

STUDY REPLICATION AGREEMENT

THIS STUDY REPLICATION AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 20__ by and between _____, a _____ organized and existing under the laws of the State of _____, (“Requestor”), and the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (“NYISO”). Requestor and NYISO each may be referred to as a “Party,” or collectively referred to as the “Parties.”

RECITALS

WHEREAS, Requestor has submitted a completed request form, dated _____ and the requisite refundable deposit to the NYISO for the NYISO to replicate the [*Study to be designated by Requestor, referencing the applicable Section(s) 6.1, 9.1, 12.1, and/or 15.5 of Attachment Y*] (“Study Replication”) pursuant to Attachment Y to the Open Access Transmission Tariff (“OATT”) and the NYISO has posted the date and expected occurrence of the Study Replication; and

WHEREAS, Requestor and the NYISO have met to discuss and determine the nature and scope of the Study Replication, as designated in Attachment A hereto; and

WHEREAS, Requestor desires the NYISO to perform, or cause to be performed, the Study Replication in accordance with this Agreement, and with applicable provisions of Attachment Y to the OATT and ISO Procedures;

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

- 1.0 Capitalized terms that are not otherwise defined herein shall have the meaning set forth in Section 1.0 of the OATT or in Attachment X or Attachment Y to the OATT.
- 2.0 Requestor requests, and the NYISO shall perform or cause to be performed, a Study Replication consistent with Attachment Y to the OATT. The terms of Attachment Y to the OATT, as applicable, are hereby incorporated herein by reference.
- 3.0 The scope of the Study Replication shall be specified in Attachment A to this Agreement, including certain information upon which the Study Replication shall be based. The Study Replication shall use the information, applicable database and base case used in the study to be replicated.
- 4.0 The Study Replication will be based upon the information provided to the NYISO by Requestor in its request for a Study Replication dated _____, (“Request For Replication”). The Requestor shall promptly provide to the

NYISO additional information as the NYISO in its judgment determines is reasonably necessary to complete the Study Replication.

5.0 The NYISO shall perform, or cause to be performed, this Study Replication on a first come, first served basis in the order in which its respective completed Request for Replication was received. The NYISO shall make Reasonable Efforts to complete the Study Replication by [*calendar date/date point on Comprehensive Reliability Plan cycle time line*]. If the NYISO determines that this target date will not be met, the NYISO will promptly inform Requestor and provide Requestor with an updated estimate of the date by which the Study Replication will be completed together with an explanation of the reasons why additional time is required. If Requestor modifies the technical information provided in the Request For Replication, the NYISO may reasonably extend the time to complete the Study Replication.

6.0 Contents of Study Replication to be provided to Requestor:

6.1 [TBD]

6.2 [TBD]

6.3 [TBD]

7.0 Study Replication Costs

7.1 The NYISO shall charge, and Requestor shall pay, all reasonable costs actually incurred by the NYISO to perform or cause to be performed, the Study Replication. Such costs may include the cost of consultants and contractors retained by the NYISO and the cost, if any, incurred by Transmission Owner(s) to supply analysis-related data, if any, when requested to do so by the NYISO. Costs shall be computed on a time and materials basis in accordance with the rates set forth in Attachment B to this Agreement.

7.2 The initial deposit of \$25,000 submitted by Requestor with its Request For Replication, shall be applied to the cost of the Study Replication. The NYISO's good faith estimate of the total cost of the Study Replication is \$[_____]. The Parties acknowledge and agree that the actual total cost of the Study Replication may differ from this estimate. Upon execution of this Agreement, Requestor shall submit an additional deposit of \$[_____] which the NYISO shall also apply to the actual cost of the Study Replication. If Requestor modifies the scope of the Study Replication as initially specified in Attachment A to this Agreement, and does so in such a way as to increase the estimated total cost of the Study Replication, the NYISO may request, and the Requestor shall pay, an additional deposit to reflect that cost increase, which the NYISO shall apply to the actual cost of the Study Replication.

- 7.3 Upon completion of the Study Replication, NYISO shall provide to the Requestor a final invoice setting forth all of the reasonable costs actually incurred by the NYISO for the Study Replication. Any difference between the total of the deposits submitted by Requestor and the actual costs set forth in the final invoice shall be paid by or refunded to Requestor, as applicable, within thirty (30) days of the final invoice.
- 8.0 Study Replication Results
- 8.1 Upon receipt of the final payment by the applicable Party of any amount due pursuant to Section 7.3 of this Agreement, the NYISO will deliver the results of the completed Study Replication to Requestor, and if so requested by Requestor, the Parties will meet at a mutually agreeable time and place to review the results of the Study Replication.
- 8.2 The NYISO will review the results of the Study Replications to determine whether the results reveal Confidential Information that is not subject to disclosure under the NYISO's Code of Conduct. Confidential Information will be removed or the results, aggregated or masked sufficiently to avoid the disclosure of Confidential Information.
- 9.0 Requestor may withdraw its Request For Replication at any time by terminating this Agreement in accordance with Section 10.5 of this Agreement. Upon receipt of such termination notice, the NYISO will cease work on the Study Replication. Requestor shall reimburse the NYISO for all reasonable costs incurred for the Study Replication through the effective date of termination. The NYISO will promptly forward to Requestor either (i) an invoice for unpaid costs related to the Study Replication, payable within thirty (30) days, or (ii) a refund of that portion of Requestor's deposited funds not required to cover unpaid costs related to the Study Replication. The NYISO will forward completed results, if any, to Requestor with the refund, if one is due, or upon receipt of full payment from Requestor for unpaid costs related to the Study Replication.
- 10.0 Miscellaneous.
- 10.1 Accuracy of Information. Except as Requestor may otherwise specify in writing when it provides information to the NYISO under this Agreement, Requestor represents and warrants that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. Requestor shall promptly provide NYISO with any additional information needed to update information previously provided.
- 10.2 Disclaimer of Warranty. In preparing the costs related to the Study Replication, the NYISO and any subcontractor or consultant employed

by it and any Transmission Owner that provides study-related data shall have to rely on information provided by the Requestor and third parties, and may not have control over the accuracy of such information. Accordingly, neither the NYISO nor any subcontractor or consultant employed by the NYISO nor any Transmission Owner that provides study-related data 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, completeness or conclusions of the Study Replication. Requestor acknowledges that it has not relied on any representations or warranties not specifically set forth herein.

- 10.3 **Limitation of Liability.** In no event shall either Party or its subcontractors or consultants or any Transmission Owner that provides study-related data 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 Study Replication or any reliance on the Study Replication by either Party or third parties, even if one of the Parties or its subcontractors or consultants have been advised of the possibility of such damages.
- 10.4 **Third-Party Beneficiaries.** Without limitation of Sections 10.2 and 10.3 of this Agreement, Requestor further agrees that any subcontractor or consultant hired by NYISO with respect to the Study Replication and any Transmission Owner that provides study-related data 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 for a term of [_____] or until the Study Replication is completed, whichever event occurs first. Requestor may by ten (10) days written notice terminate this Agreement and thereby withdraw Requestor's Request For Replication.
- 10.6 **Governing Law.** This Agreement shall be governed by the substantive law of the State of New York, without regard to any conflicts of laws provisions (other than Section 5-1401 of the New York General Obligations Law).
- 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. The terms and conditions of this Agreement (including all Attachments and the executed Request for Replication) may be modified, amended or waived only by a prior written instrument that has been signed by an authorized representative of each Party and delivered to both Parties. Any purported modification, amendment or waiver that fails to comply with the foregoing shall be void and of no effect.
- 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 shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors or consultants shall be considered to be employees of Requestor 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 THEREOF, 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.

ATTACHMENT A
SCOPE OF STUDY REPLICATION

I. [Study to be Replicated. Identify study and specify the applicable Section(s) 6.1, 9.1, 12.1 and/or 15.5 of Attachment Y.]

II. [Scope, including data to be analyzed.]

ATTACHMENT B

HOURLY RATES FOR PERSONNEL WORKING ON THE STUDY REPLICATION

<u>Position</u>	<u>Hourly Rate</u>