

### 40.25.3 APPENDIX 3 TO ATTACHMENT HH

#### CLUSTER 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”), \_\_\_\_\_ a \_\_\_\_\_ organized and existing under the laws of the State of New York (“Connecting Transmission Owner”), and, if applicable, \_\_\_\_\_ a \_\_\_\_\_ organized and existing under the laws of the State of New York (“Affected Transmission Owner/Affected System Operator”). Each individual Interconnection Customer, NYISO, Connecting Transmission Owner, and Affected Transmission Owner/Affected System Operator may be referred to as a “Party,” or collectively as the “Parties.” *[If more than one Connecting Transmission Owner, Affected Transmission Owner, or Affected System Operator, to insert additional entity placeholder in preamble.]*

#### RECITALS

**WHEREAS**, Interconnection Customer has submitted [an Interconnection Request/a CRIS-Only Request] proposing to [interconnect a new Generating Facility or Cluster Study Transmission Project/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//solely obtain Capacity Resource Interconnection Service (“CRIS”) or External CRIS /an increase in Capacity Resource Interconnection Service (“CRIS”)]; and

**WHEREAS**, Interconnection Customer is requesting through its [Interconnection Request/ CRIS-Only Request] for its Cluster Study Project to obtain [Energy Resource Interconnection Service (“ERIS”)/ERIS and Capacity Resource Interconnection Service (“CRIS”)/only Capacity Resource Interconnection Service (“CRIS”)/ only External Capacity Resource Interconnection Service (“CRIS”)/ an increase in Capacity Resource Interconnection Service (“CRIS”)] pursuant to Attachment HH to the NYISO’s Open Access Transmission Tariff (“OATT”).

**WHEREAS**, Interconnection Customer has submitted all of the items required for a complete [Interconnection Request/ CRIS-Only Request] for its Cluster Study Project, including all fees and deposits, as set forth in Section 40.5 to Attachment HH to the ISO OATT; and

**WHEREAS**, the NYISO has validated the Interconnection Customer’s [Interconnection Request/ CRIS-Only Request] for its Cluster Study Project submitted during the Application Window or Customer Engagement Window for the Cluster Study and identified the applicable Connecting Transmission Owner; and

**WHEREAS**, the NYISO has identified or may subsequently identify any Affected Transmission Owner(s)/Affected System Operator(s) which Affected System is impacted by the proposed interconnection of the Cluster Study Project.

**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 This Agreement will become effective upon the execution of the Interconnection Customer, Connecting Transmission Owner, the ISO, and any Affected Transmission Owner(s)/Affected System Operator(s) initially identified in connection with the ISO's validation of the Interconnection Request. If the ISO subsequently identifies potential impacts of the Cluster Study Project on the Affected System of an Affected Transmission Owner/Affected System Operator that require study under the Cluster Study Process, the Parties agree to amend this Agreement to include the applicable Affected Transmission Owner(s)/Affected System Owner(s).
- 3.0 Interconnection Customer elects for its Cluster Study Project to be evaluated for [ERIS/ERIS and CRIS/CRIS only/ External CRIS only/ an increase in CRIS] in the Cluster Study, and the NYISO, Connecting Transmission Owner, Interconnection Customer, and any Affected Transmission Owner(s)/Affected System Operator(s) shall perform their responsibilities for the Cluster Study consistent with the requirements in Attachment HH to the ISO OATT. The terms of the Attachment HH to the ISO OATT, as applicable, are hereby incorporated by reference herein, as such OATT requirements may be amended from time to time.
- 4.0 Interconnection Customer shall provide to the NYISO, Connecting Transmission Owner, and Affected Transmission Owner(s)/Affected System Owner(s) as applicable, the information required by the [Interconnection Request/ CRIS-Only Request] and any other information required by Attachment HH to the ISO OATT in accordance with timeframes set forth in Attachment HH to the ISO OATT.
- 5.0 The Interconnection Customer shall provide any deposits and satisfy any entry requirements required at each decision period within the Cluster Study Process in accordance with the requirements in Attachment HH to the ISO OATT for its Cluster Study Project to continue to be assessed in the Cluster Study. Interconnection Customer shall be responsible for any Withdrawal Penalties assessed to its Cluster Study Project in accordance with Attachment HH to the ISO OATT. The time for completion of the components of the Cluster Study is specified in Attachment HH to the ISO OATT.
- 6.0 For an Interconnection Customer seeking ERIS, (i) the Phase 1 Study report shall provide a description, estimated cost of, and preliminary schedule for the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, and Local System Upgrade Facilities required to interconnect the facility to the New York State Transmission System (or Distribution System, as applicable) in accordance with the requirements in Section 40.10 of Attachment HH to the ISO OATT and (ii) the Cluster Study Report shall provide a description, estimated cost of, and preliminary schedule for the System Upgrade Facilities required to interconnect the facility to the New York State Transmission System (or Distribution System, as applicable) in accordance with the

requirements in Sections 40.11, 40.12, and 40.15 of Attachment HH to the ISO OATT.

- 7.0 For an Interconnection Customer seeking CRIS, the Cluster 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 in accordance with the requirements in Sections 40.11, 40.12, 40.13, 40.14, and 40.15 of Attachment HH to the ISO OATT.
- 8.0 For an Interconnection Customer with a Cluster Study Project which interconnection impacts an External Affected System, the Interconnection Customer shall be responsible for satisfying any NYISO and External Affected System Operator requirements, including Interconnection Customer's cost responsibility, concerning the assessment of such impacts on the External Affected System and its responsibility for any required Affected System Network Upgrades.
- 9.0 Interconnection Customer shall be responsible for the actual costs incurred, as applicable by NYISO, Connecting Transmission Owner, Affected Transmission Owner(s)/Affected System, and any third-party contractors for the Cluster Study Process, as computed on a time and materials basis in accordance with the rates attached hereto. The ISO shall invoice the Interconnection Customer, and Interconnection Customer shall pay the invoiced amounts to NYISO, in accordance with the requirements in Section 40.24.3 of Attachment HH to the ISO OATT. The NYISO shall continue to hold the deposits until settlement of the final invoice, including invoicing for any Withdrawal Penalties applicable to the Cluster Study Project, in accordance with the requirements in Section 40.24.3.
- 10.0 Miscellaneous.
  - 10.1 Accuracy of Information. Except as Interconnection Customer may otherwise specify in writing when they provide information to NYISO, Connecting Transmission Owner, and Affected Transmission Owner(s)/Affected System Owner(s) under this Agreement, Interconnection Customer represents and warrants that the information it provides to NYISO, Connecting Transmission Owner, and Affected Transmission Owner(s)/Affected System Owner(s) shall be accurate and complete as of the date the information is provided. Interconnection Customer shall promptly provide NYISO, Connecting Transmission Owner, and Affected Transmission Owner(s)/Affected System Owner(s) with any additional information needed to update information previously provided to the extent permitted under Attachment HH to the ISO OATT.
  - 10.2 Disclaimer of Warranty. In preparing the components of the Cluster Study, the Party preparing such study component 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 a component of the Cluster 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 its component of the Cluster 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.

- 10.3 **Limitation of Liability.** The NYISO, Connecting Transmission Owner, Affected Transmission Owner(s)/Affected System Owner(s), or any subcontractor consultants engaged by the party shall not be liable for direct damages, including money damages or other compensation, for its actions or omissions in performing its obligations under this Agreement, except to the extent its act or omission is found to result from its gross negligence or willful misconduct. 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 Cluster Study or any reliance on the Cluster Study, including any of its components, 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, except as otherwise set forth in Attachment HH to the ISO OATT.
- 10.4 **Third-Party Beneficiaries.** Without limitation of Sections 10.2 and 10.3 of this Agreement, Interconnection Customer further agrees that subcontractor consultants employed by NYISO, Connecting Transmission Owner, and Affected Transmission Owner(s)/Affected System Owner(s) to conduct or review, or to assist in the conducting or reviewing, a component of the Cluster Study shall be deemed third party beneficiaries of these Sections 10.2 and 10.3.
- 10.5 **Term and Termination.** This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 10.5, shall continue in effect until the later of: (i) the completion of the Final Decision Round for the later of the Final Decision Period at the conclusion of the Phase 2 Study or the Additional SDU Study Decision Period, (ii) the ISO's receipt of final invoices from an External Affected System Operator concerning the External Affected System Operator's assessment, if applicable, of the impact of the Cluster Study Project on the External Affected System, and (iii) the final reconciliation of any payments, deposits, and Withdrawal Penalties concerning the Cluster Study Project in accordance with the requirements in Attachment HH to the ISO OATT. Interconnection Customer or NYISO may terminate this Agreement upon the later of (i) the withdrawal of the Interconnection Customer's project from the NYISO's Queue pursuant to Section 40.6.4 of Attachment HH, and (ii) the final reconciliation of any payments, deposits, and Withdrawal Penalties in accordance with the requirements in Attachment HH to the ISO OATT.

- 10.6 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.
- 10.7 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.
- 10.8 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 10.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing signed by the Parties hereto.
- 10.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 10.11 Independent Contractor. NYISO, Connecting Transmission Owner, and Affected Transmission Owner(s)/Affected System Owner(s) shall at all times be deemed to be independent contractors and none of their employees or the employees of their subcontractors shall be considered to be employees of the other Parties or the Interconnection Customer as a result of this Agreement.
- 10.12 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.
- 10.13 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: \_\_\_\_\_

**[Insert name(s) of Affected Transmission Owner(s)/Affected System Operator(s)]**

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

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

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