

**31.16 Appendix M - Study Agreement for Evaluation of Designated Long-Term
Transmission Project (If Designated Entity Did Not Propose the Long-Term
Transmission Project)**

STUDY AGREEMENT FOR EVALUATION OF DESIGNATED LONG-TERM TRANSMISSION PROJECT (If Designated Entity Did Not Propose the Long-Term Transmission Project)

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 _____ (“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”). Developer and NYISO each may be referred to as a “Party,” or collectively as the “Parties.”

RECITALS

WHEREAS, pursuant to Section 31.6.11.5 of Attachment Y of the NYISO’s Open Access Transmission Tariff (“OATT”), the Developer was designated as the Designated Entity for a Designated Long-Term Transmission Project that is the Long-Term Transmission Project, or a portion of the project, that the NYISO selected pursuant to Section 31.6.11 as the more efficient or cost-effective Long-Term Transmission Project to address a Long-Term Transmission Need (the “Project”);

WHEREAS, pursuant to Section 31.6.12.2, the Designated Entity is responsible for entering into a Development Agreement with the NYISO for the development of the Project;

WHEREAS, pursuant to Section 31.6.12.2, the NYISO is responsible to develop the draft Development Agreement and its appendices and to negotiate and finalize these materials with Developer; and

WHEREAS, pursuant to Section 31.6.11.5 of Attachment Y to the OATT, Developer will submit, together with the execution of this Agreement, its application fee and deposit for the purpose of the NYISO’s performance of its Evaluation (as defined below) under this Agreement concerning the Project.

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 but not otherwise defined herein shall have the meanings indicated in Section 31.1.1 of Attachment Y to the OATT, or if not defined therein, in the OATT.
- 2.0** Pursuant to Section 31.6.12.2 of Attachment Y to the OATT, the NYISO shall develop the draft Development Agreement and its appendices and shall negotiate and finalize these materials with Developer, including any associated administrative and study work.

This work shall constitute the “Evaluation” under this agreement. The terms of Section 31.6.12.2 are hereby incorporated by reference herein.

- 3.0 Upon the execution of this Agreement, Developer shall also provide the NYISO with: (i) a non-refundable application fee of \$10,000 and (ii) a deposit of \$50,000 in accordance with Section 31.6.11.5 of Attachment Y to the OATT to secure Developer’s payment of the NYISO’s expenses incurred in performing the Evaluation. The NYISO will not commence its Evaluation of the Project prior to its receipt of Developer’s deposit. The NYISO shall invoice, and Developer shall pay to the NYISO, the actual costs of the Evaluation in accordance with Sections 31.6.9.4 and 31.6.11.5 of Attachment Y to the OATT. Upon settlement of the final invoice, the NYISO will return to Developer any remaining portion of the deposit, including any accrued interest, in accordance with Sections 31.6.9.4 and 31.6.11.5 of Attachment Y to the OATT.
- 4.0 The NYISO may engage an independent consultant to assist in the performance of the Evaluation and may rely on the independent consultant’s work and analysis in performing its Evaluation.
- 5.0 The scope of the Evaluation shall be subject, as applicable, to the study purposes and criteria set forth in Attachment Y to the OATT and to the assumptions set forth in Attachment A to this Agreement, if different from those determined in Attachment Y.

6.0 Miscellaneous.

- 6.1 Accuracy of Information. Except as Developer may otherwise specify in writing when it provides information to the NYISO under this Agreement, Developer represents and warrants that to the best of its knowledge and belief the information it has provided or subsequently provides to the NYISO is and shall be accurate and complete as of the date the information is provided. Developer shall promptly provide the NYISO with any additional information needed to update information previously provided.
- 6.2 Disclaimer of Warranty. In performing the Evaluation, the NYISO and any subcontractor consultants engaged by the NYISO will 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 the NYISO nor any subcontractor consultant engaged by the 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 Evaluation performed pursuant to this Agreement and the OATT. Developer acknowledges that it has not relied on any representations or warranties by

the NYISO or its subcontractor consultants 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. The NYISO or any subcontractor consultants engaged by the NYISO shall not be liable for direct damages, including money damages or other compensation, for actions or omissions by the NYISO or a subcontractor consultant in performing its obligations under this Agreement, except to the extent such act or omission by the NYISO or a subcontractor consultant is found to result from its gross negligence or willful misconduct. In no event shall either 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 and the OATT or any reliance on the Evaluation 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 either 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 further agrees that subcontractor consultants hired by NYISO to conduct or review, or to assist in the conducting or reviewing, the Evaluation of the Project 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 completion of the Evaluation, which shall be the date on which the Development Agreement for the Project is fully executed by the NYISO and Developer or the unexecuted version of the Development Agreement is accepted by the Commission. Developer or NYISO may end the Evaluation and terminate this Agreement upon the termination of the Project due to its failure to enter into a Development Agreement.

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 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. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 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 and the payment obligations provided under Section 3.0 shall survive the expiration or termination of this Agreement.
- 6.11 Independent Contractor. NYISO shall at all times be deemed to be an independent contractor for purposes of this Agreement and none of its employees or the employees of its subcontractors shall be considered to be employees of Developer 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.
- 6.14 Confidentiality. NYISO shall maintain the project information submitted by Developer under this Agreement in accordance with the requirements set forth in Sections 31.6.9.3.10, 31.6.9.3.11, and 31.6.15 of Attachment Y to the OATT.

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

NYISO

[Insert name of Developer]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____