section 40.13.10 of this Attachment HH, (2) the annual deliverability determination applied in the import limit setting process described in Section 5.12.2.2 of the ISO Services Tariff, or (3) to the allocation of import rights described in ISO Procedures.

##### **40.13.11.1 Required Commitment of External Installed Capacity**

An entity requesting External CRIS Rights for a specified number of MW of External Installed Capacity must commit to supply that number of MW of External Installed Capacity for a period of at least five (5) years (“Award Period”). The entity’s commitment to supply the specified number of MW for the Award Period may be based upon either an executed bilateral contract to supply (“Contract Commitment”) or based upon another kind of long-term commitment (“Non-Contract Commitment”), both as described herein.

##### **40.13.11.1.1 Contract Commitment**

An entity making a Contract Commitment of External Installed Capacity must have one or more executed bilateral contract(s) to supply a specified number of MW of External Installed Capacity (“Contract CRIS MW”) to a Load Serving Entity or Installed Capacity Supplier for an Award Period of at least five (5) years. The entity must have ownership or contract control of External Installed Capacity to fulfill its bilateral supply contract throughout the Award Period, and that otherwise satisfies ISO requirements.

40.13.11.1.1.1 The bilateral supply contract(s) individually or in the aggregate, must be for all months of the Summer Capability Periods over the term of the bilateral supply contract(s), but need not include any of the months of the Winter Capability Periods over that term. The entity seeking External CRIS Rights must specify which, if any, months of the Winter Capability Period it will supply External Installed Capacity under the bilateral supply contract(s) (“Specified Winter Months”).

40.13.11.1.1.2 The bilateral supply contract(s) must be for the same number of MW for all months of the Summer Capability Periods (“Summer Contract CRIS MW”) and the same number of MW for all Specified Winter Months (“Winter Contract CRIS MW”). The Winter Contract CRIS MW level must be less than or equal to the Summer Contract CRIS MW level.

40.13.11.1.1.3 An entity holding External CRIS Rights under a Contract Commitment must certify the bilateral supply contract for every month of the Summer Capability Periods and all Specified Winter Months for the applicable Contract CRIS MW. The Summer Contract CRIS MW must be certified for every month of the Summer Capability Period, and the Winter Contract CRIS MW must be certified for every Specified Winter Month (if any).

#### **40.13.11.1.2 Non-Contract Commitment**

An entity holding External CRIS Rights under a Non-Contract Commitment must offer the committed number of MW of External Installed Capacity for every month of the commitment, as described below, in the ISO Installed Capacity auctions for an Award Period of

at least five (5) years. The entity must have ownership or contract control of External Installed Capacity to fulfill its Non-Contract Commitment throughout the Award Period.

40.13.11.1.2.1 The Non-Contract Commitment must be made for all months of the Summer Capability Periods over the term of the Award Period but need not include any months in the Winter Capability Periods. The entity must identify the Specified Winter Months, if any, of the Winter Capability Periods for which it will make the commitment.

40.13.11.1.2.2 The commitment must be for the same number of MW for each month of the Summer Capability Period (“Summer Non-Contract CRIS MW”), and the same number of MW for all Specified Winter Months (“Winter Non-Contract CRIS MW”). The Winter Non-Contract CRIS MW level must be less than or equal to the Summer Contract CRIS MW level.

40.13.11.1.2.3 An entity holding External CRIS Rights under a Non-Contract Commitment must offer the committed capacity (a) in at least one of the following NYCA auctions: the Capability Period Auction, the Monthly Auction or the ICAP Spot Market Auction, or (b) through a certified and scheduled Bilateral Transaction (as such terms not defined in this Attachment HH are defined in the ISO Services Tariff). The Summer Non-Contract CRIS MW must be offered for every month of the Summer Capability Period, and the Winter Non-Contract CRIS MW must be offered for every Specified Winter Month (if any).

40.13.11.1.2.4 Notwithstanding other capacity mitigation measures that may apply, the offers to sell Installed Capacity into an auction submitted pursuant to this Non-Contract Commitment will be subject to an offer cap for each month of the



Summer Capability Periods and each Specified Winter Month. This offer cap will be determined in accordance with the provisions contained in Section 5.12.2.4 of the ISO Services Tariff.

#### **40.13.11.1.3 Failure to Meet Commitment**

If an entity fails to certify or offer the full number of Contract CRIS MW or Non-Contract CRIS MW in accordance with the terms stated above, in Sections 40.13.11.1.1 and 40.13.11.1.2, the entity shall pay the ISO an amount equal to 1.5 times the Installed Capacity Spot Auction Market Clearing Price for the month in which either the capacity under Non-Contract Commitment was not offered or the Contract Commitment to supply ICAP was not certified (“Supply Failure”), times the number of MW committed under the Non-Contract or Contract Commitment but not offered.

40.13.11.1.3.1 Within a given Award Period and each subsequent renewal of an Award Period pursuant to Section 40.18.2.4 herein, for the first three (3) instances of a Supply Failure, no additional actions will be taken. Upon the fourth instance within the Award Period or the fourth instance within a subsequent renewal period of a Supply Failure, the associated External CRIS Rights will be terminated in their entirety with no ability to renew. Entities that had External CRIS Rights terminated may reapply for External CRIS in accordance with Section 40.13.11.1.4.2 below. Nothing in this Section 40.13.11.1.3 shall be construed to limit or diminish any provision in the Market Power Mitigation Measures or the Market Monitoring Plan.

#### **40.13.11.1.4 Obtaining External CRIS Rights**

An entity making a Contract Commitment or Non-Contract Commitment of External Installed Capacity may obtain External CRIS Rights for a specified number of MW of External Installed Capacity in one of two different ways, either (i) by converting MW of grandfathered deliverability rights over the External Interface with Quebec (via Chateauguay), or (ii) by having its specified MW of External Installed Capacity evaluated in a Cluster Study Deliverability Study, both as described herein.

40.13.11.1.4.1 One-Time Conversion of Grandfathered Rights. An entity can request to convert a specified number of MW pursuant to the conversion process established in Section 5.12.2.3 of the ISO Services Tariff.

40.13.11.1.4.2 Class Year Deliverability Study. An entity may seek to obtain External CRIS Rights for its External Installed Capacity by requesting that its External Installed Capacity be evaluated for deliverability in a Cluster Study Process. To make such a request an entity must submit a CRIS-Only Request in accordance with Section 40.2 of this Attachment HH.

40.13.11.1.4.2.1 Upon satisfaction of the CRIS-Only Request requirements in Section 40.2.3 of this Attachment HH, the entity requesting External CRIS Rights for its External Installed Capacity is made a Cluster Study Project.

40.13.11.1.4.2.2 The entity's MW of External Installed Capacity covered by its bilateral contract(s) or, in the case of a Non-Contract Commitment the number of MW committed by the entity, are evaluated for deliverability within the Rest of State Capacity Region. The entity's External Installed Capacity is not subject to the NYISO Minimum Interconnection Standard. The ISO will determine whether

the requests for External CRIS Rights within a given Cluster Study exceed the import limit, established pursuant to ISO procedures, for the applicable External Interface that is in effect on the Phase 1 Study Start Date when combined, to the extent not already reflected in the import limit, with the following: (1) awarded External CRIS Rights at the same External Interface, (2) Grandfathered External Installed Capacity Agreements listed in Attachment E of the ISO Installed Capacity Manual at the same External Interface, and (3) the Existing Transmission Capacity for Native Load listed for New York State Electric & Gas Corporation in Table 3 of Attachment L to the ISO OATT (applies to the PJM interface only) (“Combined Total MW”). In addition to the other requirements stated herein, External CRIS Rights will only be awarded to the extent that the Combined Total MW does not exceed the import limit, as described above.

40.13.11.1.4.2.3        The Cluster Study Deliverability Study report will include an SDU Project Cost Allocation and a Deliverable MW number for the entity’s External Installed Capacity.

40.13.11.1.4.2.4        The entity will have the same decision alternatives as other Cluster Study Projects participating in the Cluster Study Deliverability Study only. That is, the entity may either (a) accept its SDU Project Cost Allocation, (b) decline its SDU Project Cost Allocation and accept its Deliverability MW figure, or (c) decline both its SDU Project Cost Allocation and its Deliverable MW. If the entity does decline both its SDU Project Cost Allocation and its Deliverable MW, the entity’s External Installed Capacity will be removed from the Cluster Study Deliverability Study.

40.13.11.1.4.2.5 If the entity accepts its SDU Project Cost Allocation, it must pay cash or provide Security for the System Deliverability Upgrades, like any other Cluster Study Project.

40.13.11.1.4.2.6 If the entity accepts its SDU Project Cost Allocation and pays cash or posts Security for the System Deliverability Upgrades as required by this Attachment HH, the entity must also execute and fulfill agreement(s) with the ISO and the Connecting Transmission Owner and any Affected Transmission Owner to cover the engineering, procurement and construction of the System Deliverability Upgrades pursuant to Section 40.21.

40.13.11.1.4.2.7 By the end of the Initial Decisional Round of the Final Decision Period (*i.e.*, thirty (30) days from ISO Operating Committee approval of the Cluster Study Deliverability Study), an entity making a Contract Commitment and accepting either its SDU Project Cost Allocation or Deliverable MW quantity, must provide specific contract and resource information to the ISO. Unless entities are supplying External Installed Capacity as Control Area System Resources, requests for External Installed Capacity shall be resource-specific. Entities are permitted to substitute resources located in the same External Control Area. Such substitutions shall be subject to review and approval by ISO consistent with ISO Procedures and deadlines specified therein.

40.13.11.1.4.2.8 If the entity satisfies the requirements described in this Section 40.13.11.1.4, the entity will obtain External CRIS Rights for the number of MW determined to be deliverable, made deliverable through a System Deliverability

Upgrade (with an accepted SDU Project Cost Allocation), or deemed deliverable through a commitment to pay for a System Deliverability Upgrade.

#### **40.13.12 Cost Allocation for Highway System Deliverability Upgrades**

40.13.12.1 If the portion of the Highway System Deliverability Upgrades (measured in MW) required to make one or more Cluster Study CRIS Projects in a Cluster Study deliverable is ninety percent (90%) or more of the total size (measured in MW) of the System Deliverability Upgrades, each Interconnection Customer(s) of such Cluster Study CRIS Project(s) will be responsible for its *pro rata* Cluster share of one hundred percent (100%) of the cost of the System Deliverability Upgrades.

40.13.12.2 If the portion of the System Deliverability Upgrades required to make one or more Cluster Study CRIS Projects in a Cluster Study deliverable is less than ninety percent (90%) of the total size (measured in MW) of the Highway System Deliverability Upgrade, the Interconnection Customer(s) will be required to pay or commit to pay for a percentage share of the total cost of the Highway System Deliverability Upgrades equal to the estimated percentage megawatt usage by the Class Year CRIS Project of the total megawatts provided by the System Deliverability Upgrades. Other Cluster Study Projects in the current Cluster Study Deliverability Study may share in the cost of these System Deliverability Upgrades, on the same basis. Projects in the current Cluster Study Deliverability Study will not be allocated all of the cost of these System Deliverability Upgrades. The rest of the cost of these System Deliverability Upgrades will be allocated to Load Serving Entities and subsequent Interconnection Customers, as

described in this Section 40.13.12. The Interconnection Customer may either (1) make a cash payment of its proportionate share of the upgrade, which will be held by the Connecting Transmission Owner and Affected Transmission Owner(s) in interest-bearing account(s); or (2) post Security (as defined in this Attachment HH) meeting the commercially reasonable requirements of the Connecting Transmission Owner and Affected Transmission Owner(s) for the Interconnection Customer's proportionate share of the cost of the upgrade. The amount(s) of cash or Security that an Interconnection Customer must provide to its Connecting Transmission Owner and any Affected Transmission Owners will be included in the Cluster Study Deliverability Study report. If the Interconnection Customer chooses to provide Security, its allocated cost will be increased by an annual construction-focused inflation index. The Interconnection Customer will update its Security on an annual basis to reflect this increase. Except for this adjustment for inflation, the cost allocated to the Interconnection Customers will not be increased if the estimated cost of the Highway System Deliverability Upgrade increases. However, the costs allocated to subsequent Interconnection Customers will be based on a current cost estimate of the Highway System Deliverability Upgrade project.

40.13.12.3 If requesting CRIS, the Cluster Study Project in the current Cluster Study Deliverability Study will be considered deliverable, and eligible to become a qualified Installed Capacity Supplier or to receive Unforced Capacity Deliverability Rights or External-to-ROS Deliverability Rights, as applicable and subject to eligibility requirements in the ISO Procedures, when the Project

associated with the CRIS request is in service, provided the Interconnection Customer has paid its share of the total cost of System Deliverability Upgrades necessary to support the requested CRIS level, or made a satisfactory commitment to do so. Highway System Deliverability Upgrades – where the System Deliverability Upgrades are below the ninety percent (90%) threshold discussed in Section 40.13.12.2 above – will be constructed and funded either (i) according to Sections 40.13.12.3.1 and 40.13.12.3.2 below, or (ii) according to Section 40.13.12.3.3 below.

40.13.12.3.1 When a threshold of sixty percent (60%) of the most current cost estimate of the System Deliverability Upgrade has been paid or posted as Security by Interconnection Customers, the Highway System Deliverability Upgrade will be built by the Transmission Owner that owns the facility to be upgraded. If the facility to be constructed will be entirely new, construction should be completed by the Transmission Owner that owns or controls the necessary site or right of way. If no Transmission Owner(s) has such control, construction should be completed by the Transmission Owner in whose Transmission District the facility would be constructed. If the upgrade crosses multiple Transmission Districts, each Transmission Owner will be responsible for the portion of the upgrade in its Transmission District.

40.13.12.3.2 The actual cost of the Highway System Deliverability Upgrade project described above that was paid for by Interconnection Customers will be funded by Load Serving Entities, using the rate mechanism contained in Schedule 12 of the ISO OATT. Load Serving Entity funding responsibility for the Highway System

Deliverability Upgrade will be allocated among Load Serving Entities based on their proportionate share of the ICAP requirement in the statewide capacity market, adjusted to subtract their locational capacity requirements; *provided, however*, that Load Serving Entities will not be responsible for actual costs in excess of their share of the final Class Year estimated cost of the Highway System Deliverability Upgrade if the excess results from causes, as described in Section 40.16.3.4 of this Attachment HH, within the control of a Transmission Owner(s) responsible for constructing the Highway System Deliverability Upgrade.

40.13.12.3.3 If the ISO triggers a transmission project under the Reliability Planning Process, selects a transmission project under the Short-Term Reliability Process, selects a transmission upgrade under the Public Policy Transmission Planning Process, or results in a Regulated Economic Transmission Project being approved under the Economic Planning Process (collectively “CSPP transmission upgrade”) and the CSPP transmission upgrade requires construction of a transmission facility that provides the same or greater transfer limit capability as the Highway facility identified as a Highway System Deliverability Upgrade to be constructed earlier than would be the case pursuant to Section 40.13.12.3.1, the CSPP transmission upgrade will be constructed as determined in the CSPP or the Short-Term Reliability Process, as applicable. Funds collected from Interconnection Customers (pursuant to Section 40.13.12.2, above) will be used to cover a portion of the regulated solution costs to the extent that the funds collected from Interconnection Customers were collected for System Deliverability Upgrades that are actually constructed by the regulated solution. To the extent this is true,



these funds originally collected (or posted as Security) for System Deliverability Upgrades will be used as an offset to the total CSPP transmission upgrade cost, with the remainder of the upgrade cost to be allocated per the requirements of the CSPP, as set forth in Section 31.5 of Attachment Y to the ISO OATT, or the Short-Term Reliability Process, as set forth in Section 38.22 of Attachment FF to the ISO OATT.

To the extent funds collected from Interconnection Customers for System Deliverability Upgrades are insufficient to cover the entire cost of the CSPP transmission upgrades, the Interconnection Customers' contribution to the System Deliverability Upgrades allocated to the CSPP transmission upgrades will not exceed the Interconnection Customers' respective Project Cost Allocations for the System Deliverability Upgrade. To the extent funds collected from Interconnection Customers for System Deliverability Upgrades exceed the cost of the CSPP transmission upgrades, the funds collected for the System Deliverability Upgrades will be allocated to the CSPP transmission upgrade *pro rata* with the Interconnection Customers' contribution to the System Deliverability Upgrades, and excess funds or Security for System Deliverability Upgrades above the cost of the CSPP transmission upgrade will be returned to the Interconnection Customers.

40.13.12.4 If an Interconnection Customer has accepted its Project Cost Allocation, the Interconnection Customer may elect before the construction of an identified Highway System Deliverability Upgrade is commenced, to be retested for deliverability by entering a Cluster Study. The Interconnection Customer's cost responsibility for System Deliverability Upgrades shall not increase as a result of

such retesting. It may decrease or be eliminated. If the Interconnection Customer's Project is found to be deliverable without the System Deliverability Upgrades previously identified, the Affected System Operator, Affected Transmission Owner, or Connecting Transmission Owner will terminate Interconnection Customer's Security posting, or will return the Interconnection Customer's cash payment with the interest earned.

40.13.12.5 When the Highway System Deliverability Upgrades are placed in to Commercial Operation and any resulting Incremental TCCs related to the Highway System Deliverability Upgrade become effective in accordance with Section 19.2.4 of Attachment M of the ISO OATT, an Interconnection Customer electing to receive its proportionate share of such Incremental TCCs, as further described in Section 40.13.2.2 of this Attachment HH, will receive its proportionate share of such Incremental TCCs.

40.13.12.5.1 Load Serving Entities required by this Section 40.13.12 to fund a portion of the costs of a Highway System Deliverability Upgrade will receive the corresponding financial value of any Incremental TCCs related to the System Deliverability Upgrade held by the Transmission Owner(s) responsible for constructing the Highway System Deliverability Upgrade, as further described in Section 40.13.2.2 of this Attachment HH. The corresponding financial value of any such Incremental TCCs will be accounted for in determining the applicable Highway Facilities Charge in accordance with Schedule 12 of the ISO OATT. The eligibility of the Load Serving Entities to the financial value of any Incremental TCCs related to the System Deliverability Upgrade held by the

Transmission Owner(s) responsible for constructing the Highway System Deliverability Upgrade shall commence as of the date such Incremental TCCs become effective in accordance with Section 19.2.4 of Attachment M to the OATT and continue until the earlier of: (i) the expiration of any such Incremental TCCs; or (ii) the termination of the obligation of the Load Serving Entities to fund a portion of the costs of the Highway System Deliverability Upgrade.

40.13.12.6 As new generators, Class Year Transmission Projects, and Cluster Study Transmission Projects come on line and use the Headroom on System Deliverability Upgrades created by a prior Highway System Deliverability Upgrade, the Interconnection Customers of those new facilities will reimburse the prior Interconnection Customers or will compensate the Load Serving Entities who funded the System Deliverability Upgrades for use of the Headroom created by the prior Interconnection Customers and Load Serving Entities in accordance with Sections 40.17.1.4 and 40.17.1.5 of these rules.

40.13.12.6.1 In accordance with Section 40.13.2.2 of this Attachment HH, as subsequent Interconnection Customers make Headroom payments to prior Interconnection Customers and if a subsequent Interconnection Customer elects to receive its proportionate share of any Incremental TCCs related to the Highway System Deliverability Upgrade, such Incremental TCCs will be transferred to the subsequent Interconnection Customers; *provided, however*, that Incremental TCCs that were previously deemed reserved and are transferred to a subsequent Interconnection Customer will become effective on the first day of the Capability Period that commences following the next Centralized TCC Auction conducted

after the subsequent Interconnection Customer makes the necessary Headroom payment and elects to receive its proportionate share of Incremental TCCs.

40.13.12.6.2 In accordance with Section 40.13.2.2 of this Attachment HH, as subsequent Interconnection Customers compensate Load Serving Entities for use of their Headroom by providing any such Headroom payments to the Transmission Owner(s) responsible for constructing a Highway System Deliverability Upgrade and if a subsequent Interconnection Customer elects to receive its proportionate share of any Incremental TCCs related to the Highway System Deliverability Upgrade, such Incremental TCCs will be transferred to the subsequent Interconnection Customer.

40.13.12.7 The Transmission Owner responsible for constructing a System Deliverability Upgrade or an Interconnection Customer contributing toward the cost of a System Deliverability Upgrade can elect to construct upgrades that are larger and/or more expensive than the System Deliverability Upgrades identified to support the requested level of CRIS for the Cluster Study CRIS Project in the Cluster Study Deliverability Study, provided that those upgrades are reasonably related to the Cluster Study Project. The party electing to construct the larger upgrade will pay for the incremental cost of the upgrade; *i.e.*, the difference in cost between the cost of the System Deliverability Upgrades as determined by these rules, and the cost of the larger and/or more expensive upgrade.

#### **40.13.13 Agreements for the Engineering, Procurement, and Construction of System Deliverability Upgrades**

40.13.13.1 If a System Deliverability Upgrade on the Connecting Transmission Owner's system is cost allocated to an Interconnection Customer and such Interconnection Customer

accepts its SDU Project Cost Allocation and pays cash or posts Security for the System Deliverability Upgrade, the Standard Interconnection Agreement among the Interconnection Customer, Connecting Transmission Owner, and ISO will provide for the engineering, procurement and construction of such System Deliverability Upgrade.

40.13.13.2 If a System Deliverability Upgrade on an Affected System is cost allocated to an Interconnection Customer and such Interconnection Customer accepts its SDU Project Cost Allocation and pays cash or posts Security for the System Deliverability Upgrade, the ISO shall tender to the Interconnection Customer and Affected System Operator a Standard Upgrade Construction Agreement in accordance with the requirements in Section 40.21 to this Attachment HH to provide for the engineering, procurement and construction of the System Deliverability Upgrades on the Affected System.

40.13.13.3 If a System Deliverability Upgrade is cost allocated to multiple Interconnection Customers and multiple Interconnection Customers accept their SDU Project Cost Allocation and pays cash or posts Security for the System Deliverability Upgrade, the ISO shall tender to the Interconnection Customer(s) and, as applicable, Affected System Operator or Connecting Transmission Owner, a Standard Multiparty Upgrade Construction Agreement to provide for the engineering, procurement and construction of the System Deliverability Upgrade.

## **40.19 Expedited Deliverability Study Procedures**

### **40.19.1 Study Start Date**

The start date for the first Expedited Deliverability Study will be the first Business Day after thirty (30) Calendar Days following February 18, 2020. After the completion of the initial Expedited Deliverability Study, each Expedited Deliverability Study will begin the first Business Day after thirty (30) Calendar Days following the completion of the prior Expedited Deliverability Study; *provided, however*, that an Expedited Deliverability Study may not commence during the period between the posting of, as applicable, the draft Class Year Study report for Operating Committee approval and commencement of the next Class Year Study. If the first Business Day after thirty (30) Calendar Days following the completion of the prior Expedited Deliverability Study falls on a date within the above-described Class Year decision and settlement period, the Expedited Deliverability Study will begin on the first Business Day after ten (10) Calendar Days following the Class Year Study Start Date that immediately follows the above-described Class Year decision and settlement period. The ISO will provide notice of the Expedited Deliverability Study start date by (1) sending notice of the start date to those registered through the ISO to be on the distribution lists for the NYISO Operating Committee and its subcommittees; and (2) posting notice of the Expedited Deliverability Study start date.

### **40.19.2 Study Entry Requirements and Schedule**

In order to become eligible to enter an Expedited Deliverability Study, an Interconnection Customer must (1) elect to enter the Expedited Deliverability Study by providing notice to the ISO by the Expedited Deliverability Study start date; (2) must have satisfied the data submission requirements set forth in Section 23.4.5.7.3.6 of the ISO Services Tariff required for Cluster Study Projects requesting CRIS in a Mitigated Capacity Zone and have such data submission deemed complete by the ISO by the Expedited Deliverability Study start date; and (3) must be in

service or have completed one of the following, as applicable: a Class Year Study for ERIS, a System Impact Study under the Small Generator Interconnection Procedures, or a utility interconnection study if the facility is not subject to the ISO interconnection procedures under Attachments X and Z.

A Project that satisfies the eligibility requirements for an Expedited Deliverability Study will become a member of the Expedited Deliverability Study if it satisfies the requirements of Section 40.19.3 of this Attachment HH as it relates to completion of an Expedited Deliverability Study Agreement, submission of the required deposit, and submission of required technical data.

All parties engaged in performing study work as part of the Expedited Deliverability Study are required to use Reasonable Efforts to complete the basic required evaluations in order for the Expedited Deliverability Study to be presented to the NYISO Operating Committee for approval within four (4) months from the date that the ISO confirms receipt of all of the following: (1) the executed Expedited Deliverability Study Agreement; (2) the \$30,000 Expedited Deliverability Study deposit required by Section 40.19.3 of this Attachment HH; and (3) the technical data required by Section 40.19.3 of this Attachment HH.

#### **40.19.3            Expedited Deliverability Study Agreement and Invoicing of Study Costs**

40.19.3.1 As soon as practicable after an Interconnection Customer has notified the ISO of its request to enter the next Expedited Deliverability Study, the ISO shall tender an Expedited Deliverability Study Agreement in the form of Appendix 8 to this Attachment HH. When the ISO tenders an Expedited Deliverability Study Agreement to an Interconnection Customer, the ISO shall, at the same time, also provide one to the applicable Connecting Transmission Owner. The Expedited Deliverability Study Agreement shall provide that the Interconnection Customer shall compensate the ISO for the actual cost of the Expedited Deliverability Study. When the

ISO tenders the Expedited Deliverability Study Agreement to the requesting Interconnection Customer, the ISO shall provide to the Interconnection Customer a non-binding good faith estimate of the cost and timeframe for completing the Expedited Deliverability Study.

40.19.3.2 Within ten (10) Business Days after the ISO tenders the Expedited Deliverability Study Agreement, the Interconnection Customer shall complete the Expedited Deliverability Study Agreement and deliver the completed agreement to the ISO. Interconnection Customer shall indicate, in the data form attached to the Expedited Deliverability Study Agreement, the MW level of requested CRIS up to the levels permitted by Section 40.5.6.5 of this Attachment HH. Interconnection Customer shall, with the completed Expedited Deliverability Study Agreement, deliver to the ISO (1) the required technical data and (2) a study deposit of \$30,000.

40.19.3.3 The Interconnection Customer, ISO and Connecting Transmission Owner shall execute the Expedited Deliverability Study Agreement no later than ten (10) Calendar Days after the ISO confirms receipt of the executed Expedited Deliverability Study Agreement, the required technical data, and the required deposit from the Interconnection Customer. The ISO shall provide a copy of the fully executed Expedited Deliverability Study Agreement to the Interconnection Customer and Connecting Transmission Owner.

40.19.3.4 . Interconnection Customer on a monthly basis for the work conducted on the Expedited Deliverability Study. Each Interconnection Customer shall pay an equal share of the actual cost of the combined Expedited Deliverability Study. The Interconnection Customer shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. The ISO shall continue to hold the amounts on deposit in an interest bearing account associated with the Interconnection Customer until settlement of the final invoice.



#### **40.19.4 No Prioritization of Projects in an Expedited Deliverability Study**

There will be no prioritization of the Projects grouped and studied together in an Expedited Deliverability Study. Each Project in an Expedited Deliverability Study will, with other Projects in the same Expedited Deliverability Study, share in the then currently available functional or electrical capability of the transmission system in accordance with the rules set forth herein. For purposes of this Section 40.19.4, the “then currently available functional or electrical capability of the transmission system” is the functional or electrical capability of the transmission system currently available in the applicable base case.

#### **40.19.5 Expedited Deliverability Study Procedures**

The ISO shall coordinate the Expedited Deliverability Study and shall utilize existing studies to the extent practicable in performing the Expedited Deliverability Study. The ISO may request additional information from the Interconnection Customer and Connecting Transmission Owner as may reasonably become necessary consistent with Good Utility Practice during the course of the Expedited Deliverability Study. Upon request from the ISO for additional information required for or related to the Expedited Deliverability Study, the Interconnection Customer and Connecting Transmission Owner shall provide such additional information in a prompt manner.

Within ten (10) Business Days of providing a draft Expedited Deliverability Study report to an Interconnection Customer, the ISO, Connecting Transmission Owner, and Affected System Operator(s) shall meet with the Interconnection Customer to discuss the results of the Expedited Deliverability Study.

The ISO shall use Reasonable Efforts to complete the study and present the Expedited Deliverability Study report to the Operating Committee within the timeframe set forth in Section

40.19.2 of this Attachment HH; *provided, however*, an Expedited Deliverability Study report shall not proceed to the Operating Committee between Operating Committee approval of a Class Year Study and commencement of the next Class Year Study. An Expedited Deliverability Study may not proceed to the Operating Committee until after ten (10) Calendar Days following the completion of the Class Year Study. After Operating Committee approval of the Expedited Deliverability Study report, the Interconnection Customer will be subject to the decision process set forth in Section 40.19.6.

Before Operating Committee approval of the Expedited Deliverability Study, if the pending Class Year Study proceeds to decision and settlement period and a Class Year Project accepts or rejects a Project Cost Allocation that the ISO determines may impact the deliverability of a Project in the Expedited Deliverability Study, the assumptions used in the Expedited Deliverability Study will be updated before the commencement of the next Class Year Study.

At the request of an Interconnection Customer subject to an Expedited Deliverability Study, or at any time the ISO determines that it will not meet the required timeframe for completing the Expedited Deliverability Study, the ISO shall notify the Interconnection Customer as to the schedule status of the Expedited Deliverability Study. If the ISO is unable to complete the Expedited Deliverability Study within the initial schedule, it shall notify the Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required.

Upon request, the ISO shall provide the Interconnection Customer supporting documentation, workpapers, and databases or data developed in the preparation of the Expedited Deliverability Study, subject to non-disclosure arrangements consistent with Section 40.24.1.

#### **40.19.6 Expedited Deliverability Study Decision Process**

Within 5 Business Days following approval of the Expedited Deliverability Study by the Operating Committee (such 5 Business Day period to be referred to as the “Expedited Deliverability Study Initial Decision Period”), each Interconnection Customer in the Expedited Deliverability Study shall provide notice to the ISO, in writing via electronic mail, stating whether it shall accept (an “Expedited Deliverability Study Acceptance Notice”) or not accept (an “Expedited Deliverability Study Non-Acceptance Notice”) the Deliverable MW, if any, reported to it by the ISO in the Expedited Deliverability Study report. Failure to notify the ISO by the prescribed deadline as to whether an Interconnection Customer accepts or rejects its Deliverable MW, if any, will be deemed an Expedited Deliverability Study Non-Acceptance Notice. As soon as practicable following the end of the Expedited Deliverability Study Initial Decision Period, the ISO shall report to all Cluster Study Projects, in writing via electronic mail, all of the decisions submitted by Interconnection Customers in the Expedited Deliverability Study.

At the end of the Expedited Deliverability Study Initial Decision Period, if one or more of the Interconnection Customers provides an Expedited Deliverability Study Non-Acceptance Notice (such event an “Expedited Deliverability Study Non-Acceptance Event”), the Interconnection Customer that provided the Expedited Deliverability Study Non-Acceptance Notice will be removed from the then current Expedited Deliverability Study and the ISO shall update the Expedited Deliverability Study results for those remaining Interconnection Customers in the Expedited Deliverability Study to reflect the impact of the Projects withdrawn from the Expedited Deliverability Study. The revised Expedited Deliverability Study report shall include updated Deliverable MW, if any, and shall be issued within 10 Business Days following the occurrence of an Expedited Deliverability Study Non-Acceptance Event. Each remaining

Interconnection Customer shall be deemed to have accepted its respective Deliverable MW identified in the revised Expedited Deliverability Study report.

## **40.23 Fast Track Process**

### **40.23.1 Applicability**

The Fast Track Process is available to an Interconnection Customer proposing to interconnect its Generating Facility with a Connecting Transmission Owner's Distribution System if the Generating Facility's capacity does not exceed the size limits identified in the table below. Generating Facilities below these limits are eligible for review under the Fast Track Process. However, eligibility for the Fast Track Process is distinct from the Fast Track Process itself, and eligibility does not imply or indicate that a Generating Facility will pass the Fast Track Process screens in Section 40.23.2.1 below or the supplemental review screens in Section 40.23.4.4 below.

To the extent the Fast Track Request is withdrawn or deemed withdrawn by the ISO, the Interconnection Customer may submit an Interconnection Request in a Cluster Study Application Window.

Eligibility for the Fast Track Process is determined based upon the generator type, the size of the generator, voltage of the line and the location of and type of line at the Point of Interconnection. All Facilities connecting to lines greater than 69 kilovolt (kV) are ineligible for the Fast Track Process regardless of size. All synchronous and induction machines must be no larger than 2 MW to be eligible for the Fast Track Process, regardless of location. For certified inverter-based systems, the size limit varies according to the voltage of the line at the proposed Point of Interconnection. Certified inverter-based Facilities located within 2.5 electrical circuit miles of a substation and on a mainline (as defined in the table below) are eligible for the Fast Track Process under the higher thresholds according to the table below. In addition to the size threshold, the Interconnection Customer's proposed Generating Facility must meet the codes,

standards, and certification requirements of Appendices 10 and 11 of these procedures, or the ISO, in consultation with the Connecting Transmission Owner, has to have reviewed the design or tested the proposed Generating Facility and is satisfied that it is safe to operate.

| Fast Track Eligibility for Inverter-Based Systems |   |  |
|---|---|--|
| Line Voltage                                      | Fast Track Eligibility Regardless of Location | Fast Track Eligibility on a Mainline <sup>1</sup> and $\leq 2.5$ Electrical Circuit Miles from Substation <sup>2</sup> |
| $< 5$ kV  | $\leq 500$ kW                                 | $\leq 500$ kW  |
| $\geq 5$ kV and $< 15$ kV                         | $\leq 2$ MW                                   | $\leq 3$ MW  |
| $\geq 15$ kV and $< 30$ kV                        | $\leq 3$ MW                                   | $\leq 4$ MW  |
| $\geq 30$ kV and $\leq 69$ kV                     | $\leq 4$ MW                                   | $\leq 5$ MW  |

<sup>1</sup> For purposes of this table, a mainline is the three-phase backbone of a circuit. It will typically constitute lines with wire sizes of 4/0 American wire gauge, 336.4 kcmil, 397.5 kcmil, 477 kcmil and 795 kcmil.

<sup>2</sup> An Interconnection Customer can determine this information about its proposed interconnection location in advance by requesting a Pre-Application Report pursuant to Section 40.4.2.

#### **40.23.2 Initial Review**

Within 15 Business Days after the ISO notifies the Interconnection Customer it has received a complete Fast Track Request in the form set forth in Appendix 13 to this Attachment HH, the ISO, in consultation with the Connecting Transmission Owner, shall perform an initial review using the screens set forth below, shall notify the Interconnection Customer of the results, and include with the notification copies of the analysis and data underlying the determinations under the screens.

#### **40.23.2.1 Screens**

40.23.2.1.1 The proposed Generating Facility's Point of Interconnection must be on a portion of the Connecting Transmission Owner's Distribution System.

40.23.2.1.2 For interconnection of a proposed Generating Facility to a radial distribution circuit, the aggregated generation, including the proposed Generating Facility, on the circuit shall not exceed 15% of the line section annual peak load as most recently measured at the substation. A line section is that portion of a Connecting Transmission Owner's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

40.23.2.1.3 For interconnection of a proposed Generating Facility to the load side of spot network protectors, the proposed Generating Facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 5% of a spot network's maximum load or 50 kW.<sup>1</sup>

<sup>1</sup> A spot network is a type of Distribution System found within modern commercial buildings to provide high reliability of service to a single customer. (Standard Handbook for Electrical Engineers, Donald Fink, McGraw Hill Book Company.)

40.23.2.1.4 The proposed Generating Facility, in aggregation with other generation on the distribution circuit, shall not contribute more than 10% to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of change of ownership.

40.23.2.1.5 The proposed Generating Facility, in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment (including, but not limited to, substation breakers, fuse cutouts, and

line reclosers), or Interconnection Customer equipment on the system to exceed 87.5% of the short circuit interrupting capability; nor shall the interconnection be proposed for a circuit that already exceeds 87.5% of the short circuit interrupting capability.

40.23.2.1.6 Using the table below, determine the type of interconnection to a primary distribution line. This screen includes a review of the type of electrical service provided to the Interconnecting Customer, including line configuration and the transformer connection to limit the potential for creating over-voltages on the Connecting Transmission Owner's electric power system due to a loss of ground during the operating time of any anti-islanding function.

| <b>Primary Distribution Line Type</b> | <b>Type of Interconnection to Primary Distribution Line</b>   | <b>Result/Criteria</b> |
|---------------------------------------|---|------------------------|
| Three-phase, three wire               | 3-phase or single phase, phase-to-phase                       | Pass screen            |
| Three-phase, four wire                | Effectively-grounded 3 phase or Single-phase, line-to-neutral | Pass screen            |

40.23.2.1.7 If the proposed Generating Facility is to be interconnected on single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed Generating Facility, shall not exceed 20 kW.

40.23.2.1.8 If the proposed Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.

40.23.2.1.9 The Generating Facility, in aggregate with other generation interconnected to the transmission side of a substation transformer feeding the circuit where the



Generating Facility proposes to interconnect shall not exceed 10 MW in an area where there are known, or posted, transient stability limitations to generating units located in the general electrical vicinity (*e.g.*, three or four transmission busses from the point of interconnection).

40.23.2.1.10 No construction of facilities by the Connecting Transmission Owner on its own system shall be required to accommodate the Generating Facility.

40.23.2.2 If the proposed interconnection passes the screens, the Fast Track Request shall be approved and the ISO will provide the Interconnection Customer and the Connecting Transmission Owner a draft interconnection agreement within five Business Days after the determination.

40.23.2.3 If the proposed interconnection fails the screens, but the ISO, in consultation with the Connecting Transmission Owner, determines that the Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the ISO shall provide the Interconnection Customer and the Connecting Transmission Owner a draft interconnection agreement within five Business Days after the determination. To the extent appropriate, the ISO shall notify any Affected System or Connecting Transmission Owner prior to the determination to allow for potential input by the Affected System or Connecting Transmission Owner. For purposes of this section, Affected System may include the portions of the New York State Transmission System that may be potentially affected.

40.23.2.4 If the proposed interconnection fails the screens, but the ISO, in consultation with the Connecting Transmission Owner, does not or cannot

determine from the initial review that the Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards unless the Interconnection Customer is willing to consider Minor Modifications or further study, the ISO shall provide the Interconnection Customer with the opportunity to attend a customer options meeting.

#### **40.23.3 Customer Options Meeting**

If the ISO, in consultation with the Connecting Transmission Owner, determines the Fast Track Request cannot be approved without: (1) Minor Modifications at minimal cost, (2) a supplemental study or other additional studies or actions, or (3) incurring significant cost to address safety, reliability, or power quality problems, the ISO shall notify the Interconnection Customer of that determination within five Business Days after the determination and provide copies of all data and analyses underlying its conclusion. Within ten Business Days of the ISO's determination, the ISO shall offer to convene a customer options meeting with the Interconnection Customer and the Connecting Transmission Owner to review possible Interconnection Customer facility modifications or the screen analysis and related results, to determine, in consultation with the Connecting Transmission Owner, what further steps are needed to permit the Generating Facility to be connected safely and reliably. At the time of notification of the ISO's determination, or at the customer options meeting:

40.23.3.1 The Connecting Transmission Owner shall offer to perform facility modifications or Minor Modifications to the Connecting Transmission Owner's electric system (*e.g.*, changing meters, fuses, relay settings) and provide a non-binding good faith estimate of the limited cost to make such modifications to the Connecting Transmission Owner's electric system. If the Interconnection

Customer agrees to pay for the modifications to the Connecting Transmission Owner's electric system, the ISO will provide the Interconnection Customer and the Connecting Transmission Owner with a draft interconnection agreement within ten Business Days of the customer options meeting; or

40.23.3.2 The ISO shall offer to perform a supplemental review in accordance with Section 40.23.4 and provide a non-binding good faith estimate of the costs of such review.

#### **40.23.4 Supplemental Review**

40.23.4.1 To accept the offer of a supplemental review, the Interconnection Customer shall agree in writing and submit a deposit – in accordance with the requirements in Section 40.2.4 – to the ISO for the estimated costs of the supplemental review in the amount of the good faith estimate of the costs of such review by the ISO, in consultation with the Connecting Transmission Owner, both within 15 Business Days of the offer. If the written agreement and deposit have not been received by the ISO within that timeframe, the Fast Track Request shall be withdrawn by the ISO.

40.23.4.2 The Interconnection Customer may specify the order in which the ISO, in consultation with the Connecting Transmission Owner, will complete the screens in Section 40.23.4.4.

40.23.4.3 The Interconnection Customer shall be responsible for the ISO's and the Connecting Transmission Owner's actual costs for the supplemental review conducted by the ISO.

40.23.4.4 Within 30 Business Days following receipt of the deposit for a supplemental review, the ISO, in consultation with the Connecting Transmission Owner, shall: (1) perform a supplemental review using the screens set forth below; (2) notify in writing the Interconnection Customer of the results; and (3) include with the notification copies of the analysis and data underlying the ISO's and Connecting Transmission Owner's determination under the screens. Unless the Interconnection Customer provided instructions for how to respond to the failure of any of the supplemental review screens below at the time the Interconnection Customer accepted the offer of supplemental review, the ISO shall notify the Interconnection Customer following the failure of any of the screens, or if it is unable to perform the screen in Section 40.23.4.4.1, within two Business Days of making such determination to obtain the Interconnection Customer's permission to: (1) continue evaluating the proposed interconnection under this Section 40.23.4.4 or (2) terminate the supplemental review upon withdrawal of the Fast Track Request by the Interconnection Customer.

40.23.4.4.1 Minimum Load Screen: Where 12 months of line section minimum load data (including onsite load but not station service load served by the proposed Generating Facility) are available, can be calculated, can be estimated from existing data, or can be determined from a power flow model, the aggregate generating facility capacity on the line section is less than 100% of the minimum load for all line sections bounded by automatic sectionalizing devices upstream of the proposed Generating Facility. If minimum load data is not available, or cannot be calculated, estimated or determined, the ISO, in consultation with the

CTO, shall include the reason(s) that it is unable to calculate, estimate or determine minimum load in its supplemental review results notification under Section 40.23.4.4.

40.23.4.4.1.1 The type of generation used by the proposed Generating Facility will be taken into account when calculating, estimating, or determining circuit or line section minimum load relevant for the application of this screen. Solar photovoltaic (PV) generation systems with no battery storage use daytime minimum load (*i.e.*, 10 a.m. to 4 p.m. for fixed panel systems and 8 a.m. to 6 p.m. for PV systems utilizing tracking systems), while all other generation uses absolute minimum load.

40.23.4.4.1.2 When this screen is being applied to a Generating Facility that serves some station service load, only the net injection into the Connecting Transmission Owner's electric system will be considered as part of the aggregate generation.

40.23.4.4.1.3 The ISO, in consultation with the Connecting Transmission Owner will not consider as part of the aggregate generation for purposes of this screen generating facility capacity known to be already reflected in the minimum load data.

40.23.4.4.2 Voltage and Power Quality Screen: In aggregate with existing generation on the line section: (1) the voltage regulation on the line section can be maintained in compliance with relevant requirements under all system conditions; (2) the voltage fluctuations is within acceptable limits as defined by Institute of Electrical and Electronics Engineers (IEEE) Standard 1453, or utility practice

similar to IEEE Standard 1453; and (3) the harmonic levels meet IEEE Standard 519 limits.

40.23.4.4.3 Safety and Reliability Screen: The location of the proposed Generating Facility and the aggregate generation capacity on the line section do not create impacts to safety or reliability that cannot be adequately addressed without application of the Cluster Study Process. The ISO, in consultation with the Connecting Transmission Owner, shall give due consideration to the following and other factors in determining potential impacts to safety and reliability in applying this screen.

40.23.4.4.3.1 Whether the line section has significant minimum loading levels dominated by a small number of customers (*e.g.*, several large commercial customers).

40.23.4.4.3.2 Whether the loading along the line section is uniform or even.

40.23.4.4.3.3 Whether the proposed Generating Facility is located in close proximity to the substation (*i.e.*, less than 2.5 electrical circuit miles), and whether the line section from the substation to the Point of Interconnection is a mainline rated for normal and emergency ampacity.

40.23.4.4.3.4 Whether the proposed Generating Facility incorporates a time delay function to prevent reconnection of the generator to the system until system voltage and frequency are within normal limits for a prescribed time.

40.23.4.4.3.5 Whether operational flexibility is reduced by the proposed Generating Facility, such that transfer of the line section(s) of the Generating Facility to a

neighboring distribution circuit/substation may trigger overloads or voltage issues.

40.23.4.4.3.6 Whether the proposed Generating Facility employs equipment or systems certified by a recognized standards organization to address technical issues such as, but not limited to, islanding, reverse power flow, or voltage quality.

40.23.4.5 If the proposed interconnection passes the supplemental screens in Sections 40.23.4.4.1, 40.23.4.4.2, and 40.23.4.4.3 above, the Fast Track Request shall be approved and the ISO will provide the Interconnection Customer and the Connecting Transmission Owner with an executable interconnection agreement with the timeframes established in Sections 40.23.4.5.1 and 40.23.4.5.2 below. If the proposed interconnection fails any of the supplemental review screens, the Fact Track Request shall be withdrawn by the ISO.

40.23.4.5.1 If the proposed interconnection passes the supplemental screens in Sections 40.23.4.4.1, 40.23.4.4.2, and 40.23.4.4.3 above and does not require construction of facilities by the Connecting Transmission Owner on its own system, the interconnection agreement shall be provided within ten Business Days after the notification of the supplemental review results.

40.23.4.5.2 If interconnection facilities or Minor Modifications to the Connecting Transmission Owner's system are required for the proposed interconnection to pass the supplemental screens in Sections 40.23.4.4.1, 40.23.4.4.2, and 40.23.4.4.3 above, and the Interconnection Customer agrees to pay for the modifications to the Connecting Transmission Owner's electric system, the interconnection agreement, along with a non-binding good faith estimate for the

interconnection facilities and/or Minor Modifications, shall be provided to the Interconnection Customer within 15 Business Days after receiving written notification of the supplemental review results.

40.23.4.5.3 If the proposed interconnection would require more than interconnection facilities or Minor Modifications to the Connecting Transmission Owner's system to pass the supplemental screens in Sections 40.23.4.4.1, 40.23.4.4.2, and 40.23.4.4.3 above, the ISO shall notify the Interconnection Customer, at the same time it notifies the Interconnection Customer with the supplemental review results, that the Fast Track Request shall be withdrawn by the ISO from the Queue.



## **40.24 Miscellaneous**

### **40.24.1 Confidentiality**

Certain information exchanged by the Parties during the administration of these Standard Interconnection Procedures shall constitute confidential information (“Confidential Information”) and shall be subject to this Section 40.24.1.

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 ISO Code of Conduct contained in Attachment F to the ISO OATT.

If requested by either Party receiving information, the Party supplying information shall provide in writing, the basis for asserting that the information referred to in this Section 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.

#### **40.24.1.1 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 the Standard Interconnection Agreement; or (6) is required, in accordance with Section 40.24.1.6, 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 the Standard Interconnection 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.

#### **40.24.1.2 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), employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with these procedures, unless such person has first been advised of the confidentiality provisions of this Section 40.24.1 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 Section 40.24.1.

#### **40.24.1.3 Rights**

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to another 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.

#### **40.24.1.4 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.

#### **40.24.1.5 Standard of Care**

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

#### **40.24.1.6 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 the Standard Interconnection 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.

#### **40.24.1.7 Remedies**

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's breach of its obligations under this Section 40.24.1. 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 Section 40.24.1, 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 Section 40.24.1, 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 Section 40.24.1.

#### **40.24.1.8 Disclosure to FERC, its Staff, or a State**

Notwithstanding anything in this Section 40.24.1 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 these Standard Interconnection Procedures or the ISO OATT, the Party

shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Standard Interconnection 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 either of 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 consistent with applicable state rules or 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.

40.24.1.9      Subject to the exception in Section 40.24.1.8 of these Standard Interconnection Procedures, 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 supplying Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under these Standard Interconnection Procedures, the ISO OATT or ISO 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 Parties in writing and agrees to assert confidentiality and cooperate with the other Parties in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

40.24.1.10 This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

40.24.1.11 The ISO and Connecting Transmission Owner shall, at Interconnection Customer's election, destroy, in a confidential manner, or return the Confidential Information provided at the time of Confidential Information is no longer needed.

#### **40.24.2 Delegation of Responsibility**

The ISO may use the services of subcontractors as it deems appropriate to perform its obligations under these Standard Interconnection Procedures. The ISO shall remain primarily liable to the Interconnection Customer for the performance of such subcontractors and compliance with its obligations under these Standard Interconnection Procedures. The subcontractor shall keep all information provided confidential and shall use such information solely for the performance of such obligation for which it was provided and no other purpose.

### **40.24.3 Payments and Invoicing**

#### **40.24.3.1 Obligation to Pay Costs under Standard Interconnection Procedures**

40.24.3.1.1 The ISO shall charge and Interconnection Customer shall pay the actual costs of the study work of the Cluster Study Process incurred by the ISO and Transmission Owner under these Standard Interconnection Procedures, after the Interconnection Customer has submitted its Interconnection Request or CRIS-Only Request. In the event an Interconnection Customer withdraws its Interconnection Request or CRIS-Only Request, or its Interconnection Request or CRIS-Only Request is deemed withdrawn by the ISO, prior to the commencement of the Phase 1 Study, Interconnection Customer must pay the ISO the actual costs of processing its Interconnection Request or CRIS-Only Request.

40.24.3.1.2 The ISO shall charge and Interconnection Customer shall pay the actual costs of the study work of an Affected System Study performed pursuant to Section 40.8.3, a Fast Track Process supplemental review performed pursuant to Section 40.23.4, or review of a Facility Modification Request pursuant to Section 40.6.3.2, which costs are incurred by the ISO and Transmission Owners under these Standard Interconnection Procedures.

#### **40.24.3.2 Study Cost Allocation**

##### **40.24.3.2.1 Cluster Study Process Cost Allocation**

40.24.3.2.1.1 Cluster Study Projects shall be responsible for Cluster Study costs in the following manner: (1) each Cluster Study Project shall pay the actual cost of studying the Attachment Facilities and Distribution Upgrades for its own facility; (2) each Cluster Study Project shall pay the actual cost of studying Local

System Upgrade Facilities for its own facility; and (3) each Cluster Study Project shall pay an equal share of all other Cluster Study costs (*i.e.*, those not related to Attachment Facilities, Distribution Upgrades or Local System Upgrade Facilities).

40.24.3.2.1.2 With respect to the costs of studying the Attachment Facilities and Distribution Upgrades referenced above, if more than one Cluster Study Project contributes to the need for particular Attachment Facilities or Distribution Upgrades, those Cluster Study Projects shall share equally in the cost to study those Attachment Facilities or Distribution Upgrades.

40.24.3.2.1.3 With respect to the costs of studying the Local System Upgrade Facilities referenced above, if more than one Cluster Study Project contributes to the need for particular Local System Upgrade Facilities, those Cluster Study Projects shall share equally in the cost to study those Local System Upgrade Facilities.

40.24.3.2.1.4 Notwithstanding the above study cost allocation requirements, no Interconnection Customer electing to be evaluated only for ERIS shall be responsible for any cost of any CRIS evaluation in the Cluster Study, and any Cluster Study Project that elects, pursuant to Section 40.6.4.1, to withdraw from the Cluster Study, withdraw its CRIS request, or elect to have no System Deliverability Upgrade identified to make the project deliverable at its level of requested CRIS, shall not be responsible for the costs of any additional detailed studies required for System Deliverability Upgrades.

#### **40.24.3.2.2 Reserved**

#### **40.24.3.2.3 Affected System Study Process Cost Allocation**



Each project participating in an Affected System Study shall pay an equal share of the Affected System Study costs required for the identification of the need for any Affected Network Upgrade Facilities. With respect to the costs of identifying any Affected System Network Upgrades, if more than one project contributes to the need for particular Affected System Network Upgrade, those projects shall share equally in the cost to study the Affected System Network Upgrade.

**40.24.3.2.4 Reserved**

**40.24.3.2.5 Reserved**

**40.24.3.3 Obligation to Pay Withdrawal Penalties and Application of Withdrawal Penalties**

40.24.3.3.1 The ISO shall charge, and Interconnection Customer shall pay, any Withdrawal Penalty assessed under Sections 40.6.5, 40.7.6, 40.10.9, and 40.15.5. Any Withdrawal Penalty is in addition to the Interconnection Customer's responsibility to pay for costs described in Section 40.24.3.1.

40.24.3.3.2 A Withdrawal Penalty that is calculated as a percentage of a Study Deposit amount will be calculated using the initial Study Deposit amount provided by the Interconnection Customer with its Interconnection Request or CRIS-Only Request, regardless of whether the ISO has had to draw on the Study Deposit to recover any study costs that Interconnection Customer has not paid.

40.24.3.3.3 The ISO shall apply the collected Withdrawal Penalty Funds pursuant to Section 40.6.5.

40.24.3.3.4 The ISO shall not be liable for unpaid Withdrawal Penalties and may not collect them from other Interconnection Customers or Transmission Customers.

#### **40.24.3.4 Invoicing and Payment**

40.24.3.4.1 The ISO shall invoice the Interconnection Customer monthly for the costs described in Section 40.24.3.1. The ISO shall invoice for Withdrawal Penalties after they are assessed.

40.24.3.4.2 The Interconnection Customer shall pay the invoiced amount to the ISO within thirty (30) calendar days of the ISO's issuance of the invoice. Except as otherwise provided in Section 40.24.3.4.5, if the Interconnection Customer does not pay its invoice within the timeframe described above, it shall be subject to withdrawal pursuant to Section 40.6.4 to this Attachment HH.

40.24.3.4.3 This section applies to deposits provided under this Attachment HH with the exception of Site Control Deposits. The ISO shall hold deposits provided by Interconnection Customer until settlement of the final invoices. If Interconnection Customer has not paid all invoices, including invoices for Withdrawal Penalties, the NYISO shall (i) recover any unpaid costs described in Section 40.24.3.1 from Interconnection Customer's deposits and then (ii) recover any Withdrawal Penalties from Interconnection Customer's deposits. After the ISO has recovered all unpaid costs and penalties, if any, from Interconnection Customer's deposits, the ISO will (i) refund to the Interconnection Customer any remaining refundable cash portion of its deposits, and (ii) provide written authorization for Interconnection Customer to request that the bank cancel any remaining letter of credit or surety bond provided as a deposit.

40.24.3.4.4 Any invoices for the Cluster Study must be submitted to the ISO within sixty (60) days of completion of the subject Interconnection Study and shall include a

detailed and itemized accounting of the incurred cost of the study work for the Cluster Study. After the conclusion of the Cluster Study Process or if, prior to the conclusion of the Cluster Study Process, the Interconnection Customer withdraws or is withdrawn by the ISO from the Queue, the ISO shall issue a final invoice to Interconnection Customer, which Interconnection Customer shall pay within the timeframe set forth in Section 40.24.3.4.2.

40.24.3.4.5 In the event of an Interconnection Customer's dispute over invoiced amounts, the Interconnection Customer shall: (i) timely pay any undisputed amounts to the ISO, and (ii) pay into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Interconnection Customer fails to meet these two requirements, then the ISO shall not be obligated to perform or continue to perform any study work on behalf of the Interconnection Customer's Interconnection Request, CRIS-Only Request, or other study request under this Attachment HH. Disputes arising under this section shall be addressed through the Dispute Resolution Procedures set forth in Section 40.24.5 to this Attachment HH. Within thirty (30) Calendar Days after resolution of the dispute, the Interconnection Customer will pay the ISO any amounts due with interest actually earned on such amounts.

40.24.3.4.6 Neither the ISO nor Transmission Owner shall be obligated to perform or continue to perform any study work on behalf of an Interconnection Customer's Interconnection Request, CRIS-Only Request, or other study request under this Attachment HH unless Interconnection Customer has paid all undisputed amounts in compliance with Section 40.24.3.4.5.

#### **40.24.4 Third Parties Conducting Studies**

The ISO, Connecting Transmission Owner, Affected Transmission Owner, and Affected System Operator may utilize a Transmission Owner or other third party to perform its respective obligations under the Cluster Study Process. In all cases, use of a third party shall be in accord with Article 26 of the Standard Interconnection Agreement (Subcontractors), limited to situations where the ISO determines that doing so will help maintain or accelerate the Cluster Study, and the relevant ISO OATT procedures and protocols as would apply if the ISO were to conduct the Cluster Study and shall use the information provided to it solely for purposes of performing such services and for no other purposes.

#### **40.24.5 Disputes**

##### **40.24.5.1 Submission**

In the event any Party has a dispute, or asserts a claim, that arises out of or in connection with the Standard Interconnection Agreement, these Standard Interconnection Procedures, or their performance (a “Dispute”), such Party shall provide the other Parties with written notice of the Dispute (“Notice of Dispute”). If the ISO is not identified as a party to the Dispute, the Party providing the Notice of Dispute shall also provide this notice to the ISO for the ISO to participate solely for purposes of assisting the other Parties in resolving the claim or 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 claim or 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 the Standard Interconnection Agreement.

#### **40.24.5.2 External Arbitration Procedures**

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The arbitrators so chosen shall within twenty (20) Calendar Days select one of them to chair the arbitration panel. In each case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; *provided, however*, that in the event of a conflict between the Arbitration Rules and the terms of this Section 40.24.5, the terms of this Section 40.24.5 shall prevail.

#### **40.24.5.3 Arbitration Decisions**

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Standard Interconnection Agreement and Standard Interconnection Procedures

and shall have no power to modify or change any provision of the Standard Interconnection Agreement and Standard Interconnection Procedures in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, or System Deliverability Upgrades.

#### **40.24.5.4 Costs**

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

#### **40.24.5.5 Non-Binding Dispute Resolution Procedures**

If a Party has submitted a Notice of Dispute pursuant to Section 40.24.5.1 and the Parties are unable to resolve the claim or dispute through unassisted or assisted negotiations within the thirty (30) Calendar Days provided in that section, and the Parties cannot reach mutual agreement to pursue the Section 40.24.5 arbitration process, a Party may request that the ISO engage in non-binding Dispute Resolution pursuant to this section by providing written notice to the ISO (“Request for Non-Binding Dispute Resolution”). Such Request for Non-Binding Disputes Resolution shall contain: (i) the name of the Party making the request, (ii) an indication of the Interconnection Customer, Connecting Transmission Owner, Affected Transmission

Owner, and/or other potentially affected parties, to the extent known, (iii) a description of the dispute with sufficient detail to apprise the ISO, Interconnection Customer, Connecting Transmission Owner, Affected Transmission Owner, and/or other potentially affected parties the nature of the claim, (iv) copies of any materials that the Interconnection Customer has relied on to support its initial Notice of Dispute pursuant to Section 40.24.5.1, if applicable, and (v) citations to the ISO Tariffs and other relevant materials upon which the Party's dispute relies. Conversely, any Party may file a Request for Non-Binding Dispute Resolution pursuant to this section without first seeking mutual agreement to pursue the Section 40.24.5 arbitration process. The process in Section 40.24.5.5 shall serve as an alternative to, and not a replacement of, the Section 40.24.5 arbitration process. Pursuant to this process, the ISO must within thirty (30) Calendar Days of receipt of the Request for Non-Binding Dispute Resolution appoint a neutral decision-maker that is an independent subcontractor that shall not have any current or past substantial business or financial relationships with either Party. Any individual appointed as a neutral decision-maker shall make known to the disputing parties any such disqualifying relationship or interest and a new neutral decision-maker shall be appointed, unless express written consent is provided by each Party to the dispute.

Unless otherwise agreed by the Parties, the neutral decision-maker shall render a decision within sixty (60) Calendar Days of appointment and shall notify the Parties in writing of such decision and reasons therefore. This neutral decision-maker shall be authorized only to interpret and apply the provisions of the Standard Interconnection Procedures and Standard Interconnection Agreement and shall have no power to modify or change any provision of the Standard Interconnection Procedures and Standard Interconnection Agreement in any manner. The result reached in this process is not binding, but, unless otherwise agreed, the Parties may

cite the record and decision in the non-binding dispute resolution process in future dispute resolution processes, including in a Section 40.24.5 arbitration, or in a Federal Power Act section 206 complaint. Each Party shall be responsible for its own costs incurred during the process and the cost of the neutral decision-maker shall be divided equally among each Party to the dispute.

#### **40.24.6 Local Furnishing Bonds and Other Tax-Exempt Financing**

##### **40.24.6.1 Connecting Transmission Owners and Affected Transmission Owner(s) that Own Facilities Financed by Local Furnishing Bonds or Other Tax-Exempt Bonds**

This provision is applicable only to a Connecting Transmission Owner or Affected Transmission Owner(s) that has financed facilities with tax-exempt bonds including, but not limited to, Local Furnishing Bonds (“Tax-Exempt Bonds”). Notwithstanding any other provision of this Standard Interconnection Agreement and Standard Interconnection Procedures, neither the ISO nor Connecting Transmission Owner shall be required to provide interconnection service to Interconnection Customer, nor shall any Connecting Transmission Owner or Affected Transmission Owner be required to construct System Upgrade Facilities or System Deliverability Upgrades, pursuant to this Standard Interconnection Agreement and Standard Interconnection Procedures, if the provision of such interconnection service or such construction would jeopardize the tax-exempt status of any Tax-Exempt Bonds or impair the ability of Connecting Transmission Owner or Affected Transmission Owner(s) to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.



#### **40.24.6.2 Alternate Procedures for Requesting Interconnection Service**

If a Connecting Transmission Owner or Affected Transmission Owner(s) determines that the provision of interconnection service requested by an Interconnection Customer would jeopardize the tax-exempt status of any Tax-Exempt Bond(s) used to finance its facilities that would be used in providing such interconnection service, or impair its ability to issue future tax-exempt obligations, Connecting Transmission Owner or Affected Transmission Owner(s) shall advise the Interconnection Customer and the ISO within thirty (30) Calendar days of receipt of the Interconnection Request.

The Interconnection Customer thereafter may renew its request for interconnection using the process specified in Section 40.5 of the ISO OATT.

#### **40.25.8 APPENDIX 8 TO ATTACHMENT HH**

### **EXPEDITED DELIVERABILITY STUDY AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“Interconnection Customer”), 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”), and \_\_\_\_\_ a \_\_\_\_\_ organized and existing under the laws of the State of New York (“Connecting Transmission Owner”). Interconnection Customer, NYISO and Connecting Transmission Owner each may be referred to as a “Party,” or collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, Interconnection Customer is proposing to develop or owns an existing or facility requesting Capacity Resource Interconnection Service (“CRIS”); and

**WHEREAS**, the NYISO has confirmed that the Interconnection Customer has satisfied the eligibility requirements for entering an Expedited Deliverability Study; and

**WHEREAS**, Interconnection Customer has elected to enter an Expedited Deliverability Study in order to obtain or increase CRIS pursuant to Attachment HH to the NYISO’s Open Access Transmission Tariff (“OATT”), as applicable.

**NOW, THEREFORE**, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

- 1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Section 40.1 of Attachment HH to the ISO OATT.
- 2.0 Interconnection Customer elects to be evaluated for CRIS and NYISO shall cause to be performed an Expedited Deliverability Study consistent with Attachment HH to the ISO OATT. The terms of Attachment HH of the OATT are hereby incorporated by reference herein.
- 3.0 The scope of the Expedited Deliverability Study shall be subject to the assumptions set forth in Attachment A and the data provided in Attachment B to this Agreement.
- 4.0 The Expedited Deliverability Study report (i) shall identify whether the facility is fully deliverable at its requested level of CRIS; and (ii) if not fully deliverable, shall determine the facility’s deliverable MW.
- 5.0 The Interconnection Customer shall provide a deposit of \$30,000 for the performance of the Expedited Deliverability Study. The time for completion of the Expedited Deliverability Study is specified in Attachment A.
- 6.0 NYISO shall invoice Interconnection Customer on a monthly basis for the expenses

incurred by NYISO and the Connecting Transmission Owner on the Expedited Deliverability Study each month, as computed on a time and materials basis in accordance with the rates attached hereto. Interconnection Customer shall pay invoiced amounts to NYISO within thirty (30) Calendar Days of receipt of invoice. NYISO shall continue to hold the amounts on deposit until settlement of the final invoice.

## 7.0 Miscellaneous.

- 7.1 Accuracy of Information. Except as Interconnection Customer or Connecting Transmission Owner may otherwise specify in writing when they provide information to NYISO under this Agreement, Interconnection Customer and Connecting Transmission Owner each represent and warrant that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. Interconnection Customer and Connecting Transmission Owner shall each promptly provide NYISO with any additional information needed to update information previously provided.
- 7.2 Disclaimer of Warranty. In preparing the Expedited Deliverability Study, the Party preparing such study and any subcontractor consultants employed by it shall have to rely on information provided by the other Parties, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither the Party preparing the Expedited Deliverability Study nor any subcontractor consultant employed by that Party makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Expedited Deliverability Study. Interconnection Customer acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 7.3 Limitation of Liability. In no event shall any Party or its subcontractor consultants be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with this Agreement or the Expedited Deliverability Study or any reliance on the Expedited Deliverability Study by any Party or third parties, even if one or more of the Parties or its subcontractor consultants have been advised of the possibility of such damages. Nor shall any Party or its subcontractor consultants be liable for any delay in delivery or for the non-performance or delay in performance of its obligations under this Agreement.
- 7.4 Third-Party Beneficiaries. Without limitation of Sections 7.2 and 7.3 of this Agreement, Interconnection Customer and Connecting Transmission Owner further agree that subcontractor consultants employed by NYISO to conduct or review, or to assist in the conducting or reviewing, an Expedited Deliverability Study shall be deemed third party beneficiaries of these Sections 7.2 and 7.3.

- 7.5 Term and Termination. This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 7.5, shall continue in effect until the Expedited Deliverability Study is completed and approved by the NYISO Operating Committee. Interconnection Customer or NYISO may terminate this Agreement upon the withdrawal of the Interconnection Customer's project from the NYISO interconnection queue.
- 7.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.
- 7.7 Severability. In the event that any part of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from this Agreement and the Agreement shall continue in full force and effect as if each part was not contained herein.
- 7.8 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 7.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing signed by the Parties hereto.
- 7.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 7.11 Independent Contractor. NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors shall be considered to be employees of Interconnection Customer or Connecting Transmission Owner as a result of this Agreement.
- 7.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to insist or rely on any such provision, rights and remedies in that or any other instances; rather, the same shall be and remain in full force and effect.
- 7.13 Successors and Assigns. This Agreement, and each and every term and condition hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

**New York Independent System Operator, Inc.**

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

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

Date: \_\_\_\_\_

**[Insert name of Connecting Transmission Owner]**

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

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

Date: \_\_\_\_\_

**[Insert name of Interconnection Customer]**

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

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

Date: \_\_\_\_\_

## **ATTACHMENT A**

### **SCHEDULE FOR CONDUCTING THE EXPEDITED DELIVERABILITY STUDY**

The NYISO and Connecting Transmission Owner shall use Reasonable Efforts to complete the study and issue an Expedited Deliverability Study report to the Interconnection Customer within the four months after of receipt of an executed copy of this Expedited Deliverability Study Agreement:

- Study work (other than data provision and study review) that may be requested of the Transmission Owner by the NYISO is currently not specified, but will be specified in a Study Work Agreement to be developed between the NYISO and Transmission Owner.
- Pursuant to Article 6.0 of this Agreement, the rates for the study work are attached as Exhibit 1.

## ATTACHMENT B

### DATA FORM TO BE PROVIDED BY INTERCONNECTION CUSTOMER WITH THE EXPEDITED DELIVERABILITY STUDY AGREEMENT

1. Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.
2. Specify the MW level of Capacity Resource Interconnection Service ("CRIS") requested; provided however, that CRIS requests are subject to the limits specified in Section 40.5.6.5 of Attachment HH to the ISO OATT.

Evaluation election (MW of requested CRIS): \_\_\_\_\_

If the Facility will consist of multiple units, specify the requested allocation of the above MW level of requested CRIS:

3. Proposed Schedule:

Begin Construction Date: \_\_\_\_\_

Initial Backfeed Date Date: \_\_\_\_\_

Synchronization Date Date: \_\_\_\_\_

Generation Testing Date: \_\_\_\_\_

Commercial Operation Date Date: \_\_\_\_\_

4. **Additional Information Required as Part of this Data Form:**

**All facilities, including BTM:NG Resources, and Class Year Transmission Projects and Cluster Study Transmission Projects, must also complete Section A, below.**

#### A. Additional Information:

Nameplate MW: \_\_\_\_\_

Nameplate MVA: \_\_\_\_\_

Auxiliary Load: \_\_\_\_\_

For temperature sensitive units, provide MW vs. temp curves and indicate maximum summer and winter net capability below:

- Maximum summer net (net MW = gross MW minus auxiliary loads total MW) which can be achieved at 90 degrees F: \_\_\_\_\_

- Maximum winter net (net MW = gross MW minus auxiliary loads total MW) which can be achieved at 10 degrees F: \_\_\_\_\_

1. One set of metering is required for each generation connection to the new ring bus or existing Connecting Transmission Owner station. Number of generation connections: \_\_\_\_\_
2. On the one-line indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)
3. On the one-line indicate the location of auxiliary power. (Minimum load on CT/PT) Amps
4. Will an alternate source of auxiliary power be available during CT/PT maintenance?  
\_\_\_\_\_ Yes \_\_\_\_\_ No
5. Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? \_\_\_\_\_ Yes \_\_\_\_\_ No  
(If yes, indicate on one-line diagram).
6. What type of control system or PLC will be located at the Interconnection Customer's facility?

- 
- 
7. What protocol does the control system or PLC use?

- 
- 
8. Please provide a 7.5-minute quadrangle of the site. Sketch the plant, station, transmission line, and property line.

- 
- 
9. Physical dimensions of the proposed interconnection station:

- 
- 
10. Bus length from generation to interconnection station



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11. Line length from interconnection station to Connecting Transmission Owner's transmission line.

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12. Tower number observed in the field. (Painted on tower leg):

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13. Number of third-party easements required for transmission lines, if known:

14. Describe any injection-limiting equipment if the facility is requesting ERIS below its full output:

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15. In addition to the above information, as applicable, for BTM:NG Resources, please also provide the following information:

Interconnection Customer or Customer-Site Load: \_\_\_\_\_kW (if none, so state)

Existing load? Yes \_\_\_ No\_\_\_

If existing load with metered load data, provide coincident Summer peak load: \_\_\_\_\_

If new load or existing load without metered load data, provide estimated coincident Summer peak load: \_\_\_\_\_

Is the *new or existing load* in the Transmission Owner's service area?

\_\_\_\_\_ Yes \_\_\_\_\_ No Local provider: \_\_\_\_\_



**40.25.15 APPENDIX 15 TO ATTACHMENT HH**

**STANDARD INTERCONNECTION AGREEMENT**

**(Applicable to Generating Facilities, Class Year Transmission Projects, and Cluster Study  
Transmission Projects)**

**SERVICE AGREEMENT NO. [●]**

**SERVICE AGREEMENT NO. [●]  
STANDARD INTERCONNECTION AGREEMENT  
AMONG THE  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

**AND**

***[INSERT CONNECTING TRANSMISSION OWNER]***

**AND**

***[INSERT INTERCONNECTION CUSTOMER]***

**Dated as of *[insert execution date]***

**Facility Project Name: *[insert project name]***

**Queue Position No(s): *[insert Queue number(s)]***

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## STANDARD INTERCONNECTION AGREEMENT

**THIS STANDARD INTERCONNECTION AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and among: (i) \_\_\_\_\_, a [corporate description] organized and existing under the laws of the State/Commonwealth of \_\_\_\_\_ (“Interconnection Customer” with a Facility), (ii) 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”), and (iii) \_\_\_\_\_ a [corporate description] organized and existing under the laws of the State of New York (“Connecting Transmission Owner”). Interconnection Customer, the NYISO, or Connecting Transmission Owner each may be referred to as a “Party” or collectively referred to as the “Parties.”

### RECITALS

**WHEREAS**, NYISO operates the New York State Transmission System and Connecting Transmission Owner owns certain facilities included in the New York State Transmission System;

**WHEREAS**, Interconnection Customer intends to own, lease and/or control and operate the Facility identified in Appendix A to this Agreement; and,

**WHEREAS**, Interconnection Customer, NYISO, and Connecting Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Facility with the New York State Transmission System;

**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 40.1 of Attachment HH of the OATT, the body of the Standard Interconnection Procedures, or the body of this Agreement.

**Affected System** shall mean an electric system within the New York Control Area other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Operator** shall mean the entity that operates an Affected System. Affected System Operator includes the Affected Transmission Owners.

**Affected Transmission Owner** shall mean the New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the ISO OATT, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York

State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, Affected Network Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachment P, Attachment X, Attachment S, or Attachment HH to the ISO OATT.

**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 Electric Reliability Organization, the NPCC and the NYSRC.

**Applicable Reliability Standards** shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Interconnection Customer’s Facility is directly interconnected, 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.

**Applicable Reliability Requirements:** shall mean the NYSRC Reliability Rules, and other criteria, standards and procedures, as described in Section 40.12.1.2 of this Attachment HH, applied when conducting the Cluster Baseline Assessment and the Cluster Project Assessment; 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 the Standard Interconnection Procedures. The Applicable Reliability Requirements applied are those in effect when the particular assessment is commenced.

**Attachment Facilities** shall mean the Connecting Transmission Owner’s Attachment Facilities and the Interconnection Customer’s Attachment Facilities. Collectively, Attachment Facilities include all facilities and equipment between the Generating Facility or Cluster Study Transmission Project and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the New York State Transmission System or Distribution System. Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities, Distribution Upgrades, System Upgrade Facilities or System Deliverability Upgrades.

**Balancing Authority** shall mean an entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

**Balancing Authority Area** shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies or Cluster Study by the NYISO, Connecting Transmission Owner or Interconnection Customer; as described, as applicable, in Section 30.2.3 of the Standard Large Facility Interconnection Procedures or Section 40.2.6 of the Standard Interconnection Procedures.

**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 Interconnection Customers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with Attachment S or HH to the ISO OATT; such service being one of the eligibility requirements for participation as a NYISO Installed Capacity Supplier.

**Class Year Interconnection Facilities Study (“Class Year Study”)** shall mean a study conducted by the NYISO or a third party consultant for the Interconnection Customer 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 Large Facility Interconnection Procedures in Attachment X to the ISO OATT.

**Class Year Transmission Project** shall mean an Interconnection Customer’s proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Class Year Transmission Project without having to re-dispatch generation. Class Year Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

**Cluster** shall mean a group of one or more Projects with validated Interconnection Requests that are studied together for the purpose of conducting a Cluster Study.

**Cluster Study** shall mean the study conducted, as applicable, by the ISO, Connecting Transmission Owner, Affected Transmission Owner, Affected System Operator or a third party consultant for the Interconnection Customer to determine a list of facilities (including Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System Deliverability Upgrades), the cost of those facilities, and the time required to interconnect the Generating Facility or Cluster Study Transmission Project with the New York State Transmission System or with the Distribution System. The Cluster Study includes the Phase 1 Study and the Phase 2 Study.

**Cluster Study Transmission Project** shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Cluster Study Transmission Project without having to re-dispatch generation. Cluster Study Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

**Commercial Operation** shall mean the status of a Facility that has commenced generating or transmitting electricity for sale, excluding electricity generated or transmitted during Trial Operation.

**Commercial Operation Date** of a unit shall mean the date on which the Facility commences Commercial Operation, notice of which must be provided by the Interconnection Customer to the NYISO and Connecting Transmission Owner in the form provided in Appendix E-2 to this Agreement.

**Confidential Information** shall mean any information that is defined as confidential by Article 22 of this Agreement.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the ISO OATT, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System or Distribution System at the Point of Interconnection, and (iii) is a Party to this Agreement. For purposes of this Agreement, the Connecting Transmission Owner is set forth in the preamble of this Agreement.

**Connecting Transmission Owner's Attachment Facilities** shall mean all facilities and equipment owned, controlled or operated by the Connecting Transmission Owner from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to this Agreement, including any modifications, additions or upgrades to such facilities and equipment. Connecting Transmission Owner's Attachment Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone System Upgrade Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

**Contingent Facilities** shall mean those Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and/or System Deliverability Upgrades associated with Class Year Projects or Cluster Study Projects upon which the Facility's Class Year Study or Cluster Study Project Cost Allocations are dependent, and if delayed or not built, could impact the actual costs and timing of the Facility's Project Cost Allocation for System Upgrade Facilities or System Deliverability Upgrades.

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 17 of this Agreement.

**Distribution System** shall mean the Connecting Transmission Owner's facilities and equipment used to distribute electricity that are subject to FERC jurisdiction, and are subject to the NYISO's Standard Interconnection Procedures in Attachment HH to the ISO OATT under FERC Order Nos. 2003 and/or 2006. The term Distribution System shall not include LIPA's distribution facilities.

**Distribution Upgrades** shall mean the modifications or additions to the existing Distribution System at or beyond the Point of Interconnection that are required for the Facility to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard. Distribution Upgrades do not include Attachment Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

**Effective Date** shall mean the date on which this Agreement becomes effective in accordance with Article 2.1 of this Agreement.

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

**Emergency State** shall mean the condition or state that the New York State Power System is in when an abnormal condition occurs that requires automatic or immediate manual action to prevent or limit loss of the New York State Transmission System or Generators that could adversely affect the reliability of the New York State Power System.

**Energy Resource Interconnection Service ("ERIS")** shall mean the service provided by NYISO to interconnect the Interconnection Customer's Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project to the New York State Transmission System or to the Distribution System in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive Energy and Ancillary Services from the Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project, pursuant to the terms of the ISO OATT.

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

**Facility** shall mean, as applicable, the Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project.

**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.

**Generating Facility** shall mean Interconnection Customer’s device(s) for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include: the Interconnection Customer’s Attachment Facilities or Distribution Upgrades. A facility comprised of multiple Generators will be treated as a single Generating Facility if the facility proposed in the Interconnection Request is comprised of multiple Generators behind a single Point of Interconnection, even if such Generators are different technology types.

**Generating Facility Capacity** shall mean the net seasonal capacity of the Generating Facility or the aggregate net seasonal capacity of the Generating Facility consisting of more than one device for a production and/or storage for later injection.

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

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

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

**Initial Backfeed Date** shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Connecting Transmission Owner’s Attachment Facilities to obtain back feed power. Initial Backfeed Date shall include the term In-Service Date as that term is used in Attachments S, X, and Z to the ISO OATT.

**Interconnection Customer** shall mean any entity, including the Connecting Transmission Owner or any of its affiliates or subsidiaries, that proposes to interconnect its Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project with the New York State Transmission System or the Distribution System. For purposes of applying the requirements in this Agreement, an Interconnection Customer shall include an entity that was categorized as a Developer under the NYISO’s Standard Large Facility Interconnection Procedures.

**Interconnection Customer’s Attachment Facilities** shall mean all facilities and equipment that are located between the Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project and the Point of Change of Ownership as identified in Appendix A to this Agreement, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project to the New York State Transmission System or Distribution System. Interconnection Customer’s Attachment Facilities are sole use facilities. For purposes of applying the requirements in this Agreement, Interconnection Customer’s Attachment Facilities shall include facilities that were categorized as Developer’s Attachment Facilities under the NYISO’s Standard Large Facility Interconnection Procedures or Interconnection Customer’s Interconnection Facilities under the NYISO’s Small Generator Interconnection Procedures.

**Interconnection Request** shall mean Interconnection Customer’s request, in the form of Appendix 1 to the Standard Interconnection Procedures in Attachment HH to the ISO OATT or Appendix 1 to the Standard Large Facility Interconnection Procedures in Attachment X to the ISO OATT, in accordance with the ISO OATT, to interconnect a new Facility, Class Year Transmission Project, or Cluster Study Transmission Project 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 Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project that is interconnected with the New York State Transmission System or with the Distribution System. For purposes of the Interconnection Request, a facility comprised of multiple Generators behind the same Point of Interconnection may be considered a single Generating Facility, provided the Interconnection Request identifies a single Interconnection Customer.

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

**ISO 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.

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

**Material Modification** shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with an equal or later Queue Position.

**Metering Equipment** shall mean all metering equipment installed or to be installed at the Facility pursuant to this Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

**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 pursuant to Article 27.1 of this Agreement 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 Tariffs** shall mean the ISO OATT and ISO Services Tariff.

**NYSRC** shall mean the New York State Reliability Council or its successor organization.

**Party or Parties** shall mean NYISO, Connecting Transmission Owner, or Interconnection Customer or any combination of the above.

**Point of Change of Ownership** shall mean the point where the Interconnection Customer's Attachment Facilities connect to the Connecting Transmission Owner's Attachment Facilities. The Point of Change of Ownership is set forth in Appendix A to this Agreement.

**Point of Interconnection** shall mean the point where the Attachment Facilities connect to the New York State Transmission System or to the Distribution System. The Point of Interconnection is set forth in Appendix A to this Agreement.

**Provisional Interconnection Service** shall mean interconnection service provided by the NYISO associated with interconnecting the Interconnection Customer's Facility to the New York State Transmission System (or Distribution System as applicable) and enabling the transmission system to receive electric energy from the Facility at the Point of Interconnection, pursuant to the terms of the Provisional Standard Interconnection Agreement and, if applicable, the ISO OATT.



**Provisional Standard Interconnection Agreement** shall mean the interconnection agreement for Provisional Interconnection Service established between the NYISO, Connecting Transmission Owner(s), and the Interconnection Customer. This agreement shall take the form of the Standard Interconnection Agreement, modified for provisional purposes and type of facility.

**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.

**Retired** shall mean a Generator that has permanently ceased operating on or after May 1, 2015 either: (i) pursuant to applicable notice; or (ii) as a result of the expiration of its Mothball Outage or its ICAP Ineligible Forced Outage.

**Site Control** shall mean the necessary land right sufficient to develop, construct, operate, and maintain the Facility over a term of at least ten (10) years from the date of submission of the Interconnection Request. Site Control may be demonstrated by documentation establishing: (1) ownership of, a leasehold interest in, or a right to develop a site of sufficient size to construct and operate the Facility; (2) an option to purchase or acquire a leasehold site of sufficient size to construct and operate the Facility; or (3) any other documentation that clearly demonstrates the right of Interconnection Customer to occupy a site of sufficient size to construct and operate the Facility. The term “necessary land right” restricts the use of the site for mutually exclusive projects, but does not restrict multi-use applications of the site in addition to its use for the Facility, such as agriculture, ranching, etc. The ISO will maintain acreage requirements and other applicable parameters for each facility type on its OASIS or public website.

**Stand Alone System Upgrade Facilities** shall mean System Upgrade Facilities that are not part of an Affected System that Interconnection Customer may construct without affecting day-to-day operations of the New York State Transmission System during their construction. The ISO, the Connecting Transmission Owner, and the Interconnection Customer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify them in Appendix A to the Standard Interconnection Agreement. If the ISO, the Connecting Transmission Owner, and the Interconnection Customer disagree about whether a particular System Upgrade Facility is a Stand Alone System Upgrade Facility, the ISO and the Connecting Transmission Owner must provide the Interconnection Customer a written technical explanation outlining why the ISO and the Connecting Transmission Owner do not consider the System Upgrade Facility to be a Stand Alone System Upgrade Facility within fifteen (15) Business Days of its determination.

**Standard Interconnection Agreement (“IA”)** shall mean this agreement, which is the form of interconnection agreement applicable to an Interconnection Request pertaining to a Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project, that is included in Attachment HH of the ISO OATT.

**Standard Interconnection Procedures (“Interconnection Procedures” or “SIP”)** shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Generating Facility or Cluster Study Transmission Project that are included in this Attachment HH of the ISO OATT.

**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 or Class Year Transmission Project that are included in Attachment X of the ISO OATT.

**Standard Upgrade Construction Agreement** shall mean the agreement contained in Appendix 16 to Attachment HH that is made, as applicable, among: (i) the ISO, (ii) the Affected System Operator or Affected Transmission Owner, and (iii) the Interconnection Customer or Affected System Interconnection Customer to facilitate the construction of and to set forth cost responsibility for necessary System Upgrades Facilities, System Deliverability Upgrades, or Affected System Network Upgrades on the New York State Transmission System or Distribution System.

**Standard Multiparty Upgrade Construction Agreement** shall mean the agreement contained in Appendix 17 to Attachment HH that is made, as applicable, among (i) the ISO, (ii) the Affected System Operator or Affected Transmission Owner, and (iii) multiple Interconnection Customers or Affected System Interconnection Customers to facilitate the construction of and to set forth cost responsibility for necessary System Upgrade Facilities, System Deliverability Upgrades, or Affected System Network Upgrades on the New York State Transmission System or Distribution System.

**Synchronization Date** shall mean the date upon which the Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project is initially synchronized and upon which Trial Operation begins, notice of which must be provided by the Interconnection Customer to the NYISO and Connecting Transmission Owner in the form provided in Appendix E-1. Synchronization Date shall include the term Initial Synchronization Date as that term is used in Attachments S, X, and Z to 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.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Facility and (2) protect the Facility from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

**System Upgrade Facilities** shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications to the existing transmission system that are required to maintain system reliability due to: (i) changes in the system, including

such changes as load growth and changes in load pattern, to be addressed in the form of generic generation or transmission projects; and (ii) proposed interconnections. In the case of proposed interconnection projects, System Upgrade Facilities are the modifications or additions to the existing New York State Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard.

**Trial Operation** shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Facility prior to Commercial Operation.

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

### **2.1 Effective Date.**

This Agreement shall become effective upon execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO and Connecting Transmission Owner shall promptly file this Agreement with FERC upon execution in accordance with Article 3.

### **2.2 Term of Agreement.**

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of *[ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request (Term to be Specified in Individual Agreements)]* and shall be automatically renewed for each successive one-year period thereafter.

### **2.3 Termination.**

#### **2.3.1 Written Notice.**

This Agreement may be terminated:

(i) by the Interconnection Customer after giving the NYISO and Connecting Transmission Owner ninety (90) Calendar Days advance written notice; or

(ii) by the NYISO and Connecting Transmission Owner by providing written notice to Interconnection Customer after, as applicable, the Generating Facility is Retired or the Class Year Transmission Project or Cluster Study Transmission Project permanently ceases Commercial Operation.

#### **2.3.2 Default.**

Any Party may terminate this Agreement in accordance with Article 17.

#### **2.3.3 Compliance.**

Notwithstanding Articles 2.3.1 and 2.3.2, 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 a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the terminating Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment) or charges assessed by the other Parties, as of the date of the other Parties' receipt of such notice of termination, that are the responsibility of the terminating Party under this Agreement. In the event of termination by a Party, 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:

**2.4.1** With respect to any portion of the Connecting Transmission Owner's Attachment Facilities that have not yet been constructed or installed, the Connecting Transmission Owner shall to the extent possible and with Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Connecting Transmission Owner shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Connecting Transmission Owner for any or all such costs of materials or equipment not taken by Interconnection Customer, Connecting Transmission Owner shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by the Connecting Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts.

If Interconnection Customer terminates this Agreement, it shall be responsible for all costs incurred in association with Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment, and other expenses including any System Upgrade Facilities and System Deliverability Upgrades for which the Connecting Transmission Owner has incurred expenses and has not been reimbursed by the Interconnection Customer.

**2.4.2** Connecting Transmission Owner may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Connecting Transmission Owner shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

**2.4.3** With respect to any portion of the Attachment Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

## **2.5 Disconnection.**

Upon termination of this Agreement, Interconnection Customer and Connecting Transmission Owner will take all appropriate steps to disconnect the Interconnection Customer's Facility from the New York State Transmission System or Distribution System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

## **2.6 Survival.**

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

## **ARTICLE 3. REGULATORY FILINGS**

NYISO and Connecting Transmission Owner shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Interconnection Customer to contain Confidential Information shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT. If the Interconnection Customer has executed this Agreement, or any amendment thereto, Interconnection Customer shall reasonably cooperate with NYISO and Connecting Transmission Owner with respect to such filing and to provide any information reasonably requested by NYISO and Connecting Transmission Owner needed to comply with Applicable Laws and Regulations.

## **ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE**

### **4.1 Provision of Service.**

NYISO will provide Interconnection Customer with interconnection service of the following type for the term of this Agreement.

#### **4.1.1 Product.**

Subject to Article 4.1.2, NYISO will provide [ ]  
Interconnection Service to Interconnection Customer at the Point of Interconnection.

#### **4.1.2 Execution of Agreement Prior to Completion of Class Year Study or Cluster Study.**

If the Agreement, including a Provisional Standard Interconnection Agreement, is executed prior to the completion of, as applicable, the Class Year Study or Cluster Study for the

Facility, Interconnection Customer shall, as applicable: (i) in the Class Year Study decision process accept the Project Cost Allocation and post Security for any System Upgrade Facilities that are identified for the Facility and cost allocated in the Class Year Study, or (ii) in the Cluster Study decision process accept the Project Cost Allocation and post Security for any Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and Distribution Upgrades that are identified for the Facility and cost allocated in the Cluster Study. Interconnection Customer must accept such cost allocation and post the required Security even if the Project Cost Allocation exceeds the estimate included in this Agreement and includes equipment not identified in the Agreement. Unless Interconnection Customer otherwise obtains CRIS in accordance with the requirements in Attachments S or HH to the OATT, Interconnection Customer cannot participate as an Installed Capacity Supplier until after, as applicable, the Class Year Study or Cluster Study is completed and (1) the project is deemed deliverable and Interconnection Customer accepts its Deliverable MWs, or (2) the Interconnection Customer accepts its Project Cost Allocation and posts Security for any required System Deliverability Upgrades. If the upgrades or cost estimates identified in the Class Year Study or Cluster Study or otherwise determined in accordance with Attachments S or HH differ from the amounts and description in this Agreement, the Parties shall amend the Agreement, pursuant to Articles 29.11 and 29.12 of this Agreement, to reflect the results of, as applicable, the Class Year Study or Cluster Study.

**4.1.3 Interconnection Customer** is responsible for ensuring that its actual Facility output matches the scheduled delivery from the Facility to the New York State Transmission System, consistent with the scheduling requirements of the NYISO's FERC-approved market structure, including ramping into and out of such scheduled delivery, as measured at the Point of Interconnection, consistent with the scheduling requirements of the ISO OATT and any applicable FERC-approved market structure.

#### **4.2 No Transmission Delivery Service.**

The execution of this Agreement does not constitute a request for, nor agreement to provide, any Transmission Service under the ISO OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery. If Interconnection Customer wishes to obtain Transmission Service on the New York State Transmission System, then Interconnection Customer must request such Transmission Service in accordance with the provisions of the ISO OATT.

#### **4.3 No Other Services.**

The execution of this Agreement does not constitute a request for, nor agreement to provide Energy, any Ancillary Services or Installed Capacity under the ISO Services Tariff. If Interconnection Customer wishes to supply Energy, Installed Capacity or Ancillary Services, then Interconnection Customer will make application to do so in accordance with the ISO Services Tariff.

## **ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION**

### **5.1 Options.**

Unless otherwise mutually agreed to by Interconnection Customer and Connecting Transmission Owner, Interconnection Customer shall select the Initial Backfeed Date, Synchronization Date, and Commercial Operation Date; and either the Standard Option or Alternate Option set forth below, and such dates and selected option shall be set forth in Appendix B hereto. At the same time, Interconnection Customer shall indicate whether it elects to exercise the Option to Build set forth in Article 5.1.3 below. If the dates designated by Interconnection Customer are not acceptable to the Connecting Transmission Owner, the Connecting Transmission Owner shall so notify Interconnection Customer within thirty (30) Calendar Days. Upon receipt of the notification that Interconnection Customer's designated dates are not acceptable to the Connecting Transmission Owner, Interconnection Customer shall notify the Connecting Transmission Owner within thirty (30) Calendar Days whether it elects to exercise the Option to Build if it has not already elected to exercise the Option to Build.

#### **5.1.1 Standard Option.**

The Connecting Transmission Owner shall design, procure, and construct the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities and System Deliverability Upgrades, using Reasonable Efforts to complete the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities and System Deliverability Upgrades by the dates set forth in Appendix B hereto. The Connecting 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 Connecting Transmission Owner reasonably expects that it will not be able to complete the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities and System Deliverability Upgrades by the specified dates, the Connecting Transmission Owner shall promptly provide written notice to Interconnection Customer and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

#### **5.1.2 Alternate Option.**

If the dates designated by Interconnection Customer are acceptable to Connecting Transmission Owner, the Connecting Transmission Owner shall so notify Interconnection Customer and NYISO within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Connecting Transmission Owner's Attachment Facilities by the designated dates. If Connecting Transmission Owner subsequently fails to complete Connecting Transmission Owner's Attachment Facilities by the Initial Backfeed Date, to the extent necessary to provide back feed power; or fails to complete System Upgrade Facilities or System Deliverability Upgrades by the Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by Interconnection Customer and Connecting Transmission Owner for such Trial Operation; or fails to complete the System Upgrade Facilities and System Deliverability Upgrades by the

Commercial Operation Date, as such dates are reflected in Appendix B hereto; Connecting Transmission Owner shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, *provided, however*, the dates designated by Interconnection Customer shall be extended day for day for each day that NYISO refuses to grant clearances to install equipment.

### **5.1.3 Option to Build.**

Individual or multiple Interconnection Customer(s) shall have the option to assume responsibility for the design, procurement and construction of Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities on the dates specified in Article 5.1.2 if the requirements in this Article 5.1.3 are met. When multiple Interconnection Customers may agree to exercise this option, multiple Interconnection Customers may agree to exercise this option provided (1) all Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities constructed under this option are only required for Interconnection Customers in a single Cluster and (2) all impacted Interconnection Customers execute and provide to the NYISO and Connecting Transmission Owner an agreement regarding responsibilities and payments for the construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities planned to be built under this option. NYISO, Connecting Transmission Owner, and the individual Interconnection Customer or each of the multiple Interconnection Customers must agree as to what constitutes Stand Alone System Upgrade Facilities and identify such Stand Alone System Upgrade Facilities in Appendix A hereto. Except for Stand Alone System Upgrade Facilities, Interconnection Customer shall have no right to construct System Upgrade Facilities or System Deliverability Upgrades under this option.

### **5.1.4 Negotiated Option.**

If the dates designated by Interconnection Customer are not acceptable to the Connecting Transmission Owner, Interconnection Customer and Connecting Transmission Owner shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of all facilities other than the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities if Interconnection Customer elects to exercise the Option to Build under Article 5.1.3. If the two Parties are unable to reach agreement on such terms and conditions, then, pursuant to Article 5.1.1 (Standard Option), Connecting Transmission Owner shall assume responsibility for the design, procurement and construction of all facilities other than the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities if Interconnection Customer elects to exercise the Option to Build.

## **5.2 General Conditions Applicable to Option to Build.**

If Interconnection Customer assumes responsibility for the design, procurement and construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities, the following conditions apply:

### **5.2.1 Interconnection Customer shall engineer, procure equipment, and construct**



the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Connecting Transmission Owner;

**5.2.2** Interconnection Customer's engineering, procurement and construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities shall comply with all requirements of law to which Connecting Transmission Owner would be subject in the engineering, procurement or construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;

**5.2.3** Connecting Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;

**5.2.4** Prior to the commencement of construction, Interconnection Customer shall provide to Connecting Transmission Owner and NYISO a schedule for construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities, and shall promptly respond to requests for information from Connecting Transmission Owner or NYISO;

**5.2.5** At any time during construction, Connecting Transmission Owner shall have the right to gain unrestricted access to the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities and to conduct inspections of the same;

**5.2.6** At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities not meet the standards and specifications provided by Connecting Transmission Owner, Interconnection Customer shall be obligated to remedy deficiencies in that portion of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;

**5.2.7** Interconnection Customer shall indemnify Connecting Transmission Owner and NYISO for claims arising from Interconnection Customer's construction of Connecting Transmission Owner's Attachment Facilities, Stand Alone System Upgrade Facilities under procedures applicable to Article 18.1 Indemnity;

**5.2.8** Interconnection Customer shall transfer control of Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the Connecting Transmission Owner;

**5.2.9** Unless Interconnection Customer and Connecting Transmission Owner otherwise agree, Interconnection Customer shall transfer ownership of Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to Connecting Transmission Owner;

**5.2.10** Connecting Transmission Owner shall approve and accept for operation

and maintenance the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 5.2;

**5.2.11** Interconnection Customer shall deliver to NYISO and Connecting Transmission Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or Connecting Transmission Owner to assure that the Attachment Facilities and Stand Alone System Upgrade Facilities are built to the standards and specifications required by Connecting Transmission Owner; and

**5.2.12** If Interconnection Customer exercises the Option to Build pursuant to Article 5.1.3 , Interconnection Customer shall pay the Connecting Transmission Owner the agreed upon amount of [\$ PLACEHOLDER] for the Connecting Transmission Owner to execute the responsibilities enumerated to Connecting Transmission Owner under Article 5.2. The Connecting Transmission Owner shall invoice Interconnection Customer for this total amount to be divided on a monthly basis pursuant to Article 12.

### **5.3           Liquidated Damages.**

The actual damages to Interconnection Customer, in the event the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades are not completed by the dates designated by Interconnection Customer and accepted by the Connecting Transmission Owner pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Connecting Transmission Owner to Interconnection Customer in the event that Connecting Transmission Owner does not complete any portion of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades by the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities and System Deliverability Upgrades, in the aggregate, for which Connecting Transmission Owner has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities and System Deliverability Upgrades for which the Connecting Transmission Owner has assumed responsibility to design, procure, and construct. The foregoing payments will be made by the Connecting Transmission Owner to Interconnection Customer as just compensation for the damages caused to Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this Agreement. Liquidated damages, when Interconnection Customer and Connecting Transmission Owner agree to them, are the exclusive remedy for the Connecting Transmission Owner's failure to meet its schedule.

Further, Connecting Transmission Owner shall not pay liquidated damages to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of the

Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades to take the delivery of power for the Interconnection Customer's Facility's Trial Operation or to export power from Interconnection Customer's Facility on the specified dates, unless Interconnection Customer would have been able to commence use of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades to take the delivery of power for Interconnection Customer's Facility's Trial Operation or to export power from the Interconnection Customer's Facility, but for Connecting Transmission Owner's delay; (2) the Connecting Transmission Owner's failure to meet the specified dates is the result of the action or inaction of Interconnection Customer or any other Interconnection Customer who has entered into an interconnection agreement with the Connecting Transmission Owner and NYISO, or action or inaction by any other Party, or any other cause beyond Connecting Transmission Owner's reasonable control or reasonable ability to cure; (3) Interconnection Customer has assumed responsibility for the design, procurement and construction of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities; or (4) the Connecting Transmission Owner and Interconnection Customer have otherwise agreed. In no event shall NYISO have any liability whatever to Interconnection Customer for liquidated damages associated with the engineering, procurement or construction of Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades.

#### **5.4 Power System Stabilizers.**

Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with the requirements identified in the Class Year Study or Cluster Study conducted for Interconnection Customer's Facility. NYISO and Connecting Transmission Owner reserve the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Facility. If the Facility's Power System Stabilizers are removed from service or not capable of automatic operation, Interconnection Customer shall immediately notify the Connecting Transmission Owner and NYISO.

#### **5.5 Design and Equipment Procurement.**

If responsibility for construction of the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, or System Deliverability Upgrades is to be borne by the Connecting Transmission Owner, then the Connecting Transmission Owner shall commence design of the applicable facilities for which it is responsible and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless Interconnection Customer and Connecting Transmission Owner otherwise agree in writing:

**5.5.1** NYISO and Connecting Transmission Owner have completed the Class Year Study or Cluster Study;

**5.5.2** The NYISO has completed the required cost allocation analyses, and Interconnection Customer has accepted its Project Cost Allocation for, as applicable, the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades required for the Facility in accordance with the provisions of Attachment S or HH of the ISO OATT;

**5.5.3** The Connecting Transmission Owner has received written authorization to proceed with design and procurement from Interconnection Customer by the date specified in Appendix B hereto; and

**5.5.4** Interconnection Customer has provided security to the Connecting Transmission Owner for the design and procurement of the applicable facilities in accordance with Article 11.5 by the date(s) specified in Appendix B hereto.

## **5.6 Construction Commencement.**

The Connecting Transmission Owner shall commence construction of the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

**5.6.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

**5.6.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades;

**5.6.3** The Connecting Transmission Owner has received written authorization to proceed with construction from Interconnection Customer by the date specified in Appendix B hereto; and

**5.6.4** Interconnection Customer has provided security to the Connecting Transmission Owner for the construction of the applicable facilities in accordance with Article 11.5 by the date(s) specified in Appendix B hereto.

## **5.7 Work Progress.**

Interconnection Customer and Connecting Transmission Owner will keep each other, and NYISO, advised periodically as to the progress of their respective design, procurement and construction efforts. Any Party may, at any time, request a progress report from Interconnection Customer or Connecting Transmission Owner. If, at any time, Interconnection Customer determines that the completion of the Connecting Transmission Owner's Attachment Facilities will not be required until after the specified Initial Backfeed Date, Interconnection Customer will provide written notice to the Connecting Transmission Owner and NYISO of such later date upon which the completion of the Connecting Transmission Owner's Attachment Facilities will be required.

## **5.8 Information Exchange.**

As soon as reasonably practicable after the Effective Date, Interconnection Customer and Connecting Transmission Owner shall exchange information, and provide NYISO the same information, regarding the design and compatibility of their respective Attachment Facilities and compatibility of the Attachment Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.

## **5.9 Other Interconnection Options**

### **5.9.1 Limited Operation.**

If any of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, or System Deliverability Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of Interconnection Customer's Facility, NYISO shall, upon the request and at the expense of Interconnection Customer, in conjunction with the Connecting Transmission Owner, perform operating studies on a timely basis to determine the extent to which Interconnection Customer's Facility and the Interconnection Customer's Attachment Facilities may operate prior to the completion of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, or System Deliverability Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this Agreement. Connecting Transmission Owner and NYISO shall permit Interconnection Customer to operate Interconnection Customer's Facility and Interconnection Customer's Attachment Facilities in accordance with the results of such studies.

### **5.9.2 Provisional Interconnection Service.**

Prior to: (i) Interconnection Customer's eligibility under the Standard Large Facility Interconnection Procedures or Standard Interconnection Procedures pursuant to which it may enter into an interconnection agreement before the completion of the Class Year Study or Cluster Study and (ii) the completion of requisite Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Distribution Upgrades, or System Protection Facilities, Interconnection Customer may request an evaluation for Provisional Interconnection Service. NYISO, in conjunction with the Connecting Transmission Owner, shall determine, through available studies or additional studies as necessary, whether stability, short circuit, thermal, and/or voltage issues would arise if Interconnection Customer interconnects without modifications to the Facility or the New York State Transmission System (or Distribution System as applicable). NYISO, in conjunction with the Connecting Transmission Owner, shall determine whether any Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Deliverability Upgrades, or System Protection Facilities, which are necessary to meet Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, are in place prior to the commencement of interconnection service from the Facility. Where available studies indicate that the Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Deliverability Upgrades, or System Protection Facilities are required for the interconnection of a new, modified and/or expanded Facility but such facilities are not currently in place, NYISO, in conjunction with the Connecting Transmission Owner, will perform a study, at Interconnection Customer's expense, to confirm the facilities that are required for Provisional

Interconnection Service. The maximum permissible output of the Facility in the Provisional Standard Interconnection Agreement shall be studied, at the Interconnection Customer's expense, and updated annually. The NYISO shall issue the study's findings in writing to Interconnection Customer and Connecting Transmission Owner(s). Following a determination by NYISO, in conjunction with the Connecting Transmission Owner, that Interconnection Customer may reliably provide Provisional Interconnection Service, NYISO shall tender to Interconnection Customer and Connecting Transmission Owner, a Provisional Standard Interconnection Agreement. NYISO, Interconnection Customer, and Connecting Transmission Owner may execute the Provisional Standard Interconnection Agreement, or Interconnection Customer may request the filing of an unexecuted Provisional Standard Interconnection Agreement with the Commission. Interconnection Customer shall assume all risk and liabilities with respect to changes between the Provisional Standard Interconnection Agreement and the Standard Interconnection Agreement, including changes in output limits and the cost responsibilities for the Attachment Facilities, System Upgrade Facilities, System Deliverability Upgrades, and/or System Protection Facilities.

#### **5.10 Interconnection Customer's Attachment Facilities ("ICAF").**

Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICAF, as set forth in Appendix A hereto.

##### **5.10.1 ICAF Specifications.**

Interconnection Customer shall submit initial specifications for the ICAF, including System Protection Facilities, to Connecting Transmission Owner and NYISO at least one hundred eighty (180) Calendar Days prior to the Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Synchronization Date. Connecting Transmission Owner and NYISO shall review such specifications to ensure that the ICAF are compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed to be Confidential Information.

##### **5.10.2 No Warranty.**

The review of Interconnection Customer's final specifications by Connecting Transmission Owner and NYISO shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Facility or the ICAF. Interconnection Customer shall make such changes to the ICAF as may reasonably be required by Connecting Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the ICAF are compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO.

##### **5.10.3 ICAF Construction.**

The ICAF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless Interconnection Customer and Connecting Transmission Owner agree on another mutually

acceptable deadline, Interconnection Customer shall deliver to the Connecting Transmission Owner and NYISO “as-built” drawings, information and documents for the ICAF, such as: a one-line diagram, a site plan showing the Facility and the ICAF, plan and elevation drawings showing the layout of the ICAF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with Interconnection Customer’s step-up transformers, the facilities connecting the Facility to the step-up transformers and the ICAF, and the impedances (determined by factory tests) for the associated step-up transformers and the Facility. Interconnection Customer shall provide to, and coordinate with, Connecting Transmission Owner and NYISO with respect to proposed specifications for the excitation system, automatic voltage regulator, Facility control and protection settings, transformer tap settings, and communications, if applicable.

#### **5.11 Connecting Transmission Owner’s Attachment Facilities Construction.**

The Connecting Transmission Owner’s Attachment Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Connecting Transmission Owner and Interconnection Customer agree on another mutually acceptable deadline, the Connecting Transmission Owner shall deliver to Interconnection Customer “as-built” drawings, relay diagrams, information and documents for the Connecting Transmission Owner’s Attachment Facilities set forth in Appendix A.

The Connecting Transmission Owner [shall/shall not] transfer operational control of the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities to the NYISO upon completion of such facilities.

#### **5.12 Access Rights.**

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, either the Connecting Transmission Owner or Interconnection Customer (“Granting Party”) shall furnish to the other of those two Parties (“Access Party”) at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain the ingress and egress at the Point of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Facility with the New York State Transmission System or Distribution System; (ii) operate and maintain the Facility, the Attachment Facilities, and the New York State Transmission System; and (iii) disconnect or remove the Access Party’s facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

### **5.13 Lands of Other Property Owners.**

If any part of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and/or System Deliverability Upgrades is to be installed on property owned by persons other than Interconnection Customer or Connecting Transmission Owner, the Connecting Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and/or System Deliverability Upgrades upon such property.

### **5.14 Permits.**

NYISO, Connecting Transmission Owner, and Interconnection Customer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Connecting Transmission Owner shall provide permitting assistance to Interconnection Customer comparable to that provided to the Connecting Transmission Owner's own, or an Affiliate's generation, if any.

### **5.15 Early Construction of Base Case Facilities.**

Interconnection Customer may request Connecting Transmission Owner to construct, and Connecting Transmission Owner shall construct, subject to a binding cost allocation agreement reached in accordance with Attachment S or HH to the ISO OATT, including Section 25.8.7 or 40.17 thereof, using Reasonable Efforts to accommodate Interconnection Customer's Initial Backfeed Date, all or any portion of any System Upgrade Facilities or System Deliverability Upgrades required for Interconnection Customer to be interconnected to the New York State Transmission System which are included in the Base Case of the Class Year Study or Cluster Study for Interconnection Customer, and which also are required to be constructed for another Interconnection Customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's Initial Backfeed Date.

### **5.16 Suspension.**

Interconnection Customer reserves the right, upon written notice to Connecting Transmission Owner and NYISO, to suspend at any time all work by Connecting Transmission Owner or Interconnection Customer, as applicable, associated with the construction and installation of Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and/or System Deliverability Upgrades required for only that Interconnection Customer under this Agreement with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Connecting Transmission Owner and NYISO. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with Attachment HH to the OATT including those which Connecting



Transmission Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs as a result of the suspension of such work, including any costs incurred by the Connecting Transmission Owner to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if cancellation or suspension of material, equipment, and labor contracts which Connecting Transmission Owner cannot reasonably avoid; *provided, however*, that prior to canceling or suspending any such material, equipment, or labor contract, Connecting Transmission Owner shall obtain Interconnection Customer's authorization to do so. Interconnection Customer's election to suspend work pursuant to this Article 5.16 shall not toll the time period by which an Interconnection Customer may extend the Commercial Operation Date for the Facility without such extension being a Material Modification pursuant to Attachment HH to the OATT.

Connecting Transmission Owner shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. If: (i) pursuant to this Article 5.16, Interconnection Customer suspends work associated with the construction and installation of Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and/or System Deliverability Upgrades that is required under this Agreement, and (ii) Interconnection Customer has, as applicable, either not recommenced work or requested Connecting Transmission Owner to recommence its work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Connecting Transmission Owner and NYISO, if no effective date is specified.

## **5.17 Taxes.**

If the Facility is a Class Year Transmission Project or a Cluster Study Transmission Project, Appendix C to this Agreement shall include any project-specific variations from the tax requirements established in this Article 5.17 that are appropriate for the transmission facility.

### **5.17.1 Interconnection Customer Payments Not Taxable.**

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

### **5.17.2 Representations and Covenants.**

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Generating Facility will pass to another party prior to the transmission of the electricity on the

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

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

#### **5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Connecting Transmission Owner.**

Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Connecting Transmission Owner from the cost consequences of any current tax liability imposed against Connecting Transmission Owner as the result of payments or property transfers made by Interconnection Customer to Connecting Transmission Owner under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Connecting Transmission Owner.

Connecting Transmission Owner shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customer under this Agreement unless (i) Connecting Transmission Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Connecting Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Connecting Transmission Owner to report payments or property as income subject to taxation; *provided, however*, that Connecting Transmission Owner may require Interconnection Customer to provide security, in a form reasonably acceptable to Connecting Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Interconnection Customer shall reimburse Connecting Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Connecting Transmission Owner of the amount due, including detail about how the amount was calculated.

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

indemnification obligations as contemplated by this Article 5.17.

#### **5.17.4 Tax Gross-Up Amount.**

Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Connecting Transmission Owner, in addition to the amount paid for the Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, an amount equal to (1) the current taxes imposed on Connecting Transmission Owner ("Current Taxes") on the excess of (a) the gross income realized by Connecting Transmission Owner as a result of payments or property transfers made by Interconnection Customer to Connecting Transmission Owner under this Agreement (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Connecting Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Connecting Transmission Owner's composite federal and state tax rates at the time the payments or property transfers are received and Connecting Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Connecting Transmission Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Connecting Transmission Owner's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Connecting Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value Depreciation Amount})) / (1 - \text{Current Tax Rate})$ . Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades.

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

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

Connecting Transmission Owner shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter

ruling. Connecting Transmission Owner shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

#### **5.17.6 Subsequent Taxable Events.**

If, within 10 years from the date on which the relevant Connecting Transmission Owner Attachment Facilities are placed in service, (i) Interconnection Customer Breaches the covenants contained in Article 5.17.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Connecting Transmission Owner retains ownership of the Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Connecting Transmission Owner, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

#### **5.17.7 Contests.**

In the event any Governmental Authority determines that Connecting Transmission Owner’s receipt of payments or property constitutes income that is subject to taxation, Connecting Transmission Owner shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer’s sole expense, Connecting Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer’s written request and sole expense, Connecting Transmission Owner may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Connecting Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Connecting Transmission Owner shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Connecting Transmission Owner on a periodic basis, as invoiced by Connecting Transmission Owner, Connecting Transmission Owner’s documented reasonable costs of prosecuting such appeal, protest, abatement or other contest, including any costs associated with obtaining the opinion of independent tax counsel described in this Article 5.17.7. The Connecting Transmission Owner may abandon any contest if Interconnection Customer fails to provide payment to the Connecting Transmission Owner within thirty (30) Calendar Days of receiving such invoice. At any time during the contest, Connecting Transmission Owner may agree to a settlement either with Interconnection Customer’s consent or after obtaining written advice from nationally-recognized tax counsel, selected by Connecting Transmission Owner, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer’s obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is

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

#### **5.17.8 Refund.**

In the event that (a) a private letter ruling is issued to Connecting Transmission Owner which holds that any amount paid or the value of any property transferred by Interconnection Customer to Connecting Transmission Owner under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Connecting Transmission Owner in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Connecting Transmission Owner under the terms of this Agreement is not taxable to Connecting Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Connecting Transmission Owner are not subject to federal income tax, or (d) if Connecting Transmission Owner receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Connecting Transmission Owner pursuant to this Agreement, Connecting Transmission Owner shall promptly refund to Interconnection Customer the following:

(i) Any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

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

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

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

#### **5.17.9 Taxes Other Than Income Taxes.**

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

#### **5.18 Tax Status; Non-Jurisdictional Entities.**

##### **5.18.1 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 Connecting 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, NYPA and Consolidated Edison Company of New York, Inc. 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 their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

##### **5.18.2 Non-Jurisdictional Entities.**

LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

## **5.19 Modification.**

### **5.19.1 General.**

Either Interconnection Customer or Connecting Transmission Owner may undertake modifications to its facilities covered by this Agreement; *provided, however*, that if Interconnection Customer seeks to undertake any modifications for the Facility, Interconnection Customer must comply with the modification requirements for Facilities, including for extensions of the Commercial Operation Date, set forth in the ISO OATT and ISO Procedures. If either Interconnection Customer or Connecting Transmission Owner plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party, and to NYISO, sufficient information regarding such modification so that the other Party and NYISO may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be Confidential Information hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party and NYISO at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Facility modifications that do not require Interconnection Customer to submit an Interconnection Request, the NYISO shall provide, within sixty (60) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the New York State Transmission System, Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof. The Interconnection Customer shall be responsible for the cost of any such additional modifications, including the cost of studying the impact of the Interconnection Customer modification.

### **5.19.2 Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

### **5.19.3 Modification Costs.**

Interconnection Customer shall not be assigned the costs of any additions, modifications, or replacements that Connecting Transmission Owner makes to the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment HH of the ISO OATT. Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to the Interconnection Customer's Attachment Facilities that may be necessary to maintain or upgrade such Interconnection Customer's

Attachment Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

## **ARTICLE 6. TESTING AND INSPECTION**

### **6.1 Pre-Commercial Operation Date Testing and Modifications.**

Prior to the Commercial Operation Date, the Connecting Transmission Owner shall test the Connecting Transmission Owner's Attachment Facilities (including required control technologies and protection systems), System Upgrade Facilities, and System Deliverability Upgrades and Interconnection Customer shall test the Facility and the Interconnection Customer's Attachment Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Interconnection Customer and Connecting Transmission Owner shall each make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall, as applicable, generate test energy at or transit test energy over the Facility only if it has arranged for the injection of such test energy in accordance with ISO Procedures.

### **6.2 Post-Commercial Operation Date Testing and Modifications.**

Interconnection Customer and Connecting Transmission Owner shall each at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice and Applicable Reliability Standards as may be necessary to ensure the continued interconnection of the Facility with the New York State Transmission System in a safe and reliable manner. Interconnection Customer and Connecting Transmission Owner shall each have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

### **6.3 Right to Observe Testing.**

Interconnection Customer and Connecting Transmission Owner shall each notify the other Party, and the NYISO, in advance of its performance of tests of its Attachment Facilities. The other Party, and the NYISO, shall each have the right, at its own expense, to observe such testing.

### **6.4 Right to Inspect.**

Interconnection Customer and Connecting Transmission Owner shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Attachment Facilities, the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Interconnection Customer and Connecting Transmission Owner. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a



Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Attachment Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT.

## **ARTICLE 7. METERING**

### **7.1 General.**

Interconnection Customer and Connecting Transmission Owner shall each comply with applicable requirements of NYISO and the New York Public Service Commission when exercising its rights and fulfilling its responsibilities under this Article 7. Unless otherwise agreed by the Connecting Transmission Owner and NYISO approved meter service provider and Interconnection Customer, the Connecting Transmission Owner shall install Metering Equipment at the Point of Interconnection prior to any operation of the Facility and shall own, operate, test and maintain such Metering Equipment. Net power flows including MW and MVAR, MWHR and loss profile data to and from the Facility shall be measured at the Point of Interconnection. Connecting Transmission Owner shall provide metering quantities, in analog and/or digital form, as required, to Interconnection Customer or NYISO upon request. Where the Point of Interconnection for the Facility is other than the generator terminal, the Interconnection Customer shall also provide gross MW and MVAR quantities at the generator terminal as required by NYISO. If the Facility is a Class Year Transmission Project or a Cluster Study Transmission Project, Appendix C to this Agreement shall include any project-specific variations from the metering requirements established in this Article 7 that are appropriate for the transmission facility. Interconnection Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

### **7.2 Check Meters.**

Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Connecting Transmission Owner's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this Agreement, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Connecting Transmission Owner or its designee. The installation, operation and maintenance thereof shall be performed entirely by Interconnection Customer in accordance with Good Utility Practice.

### **7.3 Standards.**

Connecting Transmission Owner shall install, calibrate, and test revenue quality Metering Equipment including potential transformers and current transformers in accordance with applicable ANSI and PSC standards as detailed in the NYISO Control Center Communications Manual and in the NYISO Revenue Metering Requirements Manual.

#### **7.4 Testing of Metering Equipment.**

Connecting Transmission Owner shall inspect and test all of its Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by NYISO or Interconnection Customer, Connecting Transmission Owner shall, at Interconnection Customer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Connecting Transmission Owner shall give reasonable notice of the time when any inspection or test shall take place, and Interconnection Customer and NYISO may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Interconnection Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Connecting Transmission Owner's failure to maintain, then Connecting Transmission Owner shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Connecting Transmission Owner shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment. The NYISO shall reserve the right to review all associated metering equipment installation on Interconnection Customer's or Connecting Transmission Owner's property at any time.

#### **7.5 Metering Data.**

At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Connecting Transmission Owner, Interconnection Customer, and NYISO. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Facility to the Point of Interconnection.

### **ARTICLE 8. COMMUNICATIONS**

#### **8.1 Interconnection Customer Obligations.**

In accordance with applicable NYISO requirements, Interconnection Customer shall maintain satisfactory operating communications with Connecting Transmission Owner and NYISO. Interconnection Customer shall provide standard voice line and dedicated voice line communications at its Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Connecting Transmission Owner and NYISO as set forth in Appendix D hereto. The data circuit(s) shall extend from the Facility to the location(s) specified by Connecting Transmission Owner and NYISO. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

## **8.2 Remote Terminal Unit.**

Prior to the Synchronization Date of the Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Interconnection Customer, or by Connecting Transmission Owner at Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Connecting Transmission Owner and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Connecting Transmission Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Connecting Transmission Owner and NYISO.

Each Party will promptly advise the appropriate other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by that other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

## **8.3 No Annexation.**

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

# **ARTICLE 9. OPERATIONS**

## **9.1 General.**

Each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards. Each Party shall provide to the other Parties all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations, and Applicable Reliability Standards. If the Facility is a Class Year Transmission Project or a Cluster Study Transmission Project, Appendix C to this Agreement shall include any project-specific variations from the operating requirements established in this Article 9 that are appropriate for the transmission facility.

## **9.2 NYISO and Connecting Transmission Owner Obligations.**

Connecting Transmission Owner and NYISO shall cause the New York State Transmission System and the Connecting Transmission Owner's Attachment Facilities to be operated, maintained and controlled in a safe and reliable manner in accordance with this Agreement and the NYISO Tariffs. Connecting Transmission Owner and NYISO may provide operating instructions to Interconnection Customer consistent with this Agreement, the NYISO Tariffs, ISO Procedures, and Connecting Transmission Owner's operating protocols and procedures, as such requirements may change from time to time. Connecting Transmission Owner and NYISO will consider changes to their respective operating protocols and procedures proposed by Interconnection Customer.

### **9.3 Interconnection Customer Obligations.**

Interconnection Customer shall at its own expense operate, maintain, and control the Facility and the Interconnection Customer's Attachment Facilities in a safe and reliable manner and in accordance with this Agreement. Interconnection Customer shall operate the Facility and the Interconnection Customer's Attachment Facilities in accordance with any additional NYISO and Connecting Transmission Owner requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.

### **9.4 Start-Up and Synchronization.**

Consistent with the mutually acceptable procedures of Interconnection Customer and Connecting Transmission Owner, Interconnection Customer is responsible for the proper synchronization of the Facility to the New York State Transmission System in accordance with NYISO and Connecting Transmission Owner procedures and requirements.

### **9.5 Real and Reactive Power Control and Primary Frequency Response.**

#### **9.5.1 Power Factor Design Criteria.**

**9.5.1.1 Synchronous Generation.** Interconnection Customer shall design the Facility to maintain effective composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging unless the NYISO or the Transmission Owner in whose Transmission District the Facility interconnects has established different requirements that apply to all generators in the New York Control Area or Transmission District (as applicable) on a comparable basis, in accordance with Good Utility Practice.

Interconnection Customer shall design and maintain the plant auxiliary systems to operate safely throughout the entire real and reactive power design range.

**9.5.1.2 Non-Synchronous Generation.** Interconnection Customer shall design the Facility to maintain composite power delivery at continuous rated power output at the high-side of the generator substation at a power factor within the range of 0.95 leading to 0.95 lagging, unless the NYISO or the Transmission Owner in whose Transmission District the Facility interconnects has established a different power factor range that applies to all non-synchronous generators in the New York Control Area or Transmission District (as applicable) on a comparable basis, in accordance with Good Utility Practice. This power factor range standard shall be dynamic and can be met using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors, or a combination of the two. This requirement shall only apply to newly interconnection non-synchronous generators that have not yet executed a Class Year Study Agreement or a Cluster Study Agreement as of September 21, 2016.

Interconnection Customer shall design and maintain the plant auxiliary systems to operate safely throughout the entire real and reactive power design range.

#### **9.5.2 Voltage Schedules.**

Once Interconnection Customer has synchronized the Facility with the New York State Transmission System, NYISO shall require Interconnection Customer to operate the Facility to produce or absorb reactive power within the design capability of the Facility set forth in Article 9.5.1 (Power Factor Design Criteria). NYISO's voltage schedules shall treat all sources of reactive power in the New York Control Area in an equitable and not unduly discriminatory manner. NYISO shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules in accordance with ISO Procedures, and may make changes to such schedules as necessary to maintain the reliability of the New York State Transmission System. Interconnection Customer shall operate the Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design capability of the Facility set forth in Article 9.5.1 (Power Factor Design Criteria) as directed by the Connecting Transmission Owner's system operator or the NYISO. If Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify NYISO.

#### **9.5.3 Payment for Reactive Power.**

NYISO shall pay Interconnection Customer for reactive power or voltage support service that Interconnection Customer provides from the Facility in accordance with the provisions of Rate Schedule 2 of the ISO Services Tariff.

#### **9.5.4 Voltage Regulators.**

Whenever the Facility is operated in parallel with the New York State Transmission System, the automatic voltage regulators shall be in automatic operation at all times. If the Facility's automatic voltage regulators are not capable of such automatic operation, Interconnection Customer shall immediately notify NYISO, or its designated representative, and ensure that such Facility's real and reactive power are within the design capability of the Facility's generating unit(s) and steady state stability limits and NYISO system operating (thermal, voltage and transient stability) limits. Interconnection Customer shall not cause its Facility to disconnect automatically or instantaneously from the New York State Transmission System or trip any generating unit comprising the Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the New York Control Area on a comparable basis.

#### **9.5.5 Primary Frequency Response.**

Interconnection Customer shall ensure the primary frequency response capability of its Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term "functioning governor or equivalent controls" as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Facility's real power output in accordance with the droop and deadband parameters and in the direction needed to correct

frequency deviations. Interconnection Customer is required to install a governor or equivalent controls with the capability of operating: (1) with a maximum 5 percent droop  $\pm 0.036$  Hz deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained response settings from an approved Applicable Reliability Standard providing for equivalent or more stringent parameters. The droop characteristic shall be: (1) based on the nameplate capacity of the Facility, and shall be linear in the range of frequencies between 59 and 61 Hz that are outside of the deadband parameter; or (2) based on an approved Applicable Reliability Standard providing for an equivalent or more stringent parameter. The deadband parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Facility's real power output in response to frequency deviations. The deadband shall be implemented: (1) without a step to the droop curve, that is, once the frequency deviation exceeds the deadband parameter, the expected change in the Facility's real power output in response to frequency deviations shall start from zero and then increase (for under-frequency deviations) or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the frequency deviation; or (2) in accordance with an approved Applicable Reliability Standard providing for an equivalent or more stringent parameter. Interconnection Customer shall notify NYISO that the primary frequency response capability of the Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Facility with the New York State Transmission System, Interconnection Customer shall operate the Facility consistent with the provisions specified in Articles 9.5.5.1 and 9.5.5.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Facilities.

#### **9.5.5.1 Governor or Equivalent Controls.**

Whenever the Facility is operated in parallel with the New York State Transmission System, Interconnection Customer shall operate the Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall: (1) in coordination with NYISO, set the deadband parameter to: (1) a maximum of  $\pm 0.036$  Hz and set the droop parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings from an approved Applicable Reliability Standard that provides for equivalent or more stringent parameters. Interconnection Customer shall be required to provide the status and settings of the governor and equivalent controls to NYISO and/or the Connecting Transmission Owner upon request. If Interconnection Customer needs to operate the Facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify NYISO and the Connecting Transmission Owner, and provide both with the following information: (1) the operating status of the governor or equivalent controls (i.e., whether it is currently out of service or when it will be taken out of service); (2) the reasons for removing the governor or equivalent controls from service; and (3) a reasonable estimate of when the governor or equivalent controls will be returned to service. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable. Interconnection Customer shall make Reasonable Efforts to keep outages of the Facility's governor or equivalent controls to a minimum whenever the Facility is operated in parallel with the New York State Transmission System.

#### **9.5.5.2 Timely and Sustained Response.**

Interconnection Customer shall ensure that the Facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, and to the extent the Facility has operating capability in the direction needed to correct the frequency deviation. Interconnection Customer shall not block or otherwise inhibit the ability of the governor or equivalent controls to respond and shall ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, physical energy limitations, outages of mechanical equipment, or regulatory requirements. The Facility shall sustain the real power response at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. An Applicable Reliability Standard with equivalent or more stringent requirements shall supersede the above requirements.

#### **9.5.5.3 Exemptions.**

Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Articles 9.5.5, 9.5.5.1, and 9.5.5.2 of this Agreement. Facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host facility) shall be required to install primary frequency response capability requirements in accordance with the droop and deadband capability requirements specified in Article 9.5.5, but shall be otherwise exempt from the operating requirements in Articles 9.5.5, 9.5.5.1, 9.5.5.2, and 9.5.5.4 of this Agreement.

#### **9.5.5.4 Electric Storage Resources.**

Interconnecting Customer interconnecting a Facility that contains an electric storage resource shall establish an operating range in Appendix C of this Agreement that specifies a minimum state of charge and a maximum state of charge between which the electric storage resource will be required to provide primary frequency response consistent with the conditions set forth in Articles 9.5.5, 9.5.5.1, 9.5.5.2, and 9.5.5.3 of this Agreement. Appendix C shall specify whether the operating range is static or dynamic, and shall consider (1) the expected magnitude of frequency deviations in the interconnection; (2) the expected duration that system frequency will remain outside of the deadband parameter in the interconnection; (3) the expected incidence of frequency deviations outside of the deadband parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5) operational limitations of the electric storage resources due to manufacturer specification; and (6) any other relevant factors agreed to by the NYISO, Connecting Transmission Owner, and Interconnection Customer. If the operating range is dynamic, then Appendix C must establish how frequently the operating range will be reevaluated and the factors that may be considered during its reevaluation.

Interconnection Customer's electric storage resource is required to provide timely and sustained primary frequency response consistent with Article 9.5.5.2 of this Agreement when it is online and dispatched to inject electricity to the New York State Transmission System and/or receive electricity from the New York State Transmission System. This excludes circumstances

when the electric storage resource is not dispatched to inject electricity to the New York State Transmission System and/or dispatched to receive electricity from the New York State Transmission System. If Interconnection Customer's electric storage resource is charging at the time of a frequency deviation outside of its deadband parameter, it is to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which it is charging in accordance with its droop parameter. Interconnection Customer's electric storage resource is not required to change from charging to discharging, or vice versa, unless the response necessitated by the droop and deadband settings requires it to do so and it is technically capable of making such a transition.

## **9.6 Outages and Interruptions.**

### **9.6.1 Outages.**

#### **9.6.1.1 Outage Authority and Coordination.**

Interconnection Customer and Connecting Transmission Owner may each, in accordance with ISO Procedures and Good Utility Practice and in coordination with the other Party, remove from service any of its respective Attachment Facilities or System Upgrade Facilities and System Deliverability Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency State, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both the Interconnection Customer and the Connecting Transmission Owner. In all circumstances either Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

#### **9.6.1.2 Outage Schedules.**

The Connecting Transmission Owner shall post scheduled outages of its transmission facilities on the NYISO OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Facility to Connecting Transmission Owner and NYISO for a minimum of a rolling thirty-six month period. Interconnection Customer shall update its planned maintenance schedules as necessary. NYISO may direct, or the Connecting Transmission Owner may request, Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the New York State Transmission System. Compensation to Interconnection Customer for any additional direct costs that Interconnection Customer incurs as a result of rescheduling maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost Interconnection Customer would have incurred absent the request to reschedule maintenance, shall be in accordance with the ISO OATT. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, Interconnection Customer had modified its schedule of maintenance activities other than at the direction of the NYISO or request of the Connecting Transmission Owner.

#### **9.6.1.3 Outage Restoration.**

If an outage on the Attachment Facilities or System Upgrade Facilities or System



Deliverability Upgrades of the Connecting Transmission Owner or Interconnection Customer adversely affects the other Party's operations or facilities, the Party that owns the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns the facility that is out of service shall provide the other Party and NYISO, to the extent such information is known, information on the nature of the Emergency State, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

**9.6.2 Interruption of Service.** If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO or Connecting Transmission Owner may require Interconnection Customer to interrupt or reduce production or transmission of electricity if such production or transmission of electricity could adversely affect the ability of NYISO and Connecting Transmission Owner to perform such activities as are necessary to safely and reliably operate and maintain the New York State Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.6.2:

**9.6.2.1** The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

**9.6.2.2** Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating and merchant transmission facilities directly connected to the New York State Transmission System;

**9.6.2.3** When the interruption or reduction must be made under circumstances which do not allow for advance notice, NYISO or Connecting Transmission Owner shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

**9.6.2.4** Except during the existence of an Emergency State, when the interruption or reduction can be scheduled without advance notice, NYISO or Connecting Transmission Owner shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. NYISO or Connecting Transmission Owner shall coordinate with each other and Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to Interconnection Customer, the Connecting Transmission Owner and the New York State Transmission System;

**9.6.2.5** The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Facility, Attachment Facilities, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

### **9.6.3 Ride Through Capability and Performance.**

The New York State Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Councils in the event of an under-

frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Facility as required by the Applicable Reliability Councils to ensure frequency “ride through” capability of the New York State Transmission System. Facility response to frequency deviations of predetermined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with the NYISO and Connecting Transmission Owner in accordance with Good Utility Practice. Interconnection Customer shall also implement under-voltage and over-voltage relay set points, or equivalent electronic controls, as required by the Applicable Reliability Councils to ensure voltage “ride through” capability of the New York State Transmission System. The term “ride through” as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the New York State Transmission System during system disturbances within a range of under-frequency, over-frequency, under-voltage, and over-voltage conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other Generating Facilities in the Balancing Authority Area on a comparable basis unless the Transmission Owner in whose Transmission District the Facility interconnects has established different requirements that apply on a comparable basis in accordance with Good Utility Practice. For abnormal frequency conditions and voltage conditions within the “no trip zone” as that term is defined by ERO Reliability Standard PRC-024-3, any successor mandatory ride through ERO reliability standards, or any more stringent NPCC or NYSRC requirements applicable to Generating Facilities in the Balancing Authority Area on a comparable basis, the non-synchronous Generating Facility must ensure that, within any physical limitations of the Generating Facility, its control and protection settings are configured or set to (1) continue active power production during disturbance and post disturbance periods at pre-disturbance levels, unless reactive power priority mode is enabled or unless providing primary frequency response or fast frequency response; (2) minimize reductions in active power and remain within dynamic voltage and current limits, if reactive power priority mode is enabled, unless providing primary frequency response or fast frequency response; (3) not artificially limit dynamic reactive power capability during disturbances; and (4) return to pre-disturbance active power levels without artificial ramp rate limits if active power is reduced, unless providing primary frequency response or fast frequency response.

#### **9.6.4 System Protection and Other Control Requirements.**

**9.6.4.1 System Protection Facilities.** Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Facility or Interconnection Customer’s Attachment Facilities. Connecting Transmission Owner shall install at Interconnection Customer’s expense any System Protection Facilities that may be required on the Connecting Transmission Owner’s Attachment Facilities or the New York State Transmission System as a result of the interconnection of the Facility and Interconnection Customer’s Attachment Facilities.

**9.6.4.2** The protection facilities of both Interconnection Customer and Connecting Transmission Owner shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.

**9.6.4.3** Interconnection Customer and Connecting Transmission Owner shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and

Applicable Reliability Standards.

**9.6.4.4** The protective relay design of Interconnection Customer and Connecting Transmission Owner shall each incorporate the necessary test switches to perform the tests required in Article 6 of this Agreement. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of Interconnection Customer's Facility or Connecting Transmission Owner's facilities.

**9.6.4.5** Interconnection Customer and Connecting Transmission Owner will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice, ERO and NPCC criteria.

**9.6.4.6** Prior to the Initial Backfeed Date, and again prior to the Commercial Operation Date, Interconnection Customer and Connecting Transmission Owner shall each perform, or their agents shall perform, a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, Interconnection Customer and Connecting Transmission Owner shall each perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

#### **9.6.5 Requirements for Protection.**

In compliance with NPCC requirements and Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Facility to any short circuit occurring on the New York State Transmission System not otherwise isolated by Connecting Transmission Owner's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the New York State Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Facility and the New York State Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of Interconnection Customer and Connecting Transmission Owner. Interconnection Customer shall be responsible for protection of the Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Facility and Interconnection Customer's other equipment if conditions on the New York State Transmission System could adversely affect the Facility.

#### **9.6.6 Power Quality.**

Neither the facilities of Interconnection Customer nor the facilities of Connecting Transmission Owner shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance

with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

## **9.7 Switching and Tagging Rules.**

Interconnection Customer and Connecting Transmission Owner shall each provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a nondiscriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

## **9.8 Use of Attachment Facilities by Third Parties.**

### **9.8.1 Purpose of Attachment Facilities.**

Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Attachment Facilities shall be constructed for the sole purpose of interconnecting the Facility to the New York State Transmission System and shall be used for no other purpose.

### **9.8.2 Third Party Users.**

If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Connecting Transmission Owner's Attachment Facilities, or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Attachment Facilities based upon the pro rata use of the Attachment Facilities by Connecting Transmission Owner, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Attachment Facilities, will be allocated between Interconnection Customer and any third party users based upon the pro rata use of the Attachment Facilities by Connecting Transmission Owner, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

## **9.9 Disturbance Analysis Data Exchange.**

The Parties will cooperate with one another and the NYISO in the analysis of disturbances to either the Facility or the New York State Transmission System by gathering and providing access to any information relating to any disturbance, including information from disturbance recording equipment, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

## **9.10 Phasor Measurement Units**

An Interconnection Customer shall install and maintain, at its expense, phasor measurement units (“PMUs”) if it meets the following criteria: (1) completed a Class Year Study or Cluster Study after Class Year 2017; and (2) proposes a new Facility that either (a) has a maximum net output equal to or greater than 100 MW or (b) requires, as Attachment Facilities or System Upgrade Facilities, a new substation of 230kV or above.

PMUs shall be installed on the Facility on the low side of the generator step-up transformer, unless it is a non-synchronous generation facility, in which case the PMUs shall be installed on the Interconnection Customer side of the Point of Interconnection. The PMUs must be capable of performing phasor measurements at a minimum of 60 samples per second which are synchronized via a high-accuracy satellite clock. To the extent Interconnection Customer installs similar quality equipment, such as relays or digital fault recorders, that can collect data at least at the same rate as PMUs and which data is synchronized via a high-accuracy satellite clock, such equipment would satisfy this requirement.

Interconnection Customer shall be required to install and maintain, at its expense, PMU equipment which includes the communication circuit capable of carrying the PMU data to a local data concentrator, and then transporting the information continuously to the Connecting Transmission Owner and the NYISO; as well as store the PMU data locally for thirty (30) Calendar Days. Interconnection Customer shall provide to Connecting Transmission Owner and the NYISO all necessary and requested information through the Connecting Transmission Owner’s and the NYISO’s synchrophasor system, including the following: (a) gross MW and MVAR measured at the Interconnection Customer side of the generator step-up transformer (or, for a non-synchronous generation facility, to be measured at the Interconnection Customer side of the Point of Interconnection); (b) generator terminal voltage and current magnitudes and angles; (c) generator terminal frequency and frequency rate of change; and (d) generator field voltage and current, where available; and (e) breaker status, if available. The Connecting Transmission Owner will provide for the ongoing support and maintenance of the network communications linking the data concentrator to the Connecting Transmission Owner and the NYISO, consistent with ISO Procedures detailing the obligations related to SCADA data.

## **ARTICLE 10. MAINTENANCE**

### **10.1 Connecting Transmission Owner Obligations.**

Connecting Transmission Owner shall maintain its transmission facilities and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

### **10.2 Interconnection Customer Obligations.**

Interconnection Customer shall maintain its Facility and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

### **10.3 Coordination.**

Interconnection Customer and Connecting Transmission Owner shall confer regularly to

coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Facility and the Attachment Facilities. Interconnection Customer and Connecting Transmission Owner shall keep NYISO fully informed of the preventive and corrective maintenance that is planned, and shall schedule all such maintenance in accordance with ISO Procedures.

#### **10.4 Secondary Systems.**

Interconnection Customers and Connecting Transmission Owner shall each cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of Interconnection Customer's or Connecting Transmission Owner's facilities and equipment which may reasonably be expected to impact the other Party. Interconnection Customer and Connecting Transmission Owner shall each provide advance notice to the other Party, and to NYISO, before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

#### **10.5 Operating and Maintenance Expenses.**

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's Attachment Facilities; and (2) operation, maintenance, repair and replacement of Connecting Transmission Owner's Attachment Facilities. The Connecting Transmission Owner shall be entitled to the recovery of incremental operating and maintenance expenses that it incurs associated with System Upgrade Facilities and System Deliverability Upgrades if and to the extent provided for under Attachment HH to the ISO OATT.

### **ARTICLE 11. PERFORMANCE OBLIGATION**

#### **11.1 Interconnection Customer's Attachment Facilities.**

Interconnection Customer shall design, procure, construct, install, own and/or control the Interconnection Customer's Attachment Facilities described in Appendix A hereto, at its sole expense.

#### **11.2 Connecting Transmission Owner's Attachment Facilities.**

Connecting Transmission Owner or Interconnection Customer, as determined in accordance with Article 5 of this Agreement, shall design, procure, construct, and/or install the Connecting Transmission Owner's Attachment Facilities described in Appendix A hereto at the sole expense of the Interconnection Customer. Connecting Transmission Owner shall own the Connecting Transmission Owner's Attachment Facilities.

### **11.3 System Upgrade Facilities and System Deliverability Upgrades.**

Connecting Transmission Owner or Interconnection Customer, as determined in accordance with Article 5 of this Agreement, shall design, procure, construct, and/or install the System Upgrade Facilities and System Deliverability Upgrades described in Appendix A hereto. Connecting Transmission Owner shall own the System Upgrade Facilities and System Deliverability Upgrades. The responsibility of the Interconnection Customer for costs related to System Upgrade Facilities and System Deliverability Upgrades shall be determined in accordance with the provisions of Attachment HH to the OATT.

### **11.4 Upgrades on Affected Systems or Upgrades Required for Multiple Projects on Connecting Transmission Owner's System or Affected Systems.**

If any System Upgrade Facilities or System Deliverability Upgrades are required on an Affected System or Connecting Transmission Owner's system in connection with the interconnection of the Facility and are subject to the requirements to enter a Standard Upgrades Construction Agreement or a Standard Multiparty Upgrade Construction Agreement pursuant to the requirements in Attachment HH to the OATT, the upgrades will be described in Appendix A to this Agreement and constructed in accordance with the applicable construction agreement. If the Facility is subject to an Affected System Study for potential impacts to an External Affected System, the status of the Affected System Study and any identified Affected System Network Upgrades on the External Affected System will be described in Appendix A to this Agreement.

### **11.5 Provision of Security.**

*[If this Agreement is for a Generating Facility or Cluster Study Transmission Project participating in a Cluster Study Process that accepted, or is agreeing under this Agreement to accept, as applicable its Project Cost Allocation for Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and/or System Deliverability Upgrades and has posted, or is agreeing to post, the related Security in the Cluster Study Process, this provision will be replaced with the following: Attachment HH to the ISO OATT shall govern the Security that Interconnection Customer provided for, as applicable, Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and/or System Deliverability Upgrades for a Generating Facility or Cluster Study Transmission Project that participated in a Cluster Study.]*

At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Connecting Transmission Owner's Attachment Facilities, Interconnection Customer shall provide Connecting Transmission Owner, at Interconnection Customer's option, a guarantee, a letter of credit or other form of security that is reasonably acceptable to Connecting Transmission Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1 of this Agreement. Such security for payment shall be in an amount sufficient to cover the cost for Interconnection Customer's share of constructing, procuring and installing the applicable portion of Connecting Transmission Owner's Attachment Facilities, and shall be reduced on a dollar-for-dollar basis for payments made to Connecting Transmission Owner for these purposes.

In addition:

**11.5.1** The guarantee must be made by an entity that meets the commercially reasonable creditworthiness requirements of Connecting Transmission Owner, and contains terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

**11.5.2** The letter of credit must be issued by a financial institution reasonably acceptable to Connecting Transmission Owner and must specify a reasonable expiration date.

**11.5.3** Attachment HH to the ISO OATT shall govern the Security that Interconnection Customer provided for System Upgrade Facilities and System Deliverability Upgrades for a Generating Facility or Class Year Transmission Project that participated in a Class Year Study.

## **11.6 Interconnection Customer's Compensation for Emergency Services.**

If, during an Emergency State, Interconnection Customer provides services at the request or direction of the NYISO or Connecting Transmission Owner, Interconnection Customer will be compensated for such services in accordance with the ISO Services Tariff.

## **11.7 Line Outage Costs.**

Notwithstanding anything in the ISO OATT to the contrary, the Connecting Transmission Owner may propose to recover line outage costs associated with the installation of Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, or System Deliverability Upgrades on a case-by-case basis.

# **ARTICLE 12. INVOICE**

## **12.1 General.**

Interconnection Customer and Connecting Transmission Owner shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. Interconnection Customer and Connecting 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.

## **12.2 Final Invoice.**

Within six months after completion of the construction of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades, Connecting Transmission Owner shall provide an invoice of the final cost of the construction of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades, determined in accordance with Attachment HH to the ISO OATT, and shall set forth such costs in sufficient detail to enable Interconnection Customer to



compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Connecting Transmission Owner shall refund to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

### **12.3 Payment.**

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

### **12.4 Disputes.**

In the event of a billing dispute between Connecting Transmission Owner and Interconnection Customer, Connecting Transmission Owner shall continue to perform under this Agreement as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Connecting Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Connecting Transmission Owner may provide notice to Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

## **ARTICLE 13. EMERGENCIES**

### **13.1 Obligations.**

Each Party shall comply with the Emergency State procedures of NYISO, the Applicable Reliability Councils, of Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee.

### **13.2 Notice.**

NYISO or, as applicable, Connecting Transmission Owner shall notify Interconnection Customer promptly when it becomes aware of an Emergency State that affects the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Facility or the Interconnection Customer's Attachment Facilities. Interconnection Customer shall notify NYISO and Connecting Transmission Owner promptly when it becomes aware of an Emergency State that affects the Facility or the Interconnection Customer's Attachment Facilities that may reasonably be expected to affect the New York State Transmission System or the Connecting Transmission Owner's Attachment Facilities. To the extent information is known, the notification shall describe the Emergency State, the extent of the damage or deficiency, the

expected effect on the operation of Interconnection Customer's or Connecting Transmission Owner's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

### **13.3 Immediate Action.**

Unless, in Interconnection Customer's reasonable judgment, immediate action is required, Interconnection Customer shall obtain the consent of Connecting Transmission Owner, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Facility or the Interconnection Customer's Attachment Facilities in response to an Emergency State either declared by NYISO, Connecting Transmission Owner or otherwise regarding New York State Transmission System.

### **13.4 NYISO and Connecting Transmission Owner Authority.**

#### **13.4.1 General.**

NYISO or Connecting Transmission Owner may take whatever actions with regard to the New York State Transmission System or the Connecting Transmission Owner's Attachment Facilities it deems necessary during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the New York State Transmission System or the Connecting Transmission Owner's Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

NYISO and Connecting Transmission Owner shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Facility or the Interconnection Customer's Attachment Facilities. NYISO or Connecting Transmission Owner may, on the basis of technical considerations, require the Facility to mitigate an Emergency State by taking actions necessary and limited in scope to remedy the Emergency State, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Facility; implementing a reduction or disconnection pursuant to Article 13.4.2; directing Interconnection Customer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Facility and the Interconnection Customer's Attachment Facilities. Interconnection Customer shall comply with all of the NYISO and Connecting Transmission Owner's operating instructions concerning Facility real power and reactive power output within the manufacturer's design limitations of the Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

#### **13.4.2 Reduction and Disconnection.**

NYISO or Connecting Transmission Owner may reduce generation or transmission from or disconnect the Facility or the Interconnection Customer's Attachment Facilities, when such reduction or disconnection is necessary under Good Utility Practice due to an Emergency State. These rights are separate and distinct from any right of Curtailment of NYISO pursuant to the ISO OATT. When NYISO or Connecting Transmission Owner can schedule the reduction or disconnection in advance, NYISO or Connecting Transmission Owner shall notify Interconnection Customer of the reasons, timing and expected duration of the reduction or

disconnection. NYISO or Connecting Transmission Owner shall coordinate with Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to Interconnection Customer and the New York State Transmission System. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Facility, the Attachment Facilities, and the New York State Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

### **13.5 Interconnection Customer Authority.**

Consistent with Good Utility Practice and this Agreement, Interconnection Customer may take whatever actions or inactions with regard to the Facility or the Interconnection Customer's Attachment Facilities during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the Facility or the Interconnection Customer's Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the New York State Transmission System and the Connecting Transmission Owner's Attachment Facilities. NYISO and Connecting Transmission Owner shall use Reasonable Efforts to assist Interconnection Customer in such actions.

### **13.6 Limited Liability.**

Except as otherwise provided in Article 11.6 of this Agreement, no Party shall be liable to another Party for any action it takes in responding to an Emergency State so long as such action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

## **ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW**

### **14.1 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 Interconnection Customer 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.

### **14.2 Governing Law.**

**14.2.1** 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.

**14.2.2** This Agreement is subject to all Applicable Laws and Regulations.

**14.2.3** 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 15. NOTICES**

### **15.1 General.**

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

### **15.2 Billings and Payments.**

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

### **15.3 Alternative Forms of Notice.**

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

### **15.4 Operations and Maintenance Notice.**

Interconnection Customer and Connecting Transmission Owner shall each notify the other Party, and NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10 of this Agreement.

## **ARTICLE 16. FORCE MAJEURE**

Economic hardship is not considered a Force Majeure event. A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, (including obligations under Article 4 of this Agreement), 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 17. DEFAULT**

### **17.1 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 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.

### **17.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 17, 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 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

### **18.1 Indemnity.**

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

#### **18.1.1 Indemnified Party.**

If a Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1.3, 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.

#### **18.1.2 Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 18, 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.

#### **18.1.3 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 18.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

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

### **18.2 No Consequential Damages.**

Other than the liquidated damages heretofore described and the indemnity obligations set forth in Article 18.1, 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.

### **18.3 Insurance.**

Interconnection Customer and Connecting Transmission Owner shall each, 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:

**18.3.1** Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of New York State.

**18.3.2** 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.

**18.3.3** 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.

**18.3.4** 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.

**18.3.5** 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.

**18.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of Interconnection Customer and Connecting Transmission Owner shall name the other Party, its parent, 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.

**18.3.7** 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. Interconnection Customer and Connecting Transmission Owner shall each be responsible for its respective deductibles or retentions.

**18.3.8** 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 Interconnection Customer and Connecting Transmission Owner.

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

**18.3.10** The requirements contained herein as to the types and limits of all insurance to be maintained by Interconnection Customer and Connecting 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.

**18.3.11** Within [insert term stipulated by the Parties] Calendar Days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) Calendar Days thereafter, Interconnection Customer and Connecting Transmission Owner shall provide certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

**18.3.12** Notwithstanding the foregoing, Interconnection Customer and Connecting Transmission Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.1 through 18.3.9 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 18.3.1 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.12, it shall notify the other Party 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 18.3.1 through 18.3.9 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 18.3.1 through 18.3.9.

**18.3.13** Interconnection Customer and Connecting Transmission Owner agree to report to each other 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.

**18.3.14** Subcontractors of each party must maintain the same insurance requirements stated under Articles 18.3.1 through 18.3.9 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 19. 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, including the Attachment Facilities it owns, 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 Interconnection Customer shall have the right to assign this Agreement, without the consent of the NYISO or Connecting Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Interconnection Customer will promptly notify the NYISO and Connecting Transmission Owner of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and Connecting Transmission Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Connecting Transmission Owner with proof that it meets the requirements of Articles 11.5 and 18.3. If the Facility is made up of more than one resource, a Party may only assign this Agreement for the entire Facility and may not divide the Agreement into separate agreements for the individual resources that constitute the Facility. 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 20. 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; provided that if Interconnection Customer (or any third party, but

only if such third party is not acting at the direction of the Connecting Transmission Owner) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the rights and obligations of Interconnection Customer and Connecting Transmission Owner shall be governed solely by the Standard Option (Article 5.1.1).

## **ARTICLE 21. COMPARABILITY**

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

## **ARTICLE 22. CONFIDENTIALITY**

### **22.1 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 22.

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.

### **22.2 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 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

### **22.3 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.

### **22.4 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 22.9 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.

## **22.5 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 Interconnection Customer, or to potential purchasers or assignees of a Party, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 22 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 22.

## **22.6 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.

## **22.7 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.

## **22.8 Standard of Care.**

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under this Agreement or its regulatory requirements, including the ISO OATT and ISO 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.

## **22.9 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.

## **22.10 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.

## **22.11 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 22. 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 22, 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 22, 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 22.

## **22.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying

the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

## **22.13 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 ISO 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 23. INTERCONNECTION CUSTOMER AND CONNECTING TRANSMISSION OWNER NOTICES OF ENVIRONMENTAL RELEASES**

Interconnection Customer and Connecting Transmission Owner shall each notify the other Party, 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 Facility or the Attachment Facilities, each of which may reasonably be expected to affect the other Party. 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 Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

## **ARTICLE 24. INFORMATION REQUIREMENT**

### **24.1 Information Acquisition.**

Connecting Transmission Owner and Interconnection Customer shall each submit specific information regarding the electrical characteristics of their respective facilities to the other, and to NYISO, as described below and in accordance with Applicable Reliability

Standards.

#### **24.2 Information Submission by Connecting Transmission Owner.**

The initial information submission by Connecting Transmission Owner shall occur no later than one hundred eighty (180) Calendar Days prior to the Synchronization Date and shall include New York State Transmission System information necessary to allow Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by Interconnection Customer and Connecting Transmission Owner and set forth in the Milestones table in Appendix B to this Agreement. On a monthly basis, Connecting Transmission Owner or Interconnection Customer, as applicable, shall provide the other Parties with a status report on the construction and installation of the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades for which it is responsible, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

#### **24.3 Updated Information Submission by Interconnection Customer.**

The updated information submission by Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Synchronization Date, unless otherwise mutually agreed to by Interconnection Customer and Connecting Transmission Owner and set forth in the Milestone table in Appendix B to this Agreement. Interconnection Customer shall submit a completed copy of the Facility data requirements contained in, as applicable, Appendix 1 to the Standard Large Facility Interconnection Procedures in Attachment X to the OATT or Appendix 1 to the Standard Interconnection Procedures in Attachment HH to the OATT. It shall also include any additional information provided to Connecting Transmission Owner for the Class Year Study or Cluster Study. Information in this submission shall be the most current Facility design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If Interconnection Customer's data is different from what Interconnection Customer originally provided to Connecting Transmission Owner and NYISO in its Interconnection Request or, if applicable, pursuant to an Class Year Study Agreement among Connecting Transmission Owner, NYISO and Interconnection Customer and this difference may be reasonably expected to affect the other Parties' facilities or the New York State Transmission System, but does not require the submission of a new Interconnection Request, then NYISO will conduct appropriate studies to determine the impact on the New York State Transmission System based on the actual data submitted pursuant to this Article 24.3. Such studies will provide an estimate of any additional modifications to the New York State Transmission System, Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades based on the actual data and a good faith estimate of the costs thereof. The Interconnection Customer shall not begin Trial Operation until such studies are completed.

The Interconnection Customer shall be responsible for the cost of any modifications required by the actual data, including the cost of any required studies.

#### **24.4 Information Supplementation.**

Prior to the Commercial Operation Date, Interconnection Customer and Connecting Transmission Owner shall supplement their information submissions described above in this Article 24 with any and all “as-built” Facility information or “as-tested” performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. If the Facility is a Class Year Transmission Project or Cluster Study Transmission Project, Appendix C to this Agreement shall include any project-specific variations from the testing requirements established in this Article 24.4 that are appropriate for the transmission facility.

Interconnection Customer shall conduct tests on the Facility as required by Good Utility Practice such as an open circuit “step voltage” test on the Facility to verify proper operation of the Facility’s automatic voltage regulator. Unless otherwise agreed, the test conditions shall include: (1) Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent change in Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Facility’s terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Facility terminal or field voltages is provided. Facility testing shall be conducted and results provided to the Connecting Transmission Owner and NYISO for each individual generating unit in a station.

Subsequent to the Commercial Operation Date, Interconnection Customer shall provide Connecting Transmission Owner and NYISO any information changes due to equipment replacement, repair, or adjustment. Connecting Transmission Owner shall provide Interconnection Customer and NYISO any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Connecting Transmission Owner substation that may affect the Interconnection Customer’s Attachment Facilities equipment ratings, protection or operating requirements. Interconnection Customer and Connecting Transmission Owner shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

### **ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS**

#### **25.1 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 25.1 of this Agreement and to enforce their rights under

this Agreement.

## **25.2 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.

## **25.3 Audit Rights.**

Subject to the requirements of confidentiality under Article 22 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, calculation of invoiced amounts, and each Party’s actions in an Emergency State. 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 25.4 of this Agreement.

## **25.4 Audit Rights Periods.**

### **25.4.1 Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of Connecting Transmission Owner’s Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades shall be subject to audit for a period of twenty-four months following Connecting Transmission Owner’s issuance of a final invoice in accordance with Article 12.2 of this Agreement.

### **25.4.2 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 25.4.1 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.

## **25.5 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 26. SUBCONTRACTORS**

### **26.1 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.

### **26.2 Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; *provided, however*, that in no event shall the NYISO or Connecting Transmission Owner be liable for the actions or inactions of Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customer under Article 5 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.

### **26.3 No Limitation by Insurance.**

The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 27. DISPUTES**

### **27.1 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.

### **27.2 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, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; *provided, however*, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

### **27.3 Arbitration Decisions.**

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

### **27.4 Costs.**

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

### **27.5 Termination.**

Notwithstanding the provisions of this Article 27, 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 28. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **28.1 General.**

Each Party makes the following representations, warranties and covenants:

#### **28.1.1 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 or states in which the Facility, Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades owned by such Party, as applicable, are located or interconnect; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted, to enter into this Agreement and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

#### **28.1.2 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).

#### **28.1.3 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.

#### **28.1.4 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 the Party will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

### **ARTICLE 29. MISCELLANEOUS**

#### **29.1 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.

#### **29.2 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.

### **29.3 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; (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, or such Section to the Standard Interconnection Procedures or such Appendix to the Standard Interconnection Procedures, as the case may be; (6) "hereunder," "hereof," "herein," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including."

### **29.4 Compliance.**

Each Party shall perform its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, the ISO OATT, ISO Procedures, 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.

### **29.5 Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, Interconnection Customer, and Connecting Transmission Owner are several, and are neither joint nor joint and several.

### **29.6 Entire Agreement.**

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

## **29.7 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.

## **29.8 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 any 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. Termination or Default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of Interconnection Customer's legal rights to obtain Capacity Resource Interconnection Service and Energy Resource Interconnection Service from the NYISO and Connecting Transmission Owner in accordance with the provisions of the ISO OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

## **29.9 Headings.**

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

## **29.10 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.

## **29.11 Amendment.**

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

## **29.12 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.

## **29.13 Reservation of Rights.**

NYISO and Connecting Transmission Owner shall have the right to make unilateral filings with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and

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

#### **29.14 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.

#### **29.15 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 Interconnection Customer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the System Upgrade Facilities and System Deliverability Upgrades.

#### **29.16 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 Interconnection Agreement located in Appendix 15 of Attachment HH 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* Standard 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.

**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: \_\_\_\_\_

**[Insert Name of Connecting Transmission Owner]**

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

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

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

Date: \_\_\_\_\_

**[Insert Name of Interconnection Customer]**

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

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

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

Date: \_\_\_\_\_

## **APPENDICES**

|                     |  |
|---------------------|--|
| <b>Appendix A</b>   | Facility, Attachment Facilities, and Upgrades  |
| <b>Appendix B</b>   | Milestones                                     |
| <b>Appendix C</b>   | Operating Requirements                         |
| <b>Appendix D</b>   | Security Arrangements Details                  |
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| <b>Appendix F</b>   | Addresses for Delivery of Notices and Billings |



**APPENDIX A**  
**FACILITY, ATTACHMENT FACILITIES,**  
**AND UPGRADES**

**1. Description of Facility**

*[Insert description of Facility]*

**2. Point(s) of Interconnection and Point(s) of Change of Ownership**

**(a) Point(s) of Interconnection (“POI”).** *[Insert description of Point of Interconnection]*

**(b) Point(s) of Change of Ownership (“PCO”).** *[Insert description of Point of Change of Ownership]*

The POI and PCO are detailed on the simplified one-line diagram in Appendix A.

**3. Attachment Facilities:**

**(a) Interconnection Customer’s Attachment Facilities (“ICAFs”)**

*[Insert description of any Interconnection Customer’s Attachment Facilities]*

**(b) Connecting Transmission Owner’s Attachment Facilities (“CTOAFs”)**

*[Insert description of any Connecting Transmission Owner’s Attachment Facilities]*

**4. System Upgrade Facilities (“SUFs”):**

**(a) Stand Alone System Upgrade Facilities**

*[Insert description of any Stand-Alone SUFs.]*

**(b) Other System Upgrade Facilities**

*[Insert description of any Other System Upgrade Facilities]*

**5. Distribution Upgrades**

*[Insert description of any Distribution Upgrades]*

**6. Affected Systems**

*[Insert description of any System Upgrade Facilities for Affected Systems and reference related Standard Upgrades Construction Agreement and Standard Multiparty Upgrades Construction Agreement]*

**7. External Affected Systems**

*[Insert description of any upgrades required on External Affected Systems.]*

**8. System Deliverability Upgrades:**

*[Insert description of any System Deliverability Upgrade.]*

**9. Cost Estimates**

*[Insert cost table for Connecting Transmission Owner's Attachment Facilities and Upgrades drawn from the Class Year Study or Cluster Study]*

**10. Operating & Maintenance Expenses for CTOAFs**

*[Connecting Transmission Owner to insert operating and maintenance cost recovery requirements for Connecting Transmission Owner's Attachment Facilities.]*

**11. Interconnection Customer's Estimated Tax Liability**

*[Pursuant to Article 5.17.4, to insert Interconnection Customer's estimated tax liability in the event taxes are imposed.]*

**12. Contingent Facilities**

**Figure A-1**

**Simplified One-Line Diagram**

*[Parties to insert simplified one-line diagram that clearly shows Facility, Attachment Facilities, Upgrades, POI, and PCO]*

## APPENDIX B

### MILESTONES

#### 1. Selected Option Pursuant to Article 5.1

*[To specify which option Interconnection Customer selected pursuant to Article 5.1 concerning the CTOAFs and Stand-Alone SUFs.]*

#### 2. Milestones

*[To insert]*

#### 3. Security

*[Insert description of the Security form and amount provided by Interconnection Customer in the Class Year Study or Cluster Study for CTOAFs, SUFs, and/or SDUs and insert description of any additional Security required for CTOAFs in accordance with Article 11.5 of this Agreement.]*

#### 4. Site Control

Check box if applicable [ ]

Interconnection Customer with qualifying regulatory limitations must demonstrate 100% Site Control by [NYISO to insert date one hundred eighty (180) Calendar Days from the Effective Date of this Agreement] or the Agreement may be terminated per Article 17 (Default) of this Agreement.

**APPENDIX C –  
OPERATING REQUIREMENTS**

**1. Interconnection Customer Operating Requirements**

*[To insert any additional operating requirements.]*

**2. *[Primary Frequency Response Operating Range]***

*[To insert if applicable]*

**3. *[Operating Requirements Variations for Class Year Transmission Project or Cluster Study Transmission Project]***

*[To insert if applicable]*

## **APPENDIX D**

### **SECURITY ARRANGEMENTS DETAILS**

Infrastructure security of New York State Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day New York State Transmission System reliability and operational security. The Commission will expect the NYISO, all Transmission Owners, all Interconnection Customers and all other Market Participants to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

**APPENDIX E-1**  
**SYNCHRONIZATION DATE**

**[Date]**

**[NYISO Address]**

**[Connecting Transmission Owner Address]**

Re: \_\_\_\_\_ Facility

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

On **[Date]** **[Interconnection Customer]** initially synchronized the Facility [specify units, if applicable]. This letter confirms that **[Interconnection Customer]**'s Synchronization Date was [specify].

Thank you.

**[Signature]**

**[Interconnection Customer Representative]**

**APPENDIX E-2**  
**COMMERCIAL OPERATION DATE**

**[Date]**

**[NYISO Address]**

**[Connecting Transmission Owner Address]**

Re: \_\_\_\_\_ Facility

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

On **[Date]** **[Interconnection Customer]** has completed Trial Operation of Unit No. \_\_\_\_\_. This letter confirms that **[Interconnection Customer]** commenced Commercial Operation of Unit No. \_\_\_\_\_ at the Facility, effective as of **[Date plus one day]**.

Thank you.

**[Signature]**

**[Interconnection Customer Representative]**



## **APPENDIX F – ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

### **Notices:**

NYISO:

[To be supplied.]

Connecting Transmission Owner:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

### **Billings and Payments:**

Connecting Transmission Owner:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

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

NYISO:

[To be supplied.]

Connecting Transmission Owner:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

**40.25.16**

**APPENDIX 16 TO ATTACHMENT HH**

**STANDARD UPGRADE CONSTRUCTION AGREEMENT**

**SERVICE AGREEMENT NO. [\*]**

**SERVICE AGREEMENT NO. [●]**

**STANDARD UPGRADE CONSTRUCTION AGREEMENT**

**AMONG THE**

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

**AND**

***[INSERT SYSTEM OWNER]***

**AND**

***[INSERT INTERCONNECTION CUSTOMER]***

**Dated as of *[insert execution date]***

**Project Name: *[insert project name]***

**Queue Position No(s): *[insert queue number(s)]***

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## STANDARD UPGRADE CONSTRUCTION AGREEMENT

**THIS STANDARD UPGRADE CONSTRUCTION AGREEMENT** (“Agreement”) is made and entered into this \_\_\_ day of \_\_ 20\_\_, by and among: \_\_\_\_\_, a [corporate description] organized and existing under the laws of State/Commonwealth of \_\_\_\_\_ (“Interconnection Customer”), \_\_\_\_\_, a [corporate description] organized and existing under the laws of State/Commonwealth of \_\_\_\_\_ (“System Owner”), and 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”). Interconnection Customer, the NYISO, or System Owner each may be referred to as a “Party” or collectively referred to as the “Parties.”

### RECITALS

*[To insert one of the following recitals based on Interconnection Customer’s project:*

#### Application 1:

**WHEREAS**, Interconnection Customer is developing a [insert generation/transmission project] identified as [insert project name] with NYISO Queue Position No. [\*] [(“Facility”)] that will interconnect to certain transmission facilities of [insert Connecting Transmission Owner’s name] (“Connecting Transmission Owner”) that are part of the New York State Transmission System or Distribution System;

**WHEREAS**, Interconnection Customer [has entered/will enter] into an Interconnection Agreement with the NYISO and the Connecting Transmission Owner concerning the interconnection of the Facility;

#### Application 2:

**WHEREAS**, Interconnection Customer is an Affected System Interconnection Customer developing a [insert generation/transmission] project (“Facility”) that will interconnect in [insert name of host transmission region], which interconnection was studied by the NYISO through an Affected System Study for impacts on the New York State Transmission System or Distribution System with NYISO Queue Position No. [\*];

**WHEREAS**, Interconnection Customer [has entered/will enter] into any required interconnection agreement for its Facility with the [insert name of host transmission region];

*[To insert one of the following alternatives based on the application of this Agreement:*

#### Application 1:

**WHEREAS**, the [Cluster Study/Class Year Interconnection Facilities Study for Class Year [insert Class Year]] has determined that certain System Upgrade Facilities are required to be constructed on the Affected System owned by the System Owner as the Affected System Operator to enable the Facility to interconnect reliably to the New York State Transmission System or

*Distribution System in a manner that meets the NYISO Minimum Interconnection Standard (“Upgrades”);*

*Application 2:*

**WHEREAS**, the NYISO’s [*Cluster Study Deliverability Study and/or Additional SDU Study (collectively, the “Cluster Study Deliverability Study”)/Class Year Deliverability Study and/or Additional SDU Study for Class Year [insert Class Year] (collectively, the “Class Year Deliverability Study”)*] determined that certain System Deliverability Upgrades are required to be constructed on the Affected System owned by the System Owner as the Affected System Operator to enable the Facility to interconnect reliably to the New York State Transmission System or Distribution System in a manner that meets the NYISO Deliverability Interconnection Standard at the Facility’s requested level of Capacity Resource Interconnection Service (“Upgrades”);]

*Application 3:*

**WHEREAS**, the NYISO’s Affected System Study determined that certain Affected System Network Upgrades are required to be constructed on the Affected System owned by they System Owner as the Affected System Operator in connection with the Facility’s interconnection in [insert name of host transmission region];

**WHEREAS**, the [*Cluster Study/ Cluster Study Deliverability Study/Class Year Interconnection Facilities Study/ Class Year Deliverability Study/Affected System Study*] has determined the cost estimate for the engineering, procurement, and construction of the Upgrades (“Upgrades Estimated Total Cost Amount”);

**WHEREAS**, Interconnection Customer and System Owner desire to [perform/have Interconnection Customer perform/have System Owner perform], and [they are willing to perform/Interconnection Customer is willing to perform/System Owner is willing to perform], the engineering, procurement, and construction services required to construct the Upgrades (“Construction Services”) in accordance with the terms and conditions hereinafter set forth; and

**WHEREAS**, Interconnection Customer, System 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 Construction Services required to construct the 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 OATT, Section 40.1 of Attachment HH to the OATT, Section 30.1 of Attachment X to the ISO OATT, Section 25.1.2 of Attachment S to the OATT, the body of the Standard Interconnection Procedures or Standard Facility Interconnection Procedures, or the body of this Agreement.



**Affected System** shall mean an electric system within the New York Control Area other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Interconnection Customer** shall mean any entity that submits an interconnection request for a Facility to a transmission system other than New York State Transmission System that may cause the need for Affected System Network Upgrades on the New York State Transmission System.

**Affected System Network Upgrades** shall mean the additions, modifications, and upgrades to the New York State Transmission System required to accommodate Affected System Interconnection Customer's proposed interconnection to a transmission system other than the New York State Transmission System.

**Affected System Operator** shall mean the entity that operates an Affected System. Affected System Operator includes the Affected Transmission Owners.

**Affected System Study** shall mean the NYISO's evaluation of the impacts on the New York State Transmission System of an Affected System Interconnection Customer's proposed interconnection to a transmission system other than the New York State Transmission System, as described in Section 40.8.3 of Attachment HH to the OATT.

**Affected Transmission Owner** shall mean the New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the ISO OATT, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, Affected Network Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachments P, S, X, Z, or HH to the ISO OATT.

**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 Electric Reliability Organization, the NPCC and the NYSRC.

**Applicable Reliability Requirements** shall mean the NYSRC Reliability Rules, and other criteria, standards and procedures, as described in Section 40.12.1.2 of this Attachment HH, applied when conducting the Cluster Baseline Assessment and the Cluster Project Assessment;

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 the Standard Interconnection Procedures. The Applicable Reliability Requirements applied are those in effect when the particular assessment is commenced.

**Applicable Reliability Standards** shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Interconnection Customer's Facility is directly interconnected, 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.

**Class Year Interconnection Facilities Study ("Class Year Study")** shall mean a study conducted by the NYISO or a third party consultant for the Interconnection Customer 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 Large Facility Interconnection Procedures in Attachment X to the ISO OATT.

**Class Year Transmission Project** shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Class Year Transmission Project without having to re-dispatch generation. Class Year Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

**Cluster Study** shall mean the study conducted, as applicable, by the ISO, Connecting Transmission Owner, Affected Transmission Owner, Affected System Operator or a third party consultant for the Interconnection Customer to determine a list of facilities (including Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System

Upgrade Facilities and System Deliverability Upgrades), the cost of those facilities, and the time required to interconnect the Generating Facility or Cluster Study Transmission Project with the New York State Transmission System or with the Distribution System. The Cluster Study includes the Phase 1 Study and the Phase 2 Study.

**Cluster Study Transmission Project** shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Cluster Study Transmission Project without having to re-dispatch generation. Cluster Study Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

**Completion Date** shall mean the date on which, as applicable, the System Owner or Interconnection Customer has completed the Construction Services, as set forth in Appendix A.

**Confidential Information** shall mean any information that is defined as confidential by Article 15 of this Agreement.

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

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

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 10 of this Agreement.

**Distribution System** shall mean the Connecting Transmission Owner's facilities and equipment used to distribute electricity that are subject to FERC jurisdiction, and are subject to the NYISO's Standard Interconnection Procedures in Attachment HH 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 on which this Agreement becomes effective in accordance with Article 2.1 of this Agreement.

**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.

**Facility** shall mean, as applicable, the Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project interconnecting to the New York State Transmission System or Distribution System or, for an Affected System Interconnection Customer, the generation or transmission facility interconnecting to another region's transmission system. For purpose of this agreement, the Facility is the generation or transmission facility identified in the Recitals.

**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.

**Generating Facility** shall mean Interconnection Customer's device(s) for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Attachment Facilities or Distribution Upgrades. A facility comprised of multiple Generators will be treated as a single Generating Facility if the facility proposed in the Interconnection Request is comprised of multiple Generators behind a single Point of Interconnection, even if such Generators are different technology types.

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

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

**Hazardous Substances** shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any

other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

**In-Service Date** shall mean the date upon which the Upgrades are energized consistent with the provisions of this Agreement, notice of which must be provided to the other Parties by, as applicable, the Interconnection Customer or System Owner in the form of Appendix C.

**Interconnection Agreement** shall mean, as applicable, the Standard Interconnection Agreement or Standard Large Generator Interconnection Agreement, or, if a Facility is interconnecting to another region's transmission system, the interconnection agreement entered into in that region.

**Interconnection Customer** shall mean, as applicable, an Interconnection Customer as defined in Attachment HH to the ISO OATT, a Developer as defined in Attachments S and X of the ISO OATT, or an Affected System Interconnection Customer as defined in Attachment HH to the ISO OATT. For purposes of this Agreement, the Interconnection Customer shall have the meaning set forth in the introductory paragraph.

**Interconnection Request** shall mean Interconnection Customer's request, in the form of Appendix 1 to Attachment X to the ISO OATT or Appendix 1 to Attachment HH to the ISO OATT, to interconnect a new 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 Facility that is interconnected with the New York State Transmission System or with the Distribution System. For purposes of the Interconnection Request, a facility comprised of multiple Generators behind the same Point of Interconnection may be considered a single Generating Facility, provided the Interconnection Request identifies a single Interconnection Customer.

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

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

**ISO OATT** shall mean the NYISO's Open Access Transmission Tariff, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

**Milestones** shall mean the milestones for the performance of the Construction 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 NYISO 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 pursuant to Article 20 of this Agreement 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 Tariffs** shall mean the ISO OATT and ISO Services Tariff.

**NYSRC** shall mean the New York State Reliability Council or its successor organization.

**Party or Parties** shall have the meaning set forth in the introductory paragraph.

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

**Standard Upgrade Construction Agreement** shall mean this Agreement.

**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.

**System Owner** shall mean, as applicable, the Affected System Operator, Affected Transmission Owner, or Connecting Transmission Owner. For purposes of this Agreement, the System Owner shall be defined in the introductory paragraph.

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

**Upgrades** shall mean, as applicable, System Upgrade Facilities, System Deliverability Upgrade Facilities, or Affected Network Upgrade Facilities. For purposes of this Agreement, the Upgrades shall have the meaning set forth in the recitals and shall be described in Appendix A.

**Upgrades Estimated Total Cost Amount** shall have the meaning set forth in the recitals, which costs are specified in Appendix A.

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

### **2.1 Effective Date.**

This Agreement shall become effective upon the date of execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO,

and if applicable, the System Owner, shall promptly file this Agreement with FERC upon execution, if required, in accordance with the requirements in the OATT. Interconnection Customer and System Owner shall reasonably cooperate with the NYISO with respect to the filing of this Agreement with FERC and provide any information reasonably requested by the NYISO needed for such filing.

## **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 have been made pursuant to Articles 6.1 and 6.3 and any remaining Security has been released or refunded pursuant to Article 6.2.

## **2.3 Termination.**

### **2.3.1 Completion of Term of Agreement**

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

### **2.3.2 Written Notice.**

This Agreement may be terminated:

(i) by the mutual agreement in writing of all of the Parties; or

(ii) by the NYISO and System Owner if the Interconnection Agreement for the Facility is terminated in accordance with the requirements in the Interconnection Agreement.

*[If this agreement concerns the construction of Affected Network Upgrade Facilities, replace (ii) with the following:*

*(ii) by the NYISO and System Owner upon their receipt of notification by the Interconnection Customer that the interconnection agreement for its Facility has been terminated in accordance with the requirements in its host transmission region or, if an interconnection agreement is not required for its Facility, that its Facility has ceased development or operation in accordance with the requirements of its host transmission region];*

*[If this agreement concerns the construction of a Highway System Deliverability Upgrade, replace (ii) with the following:*

*(ii) by the NYISO after giving the other Parties thirty (30) Calendar Days advance written notice following its determination that the threshold for triggering the construction of the Upgrades set forth in, as applicable, Section 25.7.12.3.1 of Attachment S or Section 40.13.12.3.1 of Attachment HH to the OATT is no longer met.]*

### **2.3.3 Default.**

Any Party may terminate this Agreement to the extent permitted under Article 10 and Article 20.

### **2.3.4 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 Articles 2.3.2 or 2.3.3 above, the Interconnection Customer shall be responsible for all costs that are the responsibility of the Interconnection Customer under this Agreement that are incurred by the Interconnection Customer or other Parties through the date the Parties agree in writing to terminate the agreement or through the date of the Interconnection Customer's receipt of a notice of termination. Such costs include any cancellation costs relating to orders or contracts concerning the Construction Services or Upgrades. 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:

**2.4.1** With respect to any portion of the Upgrades for which the System Owner or Interconnection Customer (the "Constructing Party") are responsible for constructing or installing under this Agreement and that have not yet been constructed or installed, the Constructing Party shall, to the extent possible and with the other Party's (*i.e.*, the System Owner or Interconnection Customer, as applicable) authorization, cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, the Upgrades; provided that in the event the other Party elects not to authorize such cancellation, the other Party shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Constructing Party shall deliver such material and equipment, and, if necessary, assign such contracts, to the other Party as soon as practicable, at the other Party's expense. To the extent that the other Party has already paid the Constructing Party for any or all such costs of materials or equipment not taken by the other Party, the Constructing Party shall promptly refund such amounts to the other Party, less any costs, including penalties incurred by the Constructing Party to cancel any pending orders of or return such materials, equipment, or contracts.

**2.4.2** The Constructing Party may, at its option, retain any portion of such materials or equipment that the other Party chooses not to accept delivery of, in which case the Constructing Party shall be responsible for all costs associated with procuring such materials or equipment.

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



materials, equipment, or facilities and such other expense actually incurred by System Owner to return its system to safe and reliable operation.

## **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; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Interconnection Customer and System Owner each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

## **2.6 No Annexation.**

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

# **ARTICLE 3. CONSTRUCTION SERVICES**

## **3.1 Performance of Construction Services.**

System Owner shall be responsible for performing the Construction Services. At System Owner's sole discretion, System Owner may agree with Interconnection Customer for Interconnection Customer to perform such services. System Owner's and Interconnection Customer's respective obligations concerning the Construction Services shall be set forth in Appendix A hereto. System Owner and Interconnection Customer shall each use Reasonable Efforts to complete the Construction Services for which it has responsibility by the Milestone dates set forth in Appendix A hereto. The System Owner shall not be required to undertake any action which is inconsistent with the System Owner's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. The NYISO has no responsibility, and shall have no liability, for the performance of any of the Construction Services under this Agreement.

## **3.2 General Conditions Applicable to Interconnection Customer's Performance of the Construction Services.**

If System Owner and Interconnection Customer agree pursuant to Article 3.1 for Interconnection Customer to be responsible for the design, procurement, and/or construction of any Upgrades as set forth in Appendix A, the following conditions apply:

**3.2.1** Interconnection Customer shall engineer, procure equipment, and construct the Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by System Owner;

**3.2.2** Interconnection Customer's engineering, procurement and construction of the Upgrades shall comply with all requirements of law to which System Owner would be subject in the engineering, procurement or construction of the Upgrades;

**3.2.3** System Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Upgrades;

**3.2.4** Prior to the commencement of construction, Interconnection Customer shall provide System Owner and NYISO a schedule for construction of the Upgrades, and shall promptly respond to requests for information from System Owner or NYISO;

**3.2.5** At any time during construction, System Owner shall have the right to gain unrestricted access to the Upgrades and to conduct inspections of the same;

**3.2.6** At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Upgrades not meet the standards and specifications provided by System Owner, Interconnection Customer shall be obligated to remedy deficiencies in that portion of the Upgrades;

**3.2.7** Interconnection Customer shall indemnify System Owner and NYISO for claims arising from Interconnection Customer's construction of Upgrades under procedures applicable to Article 11.1 Indemnity;

**3.2.8** Interconnection Customer shall transfer control of Upgrades to System Owner;

**3.2.9** Unless Interconnection Customer and System Owner otherwise agree, Interconnection Customer shall transfer ownership of Upgrades to System Owner;

**3.2.10** System Owner shall approve and accept for operation and maintenance the Upgrades to the extent engineered, procured, and constructed in accordance with this Article 3.2;

**3.2.11** Interconnection Customer shall deliver to NYISO and System Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or System Owner to assure that the Upgrades are built to the standards and specifications required by System Owner; and

**3.2.12** Interconnection Customer shall pay the System Owner the agreed upon amount of [\$ PLACEHOLDER] for the System Owner to execute the responsibilities enumerated to System

Owner under Article 3.2. System Owner shall invoice Interconnection Customer for this total amount to be divided on a monthly basis pursuant to Article 6.

### **3.3 Design and Equipment Procurement**

If responsibility for construction of the Upgrades is to be borne by the System Owner, then the System Owner shall commence the design and procurement of the Upgrades for which it is responsible as soon as practicable after all of the following conditions are satisfied, unless the Interconnection Customer and System Owner otherwise agree in writing:

**3.3.1** NYISO has completed, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study;

**3.3.2** The NYISO has completed the required cost allocation analyses, and Interconnection Customer has accepted its Project Cost Allocation for the Upgrades required for the Facility in accordance with the provisions of Attachment S or HH of the ISO OATT.

**3.3.3** System Owner has received written authorization to proceed with design and procurement of the Upgrades from the Interconnection Customer by the date specified in Appendix A hereto; and

**3.3.4** Interconnection Customer has provided Security to the System Owner for the design and procurement of the Upgrades in accordance with Article 5 by the date(s) specified in Appendix A hereto.

### **3.4 Construction Commencement**

System Owner shall commence construction of the Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied.

**3.4.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

**3.4.2** Necessary real property rights and rights-of-way have been obtained, to the extent required, for the construction of a discrete aspect of the Upgrades;

**3.4.3** System Owner has received written authorization to proceed with construction from the Interconnection Customer by the date specified in Appendix A hereto; and

**3.4.4** Interconnection Customer has provided security to the System Owner for the construction of the applicable facilities in accordance with Article 5.2 by the date(s) specified in Appendix A hereto.

### **3.5 Work Progress.**

The Interconnection Customer and System Operator will keep each other, and NYISO, advised periodically as to the progress of its respective design, procurement and construction

efforts. Any Party may, at any time, request a progress report from the Interconnection Customer or System Owner.

### **3.6 Information Exchange.**

As soon as reasonably practicable after the Effective Date, Interconnection Customer and System Owner shall exchange information, and provide NYISO the same information, regarding the design of the Upgrades and compatibility of the Upgrades with the New York State Transmission System and shall work diligently and in good faith to make any necessary design changes. Interconnection Customer shall inform the System Owner and NYISO of any termination of the Interconnection Agreement for the Facility within ten (10) Calendar Days of the termination of the Interconnection Agreement.

### **3.7 Ownership and Control of Upgrades.**

System Owner shall own the Upgrades as described in Appendix A. The System Owner's and, if applicable, NYISO's operational control of the Upgrades upon the completion of the facilities shall be described in Appendix A.

### **3.8 Access Rights.**

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, either the System Owner or Interconnection Customer ("Granting Party") shall furnish to the other of those two Parties ("Access Party") at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain the ingress and egress required for the performance of the Construction Services, including to construct, repair, test (or witness testing), inspect, replace or remove the Upgrades. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

### **3.9 Lands of Other Property Owners.**

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

### **3.10 Permits.**

NYISO, Interconnection Customer, and System Owner shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the Construction Services in compliance with Applicable Laws and Regulations. With respect to this paragraph, System Owner shall provide permitting assistance to the Interconnection Customer comparable to that provided to System Owner's own, or an Affiliate's generation facilities, if any.

### **3.11 Suspension**

Interconnection Customer reserves the right, upon written notice to System Owner and NYISO, to suspend at any time all work by System Owner or Interconnection Customer, as applicable, associated with the construction and installation of the Upgrades required for only that Interconnection Customer's Facility, with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of System Owner and NYISO. In such event, such Interconnection Customer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with Attachment S or HH to the ISO OATT including those which System Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs as a result of the suspension of such work, including any costs incurred by System Owner to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred by System Owner in connection with the cancellation or suspension of material, equipment and labor contracts which System Owner cannot reasonably avoid; *provided, however*, that prior to canceling or suspending any such material, equipment or labor contract, System Owner shall obtain such Interconnection Customer's authorization to do so.

System Owner shall invoice Interconnection Customer for such costs pursuant to Article 6 and shall use due diligence to minimize its costs. If Interconnection Customer suspends work required under this Agreement pursuant to this Article 3.11, and has, as applicable, either not recommenced work or requested System Owner to recommence its work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to System Owner and NYISO, if no effective date is specified.

### **3.12 Taxes.**

#### **3.12.1 Indemnification for Contributions in Aid of Construction.**

With regard only to payments made by Interconnection Customer to System Owner for the installation of the Upgrades, System Owner shall not include a gross-up for income taxes in the amounts it charges Interconnection Customer for the installation of the Upgrades unless (1) System Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to System Owner should be reported as income subject to taxation, or (2) any Governmental Authority directs System Owner to report payments or property as income

subject to taxation. Interconnection Customer shall reimburse System Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from System Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten (10)-year testing period and the applicable statute of limitation, as it may be extended by System Owner upon request of the Internal Revenue Service, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.12.1, and to the extent permitted by law, to the extent that the receipt of such payments by System Owner is determined by any Governmental Authority to constitute income by System Owner subject to taxation, Interconnection Customer shall protect, indemnify, and hold harmless System Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest, and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, System Owner shall provide Interconnection Customer with written notification within thirty (30) Calendar Days of such determination and notification. System Owner, upon the timely written request by Interconnection Customer and at Interconnection Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. System Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that System Owner shall cooperate and consult in good faith with Interconnection Customer regarding the conduct of such contest. Interconnection Customer shall not be required to pay System Owner for the tax, interest, and/or penalties prior to the seventh (7th) Calendar Day before the date on which System Owner (1) is required to pay the tax, interest, and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement, or other contest; (2) is required to pay the tax, interest, and/or penalties as the result of a final, non appealable order by a Governmental Authority; or (3) is required to pay the tax, interest, and/or penalties as a prerequisite to an appeal, protest, abatement, or other contest. In the event such appeal, protest, abatement, or other contest results in a determination that System Owner is not liable for any portion of any tax, interest, and/or penalties for which Interconnection Customer has already made payment to System Owner, System Owner shall promptly refund to Interconnection Customer any payment attributable to the amount determined to be non-taxable, plus any interest (calculated in accordance with 18 CFR 35.19a(a)(2)(iii)) or other payments System Owner receives or which System Owner may be entitled with respect to such payment. Interconnection Customer shall provide System Owner with credit assurances sufficient to meet Interconnection Customer's estimated liability for reimbursement of System Owner for taxes, interest, and/or penalties under this Article 3.12.1. Such estimated liability shall be stated in Appendix A.

To the extent that System Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: System Owner represents, and the Parties acknowledge, that System Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Interconnection Customer to System Owner for Upgrades is to be treated as an upfront payment. It is anticipated by the Parties that any amounts paid by Interconnection Customer to System Owner for the

Upgrades will be reimbursed to Interconnection Customer in accordance with the terms of this Agreement, provided Interconnection Customer fulfills its obligations under this Agreement.

### **3.12.2 Private Letter Ruling.**

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

### **3.12.3 Other Taxes.**

Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, System Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against System Owner for which Interconnection Customer may be required to reimburse System Owner under the terms of this Agreement. Interconnection Customer shall pay to System Owner on a periodic basis, as invoiced by System Owner, System Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and System Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to System Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by System Owner. Each Party shall cooperate with the other Party to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds, as described in section 142(f) of the Internal Revenue Code.

## **3.13 Tax Status; Non-Jurisdictional Entities.**

### **3.13.1 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 System Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of New York, Inc. 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 their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of

the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

### **3.13.2 Tax Status.**

LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

## **3.14 Modification.**

### **3.14.1 General**

If, prior to the In-Service Date, the System Owner proposes to modify the Upgrades, the System Owner must provide to the NYISO at least ninety (90) Calendar Days in advance of the commencement of the work, or such shorter period upon which the Parties may agree, sufficient information for the NYISO to evaluate the impact of the proposed modification on, as applicable: (i) the reliable interconnection of Interconnection Customer's Facility to the New York State Transmission System or (ii) the reliability of the New York State Transmission System due to the Facility's interconnection to another region's transmission system. The NYISO's agreement to the proposed modification shall not be unreasonably withheld, conditioned, or delayed if the proposed modification is reasonably related to the interconnection of the Facility and will enable Interconnection Customer's Facility to reliably interconnect to the New York State Transmission System or ensure the reliability of the New York State Transmission System of the Facility's interconnection to another region's transmission system. If the cost of the modified Upgrades is greater than the estimated cost identified in the applicable Class Year Interconnection Facility Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Additional System Study, the additional cost will be allocated in accordance with, as applicable, Sections 25.6.14.1 and 25.8.6 of Attachment S or Sections 40.12.1.5.1 and 40.16.3 of Attachment HH of the ISO OATT.

### **3.14.2 Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

### **3.14.3 Modification Costs.**

Interconnection Customer shall not be assigned the costs of any additions, modifications, or replacements that System Owner makes to the Upgrades or the New York State Transmission System to facilitate the interconnection of a third party to the 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 S or HH of the ISO OATT.



## **ARTICLE 4. TESTING AND INSPECTION**

### **4.1 Initial Testing and Modifications.**

Prior to the In-Service Date of the Upgrades, the System Owner or Interconnection Customer, as specified in Appendix A, shall test the Upgrades to ensure their safe and reliable operation. The Party responsible for constructing the Upgrades shall make any modifications to the Upgrades that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications

### **4.2 Right to Observe Testing.**

The Party performing the testing shall notify the other Parties in advance of its performance of tests of the Upgrades. Each of the other Parties shall have the right, at its own expense, to observe such testing.

## **ARTICLE 5. PERFORMANCE OBLIGATIONS**

### **5.1 Cost Responsibilities**

Interconnection Customer and/or System Owner, as specified in Appendix A, shall perform the Construction Services at Interconnection Customer's sole expense up to the Upgrades Estimated Total Cost Amount. Interconnection Customer's and System Owner's respective responsibilities for the cost of the Construction Services greater than the Upgrades Estimated Total Costs Amount shall be determined in accordance with, as applicable, Section 25.8.6 of Attachment S or Section 40.16.3 of Attachment HH to the OATT.

### **5.2 Provision and Application of Security**

**5.2.1** If Interconnection Customer accepted its Project Cost Allocation and posted to System Owner the Security for its Upgrades at the conclusion of, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study, then Interconnection Customer shall not be responsible for posting additional Security under this Agreement. Interconnection Customer's Security shall be subject to the requirements of Attachment S or HH to the ISO OATT.

**5.2.2** If Interconnection Customer was not required to post Security to the System Owner at the conclusion of, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study, then at least thirty (30) Calendar Days prior to the System Owner's commencement of the procurement, installation, or construction of a discrete portion of the Upgrades as such portion(s) are detailed in the Milestones in Appendix A, Interconnection Customer shall provide System Owner, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to System Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 7.2 of this Agreement. Such security for payment shall be in an amount sufficient to cover the costs for Interconnection Customer's share of constructing, procuring and installing the applicable portion of the Upgrades, and shall be reduced on a dollar-for-dollar basis for payments made to System Owner for these purposes.

In addition:

**5.2.2.1** The guarantee must be made by an entity that meets the commercially reasonable creditworthiness requirements of System Owner, and contains terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

**5.2.2.2** The letter of credit must be issued by a financial institution reasonably acceptable to System Owner and must specify a reasonable expiration date.

**5.2.2.3** The surety bond must be issued by an insurer reasonably acceptable to System Owner and must specify a reasonable expiration date.

## **ARTICLE 6. INVOICE**

### **6.1 General.**

To the extent that any amounts are due to the Interconnection Customer or System Owner under this Agreement, the Interconnection Customer and System Owner, as applicable, shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Interconnection Customer and System 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.

### **6.2 Final Invoice and Refund of Remaining Security/Overpayment Amount**

Within one hundred eighty (180) Calendar Days of the Completion Date, Interconnection Customer or System Owner, as applicable, shall provide a final invoice to the other Party of any remaining amounts due associated with the Construction Services. Within thirty (30) Calendar Days of the later of: (i) Interconnection Customer's payment of any final invoice to the System Owner, and (ii) the completion of the Construction Services, System Owner shall release or refund to the Interconnection Customer any remaining portions of its Security and any amount that Interconnection Customer has overpaid under this Article 6.

### **6.3 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.

## **6.4 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; 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 10. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

## **ARTICLE 7. REGULATORY REQUIREMENTS AND GOVERNING LAW**

### **7.1 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 a Party to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

### **7.2 Governing Law.**

**7.2.1** 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.

**7.2.2** This Agreement is subject to all Applicable Laws and Regulations.

**7.2.3** 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 8. NOTICES**

### **8.1 General.**

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

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.

## **8.2 Billings and Payments.**

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

## **8.3 Alternative Forms of Notice.**

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

# **ARTICLE 9. FORCE MAJEURE**

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

# **ARTICLE 10. DEFAULT**

## **10.1 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 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.

## **10.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 10, 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 11. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

### **11.1 Indemnity.**

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

#### **11.1.1 Indemnified Party.**

If a Party is entitled to indemnification under this Article 11 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 11.1.3, 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.

#### **11.1.2 Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 11, 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.

#### **11.1.3 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 11.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

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

## **11.2 No Consequential Damages.**

Other than the indemnity obligations set forth in Article 11.1, 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.

## **11.3 Insurance.**

*[If System Owner and Interconnection Customer agree pursuant to Article 3.1 of this Agreement for Interconnection Customer to be responsible for any of the Construction Services under this Agreement, the insurance requirements in this Article 11.3 shall be applicable to Interconnection Customer as well.]*

The System Owner and, if applicable, Interconnection Customer 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:

**11.3.1** Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of New York State.

**11.3.2** 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.

**11.3.3** 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.

**11.3.4** 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.

**11.3.5** 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.

**11.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of System Owner and, if applicable, Interconnection Customer shall name the other Party, its parent, 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.

**11.3.7** 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. System Owner and, if applicable, Interconnection Customer shall each be responsible for its respective deductibles or retentions.

**11.3.8** 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 the Interconnection Customer and System Owner.

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

**11.3.10** The requirements contained herein as to the types and limits of all insurance to be maintained by the System Owner and, if applicable, Interconnection Customer are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

**11.3.11** Within [insert term stipulated by the Parties] Calendar Days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) Calendar Days thereafter, Interconnection Customer and System Owner, as applicable, shall provide certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

**11.3.12** Notwithstanding the foregoing, either of System Owner and, if applicable, Interconnection Customer may each self-insure to meet the minimum insurance requirements of Articles 11.3.1 through 11.3.9 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 11.3.1 through 11.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 11.3.12, it shall notify the other Party 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 11.3.1 through 11.3.9 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 11.3.1 through 11.3.9.

**11.3.13** Interconnection Customer and System Owner agree to report to each other 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.

**11.3.14** Subcontractors of each party must maintain the same insurance requirements stated under Articles 11.3.1 through 11.3.9 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 12. ASSIGNMENT**

### **12.1 Assignment.**

This Agreement may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Interconnection Customer shall have the right to assign this Agreement, without the consent of the NYISO or System Owner, for collateral security purposes to aid in providing financing for the Facility, provided that the Interconnection Customer will promptly notify the NYISO and System Owner of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and System Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and System Owner with proof that it meets the requirements of Articles 5.2 and 11.3. 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 13. 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 14. COMPARABILITY**

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

## **ARTICLE 15. CONFIDENTIALITY**

### **15.1 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 15.

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.

## **15.2 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 15, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

## **15.3 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 OATT.

## **15.4 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 15.9 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.

## **15.5 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 Interconnection Customer, or to potential purchasers or assignees of a Party, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 15 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 15.

## **15.6 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.

## **15.7 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.

## **15.8 Standard of Care.**

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

## **15.9 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.

## **15.10 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.

### **15.11 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 15. 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 15, 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 15, 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 15.

### **15.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article 15 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 OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

### **15.13 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 OATT or the 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 16. INTERCONNECTION CUSTOMER AND SYSTEM OWNER NOTICES OF ENVIRONMENTAL RELEASES**

Interconnection Customer and System 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 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 17. INFORMATION REQUIREMENT**

### **17.1 Information Acquisition.**

Interconnection Customer and System Owner shall each submit specific information regarding the electrical characteristics of its facilities to the other Parties as described below and in accordance with Applicable Reliability Requirements.

### **17.2 Information Submission Concerning the Upgrades.**

The initial information submission by System Owner shall occur as specified in the Milestones in Appendix A and shall include New York State Transmission System information necessary to allow the Interconnection Customer to select equipment for its Facility and meet any system protection and stability requirements, unless otherwise mutually agreed to by the Interconnection Customer and System Owner. On a monthly basis, System Owner and Interconnection Customer shall each provide the other Parties a status report on the construction and installation of the Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

### **17.3 Information Submission Concerning the Facility.**

The updated information submission by the Interconnection Customer, including manufacturer information, shall occur as specified in the Milestones in Appendix A. Interconnection Customer shall submit a completed copy, if applicable, of the Facility data requirements contained in Appendix 1 to the Standard Large Facility Interconnection Procedures or Appendix 1 to the Standard Interconnection Procedures. It shall also include any additional information provided to System Owner, as applicable, for the Class Year Interconnection Facilities Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study. Information in this submission shall be the most current Facility design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the

Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Interconnection Customer's data is different from what was originally provided to System Owner and NYISO in, as applicable, its Interconnection Request or with its Affected System Study Agreement and this difference may be reasonably expected to affect the other Parties' facilities or the New York State Transmission System, but does not require the submission of a new Interconnection Request, then Interconnection Customer will notify the NYISO and System Owner of such modifications.

#### **17.4 Information Supplementation.**

The Interconnection Customer and System Owner shall supplement its information submissions described above in this Article 17 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 18. INFORMATION ACCESS AND AUDIT RIGHTS**

#### **18.1 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 18.1 and to enforce their rights under this Agreement.

#### **18.2 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.

#### **18.3 Audit Rights.**

Subject to the requirements of confidentiality under Article 15 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 18.4 of this Agreement.

#### **18.4 Audit Rights Periods.**

##### **18.4.1 Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of the Upgrades shall be subject to audit for a period of twenty-four months following the issuance of a final invoice in accordance with Article 6.1 of this Agreement.

##### **18.4.2 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 18.4.1 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.

#### **18.5 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 19. SUBCONTRACTORS**

#### **19.1 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.

#### **19.2 Responsibility of Principal.**

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

### **19.3 No Limitation by Insurance.**

The obligations under this Article 19 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 20. DISPUTES**

### **20.1 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.

### **20.2 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, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; *provided, however*, in the event of a conflict between the Arbitration Rules and the terms of this Article 20, the terms of this Article 20 shall prevail.

### **20.3 Arbitration Decisions.**

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



## **20.4 Costs.**

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

## **20.5 Termination.**

Notwithstanding the provisions of this Article 20, 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 21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

## **21.1 General.**

Each Party makes the following representations, warranties and covenants:

### **21.1.1 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, to enter into this Agreement and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

### **21.1.2 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).

### **21.1.3 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.

### **21.1.4 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 the Party will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

## **ARTICLE 22. MISCELLANEOUS**

### **22.1 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.

### **22.2 Conflicts.**

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

### **22.3 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; (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, or such Section to the Standard Interconnection Procedures or such Appendix to the Standard Interconnection Procedures as the case may be; (6) "hereunder," "hereof," "herein," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including."

### **22.4 Compliance.**

Each Party shall perform its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, the 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.

#### **22.5 Joint and Several Obligations.**

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

#### **22.6 Entire Agreement.**

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

#### **22.7 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.

#### **22.8 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 any 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. Termination or Default of this Agreement for any reason by an Interconnection Customer shall not constitute a waiver of such Interconnection Customer's legal rights to obtain Capacity Resource Interconnection Service and Energy Resource Interconnection Service from the NYISO and the relevant System Owner in accordance with the relevant Interconnection Agreement and the provisions of the OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

#### **22.9 Headings.**

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

#### **22.10 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.

#### **22.11 Amendment.**

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

#### **22.12 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.

#### **22.13 Reservation of Rights.**

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

#### **22.14 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.

#### **22.15 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 Interconnection Customer shall be entitled to, now or in the future under any other agreement or tariff as a result of or otherwise associated with, the transmission capacity, if any, created by the Upgrades.

#### **22.16 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 Upgrade Construction Agreement located in Appendix 16 of Attachment HH 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* Standard Upgrade Construction 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.

**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: \_\_\_\_\_

**[Insert Name of System Owner]**

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

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

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

Date: \_\_\_\_\_

**[Insert Name of Interconnection Customer]**

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

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

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

Date: \_\_\_\_\_

## **APPENDICES**

### **Appendix A**

Construction Services

### **Appendix B**

Addresses for Delivery of Notices and Billings

### **Appendix C**

In-Service Date

## APPENDIX A

### CONSTRUCTION SERVICES

#### 1. Upgrades

*[Insert description of Upgrades and specify Interconnection Customer's and System Owner's responsibilities to design, procure, and construction Upgrades]*

#### 2. Upgrades Estimated Total Cost Amount

*[Insert table indicating Upgrades Estimated Total Cost Amount and insert description of security provided by Interconnection Customer to System Owner for Upgrades]*

#### 3. Milestones

| Item | Milestone           | Date          | Responsible Party |
|------|---------------------|---------------|-------------------|
| 1.   | [insert milestones] | [insert date] |                   |
| 2.   | In-Service Date     | [insert date] |                   |
| 3.   | Completion Date     | [insert date] |                   |

#### 4. Estimated Tax Liability

*[If applicable]*



## **APPENDIX B**

### **ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

#### **Notices:**

##### NYISO:

[To be supplied.]

##### System Owner:

[To be supplied.]

##### Interconnection Customer:

[To be supplied.]

#### **Billings and Payments:**

##### System Owner:

[To be supplied.]

##### Interconnection Customer:

[To be supplied.]

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

##### NYISO:

[To be supplied.]

##### System Owner:

[To be supplied.]

##### Interconnection Customer:

[To be supplied.]

**APPENDIX C**  
**IN-SERVICE DATE**

**[Date]**

[Insert NYISO address]

[Insert System Owner address]

[Insert Interconnection Customer address]

Re: [Insert project name] Upgrades

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

On **[Date]** **[System Owner/Interconnection Customer]** has completed the Upgrades. This letter confirms that **[describe Upgrades]** have commenced service, effective as of **[Date plus one day]**.

Thank you.

**[Signature]**

**[Interconnection Customer's/System Owner's Representative]**

**40.25.17      APPENDIX 17 TO ATTACHMENT HH**

**STANDARD MULTIPARTY UPGRADE CONSTRUCTION AGREEMENT**

**SERVICE AGREEMENT NO. [\*]**

**SERVICE AGREEMENT NO. [●]**

**STANDARD MULTIPARTY UPGRADE CONSTRUCTION AGREEMENT**

**AMONG THE**

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

**AND**

***[INSERT SYSTEM OWNER]***

**AND**

***[INSERT INTERCONNECTION CUSTOMER]***

**AND**

***[INSERT INTERCONNECTION CUSTOMER]***

**Dated as of *[insert execution date]***

**Project Name: *[insert project name]***

**Queue Position Nos.: *[insert queue numbers]***

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## STANDARD MULTIPARTY UPGRADE CONSTRUCTION AGREEMENT

*[To insert additional Interconnection Customer entries if more than two Interconnection Customers are parties to this agreement.]*

### THIS STANDARD MULTIPARTY UPGRADE CONSTRUCTION AGREEMENT

(“Agreement”) is made and entered into this \_\_ day of \_\_ 20\_\_, by and among: \_\_\_\_\_, a [corporate description] organized and existing under the laws of State/Commonwealth of \_\_\_\_\_ (“[Interconnection Customer Name]”), \_\_\_\_\_, a [corporate description] organized and existing under the laws of State/Commonwealth of \_\_\_\_\_ (“[Interconnection Customer Name]”) (each an “Interconnection Customer” for a “Facility” and collectively “Interconnection Customers” for “Facilities”), \_\_\_\_\_, a [corporate description] organized and existing under the laws of State/Commonwealth of \_\_\_\_\_ (“System Owner”), and 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 Interconnection Customer, the NYISO, or System Owner each may be referred to as a “Party” or collectively referred to as the “Parties.”

### RECITALS

*[To insert the applicable following recitals based on Interconnection Customers’ projects; to insert additional Interconnection Customer entries if more than two Interconnection Customers are parties to this agreement.]*

#### Application 1:

**WHEREAS**, [Interconnection Customer Name] is developing a Facility – a [insert generation/transmission project] identified as [insert project name] with NYISO Queue Position No. [\*] – that will interconnect to certain transmission facilities of [insert Connecting Transmission Owner’s name] (“Connecting Transmission Owner”) that are part of the New York State Transmission System or Distribution System and [has entered/will enter] into an Interconnection Agreement with the NYISO and the Connecting Transmission Owner concerning the interconnection of its project;

**WHEREAS**, [Interconnection Customer Name] is developing a Facility – a [insert generation/transmission project] identified as [insert project name] with NYISO Queue Position No. [\*] – that will interconnect to certain transmission facilities of [insert Connecting Transmission Owner’s name] (“Connecting Transmission Owner”) that are part of the New York State Transmission System or Distribution System and [has entered/will enter] into an Interconnection Agreement with the NYISO and the Connecting Transmission Owner concerning the interconnection of its project;

#### Application 2:

**WHEREAS**, [Interconnection Customer Name] is an Affected System Interconnection Customer developing a Facility – a [insert generation/transmission] project identified as [insert project



*name]* – that will interconnect in *[insert name of host transmission region]*, which interconnection was studied by the NYISO through an Affected System Study for impacts on the New York State Transmission System or Distribution System with NYISO Queue Position No. *[\*]* and *[has entered/will enter]* into any required interconnection agreement for its facility with the *[insert name of host transmission region]*;

**WHEREAS**, *[Interconnection Customer Name]* is an Affected System Interconnection Customer developing a Facility –a *[insert generation/transmission]* project identified as *[insert project name]* – that will interconnect in *[insert name of host transmission region]*, which interconnection was studied by the NYISO through an Affected System Study for impacts on the New York State Transmission System or Distribution System with NYISO Queue Position No. *[\*]* and *[has entered/will enter]* into any required interconnection agreement for its facility with the *[insert name of host transmission region]*;

*[To insert one of the following alternatives based on the application of this Agreement:*

*Application 1:*

**WHEREAS**, the *[Cluster Study/Class Year Interconnection Facilities Study for Class Year [insert Class Year]]* has determined that certain System Upgrade Facilities are required to be constructed on the Affected System owned by the System Owner as the Affected System Operator to enable the Facilities to interconnect reliably to the New York State Transmission System or Distribution System in a manner that meets the NYISO Minimum Interconnection Standard (“Upgrades”);

*Application 2:*

**WHEREAS**, the *[Cluster Study/Class Year Interconnection Facilities Study for Class Year [insert Class Year]]* has determined that certain System Upgrade Facilities are required to be constructed on the transmission system owned by the System Owner as the Connecting Transmission Owner to enable the Facilities to interconnect reliably to the New York State Transmission System or Distribution System in a manner that meets the NYISO Minimum Interconnection Standard (“Upgrades”);

*Application 3:*

**WHEREAS**, the NYISO’s *[Cluster Study Deliverability Study and/or Additional SDU Study (collectively, the “Cluster Study Deliverability Study”)/Class Year Deliverability Study and/or Additional SDU Study for Class Year [insert Class Year] (collectively, the “Class Year Deliverability Study”)]* determined that certain System Deliverability Upgrades are required to be constructed on the Affected System owned by the System Owner as the Affected System Operator to enable the Facilities to interconnect reliably to the New York State Transmission System or Distribution System in a manner that meets the NYISO Deliverability Interconnection Standard at the Facilities’ requested level of Capacity Resource Interconnection Service (“Upgrades”);]

*Application 4:*

**WHEREAS**, the NYISO's [*Cluster Study Deliverability Study and/or Additional SDU Study (collectively, the "Cluster Study Deliverability Study")/Class Year Deliverability Study and/or Additional SDU Study for Class Year [insert Class Year] (collectively, the "Class Year Deliverability Study")*] determined that certain System Deliverability Upgrades are required to be constructed on the transmission system owned by the System Owner as the Connecting Transmission Owner to enable the Facilities to interconnect reliably to the New York State Transmission System or Distribution System in a manner that meets the NYISO Deliverability Interconnection Standard at the Facilities' requested level of Capacity Resource Interconnection Service ("Upgrades");]

Application 5:

**WHEREAS**, the NYISO's *Affected System Study* determined that certain *Affected System Network Upgrades* are required to be constructed on the *Affected System* owned by the System Owner as the *Affected System Operator* in connection with the Facilities' interconnection in [insert name of host transmission region] ("Upgrades");

**WHEREAS**, the [*Cluster Study/ Cluster Study Deliverability Study/Class Year Interconnection Facilities Study/ Class Year Deliverability Study/Affected System Study*] has determined the cost estimate for the engineering, procurement, and construction of the Upgrades ("Interconnection Customer Common Upgrades Cost Cap");

**WHEREAS**, Interconnection Customers and System Owner desire to [perform/have Interconnection Customers perform/have System Owner perform], and [they are willing to perform/Interconnection Customers are willing to perform/System Owner is willing to perform], the engineering, procurement, and construction services required to construct the Upgrades ("Construction Services") in accordance with the terms and conditions hereinafter set forth; and

**WHEREAS**, Interconnection Customers, System 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 Construction Services required to construct the 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 OATT, Section 40.1 of Attachment HH to the OATT, Section 30.1 of Attachment X to the ISO OATT, Section 25.1.2 of Attachment S to the OATT, the body of the Standard Interconnection Procedures or Standard Facility Interconnection Procedures, or the body of this Agreement.

**Affected System** shall mean an electric system within the New York Control Area other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Interconnection Customer** shall mean any entity that submits an interconnection request for a Facility to a transmission system other than New York State Transmission System that may cause the need for Affected System Network Upgrades on the New York State Transmission System.

**Affected System Network Upgrades** shall mean the additions, modifications, and upgrades to the New York State Transmission System required to accommodate Affected System Interconnection Customer's proposed interconnection to a transmission system other than the New York State Transmission System.

**Affected System Operator** shall mean the entity that operates an Affected System. Affected System Operator includes the Affected Transmission Owners.

**Affected System Study** shall mean the NYISO's evaluation of the impacts on the New York State Transmission System of an Affected System Interconnection Customer's proposed interconnection to a transmission system other than the New York State Transmission System, as described in Section 40.8.3 of Attachment HH to the OATT.

**Affected Transmission Owner** shall mean the New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the ISO OATT, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, Affected Network Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachments P, S, X, Z, or HH to the ISO OATT.

**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 Electric Reliability Organization, the NPCC and the NYSRC.

**Applicable Reliability Requirements** shall mean the NYSRC Reliability Rules, and other criteria, standards and procedures, as described in Section 40.12.1.2 of this Attachment HH, applied when conducting the Cluster Baseline Assessment and the Cluster Project Assessment; 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 the Standard Interconnection Procedures. The Applicable Reliability Requirements applied are those in effect when the particular assessment is commenced.

**Applicable Reliability Standards** shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Interconnection Customer's Facility is directly interconnected, 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.

**Class Year Interconnection Facilities Study ("Class Year Study")** shall mean a study conducted by the NYISO or a third party consultant for the Interconnection Customer 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 Large Facility Interconnection Procedures in Attachment X to the ISO OATT.

**Class Year Transmission Project** shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Class Year Transmission Project without having to re-dispatch generation. Class Year Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

**Cluster Study** shall mean the study conducted, as applicable, by the ISO, Connecting Transmission Owner, Affected Transmission Owner, Affected System Operator or a third party consultant for the Interconnection Customer to determine a list of facilities (including Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System Deliverability Upgrades), the cost of those facilities, and the time required to interconnect the Generating Facility or Cluster Study Transmission Project with the New York State Transmission System or with the Distribution System. The Cluster Study includes the Phase 1 Study and the Phase 2 Study.

**Cluster Study Transmission Project** shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Cluster Study Transmission Project without having to re-dispatch generation. Cluster Study Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

**Completion Date** shall mean the date on which, as applicable, the System Owner or Interconnection Customers have completed the Construction Services, as set forth in Appendix A.

**Confidential Information** shall mean any information that is defined as confidential by Article 15 of this Agreement.

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

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

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 10 of this Agreement.

**Distribution System** shall mean the Connecting Transmission Owner's facilities and equipment used to distribute electricity that are subject to FERC jurisdiction, and are subject to the NYISO's Standard Interconnection Procedures in Attachment HH 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 on which this Agreement becomes effective in accordance with Article 2.1 of this Agreement.

**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.

**Facility** shall mean, as applicable, the Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project interconnecting to the New York State Transmission System or Distribution System or, for an Affected System Interconnection Customer, the generation or transmission facility interconnecting to another region's transmission system. For purpose of

this agreement, a Facility is each individual generation or transmission facility identified in the Recitals, which are collectively the Facilities.

**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.

**Generating Facility** shall mean Interconnection Customer’s device(s) for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer’s Attachment Facilities or Distribution Upgrades. A facility comprised of multiple Generators will be treated as a single Generating Facility if the facility proposed in the Interconnection Request is comprised of multiple Generators behind a single Point of Interconnection, even if such Generators are different technology types.

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

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

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

**In-Service Date** shall mean the date upon which the Upgrades are energized consistent with the provisions of this Agreement, notice of which must be provided to the other Parties by, as applicable, the Interconnection Customer or System Owner in the form of Appendix C.

**Interconnection Agreement** shall mean, as applicable, the Standard Interconnection Agreement or Standard Large Generator Interconnection Agreement, or, if a Facility is interconnecting to another region's transmission system, the interconnection agreement entered into in that region.

**Interconnection Customer** shall mean, as applicable, an Interconnection Customer as defined in Attachment HH to the ISO OATT, a Developer as defined in Attachments S and X of the ISO OATT, or an Affected System Interconnection Customer as defined in Attachment HH to the ISO OATT. For purposes of this Agreement, the Interconnection Customer shall have the meaning set forth in the introductory paragraph.

**Interconnection Customer Common Upgrades Cost Cap** shall mean an Interconnection Customer's portion of the estimated cost of the Upgrades as described in Appendix A.

**Interconnection Request** shall mean an Interconnection Customer's request, in the form of Appendix 1 to Attachment X to the ISO OATT or Appendix 1 to Attachment HH to the ISO OATT, to interconnect a new 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 Facility that is interconnected with the New York State Transmission System or with the Distribution System. For purposes of the Interconnection Request, a facility comprised of multiple Generators behind the same Point of Interconnection may be considered a single Generating Facility, provided the Interconnection Request identifies a single Interconnection Customer.

**Invoice Share** shall mean an individual Interconnection Customer's percentage share of the Interconnection Customers' total cost responsibility for the Construction Services subject to the Interconnection Customers' Common Upgrades Cost Cap as described in Appendix A.

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

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

**ISO OATT** shall mean the NYISO's Open Access Transmission Tariff, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

**Milestones** shall mean the milestones for the performance of the Construction 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 NYISO 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 pursuant to Article 20 of this Agreement 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 Tariffs** shall mean the ISO OATT and ISO Services Tariff.

**NYSRC** shall mean the New York State Reliability Council or its successor organization.

**Party or Parties** shall have the meaning set forth in the introductory paragraph.

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

**Standard Multiparty Upgrade Construction Agreement** shall mean this Agreement.

**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.

**System Owner** shall mean, as applicable, the Affected System Operator, Affected Transmission Owner, or Connecting Transmission Owner. For purposes of this Agreement, the System Owner shall be defined in the introductory paragraph.

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

**Upgrades** shall mean, as applicable, System Upgrade Facilities, System Deliverability Upgrade Facilities, or Affected Network Upgrade Facilities. For purposes of this Agreement, the Upgrades shall have the meaning set forth in the recitals and shall be described in Appendix A.



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

### **2.1 Effective Date.**

This Agreement shall become effective upon the date of execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO, and if applicable, the System Owner, shall promptly file this Agreement with FERC upon execution, if required, in accordance with the requirements in the OATT. Interconnection Customers and System Owner shall reasonably cooperate with the NYISO with respect to the filing of this Agreement with FERC and provide any information reasonably requested by the NYISO needed for such filing.

### **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 have been made pursuant to Articles 6.1 and 6.3 and any remaining Security has been released or refunded pursuant to Article 6.2.

### **2.3 Termination.**

#### **2.3.1 Completion of Term of Agreement**

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

#### **2.3.2 Written Notice.**

This Agreement may be terminated by the mutual agreement in writing of all of the Parties.

#### **2.3.3 Default.**

Any Party may terminate this Agreement to the extent permitted under Article 10 and Article 20.

#### **2.3.4 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 entire Agreement is terminated pursuant to Articles 2.3.2 or 2.3.3 above, the Interconnection Customers shall be responsible for all costs that are the responsibility of the Interconnection Customers under this Agreement that are incurred by the Interconnection

Customers or other Parties through the date the Parties agree in writing to terminate the agreement. Such costs shall be allocated among the Interconnection Customers using the same methodology as set forth in Article 5 regarding each Interconnection Customer's responsibility for the costs of the Construction Services, subject to the Interconnection Customer Common Upgrade Cost Cap. Such costs include any cancellation costs relating to orders or contracts concerning the Construction Services or Upgrades. 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:

**2.4.1** With respect to any portion of the Upgrades for which the System Owner or Interconnection Customers (the "Constructing Party") are responsible for constructing or installing under this Agreement and that have not yet been constructed or installed, the Constructing Party shall, to the extent possible and with the other Party's (i.e., the System Owner or each of the Interconnection Customers as applicable) authorization, cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, the Upgrades; provided that in the event an other Party (including one or more of the Interconnection Customers) elects not to authorize such cancellation, that other Party shall assume all payment obligations, including in the event it is one of the Interconnection Customers reimbursing the other Interconnection Customer for any payments it has already made, with respect to such materials, equipment, and contracts, and the Constructing Party shall deliver such material and equipment, and, if necessary, assign such contracts, to the other Party as soon as practicable, at the other Party's expense. To the extent that the other Party has already paid the Constructing Party for any or all such costs of materials or equipment not taken by the other Party, the Constructing Party shall promptly refund such amounts to the other Party, less any costs, including penalties incurred by the Constructing Party to cancel any pending orders of or return such materials, equipment, or contracts.

**2.4.2** The Constructing Party may, at its option, retain any portion of such materials or equipment that the other Party chooses not to accept delivery of, in which case the Constructing Party shall be responsible for all costs associated with procuring such materials or equipment.

**2.4.3** With respect to any portion of the Construction Services already performed pursuant to the terms of this Agreement, Interconnection Customers shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such related materials, equipment, or facilities and such other expense actually incurred by System Owner to return its system to safe and reliable operation.

## **2.5 Termination of One or More Interconnection Customers**

In the event of the termination of this Agreement for one or more, but not all, Interconnection Customers in accordance with Article 10.2, each Interconnection Customer whose participation in this Agreement is terminated shall be responsible for the payment to System Owner of that Interconnection Customer's Invoice Share of all amounts then due and payable for construction and installation of the Upgrades (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by System Owner in connection with the construction and installation of the Upgrades, through the

date of termination. The terminated Interconnection Customer's remaining Security for the Upgrades shall be subject to forfeiture to the extent required in accordance with the rules in Section 40.16 of Attachment HH to the ISO OATT. The cost responsibility of other Interconnection Customers shall be adjusted, as necessary, based on the payments by the terminated Interconnection Customer(s) and the application of any of the forfeited Security in accordance with the requirements in Section 40.16 of Attachment HH of the ISO OATT.

## **2.6 Survival.**

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

## **2.7 No Annexation.**

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

# **ARTICLE 3. CONSTRUCTION SERVICES**

## **3.1 Performance of Construction Services.**

System Owner shall be responsible for performing the Construction Services. At System Owner's sole discretion, System Owner may agree with Interconnection Customers for Interconnection Customers to perform such services. System Owner's and Interconnection Customers' respective obligations concerning the Construction Services shall be set forth in Appendix A hereto. System Owner and Interconnection Customers shall each use Reasonable Efforts to complete the Construction Services for which it has responsibility by the Milestone dates set forth in Appendix A hereto. The System Owner shall not be required to undertake any action which is inconsistent with the System Owner's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. The NYISO has no responsibility, and shall have no liability, for the performance of any of the Construction Services under this Agreement.

## **3.2 General Conditions Applicable to Interconnection Customers' Performance of the Construction Services.**

If System Owner and Interconnection Customers agree pursuant to Article 3.1 for the Interconnection Customers to be responsible for the design, procurement, and/or construction of any Upgrades as set forth in Appendix A, the following conditions apply:

**3.2.1** Interconnection Customers shall engineer, procure equipment, and construct the Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by System Owner;

**3.2.2** Interconnection Customers' engineering, procurement and construction of the Upgrades shall comply with all requirements of law to which System Owner would be subject in the engineering, procurement or construction of the Upgrades;

**3.2.3** System Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Upgrades;

**3.2.4** Prior to the commencement of construction, Interconnection Customers shall provide System Owner and NYISO a schedule for construction of the Upgrades, and shall promptly respond to requests for information from System Owner or NYISO;

**3.2.5** At any time during construction, System Owner shall have the right to gain unrestricted access to the Upgrades and to conduct inspections of the same;

**3.2.6** At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Upgrades not meet the standards and specifications provided by System Owner, Interconnection Customers shall be obligated to remedy deficiencies in that portion of the Upgrades;

**3.2.7** Interconnection Customers shall indemnify System Owner and NYISO for claims arising from Interconnection Customers' construction of Upgrades under procedures applicable to Article 11.1 Indemnity;

**3.2.8** Interconnection Customers shall transfer control of Upgrades to System Owner;

**3.2.9** Unless Interconnection Customers and System Owner otherwise agree, Interconnection Customers shall transfer ownership of Upgrades to System Owner;

**3.2.10** System Owner shall approve and accept for operation and maintenance the Upgrades to the extent engineered, procured, and constructed in accordance with this Article 3.2;

**3.2.11** Interconnection Customers shall deliver to NYISO and System Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or System Owner to assure that the Upgrades are built to the standards and specifications required by System Owner; and

**3.2.12** Interconnection Customers shall pay the System Owner the agreed upon amount of [\$ PLACEHOLDER] for the System Owner to execute the responsibilities enumerated to System Owner under Article 3.2. System Owner shall invoice Interconnection Customers for this total amount to be divided on a monthly basis pursuant to Article 6. Such costs shall be allocated among the Interconnection Customers using the same methodology as set forth in

Article 5 regarding each Interconnection Customer's responsibility for the costs of the Construction Services.

### **3.3 Design and Equipment Procurement**

If responsibility for construction of the Upgrades is to be borne by the System Owner, then the System Owner shall commence the design and procurement of the Upgrades for which it is responsible as soon as practicable after all of the following conditions are satisfied, unless the Interconnection Customers and System Owner otherwise agree in writing:

**3.3.1** NYISO has completed, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study;

**3.3.2** The NYISO has completed the required cost allocation analyses, and each Interconnection Customer has accepted its Project Cost Allocation for the Upgrades required for the Facility in accordance with the provisions of Attachment S or HH of the ISO OATT;

**3.3.3** System Owner has received written authorization to proceed with design and procurement of the Upgrades from the Interconnection Customers by the date specified in Appendix A hereto; and

**3.3.4** Each Interconnection Customer has provided Security to the System Owner for the design and procurement of the Upgrades in accordance with Article 5 by the date(s) specified in Appendix A hereto.

### **3.4 Construction Commencement**

System Owner shall commence construction of the Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

**3.4.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

**3.4.2** Necessary real property rights and rights-of-way have been obtained, to the extent required, for the construction of a discrete aspect of the Upgrades;

**3.4.3** System Owner has received written authorization to proceed with construction from the Interconnection Customer by the date specified in Appendix A hereto; and

**3.4.4** Each Interconnection Customer has provided security to the System Owner for the construction of the applicable facilities in accordance with Article 5.2 by the date(s) specified in Appendix A hereto.

### **3.5 Work Progress.**

The Interconnection Customers and System Operator will keep each other, and NYISO, advised periodically as to the progress of its respective design, procurement and construction

efforts. Any Party may, at any time, request a progress report from the Interconnection Customers or System Owner.

### **3.6 Information Exchange.**

As soon as reasonably practicable after the Effective Date, Interconnection Customers and System Owner shall exchange information, and provide NYISO the same information, regarding the design of the Upgrades and compatibility of the 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 and Control of Upgrades.**

System Owner shall own the Upgrades as described in Appendix A. The System Owner's and, if applicable, NYISO's operational control of the Upgrades upon the completion of the facilities shall be described in Appendix A.

### **3.8 Access Rights.**

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, either the System Owner or an Interconnection Customer ("Granting Party") shall furnish to the other Parties ("Access Party") at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain the ingress and egress required for the performance of the Construction Services, including to construct, repair, test (or witness testing), inspect, replace or remove the Upgrades. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

### **3.9 Lands of Other Property Owners.**

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

### **3.10 Permits.**

NYISO, Interconnection Customers, and System Owner shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to

accomplish the Construction Services in compliance with Applicable Laws and Regulations. With respect to this paragraph, System Owner shall provide permitting assistance to the Interconnection Customers comparable to that provided to System Owner's own, or an Affiliate's, generation facilities, if any.

**3.11 Reserved.**

**3.12 Taxes.**

**3.12.1 Indemnification for Contributions in Aid of Construction.**

With regard only to payments made by Interconnection Customers to System Owner for the installation of the Upgrades, System Owner shall not include a gross-up for income taxes in the amounts it charges Interconnection Customers for the installation of the Upgrades unless (1) System Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customers to System Owner should be reported as income subject to taxation, or (2) any Governmental Authority directs System Owner to report payments or property as income subject to taxation. Interconnection Customers shall reimburse System Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from System Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten (10)-year testing period and the applicable statute of limitation, as it may be extended by System Owner upon request of the Internal Revenue Service, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.12.1, and to the extent permitted by law, to the extent that the receipt of such payments by System Owner is determined by any Governmental Authority to constitute income by System Owner subject to taxation, Interconnection Customers shall protect, indemnify, and hold harmless System Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest, and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, System Owner shall provide Interconnection Customers with written notification within thirty (30) Calendar Days of such determination and notification. System Owner, upon the timely written request by any one or more Interconnection Customer(s) and at the expense of such Interconnection Customer(s), shall appeal, protest, seek abatement of, or otherwise oppose such determination. System Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that System Owner shall cooperate and consult in good faith with the requesting Interconnection Customer(s) regarding the conduct of such contest. Interconnection Customer(s) shall not be required to pay System Owner for the tax, interest, and/or penalties prior to the seventh (7th) Calendar Day before the date on which System Owner (1) is required to pay the tax, interest, and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement, or other contest; (2) is required to pay the tax, interest, and/or penalties as the result of a final, non appealable order by a Governmental Authority; or (3) is required to pay the tax, interest, and/or penalties as a

prerequisite to an appeal, protest, abatement, or other contest. In the event such appeal, protest, abatement, or other contest results in a determination that System Owner is not liable for any portion of any tax, interest, and/or penalties for which any Interconnection Customer(s) has already made payment to System Owner, System Owner shall promptly refund to such Interconnection Customer(s) any payment attributable to the amount determined to be non-taxable, plus any interest (calculated in accordance with 18 CFR 35.19a(a)(2)(iii)) or other payments System Owner receives or to which System Owner may be entitled with respect to such payment. Each Interconnection Customers shall provide System Owner with credit assurances sufficient to meet each Interconnection Customer's estimated liability for reimbursement of System Owner for taxes, interest, and/or penalties under this Article 3.12.1. Such estimated liability shall be stated in Appendix A.

To the extent that System Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: System Owner represents, and the Parties acknowledge, that System Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Interconnection Customers to System Owner for Upgrade(s) is to be treated as upfront payments. It is anticipated by the Parties that any amounts paid by each Interconnection Customer to System Owner for the Upgrades will be reimbursed to such Interconnection Customer in accordance with the terms of this Agreement, provided such Interconnection Customer fulfills its obligations under this Agreement.

### **3.12.2 Private Letter Ruling.**

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

### **3.12.3 Other Taxes.**

Upon the timely request by any one or more Interconnection Customer(s), and at such Interconnection Customer(s)' sole expense, System Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against System Owner for which such Interconnection Customer(s) may be required to reimburse System Owner under the terms of this Agreement. Interconnection Customer(s) who requested the action shall pay to System Owner on a periodic basis, as invoiced by System Owner, System Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. The requesting Interconnection Customer(s) and System Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer(s) to System Owner for such taxes until they are assessed by a final, non-appealable



order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer(s) will be responsible for all taxes, interest, and penalties, other than penalties attributable to any delay caused by System Owner. Each Party shall cooperate with the other Party to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds, as described in section 142(f) of the Internal Revenue Code.

### **3.13 Tax Status; Non-Jurisdictional Entities.**

#### **3.13.1 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 System Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of New York, Inc. 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 their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

#### **3.13.2 Tax Status.**

LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

### **3.14 Modification.**

#### **3.14.1 General**

If, prior to the In-Service Date, the System Owner proposes to modify the Upgrades, the System Owner must provide to the NYISO at least ninety (90) Calendar Days in advance of the commencement of the work, or such shorter period upon which the Parties may agree, sufficient information for the NYISO to evaluate the impact of the proposed modification on, as applicable: (i) the reliable interconnection of Interconnection Customers' Facilities to the New York State Transmission System or (ii) the reliability of the New York State Transmission System due to the Facilities' interconnection to another region's transmission system. The NYISO's agreement to the proposed modification shall not be unreasonably withheld, conditioned, or delayed if the proposed modification is reasonably related to the interconnection of the Facility and will enable Interconnection Customers' Facilities to reliably interconnect to the New York State Transmission System or ensure the reliability of the New York State Transmission System of the Facilities' interconnection to another region's transmission system. If the cost of the modified Upgrades is greater than the Interconnection Customer Common Upgrade Cost Cap, the additional cost will be allocated in accordance with, as applicable,

Sections 25.6.1.4.1 and 25.8.6 of Attachment S or Sections 40.12.1.5.1 and 40.16.3 of Attachment HH to the ISO OATT.

### **3.14.2 Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

### **3.14.3 Modification Costs.**

Interconnection Customers shall not be assigned the costs of any additions, modifications, or replacements that System Owner makes to the Upgrades or the New York State Transmission System to facilitate the interconnection of a third party to the 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 S or HH of the ISO OATT.

## **ARTICLE 4. TESTING AND INSPECTION**

### **4.1 Initial Testing and Modifications.**

Prior to the In-Service Date of the Upgrades, the System Owner or Interconnection Customers, as specified in Appendix A, shall test the Upgrades to ensure their safe and reliable operation. The Party responsible for constructing the Upgrades shall make any modifications to the Upgrades that are found to be necessary as a result of such testing. Interconnection Customers shall bear the cost of all such testing and modifications

### **4.2 Right to Observe Testing.**

The Party performing the testing shall notify the other Parties in advance of its performance of tests of the Upgrades. Each of the other Parties shall have the right, at its own expense, to observe such testing.

## **ARTICLE 5. PERFORMANCE OBLIGATIONS**

### **5.1 Cost Responsibilities**

**5.1.1** Each Interconnection Customer will be responsible for its respective Invoice Share of the monthly costs incurred by System Owner in performing the Construction Services; *provided, however*, that the Interconnection Customer will not be responsible for any costs above the Interconnection Customer Common Upgrade Cost Cap, except as set forth in Article 5.1.3.

**5.1.2** On a periodic basis as set forth in the Milestones in Appendix A, System Owner shall provide to the other Parties in writing an estimated estimate of its costs for performing the Construction Services. The updated cost estimate shall fully specify any additional services and equipment required for the System Owner to perform the Construction Services and explain why these additional services and equipment are required.

**5.1.3** If the System Owner's updated cost estimate as provided under Article 5.1.2 is greater than the estimated cost for such services as determined by the applicable Class Year Interconnection Facility Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Additional System Study, each Interconnection Customer's responsibility for any costs above its Interconnection Customer Common Upgrade Cost Cap shall be determined in accordance with, as applicable, Section 25.8.6 of Attachment S or Section 40.16.3 of Attachment HH to the ISO OATT. The Parties shall amend this Agreement if there are any changes to the Interconnection Customer Common Upgrade Cost Cap required by, as applicable, Section 25.8.6 of Attachment S or Section 40.16.3 of Attachment HH to the ISO OATT.

**5.1.4** If the final cost incurred by the System Owner in performing the Construction Services is less than the estimated cost for such services as determined by the applicable Class Year Interconnection Facility Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Additional System Study and set forth in Appendix A, then the System Owner shall make a true-up payment to each Interconnection Customer pursuant to Article 6.2 to refund to the Interconnection Customer any costs that the Interconnection Customer has paid to the System Owner under Article 5.1.1 that are greater than its Invoice Share of the actual costs.

**5.1.5** System Owner shall be solely responsible for its costs in performing the Construction Services that are not recoverable from Interconnection Customers under this Article 5.1.

## **5.2 Provision and Application of Security**

**5.2.1** If an Interconnection Customer accepted its Project Cost Allocation and posted to System Owner the Security for its Upgrades in the amount of its Interconnection Customer Common Upgrade Cost Cap at the conclusion of, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study, then that Interconnection Customer shall not be responsible for posting additional Security under this Agreement. The Interconnection Customer's Security shall be subject to the requirements of Attachment S or HH to the ISO OATT.

**5.2.2** If an Interconnection Customer was not required to post Security to the System Owner in the amount of its Interconnection Customer Common Upgrade Cost Cap at the conclusion of, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study, then at least thirty (30) Calendar Days prior to the System Owner's commencement of the procurement, installation, or construction of a discrete portion of the Upgrades as such portion(s) are detailed in the Milestones in Appendix A, that Interconnection Customer shall provide System Owner, at the Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to System Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 7.2 of this Agreement. Such security for payment shall be in an amount sufficient to cover the costs for the Interconnection

Customer's Invoice Share, and shall be reduced on a dollar-for-dollar basis for payments made to System Owner for these purposes.

In addition:

5.2.2.1 The guarantee must be made by an entity that meets the commercially reasonable creditworthiness requirements of System Owner, and contains terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.

5.2.2.2 The letter of credit must be issued by a financial institution reasonably acceptable to System Owner and must specify a reasonable expiration date.

5.2.2.3 The surety bond must be issued by an insurer reasonably acceptable to System Owner and must specify a reasonable expiration date.

## **ARTICLE 6. INVOICE**

### **6.1 General.**

To the extent that any amounts are due to the Interconnection Customers or System Owner under this Agreement, the Interconnection Customers and System Owner, as applicable, shall submit to the other Party(ies), on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. For amounts due to the System Owner, System Owner shall invoice each Interconnection Customer for each Interconnection Customer's respective share of the costs associated with the Construction Services, in proportion to each Interconnection Customer's Invoice Share set forth in Appendix A. The Interconnection Customers and System 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 another 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.

### **6.2 Final Invoice and Refund of Remaining Security/Overpayment Amount**

Within one hundred eighty (180) Calendar Days of the Completion Date, Interconnection Customers or System Owner, as applicable, shall provide a final invoice to the other Party of any remaining amounts due associated with the Construction Services. Within thirty (30) Calendar Days of the later of: (i) an Interconnection Customer's payment of any final invoice to the System Owner, and (ii) the completion of the Construction Services, System Owner shall release or refund to the Interconnection Customer any remaining portions of its Security and any amount that Interconnection Customer has overpaid under this Article 6.

### **6.3 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.

#### **6.4 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; 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 10. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

### **ARTICLE 7. REGULATORY REQUIREMENTS AND GOVERNING LAW**

#### **7.1 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 a Party to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

#### **7.2 Governing Law.**

**7.2.1** 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.

**7.2.2** This Agreement is subject to all Applicable Laws and Regulations.

**7.2.3** 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 8. NOTICES**

#### **8.1 General.**

Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to the other Parties and any instrument required or permitted to be tendered or delivered by a Party in writing to the other Parties shall be effective when

delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix B hereto.

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.

## **8.2 Billings and Payments.**

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

## **8.3 Alternative Forms of Notice.**

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

# **ARTICLE 9. FORCE MAJEURE**

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

# **ARTICLE 10. DEFAULT**

## **10.1 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 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.

## **10.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 10, 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.

Notwithstanding the foregoing, if one or more, but not all, of the Interconnection Customers to the Agreement are the Breaching Parties, the non-Breaching Parties acting together shall have the right to declare a Default and terminate this Agreement solely for those Interconnection Customers in Breach. In such case, the remaining Parties shall amend this Agreement to remove the terminated Parties and to make any modifications required to account for the treatment of any remaining Security for the Upgrades forfeited by the terminated Interconnection Customer(s) in accordance with the requirements of Section 40.16 of Attachment HH to the ISO OATT.

## **ARTICLE 11. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

### **11.1 Indemnity.**

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

#### **11.1.1 Indemnified Party.**

If a Party is entitled to indemnification under this Article 11 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 11.1.3, 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.

#### **11.1.2 Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 11, 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.

### **11.1.3 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 11.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

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

## **11.2 No Consequential Damages.**

Other than the indemnity obligations set forth in Article 11.1, 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.



### **11.3 Insurance.**

*[If System Owner and Interconnection Customers agree pursuant to Article 3.1 of this Agreement for Interconnection Customers to be responsible for any of the Construction Services under this Agreement, the insurance requirements in this Article 11.3 shall be applicable to Interconnection Customers as well.]*

The System Owner and, if applicable, each Interconnection Customer 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:

**11.3.1** Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of New York State.

**11.3.2** 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.

**11.3.3** 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.

**11.3.4** 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.

**11.3.5** 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.

**11.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of System Owner and, if applicable, each Interconnection Customer shall name the each other Party, its parent, 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.

**11.3.7** 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. System Owner and, if applicable, each Interconnection Customer shall each be responsible for its respective deductibles or retentions.

**11.3.8** 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 the Interconnection Customers and System Owner.

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

**11.3.10** The requirements contained herein as to the types and limits of all insurance to be maintained by the System Owner and, if applicable, each Interconnection Customer are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

**11.3.11** Within [insert term stipulated by the Parties] Calendar Days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) Calendar Days thereafter, Interconnection Customers and System Owner, as applicable, shall provide certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

**11.3.12** Notwithstanding the foregoing, either of System Owner and, if applicable, an Interconnection Customer may each self-insure to meet the minimum insurance requirements of Articles 11.3.1 through 11.3.9 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 11.3.1 through 11.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 11.3.12, it shall notify the other Party 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 11.3.1 through 11.3.9 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 11.3.1 through 11.3.9.

**11.3.13** Interconnection Customers and System Owner agree to report to each other 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.

**11.3.14** Subcontractors of each party must maintain the same insurance requirements stated under Articles 11.3.1 through 11.3.9 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 12. 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 each Interconnection Customer shall have the right to assign this Agreement, without the consent of the NYISO or System Owner, for collateral security purposes to aid in providing financing for the Facility, provided that the Interconnection Customer will promptly notify the NYISO and System Owner of any such assignment. Any financing arrangement entered into by an Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and System Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and System Owner with proof that it meets the requirements of Articles 5.2 and 11.3. 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 13. 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 14. COMPARABILITY**

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

## **ARTICLE 15. CONFIDENTIALITY**

### **15.1 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 15.

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.

### **15.2 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 15, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

### **15.3 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 OATT.

### **15.4 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 15.9 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.

#### **15.5 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 Interconnection Customers, 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 15 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 15.

#### **15.6 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.

#### **15.7 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.

#### **15.8 Standard of Care.**

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

#### **15.9 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.

#### **15.10 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.

#### **15.11 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 15. 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 15, 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 15, 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 15.

#### **15.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article 15 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 OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

### **15.13 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 OATT or the 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 16. INTERCONNECTION CUSTOMER AND SYSTEM OWNER NOTICES OF ENVIRONMENTAL RELEASES**

Interconnection Customers and System 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 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 17. INFORMATION REQUIREMENT**

### **17.1 Information Acquisition.**

Interconnection Customers and System Owner shall each submit specific information regarding the electrical characteristics of its facilities to the other Parties as described below and in accordance with Applicable Reliability Requirements.

### **17.2 Information Submission Concerning the Upgrades.**

The initial information submission by System Owner shall occur as specified in the Milestones in Appendix A and shall include New York State Transmission System information necessary to allow an Interconnection Customer to select equipment for its Facility and meet any system protection and stability requirements, unless otherwise mutually agreed to by the Interconnection Customers and System Owner. On a monthly basis, System Owner and Interconnection Customers shall each provide the other Parties a status report on the construction and installation of the Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

### **17.3 Information Submission Concerning the Facility.**

The updated information submission by the Interconnection Customers, including manufacturer information, shall occur as specified in the Milestones in Appendix A. Each Interconnection Customer shall submit a completed copy, if applicable, of the Facility data requirements contained in Appendix 1 to the Standard Large Facility Interconnection Procedures or Appendix 1 to the Standard Interconnection Procedures. It shall also include any additional information provided to System Owner, as applicable, for the Class Year Interconnection Facilities Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study. Information in this submission shall be the most current Facility design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If an Interconnection Customer's data is different from what was originally provided to System Owner and NYISO in, as applicable, its Interconnection Request or with its Affected System Study Agreement and this difference may be reasonably expected to affect the other Parties' facilities or the New York State Transmission System, but does not require the submission of a new Interconnection Request, then that Interconnection Customer will notify the NYISO, the other Interconnection Customer(s), and System Owner of such modifications.

### **17.4 Information Supplementation.**

The Interconnection Customers and System Owner shall supplement the information submissions described above in this Article 17 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 18. INFORMATION ACCESS AND AUDIT RIGHTS**

### **18.1 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 18.1 and to enforce their rights under this Agreement.

### **18.2 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.

### **18.3 Audit Rights.**

Subject to the requirements of confidentiality under Article 15 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 18.4 of this Agreement.

### **18.4 Audit Rights Periods.**

#### **18.4.1 Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of the Upgrades shall be subject to audit for a period of twenty-four months following the issuance of a final invoice in accordance with Article 6.1 of this Agreement.

#### **18.4.2 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 18.4.1 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.

### **18.5 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 19. SUBCONTRACTORS**

### **19.1 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.

## **19.2 Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; *provided, however*, that in no event shall the NYISO or System Owner be liable for the actions or inactions of an Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customers 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.

## **19.3 No Limitation by Insurance.**

The obligations under this Article 19 will not be limited in any way by any limitation of subcontractor's insurance.

# **ARTICLE 20. DISPUTES**

## **20.1 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.

## **20.2 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(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; *provided, however*, in the event of a conflict between the Arbitration Rules and the terms of this Article 20, the terms of this Article 20 shall prevail.

## **20.3 Arbitration Decisions.**

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

#### **20.4 Costs.**

Each Party shall be responsible for its own costs incurred during the arbitration process and its per capita share of the costs of the single arbitrator.

#### **20.5 Termination.**

Notwithstanding the provisions of this Article 20, 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 21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### **21.1 General.**

Each Party makes the following representations, warranties and covenants:

##### **21.1.1 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, to enter into this Agreement and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

##### **21.1.2 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).

### **21.1.3 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.

### **21.1.4 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 the Party will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

## **ARTICLE 22. MISCELLANEOUS**

### **22.1 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.

### **22.2 Conflicts.**

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

### **22.3 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; (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, or such Section to the Standard Interconnection Procedures or such Appendix to the Standard Interconnection Procedures as the case may be; (6) "hereunder," "hereof," "herein," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including

without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including.”

#### **22.4 Compliance.**

Each Party shall perform its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, the 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.

#### **22.5 Joint and Several Obligations.**

If System Owner and Interconnection Customers agree for the Interconnection Customers to perform Construction Services under this Agreement, each Interconnection Customer shall be joint and severally liable with the other Interconnection Customer(s) for the obligations to perform such services under this Agreement. Except as otherwise stated herein, the obligations of NYISO, each Interconnection Customer, and System Owner are several, and are neither joint nor joint and several.

#### **22.6 Entire Agreement.**

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

#### **22.7 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.

#### **22.8 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 any 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. Termination or Default of this Agreement for any reason by an Interconnection Customer shall not constitute a waiver of such Interconnection Customer’s legal rights to obtain

Capacity Resource Interconnection Service and Energy Resource Interconnection Service from the NYISO and the relevant System Owner in accordance with the relevant Interconnection Agreement and the provisions of the OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

## **22.9 Headings.**

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

## **22.10 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.

## **22.11 Amendment.**

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

## **22.12 Modification by the Parties.**

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

## **22.13 Reservation of Rights.**

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

## **22.14 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.

#### **22.15 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 Interconnection Customers shall be entitled to, now or in the future under any other agreement or tariff as a result of or otherwise associated with, the transmission capacity, if any, created by the Upgrades.

#### **22.16 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 Multiparty Upgrade Construction Agreement located in Appendix 17 of Attachment HH 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* Standard Multiparty Upgrade Construction 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.

**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: \_\_\_\_\_

**[Insert Name of System Owner]**

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

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

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

Date: \_\_\_\_\_

**[Insert Name of Interconnection Customer]**

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

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

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

Date: \_\_\_\_\_

**[Insert Name of Interconnection Customer]**

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

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

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

Date: \_\_\_\_\_



## **APPENDICES**

### **Appendix A**

Construction Services

### **Appendix B**

Addresses for Delivery of Notices and Billings

### **Appendix C**

In-Service Date

## APPENDIX A

### CONSTRUCTION SERVICES

#### 1. Upgrades

*[Insert description of Upgrades and specify Interconnection Customers' and System Owner's responsibilities to design, procure, and construction Upgrades]*

#### 2. Security and Interconnection Customers' Common Upgrades Cost Cap

*[Insert table indicating Interconnection Customers' Common Upgrades Cost Cap amount and insert description of security provided by Interconnection Customers to System Owner for Upgrades]*

#### 3. Invoice Share

*[Insert table indicating each Interconnection Customer's Invoice Share percentage reflecting each Interconnection Customer's cost responsibility for the Upgrades]*

#### 4. Milestones

| Item | Milestone           | Date          | Responsible Party |
|------|---------------------|---------------|-------------------|
| 1.   | [insert milestones] | [insert date] |                   |
| 2.   | In-Service Date     | [insert date] |                   |
| 3.   | Completion Date     | [insert date] |                   |

#### 5. Estimated Tax Liability

*[If applicable]*

## **APPENDIX B**

### **ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

#### **Notices:**

##### NYISO:

[To be supplied.]

##### System Owner:

[To be supplied.]

##### Interconnection Customer:

[To be supplied.]

##### Interconnection Customer:

[To be supplied.]

#### **Billings and Payments:**

##### System Owner:

[To be supplied.]

##### Interconnection Customer:

[To be supplied.]

##### Interconnection Customer:

[To be supplied.]

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

##### NYISO:

[To be supplied.]

##### System Owner:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

**APPENDIX C**  
**IN-SERVICE DATE**

**[Date]**

[Insert NYISO address]

[Insert System Owner address]

[Insert Interconnection Customer addresses]

Re: [Insert project name] Upgrades

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

On **[Date]** **[System Owner/Interconnection Customers]** has completed the Upgrades. This letter confirms that **[describe Upgrades]** have commenced service, effective as of **[Date plus one day]**.

Thank you.

**[Signature]**

**[Interconnection Customers'/System Owner's Representative(s)]**