

Appendix K-1 - Form Of Customer Prepayment Agreement

THIS PREPAYMENT AGREEMENT, effective as of **[date]** ("Prepayment Agreement") is entered into by and between the New York Independent System Operator, Inc. ("NYISO") and **[full legal name of customer]** ("Customer"). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to those terms in the Open Access Transmission Tariff ("OATT") or the Market Administration and Control Area Services Tariff ("Services Tariff"), as context requires.

1. **Prepayment to Reduce Operating Requirement.** Customer agrees to make a payment each week for purchases of Energy and Ancillary Services ("Prepayment") in order to reduce the Energy and Ancillary Services Component of its Operating Requirement pursuant to Section 26.4.2.1 of Attachment K of the Services Tariff.
2. **Prepayment Amount.** The amount of each Prepayment ("Prepayment Amount") shall be the NYISO's reasonable estimate, based on the charges incurred by Customer during the previous week, of the charges that Customer will incur during the following week for purchases of Energy and Ancillary Services in the NYISO-administered markets. The initial Prepayment Amount is \$**[amount]**. NYISO shall inform Customer of any change in the Prepayment Amount not later than 11:00 A.M. EST on the last business day prior to the day on which the next Prepayment is due. Amounts owed to Customer by NYISO in regular weekly settlements shall not reduce or offset the Prepayment Amount.
3. **Manner and Timing of Payment.** Customer shall make each Prepayment not later than 4:00 P.M. EST on the second business day after the NYISO requests Prepayment by wire transfer, or other payment method, if any, authorized by ISO Procedures, to the account designated by NYISO.
4. **Supplemental Payment.** In the event that NYISO determines that a Prepayment is less than the charges incurred or estimated to be incurred by Customer for purchases of Energy and Ancillary Services in the week for which the Prepayment is made, Customer shall make a supplemental payment upon written demand by NYISO. NYISO shall specify in its demand the amount of the supplemental payment and the time for such payment to be made; *provided, however*, that the payment shall not be due sooner than 4:00 P.M. EST on the next business day.
5. **Overpayment.** In the event that NYISO determines that a Prepayment exceeds the charges incurred or estimated to be incurred by Customer for purchases of Energy and Ancillary Services in the week for which the Prepayment is made, NYISO shall credit the difference toward Customer's next Prepayment and shall notify Customer of the revised Prepayment Amount.
6. **Termination.** Customer may terminate this Prepayment Agreement upon ten (10) days written notice to NYISO. NYISO may terminate this Prepayment Agreement immediately upon written notice to the Customer in the event that Customer fails to perform in strict accordance with the terms hereof. In addition, this Prepayment Agreement shall terminate upon any amendment of the OATT or the Services

Tariff that eliminates the prepayment mechanism thereunder or requires material modification of this Prepayment Agreement.

7. Regular Weekly Settlements. Nothing in this Prepayment Agreement shall alter the obligation of Customer or NYISO to pay amounts owed in accordance with the NYISO's regular weekly settlement process pursuant to the terms of the OATT and the Services Tariff, which amounts shall be net of payments made pursuant to this Prepayment Agreement.

8. Interest. Customer shall not earn interest on its Prepayments. NYISO shall apply any interest actually earned on Prepayments to offset NYISO costs otherwise recovered through Schedule 1 of the OATT and Rate Schedule 1 of the Services Tariff.

9. Communications. All communications pursuant to this Prepayment Agreement shall be in writing, deemed effective when received, and delivered by hand with receipt of delivery, registered mail, or facsimile with confirmation of receipt to the following addresses:

NYISO:

Attn: Credit Manager

New York Independent System Operator, Inc.

10 Krey Boulevard

Rensselaer, New York 12144

Fax: (518) 356-7505

Customer:

Attn: _____

Fax: _____

NYISO or Customer may change the address provided for receipt of communications pursuant to this Prepayment Agreement by providing written notice to the other party.

10. Expenses. Customer shall pay all reasonable costs incurred by NYISO to enforce this Prepayment Agreement, including attorney fees and expenses.

11. **Amendment and Waiver.** The terms and provisions of this Prepayment Agreement may not be amended or waived except in writing and signed by NYISO and Customer.
12. **Entire Agreement.** This Prepayment Agreement embodies the entire agreement between NYISO and Customer with respect to the matters set forth herein, and supersedes all prior such agreements.
13. **Severability.** Should any provision of this Prepayment Agreement be determined by a court of competent jurisdiction to be unenforceable, all of the other provisions shall remain effective.
14. **Choice of Law; Jurisdiction; Venue; and Service of Process.** This Prepayment Agreement shall be governed by the laws of the State of New York without regard to conflict of laws principles. Customer irrevocably submits to the jurisdiction of any New York court or any United States court sitting in New York over any action or proceeding arising out of or relating to this Prepayment Agreement and irrevocably agrees that all claims in such action or proceeding may be heard and determined by such court. Customer agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Customer waives any objection to venue on the basis of forum non conveniens. Customer irrevocably consents to the service of process in any action or proceeding by the mailing of copies of such process to Customer at its address set forth herein. Customer agrees that any action or proceeding brought against NYISO shall be brought only in a New York court or a United States court sitting in New York. Nothing herein shall affect the right of NYISO to bring any action or proceeding against the Customer or its property in the courts of any other jurisdictions.
15. **Waiver of Jury Trial.** CUSTOMER IRREVOCABLY, VOLUNTARILY, AND WITH ADVICE OF COUNSEL WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING IN CONNECTION WITH THIS PREPAYMENT AGREEMENT.

IN WITNESS WHEREOF, NYISO and Customer have caused this Prepayment Agreement to be executed by their respective authorized officials.

New York Independent System Operator, Inc.

By:

Name:

Title:

[Customer]

By:

Name:

Title: