New York Independent System Operator, Inc.

Foundation Agreements

AGREEMENT BETWEEN
THE NEW YORK INDEPENDENT SYSTEM OPERATOR
AND
THE NEW YORK STATE RELIABILITY COUNCIL

This composite New York Independent System Operator, Inc. agreement with the New York State Reliability Council has been prepared for the convenience of the market participants on the basis of filings made with, and accepted or approved by, the Federal Energy Regulatory Commission. The composite agreement has not been filed with the commission. The filings made with, and accepted or approved by, the Federal Energy Regulatory Commission shall govern in the case of any discrepancies with the composite agreement.

Contents

[ARTICLE 1: DEFINITIONS 6](#_Toc316476040)

[ARTICLE 2: RELATIONSHIP OF THE ISO AND THE NYSRC 7](#_Toc316476041)

[ARTICLE 3: DUTIES OF THE ISO 8](#_Toc316476042)

[ARTICLE 4: DUTIES OF THE NYSRC 9](#_Toc316476043)

[ARTICLE 5: DISPUTE RESOLUTION 11](#_Toc316476044)

[ARTICLE 6: EFFECTIVE DATE AND TERMINATION 16](#_Toc316476045)

[ARTICLE 7: REGULATORY JURISDICTION 17](#_Toc316476046)

[ARTICLE 8: ASSIGNMENT 18](#_Toc316476047)

[ARTICLE 9: LIMITATION OF LIABILITY 19](#_Toc316476048)

[ARTICLE 10: FORCE MAJEURE 20](#_Toc316476049)

[ARTICLE 11: INDEMNIFICATION 21](#_Toc316476050)

[ARTICLE 12: OTHER PROVISIONS 22](#_Toc316476051)

AGREEMENT BETWEEN THE NEW YORK INDEPENDENT SYSTEM OPERATOR AND THE NEW YORK STATE RELIABILITY COUNCIL

This AGREEMENT made as of the first day of December, 1999, by and between the NEW YORK INDEPENDENT SYSTEM OPERATOR ("ISO"), a not-for-profit corporation formed by certain participants in the competitive Wholesale Market in New York State and the NEW YORK STATE RELIABILITY COUNCIL ("NYSRC"), a voluntary organization comprised of certain participants in the Wholesale Market in New York State (collectively, the ISO and the NYSRC are referred to as the "Parties").

W I T N E S S E T H:

WHEREAS, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA[[1]](#footnote-2), New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation established the New York Power Pool ("NYPP") by Agreement made as of the 21st day of July, 1966, and Power Authority of the State of New York ("NYPA") joined the NYPP on October 11, 1967 (the "Member Systems"); and

WHEREAS, the Member Systems have created, invested in, and operate the interconnected NYS Power System and have the responsibility to maintain the reliable operation of the NYS Power System; and

WHEREAS, the Member Systems have agreed to create the ISO and agree that a competitive Wholesale Market can be operated in a reliable and efficient fashion most effectively by the creation of the ISO, the NYSRC, as proposed by the Member Systems; and

WHEREAS, the Member Systems believe and expect that through their initiatives, as well as those of federal and state regulatory agencies, a competitive Wholesale Market will be created in New York State; and

WHEREAS, the ISO shall exercise Operational Control over certain facilities in the NYS Power System and maintain the safety, efficiency, and short-term reliability of the NYS Power System; and

WHEREAS, the NYSRC's principal mission is to establish Reliability Rules for use by the ISO to maintain the integrity and reliability of the NYS Power System such that it is not compromised as a result of the operation of the competitive Wholesale Market in New York State; and

WHEREAS, the reliable and efficient operation of the NYS Power System is fundamental to achieving and maintaining reliability of power supply, requiring extensive coordination of system design and operations; and

WHEREAS, the NYSRC is the appropriate entity to establish and assess conformance with appropriate design and operating criteria by all entities whose electric operations may have a significant impact on system reliability; and

WHEREAS, in order to facilitate the coordination of the responsibilities of the ISO and the reliability functions performed by the NYSRC in such a way as to minimize any adverse commercial impacts, a relationship between those two entities, whereby certain information is exchanged between them, is necessary; and

WHEREAS, nothing in this Agreement is intended to inhibit or prevent the future development of a voluntary competitive retail electric market.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, the Parties hereto do hereby agree with each other, for themselves and for their successors and assigns as follows:

## ARTICLE 1: DEFINITIONS

The definitions contained in Article 1 of the Independent System Operator Agreement (the "ISO Agreement") as they existed on the date this Agreement is signed by the Parties are hereby incorporated by reference in their entirety into this Agreement. Modification to such definitions under the ISO Agreement shall apply to this Agreement only if the Parties to this Agreement agree in writing pursuant to Section 12.6 below.

## ARTICLE 2: RELATIONSHIP OF THE ISO AND THE NYSRC

2.1 Pursuant to the NYSRC Agreement, the NYSRC shall develop Reliability Rules which shall be complied with by the ISO and all entities engaged in transactions on the NYS Power System.

2.2 The ISO shall exercise Operational Control over Transmission Facilities Under ISO Operational Control and maintain the safety and short-term reliability of the NYS Power System in accordance with the ISO/TO Agreement, ISO Agreement, this Agreement, and the Reliability Rules.

2.3 The NYSRC shall have the authority to audit the ISO's implementation of the Reliability Rules and to assess the ISO's compliance with the Reliability Rules and this Agreement.

2.4 NYSRC and the ISO will function as two separate and distinct entities. However, the NYSRC and the ISO shall work cooperatively in accordance with the terms of this Agreement.

## ARTICLE 3: DUTIES OF THE ISO

3.1 The ISO shall comply with all Reliability Rules, including the Local Reliability Rules.

3.2 The ISO shall maintain the safety and short-term reliability of the NYS Power System and administer the ISO OATT and the ISO Services Tariff in accordance with the Reliability Rules, this Agreement, the ISO Agreement and the ISO/TO Agreement.

3.3 The ISO shall not have a financial interest in any commercial transaction except to the limited extent required for the ISO to be the single counterparty to market transactions in accordance with the credit requirements for organized wholesale electric markets set forth in Commission Order Nos. 741 and 741-A as codified in 18 C.F.R. § 35.47 (2011) or successor provisions;

3.4 The ISO shall require LSEs within the NYCA to maintain appropriate levels of Installed Capacity consistent with the Reliability Rules, this Agreement, the ISO/TO Agreement, and the ISO Agreement.

3.5 The ISO shall ensure that sufficient Operating Capacity is committed on a Day-Ahead basis and remains available to assure the reliable operation of the NYS Power System during the next day.

3.6 The ISO shall provide the NYSRC with such information, data, reports, and assistance as the NYSRC requires in carrying out its responsibilities.

3.7 The ISO shall prepare reports to the NYSRC at least annually describing the performance of the NYS Power System and the ISO's compliance with the Reliability Rules.

3.8 The ISO shall assign a member of its staff to serve as liaison to the NYSRC. The ISO representative may attend and participate in meetings of the NYSRC, on a nonvoting basis.

3.9 The ISO shall perform studies that may be requested by the NYSRC.

## ARTICLE 4: DUTIES OF THE NYSRC

4.1 The NYSRC shall be responsible for developing Reliability Rules pursuant to which the ISO shall maintain the safety and short-term reliability of the NYS Power System. The NYSRC shall develop Reliability Rules in accordance with NERC, NPCC, FERC, PSC, and NRC standards, criteria, rules, regulations, the Local Reliability Rules that have been adopted as Reliability Rules and other criteria, as provided for in Article 3 of the NYSRC Agreement.

4.2 The NYSRC, using the information, data, reports and assistance provided by the ISO, shall monitor and assess the ISO's compliance with the Reliability Rules. If the NYSRC determines that the operation of the NYS Power System by the ISO has not been in compliance with the Reliability Rules or the ISO has improperly implemented the Reliability Rules, the NYSRC shall discuss such non-compliance or improper implementation with the ISO. If a satisfactory resolution of the matter cannot be reached within thirty (30) days, the issue may be referred by either Party to dispute resolution in accordance with the provisions of this Agreement.

4.3 The NYSRC shall represent New York State at NPCC and NERC. NPCC triennial reviews and similar reliability reports required by NPCC and NERC shall be prepared by the ISO for review and approval by the NYSRC prior to submittal to NPCC and NERC. The ISO also shall actively participate in NPCC and NERC activities as the New York Control Area operator.

4.4 The NYSRC shall develop Reliability Rules for implementation by the ISO to ensure that sufficient Operating Capacity is committed on a Day-Ahead basis to ensure the reliable operation of the NYS Power System during the next day.

4.5 The NYSRC shall determine the state-wide annual Installed Capacity requirement. Such requirement will be subject to periodic review and revision by the NYSRC. For periods beyond one (1)year the NYSRC may perform or direct the ISO or another entity to perform studies required to identify future operating conditions.

## ARTICLE 5: DISPUTE RESOLUTION

5.1 The Parties hereby establish a dispute resolution process for the resolution of disputes under this Agreement wherein the PSC conducts the arbitration of the dispute. The dispute resolution process shall apply to all Reliability Rules including Local Reliability Rules. If the NYSRC determines that the ISO has not complied with or effectively implemented a Reliability Rule, or if the ISO determines that a Reliability Rule is unnecessary or should be modified, representatives of the NYSRC and the ISO shall upon request of either Party, meet within thirty (30) days to discuss and attempt to resolve the matter.

5.2 If the Parties are unable to resolve a dispute described in Section 5.1 herein within thirty (30) days by mutual agreement (unless extended by mutual consent of the Parties), such dispute may be submitted to the PSC by either Party in a written statement describing the nature of the dispute and the issues to be resolved. If the enactment of a new Reliability Rule or a modification of an existing Reliability Rule leads to a dispute, the ISO Board of Directors may request that the effectiveness of the new Reliability Rule or the modification of an existing Reliability Rule be suspended pending the outcome of the dispute resolution process. Upon such a request by the ISO Board, the NYSRC shall suspend implementation of the new Reliability Rule or the enactment of the modification pending resolution of the dispute by the PSC. Notwithstanding the foregoing, the PSC may direct that the new Reliability Rule or modification of an existing Reliability Rule go into effect immediately upon a finding that suspension of the Reliability Rule could put the reliability of the NYS Power System at risk.

5.3 Any dispute between the ISO and the NYSRC concerning a Reliability Rule that affects not only reliability but also matters subject to the Commission's jurisdiction under the Federal Power Act (such as a transmission line loading relief rule that affects the curtailment provisions of an ISO Tariff) must be resolved directly by the Commission, and not submitted first to the PSC. Other matters may be resolved in the first instance by the PSC, as provided for in this Article.

5.4 The PSC shall, on an expedited basis, (as permitted by PSC regulations) evaluate and determine whether the dispute should be: (1) dismissed; or (2) accepted for arbitration. The PSC may dismiss a dispute if:

a. the complaining Party failed to negotiate in good-faith;

b. the dispute does not reasonably relate to the Reliability Rules or their application; or

c. the claim is de minimis.

5.5 If the PSC accepts the dispute for arbitration, the following procedure shall be followed:

a. The PSC shall have the authority to make a determination with respect to any contention by the ISO that a Reliability Rule is unnecessary or should be modified, or by the NYSRC that a Reliability Rule has not been effectively implemented by the ISO. The PSC shall have no power to modify or change any Agreement or a provision of any ISO Tariff, or otherwise create any additional rights or obligations for any Party. The scope of the PSC's decision under this Agreement shall be limited to the issues presented for arbitration.

b. The PSC staff shall have the ability to review Reliability Rules and their implementation by the ISO. If the PSC staff determines that a Reliability Rule is unwarranted or should be modified or that a Reliability Rule is not being effectively implemented by the ISO, PSC staff may raise that issue with the NYSRC and the ISO. If the issue is not resolved among the PSC staff, the NYSRC and ISO, the PSC staff may initiate an arbitration proceeding before the PSC with respect to the issue. The PSC shall conduct a proceeding brought by the PSC staff under the same procedures applicable to a proceeding initiated by the NYSRC or the ISO under this Agreement.

c. The PSC shall determine discovery procedures, intervention rights, evidentiary rules, procedures for submission of written materials, and other such procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution. Each Party to the dispute shall produce all evidence determined by the PSC to be relevant to the issues presented. To the extent such evidence involves proprietary or Confidential Information, the PSC may issue an appropriate protective order which shall be complied with by all disputing Parties. The PSC may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.

d. The PSC shall consider all issues underlying the dispute and the PSC shall take evidence submitted by the disputing Parties in accordance with procedures established by the PSC and may request additional information including the opinion of recognized technical bodies or experts. Disputing Parties shall be afforded a reasonable opportunity to rebut any such additional information.

e. The PSC may permit intervention by an interested third party provided that a request to intervene is timely and the PSC finds that such intervention will enhance the arbitration process and will not cause undue delay. All intervenors shall be required to comply with all applicable procedural rules established by the PSC pursuant to Section 5.4 (c) herein.

f. After conclusion of the discovery process and after providing the Parties with an opportunity to be heard, the PSC shall render a written decision, including findings of fact and the basis for the decision. The PSC shall make a specific finding that its decision will adequately protect the reliability of the NYS Power System and state the reasons for such finding.

5.6 The order of the PSC may be entered on the award by any court in New York State having jurisdiction. Within one (1) year of the arbitration decision, a Party may request that the Commission vacate, modify, or take such other action as may be appropriate with respect to any arbitration decision that is:

a. based upon an error of law;

b. contrary to the statutes, rules, or regulations of any appropriate regulatory entity having jurisdiction;

c. violative of the Federal Arbitration Act or Administrative Dispute Resolution Act; or

d. involves a dispute in excess of $500,000.

5.7 Nothing in this Article shall restrict the rights of any Party to file a complaint or a rate or tariff change with the Commission under the relevant provisions of the Federal Power Act.

## ARTICLE 6: EFFECTIVE DATE AND TERMINATION

This Agreement, once executed by the Parties, shall become effective on the date the Commission, the PSC, and any other regulatory agencies having jurisdiction, to the extent applicable, grant all necessary approvals and the NYSRC is formed. This Agreement shall continue in full force and effect unless terminated by the written consent of all of the Parties hereto.

## ARTICLE 7: REGULATORY JURISDICTION

Subject to Section 12.6, nothing in this Agreement shall restrict the right of the Parties to file a complaint with or submit any action to FERC or any other appropriate regulatory authority under relevant provisions of the Federal Power Act, nor shall anything in this Agreement affect the jurisdiction over matters arising under this Agreement.

## ARTICLE 8: ASSIGNMENT

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties. This Agreement cannot be assigned without the consent of the other Parties which consent shall not be unreasonably withheld.

## ARTICLE 9: LIMITATION OF LIABILITY

The NYSRC shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO or any Market Participant or any third party or other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive, exemplary or direct damages resulting from any act or omission in any way associated with this Agreement, except to the extent the NYSRC is found liable for gross negligence or intentional misconduct, in which case the NYSRC shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages.

## ARTICLE 10: FORCE MAJEURE

A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other Party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising out of or from any act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes beyond such Party's reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any Party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due hereunder or pursuant to a Service Agreement. Any Party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except the settlement of any labor disturbance shall be in the sole judgment of the affected Party.

## ARTICLE 11: INDEMNIFICATION

11.1 The ISO shall indemnify, save harmless and defend the NYSRC, including its directors, officers, members, managers, employees, trustees, and agents, or each of them from and against all claims, demands, losses, liabilities, judgments, damages (including, without limitation, any consequential, incidental, direct, special, indirect, exemplary or punitive damages and economic costs), and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the NYSRC in any actions or proceedings between the NYSRC and a third party, Market Participant, the ISO, or any other party) arising out of or related to the NYSRC or the ISO's acts or omissions related in any way to performance under an ISO Tariff, the ISO Agreement, the ISO/TO Agreement, NYSRC Agreement, or this Agreement, except to the extent the NYSRC is found liable for gross negligence or intentional misconduct.

11.2 Survival. The provisions of this Article 11, "Indemnification," shall survive the termination or expiration of this Agreement.

## ARTICLE 12: OTHER PROVISIONS

12.1 Governing Law; Jurisdiction. The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement is made and performed entirely in New York State. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

12.2 Headings. The section headings herein are for convenience and reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this Agreement, they shall be construed as referring to this entire Agreement, rather than to any individual section, subsection or sentence.

12.3 No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

12.4 Not Partners. Nothing contained in this Agreement shall be construed to make the Parties partners or joint ventures or to render any Party liable for the debts or obligations of any other Party.

12.5 Waiver. Any waiver at any time of the rights of any Party as to any default or failure to require strict adherence to any of the terms herein, on the part of any other Party or Parties to this Agreement or as to any other matter arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

12.6 No Modification. This Agreement is not subject to change under Sections 205 and 206 of the FPA, as either section may be amended or superseded, absent the mutual written agreement of the Parties. It is the intent of this Section 12.6 that, to the maximum extent permitted by law, the terms and conditions of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting sua sponte on behalf of a Party or third party, (b) by a Party, (c) by a third party, or (d) in any other manner.

12.7 Contract Supremacy. In the case of a conflict between the terms of this Agreement and the terms of the ISO/TO Agreement, the terms of the ISO/TO Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the ISO Agreement, the terms of this Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the NYSRC Agreement, the terms of the NYSRC Agreement shall prevail.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in its corporate name by its proper officers as of the date first written above.

New York Independent System Operator

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

 Richard J. Grossi

Title: Chairman

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

New York State Reliability Council

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

 Richard J. Bolbrock

Title: Chairman

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

SERVICE AGREEMENT NO. 2271

aMENDED AND RESTATED

OPERATING AGREEMENT

BETWEEN THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

AND

NEW YORK TRANSCO LLC

Dated as of July 10, 2018

AMENDED AND RESTATED OPERATING AGREEMENT

Table of Contents

Page

[ARTICLE 1.0: DEFINITIONS 4](#_Toc518904536)

[1.01 Capitalized Terms 4](#_Toc518904537)

[ARTICLE 2.0: RESPONSIBILITIES OF THE NTO 5](#_Toc518904538)

[2.01 Transmission Facilities 5](#_Toc518904539)

[2.02 Transmission System Operation 5](#_Toc518904540)

[2.03 Local Area Transmission System Facilities 5](#_Toc518904541)

[2.04 Safe Operations 6](#_Toc518904542)

[2.05 Local Control Center, Metering and Telemetry 6](#_Toc518904543)

[2.06 Security Constrained Unit Commitment Adjustments 7](#_Toc518904544)

[2.07 Design, Maintenance and Rating Capabilities 8](#_Toc518904545)

[2.08 Maintenance Scheduling 8](#_Toc518904546)

[2.09 NERC Registration 8](#_Toc518904547)

[2.10 Investigations and Restoration 9](#_Toc518904548)

[2.11 Information and Support 9](#_Toc518904549)

[2.12 Performance of Obligation by Third Parties 9](#_Toc518904550)

[2.13 Comprehensive Planning Process for Reliability Needs 10](#_Toc518904551)

[ARTICLE 3.0: RESPONSIBILITIES OF THE ISO 12](#_Toc518904552)

[3.01 Operation and Coordination 12](#_Toc518904553)

[3.02 Tariff Administration and Performance of Responsibilities Under ISO Related Agreements 12](#_Toc518904554)

[3.03 Granting of Authority 13](#_Toc518904555)

[3.04 Collection and Billing 14](#_Toc518904556)

[3.05 Proposed Material Modifications to the NYS Power System 14](#_Toc518904557)

[3.06 OASIS 14](#_Toc518904558)

[3.07 NERC Registration 14](#_Toc518904559)

[3.08 NTO’s Reserved Rights 15](#_Toc518904560)

[3.09 Retention of Non-Transferred Obligations 17](#_Toc518904561)

[ARTICLE 4.0: ASSIGNMENT 18](#_Toc518904562)

[4.01 Assignments by the NTO or the ISO 18](#_Toc518904563)

[ARTICLE 5.0: LIMITATION OF LIABILITY AND INDEMNIFICATION 19](#_Toc518904564)

[5.01 Limitations of Liability 19](#_Toc518904565)

[5.02 Additional Limitations of Liability 19](#_Toc518904566)

[5.03 Indemnification 20](#_Toc518904567)

[5.04 Force Majeure 20](#_Toc518904568)

[5.05 Claims by Employees and Insurance 21](#_Toc518904569)

[5.06 Survival 21](#_Toc518904570)

[ARTICLE 6.0: OTHER PROVISIONS 22](#_Toc518904571)

[6.01 Term and Termination for Cause 22](#_Toc518904572)

[6.02 Termination by Election 23](#_Toc518904573)

[6.03 Obligations after Termination 23](#_Toc518904574)

[6.04 Winding Up 23](#_Toc518904575)

[6.05 Confidentiality 24](#_Toc518904576)

[6.06 Governing Law; Jurisdiction 25](#_Toc518904577)

[6.07 Headings 26](#_Toc518904578)

[6.08 Mutual Agreement 26](#_Toc518904579)

[6.09 Contract Supremacy 26](#_Toc518904580)

[6.10 Additional Remedies 26](#_Toc518904581)

[6.11 No Third Party Rights 27](#_Toc518904582)

[6.12 Not Partners 27](#_Toc518904583)

[6.13 Waiver 27](#_Toc518904584)

[6.14 Modification 27](#_Toc518904585)

[6.15 Counterparts 28](#_Toc518904586)

AMENDED AND RESTATED OPERATING AGREEMENT

**THIS AMENDED AND RESTATED OPERATING AGREEMENT** (“Agreement”) is made and entered into this 10th day of July, 2018, by and between New York Transco LLC, a non-incumbent transmission owner organized and existing as a limited liability company under the laws of the State of New York (“NTO”), 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 (“ISO”). The NTO and the ISO each may be referred to as a “Party” or collectively referred to as the “Parties.”

WITNESSETH:

**WHEREAS,** the ISO is an independent system operator that is responsible under its Open Access Transmission Tariff (“ISO OATT”) and its Market Administration and Control Area Services Tariff (“ISO Services Tariff”) as they may be amended from time to time (collectively, “ISO Tariffs”), and the ISO Related Agreements, filed with and accepted by the Federal Energy Regulatory Commission (“Commission”), for providing non-discriminatory, open access transmission service, maintaining reliability, performing system planning, and administering competitive wholesale markets for energy, capacity, and ancillary services in New York State;

**WHEREAS,** the NTO is the owner of certain transmission facilities specified herein that are integrated with the NYS Transmission System and the NTO has fiduciary responsibilities to its investors to assure, among other things, the receipt of adequate revenues to maintain its transmission facilities, a reasonable rate of return on its transmission facilities, and to provide for recovery of the capital invested in its transmission facilities;

**WHEREAS,** the NTO has executed, along with this Agreement, the Independent System Operator Agreement (“ISO Agreement”) and has executed a Service Agreement(s) as a Transmission Owner for purposes of the ISO Tariffs;

**WHEREAS,** the ISO will exercise ISO Operational Control over certain of the NTO’s transmission facilities classified as “NTO Transmission Facilities Under ISO Operational Control”;

**WHEREAS,** the NTO and ISO have agreed to enter into this Agreement for the purpose of the NTO authorizing the ISO to exercise, and the ISO assuming, ISO Operational Control over the NTO Transmission Facilities Under ISO Operational Control in accordance with the requirements set forth in this Agreement, the ISO Tariffs, and the ISO Related Agreements, as applicable;

**WHEREAS,** the NTO will continue to own and be responsible for the physical operation, modification and maintenance of its NTO Transmission Facilities Under ISO Operational Control; and

**WHEREAS,** the ISO OATT will provide for the payment by Transmission Customers for Transmission Service at rates designed to enable the NTO to recover its revenue requirement to the extent allowed, accepted, or approved by FERC;

**WHEREAS**, the ISO has a comprehensive planning process for reliability needs (“Reliability Planning Process”) and a planning process for reliability needs that result from the deactivation of a Generator (“Generator Deactivation Process”), and each Transmission Owner, including the NTO, will participate in this planning process as described in the ISO OATT;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties do hereby agree with each other, for themselves and their successors and assigns, as follows:

1. DEFINITIONS
	1. Capitalized Terms

Capitalized terms that are not otherwise defined herein shall have the meaning set forth in the definitions contained in Article 1 of the ISO Agreement, as it existed on the date this Agreement is signed by the Parties. Those definitions contained in Article 1 of the ISO Agreement are hereby incorporated by reference in their entirety into this Agreement; *provided, however*, that an NTO shall be a Transmission Owner for purposes of the ISO Tariffs and this Agreement notwithstanding the definition of Transmission Owner contained in the ISO Agreement related to the ownership of 100 circuit miles of transmission in New York State and becoming a signatory to the ISO/TO Agreement. Modifications to such definitions in the ISO Agreement shall apply to this Agreement only if the Parties to this Agreement agree in writing pursuant to Section 6.14 below.

1. RESPONSIBILITIES OF THE NTO
	1. Transmission Facilities

The NTO owns certain transmission facilities over which the ISO will have day-to-day operational control to maintain these facilities in a reliable state, as defined by the Reliability Rules and all other applicable reliability rules, standards and criteria, and in accordance with the ISO Tariffs, ISO Related Agreements and ISO Procedures (“ISO Operational Control”). These NTO facilities shall be classified as “NTO Transmission Facilities Under ISO Operational Control,” and are listed in Appendix A-1 of this Agreement. The NTO also will be responsible for providing notification to the ISO with respect to actions related to certain other transmission facilities. These facilities shall be classified as “NTO Transmission Facilities Requiring ISO Notification,” and are listed in Appendix A-2 of this Agreement. Transmission facilities may be added to, or deleted from, the lists of facilities provided in Appendices A-1 and A-2 herein by mutual written agreement of the ISO and the NTO owning and controlling such facilities. Currently listed facilities will be posted on the ISO’s OASIS.

* 1. Transmission System Operation

The NTO shall be responsible for ensuring that all actions related to the operation, maintenance and modification of its facilities that are designated as NTO Transmission Facilities Under ISO Operational Control and NTO Transmission Facilities Requiring ISO Notification are performed in accordance with the terms of this Agreement, all Reliability Rules and all other applicable reliability rules, standards and criteria, all operating instructions, ISO Tariffs, and ISO Procedures.

* 1. Local Area Transmission System Facilities

Transmission system facilities not designated as NTO Transmission Facilities Under ISO Operational Control or as NTO Transmission Facilities Requiring ISO Notification shall be collectively known as “Local Area Transmission System Facilities” and are listed in Appendix A-3 of this Agreement. Transmission facilities may be added to, or deleted from, the list of facilities provided in Appendix A-3 herein by mutual written agreement of the ISO and the NTO owning and controlling such facilities. The NTO shall have sole responsibility for the operation of its Local Area Transmission System Facilities, provided, however, that such operation shall comply with all Reliability Rules and ISO Tariffs as applicable, and all other applicable reliability rules, standards and criteria, and shall not compromise the reliable and secure operation of the NYS Transmission System. The NTO shall promptly comply to the extent practicable with a request from the ISO, or from the Transmission Owner(s) to which its facilities are interconnected (“Interconnecting Transmission Owner(s)” or “ITO(s)”), to take action with respect to coordination of the operation of its Local Area Transmission System Facilities.

* 1. Safe Operations

Notwithstanding any other provision of this Agreement, an NTO may take, or cause to be taken, such action with respect to the operation of its facilities as it deems necessary to maintain Safe Operations. To ensure Safe Operations, the local operating rules of the ITO(s) shall govern the connection and disconnection of generation with NTO transmission facilities. Safe Operations include the application and enforcement of rules, procedures and protocols that are intended to ensure the safety of personnel operating or performing work or tests on transmission facilities.

* 1. Local Control Center, Metering and Telemetry

The NTO shall operate, pursuant to ISO Tariffs, ISO Procedures, Reliability Rules and all other applicable reliability rules, standards and criteria on a twenty-four (24) hour basis, a suitable local control center(s) with all equipment and facilities reasonably required for the ISO to exercise ISO Operational Control over NTO Transmission Facilities Under ISO Operational Control, and for the NTO to fulfill its responsibilities under this Agreement. Operation of the NYS Power System is a cooperative effort coordinated by the ISO control center in conjunction with local control centers and will require the exchange of all reasonably necessary information. The NTO shall provide the ISO with Supervisory Control and Data Acquisition (“SCADA”) information on facilities listed in Appendices A-1 and A-2 herein as well as on generation and merchant transmission resources interconnected to the NTO’s transmission facilities pursuant to the ISO OATT.

The NTO shall provide metering data for its transmission facilities to the ISO, unless other parties are authorized by the appropriate regulatory authority to provide metering data. The NTO shall collect and submit to the ISO billing quality metering data and any other information for its transmission facilities required by the ISO for billing purposes. The NTO shall provide to the ISO the telemetry and other operating data from generation and merchant transmission resources interconnected to its transmission facilities that the ISO requires for the operation of the NYS Power System. The NTO will establish and maintain a strict code of conduct to prevent such information from reaching any unauthorized person or entity.

* 1. Security Constrained Unit Commitment Adjustments

The NTO shall coordinate with its ITO(s) as applicable regarding any request for commitment of additional Generators. If, following coordination among the NTO and its ITO(s), an additional resource(s) needs to be committed to ensure local area reliability, the NTO, or the ITO(s) at the NTO’s request, may request commitment of additional Generators (including specific output level(s)). The ISO will use Supplemental Resource Evaluation (“SRE”), pursuant to ISO Tariffs and ISO Procedures, to fulfill a request from the NTO or ITO(s), as appropriate, for additional units.

* 1. Design, Maintenance and Rating Capabilities

The NTO shall comply with the provisions of this Agreement, all Reliability Rules and all other applicable reliability rules, standards and criteria, ISO Procedures, and Good Utility Practice with respect to the design, maintenance and rating the capabilities of NYS Transmission System facilities.

* 1. Maintenance Scheduling

The NTO shall schedule maintenance of its facilities designated as NTO Transmission Facilities Under ISO Operational Control and schedule any outages (other than forced transmission outages) of said transmission system facilities in accordance with outage schedules approved by the ISO. The NTO shall comply with maintenance schedules coordinated by the ISO, pursuant to this Agreement, for NTO Transmission Facilities Under ISO Operational Control. The NTO shall be responsible for providing notification of maintenance schedules to the ISO for NTO Transmission Facilities Requiring ISO Notification. The NTO shall provide notification of maintenance schedules to affected Transmission Owners for NTO Transmission Facilities Requiring ISO Notification and Local Area Transmission Facilities pursuant to Section 3.5.3 of the ISO Services Tariff.

* 1. NERC Registration

The NTO shall register or enter into agreement with a NERC registered entity for all required NERC functions applicable to the NTO, that may include, without limitation, those functions designated by NERC to be: “Transmission Owner” and “Transmission Planner” and “Transmission Operator.” The Parties agree to negotiate in good faith the compliance obligations for the NERC functions applicable to, and to be performed by, each Party with respect to the NTO’s facilities. Notwithstanding the foregoing, the ISO shall register for the “Transmission Operator” function for all NTO Transmission Facilities under ISO Operational Control identified in Appendix A-1 of this Agreement.

* 1. Investigations and Restoration

The NTO shall promptly conduct investigations of equipment malfunctions and failures and forced transmission outages in a manner consistent with applicable FERC, PSC, NRC, NERC, NPCC and NYSRC rules, principles, guidelines, standards and requirements, ISO Procedures and Good Utility Practice. The NTO shall supply the results of such investigations to the NYSRC, the ISO, and, pursuant to Section 3.5.3 of the ISO Services Tariff, the other Transmission Owners. Following a total or partial system interruption, restoration shall be coordinated between the ISO control center and local control centers. The local control centers shall have the authority, in coordination with the ISO, to restore the system and to re-establish service if doing so would minimize the period of service interruption. The NTO shall determine the level of resources to be applied to restore facilities to service following a failure, malfunction, or forced transmission outage.

* 1. Information and Support

The NTO shall obtain from the ISO, and the ISO shall provide to the NTO, the necessary information and support services to comply with their obligations under this Article.

* 1. Performance of Obligation by Third Parties

The NTO may arrange for one or more third parties to perform its responsibilities under this Agreement; *provided, however*, that the NTO shall require each such third party to agree in writing to comply with all applicable terms and conditions of this Agreement; *provided, further,* that in all cases the NTO shall be responsible for the acts and omissions of each such third party to the same extent as if such acts and omissions were made by the NTO or its employees, and such use of a third party shall not relieve the NTO of its responsibilities under this Agreement. Notwithstanding the foregoing, the NTO shall have the right to assign this entire Agreement pursuant to the terms of Article 4.0 hereof.

* 1. Comprehensive Planning Process for Reliability Needs

a. Notwithstanding any provision, including Section 3.08(e) contained in this Agreement, the NTO acknowledges its obligations described in the ISO’s Reliability Planning Process set forth in Attachment Y of the ISO OATT and in the Generator Deactivation Process set forth in Attachment FF of the ISO OATT, that arise when the ISO designates the NTO as a “Responsible Transmission Owner,” pursuant to Section 31.2.4.3 of the ISO OATT or Attachment FF of the ISO OATT, to address a reliability need(s) related to the transmission facilities that the NTO owns and that are subject to this Agreement.

b.The NTO’s obligations described in Section 2.13(a) above shall be subject to the full recovery in wholesale rates on a current basis by the NTO, in accordance with the rate mechanism set forth in Section 6.10 of the ISO OATT (Rate Schedule 10) or Section 6.16 of the ISO OATT (Rate Schedule 16), of all reasonably incurred costs, including a reasonable return on investment and any applicable regulatory incentives, related to the preparation of a proposal for, and the development, construction, operation, and maintenance of, regulated transmission projects undertaken, or caused to be undertaken, by the NTO to meet a reliability need identified in the ISO’s Reliability Planning Process or Generator Deactivation Process as a result of being designated as the Responsible Transmission Owner, including those regulated transmission projects that were subsequently determined by the ISO not to be necessary to meet a reliability need or that cannot be completed because of the failure to obtain necessary federal, state, or local authorizations or for any other circumstance beyond the NTO’s reasonable control;

c. The NTO’s obligations described in Section 2.13(a) above shall be further conditioned on:

1. The recovery of transmission-related costs in rates, as provided for in Section 2.13(b) above, will include, but not be limited to, all reasonable costs related to (i) obtaining or attempting to obtain all federal, state and local authorizations necessary for completion of the project included in the Comprehensive Reliability Plan and (ii) acquiring or attempting to acquire all necessary real property rights for such project;

2. The receipt by the NTO of all federal, state, and local authorizations necessary for completion of the regulated transmission project and acquisition by the NTO of all necessary property rights; and

3. The right of the NTO to request any incentives available under regulatory policies related to investments in transmission projects as part of any filing under rates as provided for in Section 2.13(b) above.

d. Nothing contained in Section 2.13 of this Agreement shall limit the right of the NTO to protest, comment on, or engage in litigation before FERC, the New York Public Service Commission, or any court with respect to proposed changes to the Reliability Planning Process.

1. RESPONSIBILITIES OF THE ISO
	1. Operation and Coordination

The ISO shall direct the operation of, coordinate the maintenance scheduling of, and coordinate the planning of certain facilities of the NYS Power System, including coordination with the control center(s) maintained by or on behalf of the NTO, in accordance with the Reliability Rules and all other applicable reliability rules, standards and criteria, as follows:

### Administering Control Area operations of the NYS Power System;

### Performing balancing of Generation and Load while ensuring the safe, reliable and efficient operation of the NYS Power System;

### Exercising ISO Operational Control over certain facilities of the NYS Power System under normal operating conditions and system Emergencies to maintain system reliability;

### Coordinating the NYS Power System equipment outages and maintenance and maintaining the safety and short term reliability of the NYS Power System; and

### Conducting the Reliability Planning Process in accordance with Attachment Y of the ISO OATT and the Generator Deactivation Process in accordance with Attachment FF of the ISO OATT.

* 1. Tariff Administration and Performance of Responsibilities Under ISO Related Agreements

The ISO shall (a) administer the ISO OATT, the ISO Services Tariff and the ISO Agreement in accordance with their provisions as they may be amended from time to time, and (b) shall comply with the provisions of this Agreement, the ISO/TO Agreement, the NYSRC Agreement and the ISO/NYSRC Agreement.

* 1. Granting of Authority

The ISO responsibilities set forth in Article 3 of this Agreement, are granted by the NTO to the ISO only so long as each of the conditions set forth below is met and continues to be met throughout the term of this Agreement:

### The ISO fully implements all Reliability Rules and all other applicable reliability rules, standards and criteria including, without limitation, using all reasonable efforts to require all Market Participants to maintain applicable levels of Installed Capacity and Operating Capacity, consistent with the ISO OATT, the ISO Services Tariff, all Reliability Rules and all other applicable reliability rules, standards and criteria;

### The ISO has a FERC-accepted transmission tariff(s) and rate schedules which provide(s) for full recovery of the transmission revenue requirement of the NTO to the extent allowed, accepted or approved by FERC;

### The ISO does not act in violation of lawful PSC or FERC Orders;

### The ISO does not have a financial interest in any commercial transaction involving the use of the NYS Power System or any other electrical system except to the limited extent required for the ISO to be the single counterparty to market transactions in accordance with the credit requirements for organized wholesale electric markets set forth in Commission Order Nos. 741 and 741-A as codified in 18 C.F.R. § 35.47 (2011) or successor provisions;

### The ISO distributes revenues from the collection of transmission charges to the NTO in a timely manner; and

### The ISO enforces and complies with the creditworthiness and collection standards of the ISO Procedures, the ISO OATT and the ISO Services Tariff.

* 1. Collection and Billing

The ISO shall facilitate and/or perform the billing and collection of revenues related to services provided by the ISO pursuant to the terms of the ISO OATT and the ISO Services Tariff.

* 1. Proposed Material Modifications to the NYS Power System

Pursuant to the requirements of applicable provisions of the ISO OATT, ISO Related Agreements and ISO Procedures, the ISO shall evaluate the impact of any proposed material modification to the NYS Power System. Any proposed material modification to the NTO’s facilities must satisfy the requirements of applicable provisions of the ISO OATT, NYSRC and ISO/NYSRC Agreements, ISO Procedures, and this Agreement. In the event of a dispute regarding the impact of the proposed modification, the ISO or the NTO may refer the issue for resolution pursuant to procedures set forth in Article 11 of the ISO Services Tariff, as such procedures may be amended from time to time.

* 1. OASIS

The ISO shall maintain the OASIS for the New York Control Area.

* 1. NERC Registration

If and to the extent any of the NTO’s facilities are NERC jurisdictional facilities, the ISO will register for certain NERC functions applicable to those NTO facilities. Such functions may include, without limitation, those functions designated by NERC to be “Reliability Coordinator” and “Balancing Authority” and “Transmission Planner” and “Planning Coordinator.” The Parties agree to negotiate in good faith the compliance obligations for the NERC functions applicable to, and to be performed by, each Party with respect to the NTO’s facilities. Notwithstanding the foregoing, the ISO shall register for the “Transmission Operator” function for all NTO Transmission Facilities under ISO Operational Control identified in Appendix A-1 of this Agreement.

* 1. NTO’s Reserved Rights

Notwithstanding any other provision of this Agreement with the exception of Section 2.13 above, the NTO shall retain all of the rights set forth in this Section; provided, however, that such rights shall be exercised in a manner consistent with the NTO’s rights and obligations under the Federal Power Act and the Commission’s rules and regulations thereunder. This Section is not intended to reduce or limit any other rights of the NTO as a signatory to this Agreement or any of the ISO Related Agreements or under an ISO Tariff.

### The NTO shall have the right at any time unilaterally to file pursuant to Section 205 of the Federal Power Act to change the ISO OATT, a Service Agreement under the ISO OATT, or the ISO Agreement to the extent necessary: (i) to recover all of its reasonably incurred costs, plus a reasonable return on investment related to services under the ISO OATT and (ii) to accommodate implementation of, and changes to, an NTO’s retail access program.

### Nothing in this Agreement shall restrict any rights, to the extent such rights exist: (i) of the NTO that is a party to a merger, acquisition or other restructuring transaction to make filings under Section 205 of the Federal Power Act with respect to the reallocation or redistribution of revenues among Transmission Owners or the assignment of its rights or obligations, to the extent the Federal Power Act requires such filings; or (ii) of the NTO to terminate its participation in the ISO pursuant to Section 3.02 of the ISO Agreement or Article 6 of this Agreement, notwithstanding any effect its withdrawal from the ISO may have on the distribution of transmission revenues among other Transmission Owners.

### The NTO retains all rights that it otherwise has incident to its ownership of its assets, including, without limitation, its transmission facilities including, without limitation, the right to build, acquire, sell, merge, dispose of, retire, use as security, or otherwise transfer or convey all or any part of its assets, including, without limitation, the right to amend or terminate the NTO’s relationship with the ISO in connection with the creation of an alternative arrangement for the ownership and/or operation of its transmission facilities on an unbundled basis (e.g., a transmission company), subject to necessary regulatory approvals and to any approvals required under applicable provisions of this Agreement.

### The obligation of the NTO to expand or modify its transmission facilities in accordance with the ISO OATT shall be subject to the NTO’s right to recover, pursuant to appropriate financial arrangements contained in Commission-accepted tariffs or agreements, all reasonably incurred costs, plus a reasonable return on investment, associated with constructing and owning or financing such expansions or modifications to its facilities.

### Except as provided in Section 2.13 above, the responsibilities granted to the ISO under this Agreement shall not expand or diminish the responsibilities of the NTO to modify or expand its transmission system, nor confer upon the ISO the authority to direct the NTO to modify or expand its transmission system.

### The NTO shall have the right to construct (or cause to be constructed), invest in, and own any regulated transmission facilities that the ISO determines are required to meet a reliability need identified by the Reliability Planning Process or the Generator Deactivation Process, so long as the appropriate regulatory agency(ies) has granted its approval. The costs associated with any such transmission facilities shall be recovered in rates as provided for in Section 2.13(b) above and the ISO OATT.

### The NTO shall have the right to adopt and implement procedures it deems necessary to protect its electric facilities from physical damage or to prevent injury or damage to persons or property.

### The NTO retains the right to take whatever actions it deems necessary to fulfill its obligations under local, state or federal law.

### Nothing in this Agreement shall be construed as limiting in any way the rights of the NTO to make any filing with the PSC.

### Notwithstanding anything to the contrary in this Agreement, no amendment to any provision of this Section may be adopted without the agreement of the NTO.

* 1. Retention of Non-Transferred Obligations

Any and all other rights and responsibilities of the NTO related to the ownership or operation of its transmission assets or to its rights to withdraw its assets from ISO control, that have not been specifically transferred to the ISO under this Agreement or otherwise addressed under this Agreement, will remain with the NTO.

1. ASSIGNMENT
	1. Assignments by the NTO or the ISO

This Agreement cannot be assigned by the ISO. This Agreement may be assigned by the NTO including, without limitation, to any entity(ies) in connection with a merger, consolidation, reorganization or change in the organizational structure of the assigning Party, provided that the surviving entity(ies) agree, in writing, to be bound by the terms of this Agreement.

1. LIMITATION OF LIABILITY AND INDEMNIFICATION
	1. Limitations of Liability

Except as otherwise provided under the ISO OATT, the NTO shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO, any Market Participant, any third party or other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive, exemplary or direct damages resulting from any act or omission in any way associated with this Agreement, except to the extent the NTO is found liable for gross negligence or intentional misconduct, in which case the NTO shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages. Nothing in this Section will excuse an NTO from an obligation to pay for services provided to the NTO by the ISO or to pay any deficiency payments, penalties, or sanctions imposed by the ISO under the ISO OATT or the ISO Services Tariff. The ISO shall not be liable to the NTO or any other party for any damages resulting from any act or omission in any way associated with this Agreement, except to the extent provided for under the ISO OATT.

* 1. Additional Limitations of Liability

Except as otherwise provided under the ISO OATT, the NTO shall not be liable for any indirect, consequential, exemplary, special, incidental or punitive damages including, without limitation, lost revenues or profits, the cost of replacement power or the cost of capital, even if such damages are foreseeable or the damaged party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy. The ISO shall not be liable to the NTO or any other party for any damages resulting from any act or omission in any way associated with this Agreement, except to the extent provided for under the ISO OATT.

* 1. Indemnification

Each Party shall at all times indemnify, save harmless and defend the other Party, including their directors, officers, employees, trustees, and agents, or each of them, from and against all claims, demands, losses, liabilities, judgments, damages (including, without limitation, any consequential, incidental, direct, special, indirect, exemplary or punitive damages and economic costs), and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the Party in any actions or proceedings between the Party and a Market Participant, or any other third party) arising out of or related to the ISO’s or the NTO’s acts or omissions related in any way to the NTO’s ownership or operation of its transmission facilities when such acts or omissions are either (1) pursuant to or consistent with ISO Procedures or direction; or (2) in any way related to the NTO’s or the ISO’s performance under the ISO OATT, the ISO Services Tariff, the ISO Agreement, the ISO/NYSRC Agreement, NYSRC Agreement, or this Agreement; *provided, however*, that the NTO shall not have any indemnification obligation under this Section 5.02 with respect to any loss to the extent the loss results from the gross negligence or intentional misconduct of the ISO; *provided, further*, that the ISO shall not have any indemnification obligation under this Section 5.02 with respect to any loss except to the extent the loss results from the gross negligence or intentional misconduct of the ISO.

* 1. Force Majeure

Each Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising out of or from any act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes beyond such Party’s reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due hereunder or pursuant to a Service Agreement. Any party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except the settlement of any labor disturbance shall be in the sole judgment of the affected party.

* 1. Claims by Employees and Insurance

Each Party shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under and covered by, any workers’ compensation law. Each Party shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement.

* 1. Survival

The provisions of this Article, “Limitations of Liability and Indemnification” shall survive the termination or expiration of this Agreement or the ISO Tariffs.

1. OTHER PROVISIONS
	1. Term and Termination for Cause

This Agreement shall have an effective date of May 23, 2016. Without waiving or limiting any of its other rights under this Article, if the NTO determines that any of the conditions set forth in Section 3.03 hereof is not being met or ceases to be in full force and effect the NTO may terminate this Agreement, withdraw from the ISO Agreement and the ISO Tariffs, and withdraw its assets from the ISO’s control and administration on ninety (90) days prior written notice to the ISO and FERC. Such notice shall identify the condition or conditions set forth in Section 3.03 that have not been met or no longer are in full force and effect; provided, however, that prior to the filing of such notice, the ISO shall be advised of the specific condition or conditions that are no longer in full force and effect, and the ISO shall have the opportunity to restore the effectiveness of the condition or conditions identified within a thirty (30) day period. If the effectiveness of the condition or conditions is not restored within thirty (30) days, the NTO may file a notice of termination with the ISO and FERC; provided, however, that if the ISO demonstrates that it has made a good faith effort but has been unable to restore the effectiveness of the condition or conditions within the thirty (30) day period, the ISO shall be provided an additional thirty (30) day period to restore the effectiveness of the condition or conditions and the NTO may not file the notice of termination until the expiration of the second thirty (30) day period. The NTO’s termination of this Agreement under this Section shall be effective ninety (90) days after the filing of the notice of termination unless FERC finds that such termination of the NTO is contrary to the public interest, as that standard has been judicially construed under the Mobile-Sierra doctrine. However, the NTO may withdraw the notice or extend the termination date. Nothing in this section shall be construed as a voluntary undertaking by the NTO to remain a Party to this Agreement after the expiration of its notice of termination.

* 1. Termination by Election

The NTO may terminate this Agreement, withdraw from the ISO Agreement and the ISO Tariffs, and withdraw its assets from the ISO control and administration upon ninety (90) days written notice to the ISO Board and FERC. Such termination and withdrawal shall be effective unless FERC finds that such termination and withdrawal is contrary to the public interest, as that standard has been judicially construed under the Mobile-Sierra doctrine. Any modification to this Article shall provide the NTO with the right to terminate this Agreement pursuant to the unmodified provisions of this Article, within ninety (90) days of the effective date of such modification.

* 1. Obligations after Termination

### Following termination of this Agreement, a Party shall remain liable for all obligations arising hereunder prior to the effective date of termination, including all obligations accrued prior to the effective date, imposed on the Party by this Agreement or the ISO Tariffs or other ISO Related Agreements.

### Termination of this Agreement shall not relieve the NTO of any continuing obligation it may have under the ISO Tariffs and ISO Related Agreements, unless the NTO also withdraws from the ISO Tariffs or ISO Related Agreements.

* 1. Winding Up

Any provision of this Agreement that expressly or by implication comes into or remains in force following the termination of this Agreement shall survive such termination. The surviving provisions shall include, but shall not be limited to: (i) those provisions necessary to permit the orderly conclusion, or continuation pursuant to another agreement, of transactions entered into prior to the termination of this Agreement, (ii) those provisions necessary to conduct final billing, collection, and accounting with respect to all matters arising hereunder, and (iii) the indemnification and limitation of liability provisions as applicable to periods prior to such termination. The ISO and the terminating NTO shall have an obligation to make a good faith effort to agree upon a mutually satisfactory termination plan. Such plan shall have among its objectives an orderly termination. The plan shall address, to the extent necessary, the allocation of any costs directly related to the termination by the NTO.

* 1. Confidentiality

#### Party Access. Each Party shall supply information to the other Party as required by this Agreement. Information shall be treated as Confidential Information under this Agreement if (i) it has been clearly marked or otherwise designated as “Confidential information” by the Party supplying the information, or (ii) it is information designated as Confidential Information by applicable provisions of the ISO Tariffs; *provided, however,* Confidential Information does not include information: (i) in the public domain or that has been previously publicly disclosed without violation of this Agreement, (ii) required by law to be publicly submitted or disclosed (with notice to the other Party), or (iii) necessary to be divulged in an action to enforce this Agreement.

Notwithstanding anything in this Section to the contrary, the NTO shall not have a right hereunder to receive or review any documents, data or other information of another Market Participant or the ISO, including documents, data or other information provided to the ISO, to the extent such documents, data or information have been designated as confidential pursuant to the procedures specified in the ISO Tariffs or to the extent that they have been designated as confidential by such other Market Participant; *provided, however,* that the NTO may receive and review any composite documents, data and other information that may be developed based on such confidential documents, data or information if the composite does not disclose any individual Market Participant’s confidential data or information.

#### Required Disclosure. The ISO shall treat any Confidential Information it receives from the NTO in accordance with applicable provisions of the ISO Tariffs. If the NTO receives Confidential Information from the ISO, it shall hold such information in confidence, employing at least the same standard of care to protect the Confidential Information obtained from the ISO as it employs to protect its own Confidential Information. Each Party shall not disclose the other Party’s Confidential Information to any third party or to the public without prior written authorization of the Party providing the information; *provided, however,* if the ISO is required by applicable law, or in the course of administrative or judicial proceedings, or subpoena, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section, the ISO will do so in accordance with applicable provisions of the ISO Tariffs. And if the NTO is required by applicable law, or in the course of administrative or judicial proceedings, or subpoena, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section, the NTO may make disclosure of such information; *provided, however,* that as soon as the NTO learns of the disclosure requirement and prior to making such disclosure, the NTO shall notify the ISO of the requirement and the terms thereof and the ISO may, at its sole discretion and cost, assert any challenge to or defense against the disclosure requirement and the NTO shall cooperate with the ISO to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. Each Party shall cooperate with the Other Party to obtain proprietary or confidential treatment of such information by the person to whom such information is disclosed prior to any such disclosure.

* 1. Governing Law; Jurisdiction

The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement is made and performed entirely in New York. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

* 1. Headings

The section headings herein are for convenience and reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this Agreement, they shall be construed as referring to this entire Agreement, rather than to any individual section, subsection or sentence.

* 1. Mutual Agreement

Nothing in this Agreement is intended to limit the Parties’ ability to mutually agree upon taking a course of action different than that provided for herein; provided that doing so will not adversely affect any other Parties’ rights under this Agreement.

* 1. Contract Supremacy

In the case of a conflict between the express terms of this Agreement and the terms of the ISO Agreement, the express terms of this Agreement shall prevail.

* 1. Additional Remedies

The Parties agree that remedies at law will be inadequate to protect the interests of the NTO and that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the ISO in accordance with their specific terms or were otherwise breached. Accordingly, it is agreed that the NTO shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or an ISO Tariff by the ISO, and specific performance to enforce specifically the terms and provisions thereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which the NTO is entitled at law or in equity.

* 1. No Third Party Rights

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

* 1. Not Partners

Nothing contained in this Agreement shall be construed to make the Parties partners or joint venturers or to render either Party liable for the debts or obligations of the other Party.

* 1. Waiver

Any waiver at any time of the rights of either Party as to any default or failure to require strict adherence to any of the terms herein, on the part of the other Party to this Agreement or as to any other matters arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

* 1. Modification

This Agreement is subject to change under Section 205 of the Federal Power Act, as that section may be amended or superseded, upon the mutual written agreement of the Parties. Absent mutual agreement of the Parties, it is the intent of this Section 6.14 that, to the maximum extent permitted by law, the terms and conditions set forth in Sections 2.01, 2.13, 3.03, 3.08, 3.09, 4.01, 5.01, 5.02, 5.03, 5.04, 5.05, 5.06, 6.01, 6.02, 6.09 and 6.14 of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting sua sponte on behalf of either Party or third party, (b) by a Party, (c) by a third party, or (d) in any other manner; subject only to an express finding by the Commission that such change is required under the public interest standard under the Mobile-Sierra doctrine. Any other provision of this Agreement may be changed pursuant to a filing with FERC under Section 206 of the Federal Power Act and a finding by the Commission that such change is just and reasonable.

* 1. Counterparts

This Agreement may be executed in counterparts, neither one of which needs to be executed by both Parties, and this Agreement shall be binding upon both Parties with the same force and effect as if both Parties had signed the same document, and each such signed counterpart shall constitute an original of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in its corporate name by its proper officers as of the date first written above.

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

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

 Rick Gonzales

Title: Chief Operating Officer

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

**New York Transco LLC**

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

 Stuart Nachmias

Title: President

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

APPENDIX A-1

LISTING OF NTO TRANSMISSION FACILITIES
UNDER ISO OPERATIONAL CONTROL

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **EQUIPMENT NAME** | **FROM BUS NAME** | **FROM BUS KV** | **TO BUS NAME** | **TO BUS KV** | **RESPONSIBLE THIRD PARTY[[2]](#footnote-3)** |
| SERIES CAPACITOR 3 | FRASER | 345 |  |  | NEW YORK STATE ELECTRIC & GAS CORPORATION |
| LINE SEGMENT 33[[3]](#footnote-4) | FRASER | 345 | COOPERS CORNERS | 345 | NEW YORK STATE ELECTRIC & GAS CORPORATION |
| LINE 76 | ROCK TAVERN | 345 | SUGARLOAF | 345 | CENTRAL HUDSON GAS & ELECTRIC CORPORATION / ORANGE AND ROCKLAND UTILITIES |

APPENDIX A-2

LISTING OF NTO TRANSMISSION FACILITIES
REQUIRING ISO NOTIFICATION

APPENDIX A-3

LISTING OF NTO LOCAL AREA TRANSMISSION SYSTEM FACILITIES

1. A subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, which joined the New York Power Pool on May 28, 1998. [↑](#footnote-ref-2)
2. Identified pursuant to Section 2.12 [↑](#footnote-ref-3)
3. The line segment from Structure 17 to Structure 177 [↑](#footnote-ref-4)