

**ATTACHMENT O**

**NON-INCUMBENT TRANSMISSION DEVELOPER OPERATING AGREEMENT**

# **NON-INCUMBENT TRANSMISSION DEVELOPER OPERATING AGREEMENT**

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## **NON-INCUMBENT TRANSMISSION DEVELOPER OPERATING AGREEMENT**

This Operating Agreement (this “Agreement”), dated as of \_\_\_\_\_, is made and entered into by  
[date]

\_\_\_\_\_  
[Company]  
a \_\_\_\_\_  
[STATE] [TYPE OF ENTITY]

(“NTD”), and ISO New England Inc.(“ISO”), a Delaware corporation (NTD and the ISO are collectively referred to herein as the “Parties”).

WHEREAS, the ISO is a regional transmission organization (“RTO”) authorized by the Federal Energy Regulatory Commission (“FERC”) to exercise the functions required of RTOs pursuant to FERC’s Order No. 2000 (“Order 2000”) and FERC’s RTO regulations;

WHEREAS, NTD has been approved as a “Qualified Transmission Project Sponsor” pursuant to the ISO Open Access Transmission Tariff (the “ISO OATT”), which is Section II of the ISO New England Inc. Transmission, Markets and Services Tariff (the “ISO Tariff”);

WHEREAS, in accordance with the requirements of Order 2000, the ISO will be the transmission provider under the ISO OATT of non-discriminatory, open access transmission services over the transmission facilities of NTD, once placed in service, that become part of the New England Transmission System (“Transmission Service”);

WHEREAS, the ISO OATT will be designed to provide for the payment by transmission customers for Transmission Service at rates designed to recover the revenue requirements of NTD in supporting the provision of such transmission service by the ISO under the ISO OATT;

WHEREAS, the ISO will be responsible for system planning within the ISO region subject to certain rights and obligations of NTD, all as set forth in this Agreement;

WHEREAS, the functions to be performed by the ISO and Order 2000 require that the ISO have the requisite operational authority over NTD’s transmission facilities;

WHEREAS, in accordance with the terms set forth herein, NTD desires for the ISO to exercise, and the ISO desires to exercise, Operating Authority (as defined in Section 3.02 of this Agreement) over

the NTD Transmission Facilities (as defined in this Agreement) consistent with the requirements of Order 2000, once those facilities are placed in service;

WHEREAS, NTD will among other things, continue to own, physically operate, and maintain its transmission facilities; and

WHEREAS, references to the PTOs in this Agreement are not intended to impose additional requirements or obligations on the PTOs in addition to those in the TOA;

NOW, THEREFORE, in consideration of the promises, and the mutual representations, warranties, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, NTD and the ISO agree as follows:

## **ARTICLE I**

### **DEFINITIONS; INTERPRETATIONS**

1.01 **Definitions; Interpretations.** Each of the capitalized terms and phrases used in this Agreement (including the foregoing recitals) and not otherwise defined herein shall have the meaning specified in Schedule 1.01. In this Agreement, unless otherwise provided herein:

- (a) words denoting the singular include the plural and vice versa;
- (b) words denoting a gender include all genders;
- (c) references to a particular part, clause, section, paragraph, article, exhibit, schedule, appendix or other attachment shall be a reference to a part, clause, section, paragraph, or article of, or an exhibit, schedule, appendix or other attachment to, this Agreement;
- (d) the exhibits, schedules and appendices attached hereto are incorporated herein by reference and shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein;
- (e) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, amendments, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes,



proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in this Agreement;

(f) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time;

(g) a definition of or reference to any document, instrument or agreement includes any amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used;

(h) a reference to any Person (as hereinafter defined) includes such Person's successors and permitted assigns in that designated capacity;

(i) any reference to "days" shall mean calendar days unless "Business Days" (as hereinafter defined) are expressly specified;

(j) if the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day);

(k) words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to this Agreement as a whole and not to any particular article, section, subsection, paragraph or clause hereof;

(l) a reference to "include" or "including" means including without limiting the generality of any description preceding such term, and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned; and

(m) neither this Agreement nor any other agreement, document or instrument referred to herein or executed and delivered in connection herewith shall be construed against any Person as the principal draftsman hereof or thereof.

## **ARTICLE II**

### **TRANSMISSION FACILITIES**

2.01 **Transmission Facilities.** As to NTD, the transmission facilities over which the ISO shall exercise Operating Authority (as of the date the facilities are placed in service) in accordance with the terms set forth herein shall be:

(a) those facilities of NTD listed in Schedule 2.01(a) (hereinafter “NTD Category A Facilities”), as such list of facilities may be added to or deleted from in accordance with Sections 2.01(d) and 2.02 below;

(b) those facilities of NTD listed in Schedule 2.01(b) (hereinafter “NTD Category B Facilities”), as such list of facilities may be added to or deleted from, in accordance with Sections 2.01(d) and 2.02 below; and

(c) those transmission facilities of NTD within the New England Transmission System with a voltage level of less than 69 kV and all transformers that have no NTD Category A Facilities or NTD Category B Facilities connected to the lower voltage side of the transformer that are not listed on Schedule 2.01(a) and Schedule 2.01(b) (hereinafter “NTD Local Area Facilities”), provided that any excluded facilities of NTD listed on Schedule 4.01(d) shall not be NTD Local Area Facilities.

(d) The transmission facilities included on any of the lists of the NTD Category A Facilities or the NTD Category B Facilities contained in Schedule 2.01(a) and Schedule 2.01(b), respectively, may be redesignated on another of those two lists, deleted from such list, or redesignated as a NTD Local Area Facility without the necessity of an amendment to this Agreement, but only in the following manner:

(i) at the direction of a Governmental Authority with jurisdiction over the Transmission Facilities in question, provided that the ISO and NTD shall be provided prior written notice of such changes;

(ii) as agreed between the ISO and NTD; or

(iii) where the operational characteristics of a transmission facility have been materially modified (including a change from a radial transmission facility to a looped transmission facility that contributes to the parallel carrying capability of the New England Transmission System) in accordance with Section 2.01(e); provided that any such changes shall also be subject to ISO review consistent with Section 2.06.

(e) All transmission facilities to be redesignated as NTD Category A Facilities, NTD Category B Facilities, or Local Area Facilities or deleted from the lists in Schedule 2.01(a) and Schedule 2.01(b) in accordance with Section 2.01(d)(iii), and all transmission facilities to be added to the lists in Schedule 2.01(a) and Schedule 2.01(b) in accordance with Section 2.02 shall be classified in accordance with the following standards:

(i) NTD Category A Facilities shall consist of: all transmission lines with a voltage level of 115 kV and above, except for those 115 kV transmission facilities specifically designated as NTD Category B Facilities in accordance with Section 2.01(e)(ii); all transmission interties between Control Areas; all transformers that have NTD Category A Facilities connected to the lower voltage side of the transformer; all transformers that require an NTD Category A Facility to be taken out of service when the transformer is taken out of service; and all breakers and disconnects connected to, and all shunts, relays, reclosing and associated equipment, dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other equipment specifically installed to support the operation of such transmission lines, interties, and transformers.

(ii) NTD Category B Facilities shall consist of: all 115 kV radial transmission lines and all 69 kV transmission lines that are not interties between Control Areas; all transformers that have any NTD Category B Facilities and no NTD Category A Facilities connected to the lower voltage side of the transformer except to the extent such transformers are designated as NTD Category A Facilities in accordance with Section 2.01(e)(i); and all breakers and disconnects connected to, and all shunts, relays, reclosing and associated equipment, dynamic reactive resources, FACTS controllers, special protection systems, PARS, and other equipment specifically installed to support the operation of such NTD Category B Facilities.

(iii) NTD Local Area Facilities shall consist of all transmission facilities with a voltage level of less than 69 kV and all transformers that have no NTD Category A Facilities or NTD Category B Facilities connected to the lower voltage side of the transformer.

(iv) To the extent there is any dispute between the ISO and NTD as owner of a transmission facility concerning classification of such transmission facility under these standards, such disagreement shall be subject to the dispute resolution provisions of this Agreement, provided that the ISO's classification of a transmission facility under the standards shall govern pending resolution of the dispute.

Collectively, all NTD Category A Facilities, NTD Category B Facilities, and NTD Local Area Facilities shall hereinafter be referred to as the "Transmission Facilities," provided that "Transmission Facilities" shall not include Excluded Assets as defined in Section 2.04 of this Agreement or Merchant Facilities. The ISO shall maintain on its OASIS a posting of the current versions of Schedule 2.01(a) and Schedule 2.01(b), in each instance, reflecting each such change promptly after such change is made.

(f) The classifications set forth in this Section 2.01 are for operational purposes. Rate treatment of Transmission Facilities shall be governed by the ISO OATT, provided that filings for rate treatment under the ISO OATT shall be subject to Section 3.04 of this Agreement.

## **2.02 New and Acquired Transmission Facilities and Transmission Upgrades.**

(a) Any New Transmission Facility or Transmission Upgrade shall be considered a "Transmission Facility" under this Agreement once it is included as "Proposed" in the RSP Project List and, unless otherwise agreed by the ISO and NTD, shall thereafter be added to Schedule 2.01(a) and/or (b), as applicable.

(b) Any Merchant Facility interconnected to or within the New England Transmission System shall not be the subject of this Agreement. Any Merchant Facility interconnected to or within the New England Transmission System constructed and placed in commercial operation after the Operations Date shall be subject to the authority of the ISO under a separate agreement in accordance with Section 2.03 and any applicable provisions of the ISO OATT.

2.03 **Merchant Facilities.** The terms and conditions under which NTD, an Affiliate of NTD or any other entity grants authority over any Merchant Facilities to the ISO shall not be governed by this Agreement, it being understood that NTD shall enter into operating agreements relating to its Merchant Facilities directly with the ISO in accordance with applicable provisions of the ISO OATT. Nothing in this Agreement is intended to limit or expand the right of NTD, the Affiliate of NTD, or any other entity to propose, construct, or own Merchant Facilities interconnected to the New England Transmission System. No Merchant Facility may become an Acquired Transmission Facility.

2.04 **Excluded Assets.** The “Excluded Assets” of NTD shall consist of those assets and/or facilities of NTD set forth in Section 2.04(a) and (b). These Excluded Assets are expressly excluded from the definition of Transmission Facilities under this Agreement, and the ISO shall not have Operating Authority over NTD’s Excluded Assets. Nothing in this Section 2.04 is intended to address the rate treatment of the Transmission Facilities or any other asset of NTD. Rate treatment of Transmission Facilities shall be governed by the ISO OATT, provided that filings for rate treatment under the ISO OATT shall be subject to Section 3.04 of this Agreement:

(a) Excluded Assets are any assets, facilities, and/or portions of facilities owned by NTD that are connected with or associated with Transmission Facilities to the extent specifically excluded pursuant to the following items (i) through (vii) of this Section 2.04(a):

(i) proceeds from the use or disposition of Transmission Facilities;

(ii) any payment, refund or credit (1) relating to Taxes in respect of the Transmission Facilities, (2) arising under any contracts or tariffs of NTD and relating to services provided prior to the beginning of the Term, or (3) arising under any contract or tariff that provides for rates that are subject to regulation by an agency other than FERC.

(iii) any rights, ownership, title or interest NTD may have with respect to telecommunications assets and equipment, provided that the ISO shall continue to have the right to use such telecommunication assets and equipment attached to or associated with Transmission Facilities solely to the extent needed for the exercise of the ISO’s Operating Authority and further provided that such use right shall not be assignable by the ISO;

(iv) any existing contracts or contract rights of NTD related in any manner to Transmission Facilities unless NTD agrees to assign or transfer such contracts to the ISO;

(v) any assets, property rights, licenses, permits or facilities that are used for or in (1) the distribution, generation, trading or marketing of electricity (except for facilities specifically defined as Transmission Facilities that are used for such activities), (2) gas transportation, gas, water, petroleum, chemical, real estate development, or cable business, or (3) any other activity unrelated to the transmission of electricity located on, or making use of, the Transmission Facilities;

(vi) any causes of action or claims related to Transmission Facilities, provided, that, upon the written agreement of NTD and the ISO to the assumption by the ISO of the management of such claims under mutually agreed terms and conditions, the ISO may manage NTD's causes of action or claims against a third party relating to such Transmission Facilities, and provided further that the ISO shall have the right to pursue causes of action or claims against third parties to the extent necessary for the ISO to fulfill its responsibilities for invoicing, collection and disbursement of customer payments in accordance with Section 3.10; and

(vii) any asset or facility for which Operating Authority may not be lawfully transferred or assigned.

(b) Excluded assets are any assets or facilities of NTD that are not specifically defined as Transmission Facilities, including without limitation the facilities or portions of facilities described in items (i) through (xii) of this Section 2.04(b):

(i) all cash, cash equivalents, bank deposits, accounts receivable, and any income, sales, payroll, property or other Tax receivables;

(ii) proceeds from the use or disposition of any facilities or assets owned by NTD;

(iii) certificates of deposit, shares of stock, securities, bonds, debentures, and evidences of indebtedness;

(iv) any rights or interest in trade names, trademarks, service marks, patents, copyrights, domain names or logos;

(v) any payment, refund or credit (1) relating to Taxes, (2) arising under any contracts or tariffs of NTD and relating to services provided prior to the beginning of the Term, or (3) arising under any contract or tariff that provides for rates that are subject to regulation by an agency other than FERC;

(vi) any facilities, including transmission facilities, located outside the New England Transmission System;

(vii) any rights, ownership, title or interest NTD may have with respect to telecommunications assets and equipment;

(viii) any existing contracts or contract rights of NTD unless NTD agrees to assign or transfer such contracts to the ISO;

(ix) any assets, property rights, licenses, permits or facilities that are used for or in (1) the distribution, generation, trading or marketing of electricity or (2) gas transportation, gas, water, petroleum, chemical, real estate development, or cable business, or (3) any other activity unrelated to the transmission of electricity whether or not located on, or making use of, the Transmission Facilities;

(x) any causes of action or claims;

(xi) any asset or facility for which Operating Authority may not be lawfully transferred or assigned; and

(xii) any interests of any kind in NTD's real property, provided that nothing in this Section 2.04 shall restrict NTD from conveying interests in real property in any future written agreement into which the ISO and NTD may, in their sole discretion, enter.

#### 2.05 **Connection with Non-Parties.**

(a) NTD shall connect its Transmission Facilities (once placed in service) with the facilities of any entity that is not a Party, including the facilities of a current or proposed Transmission

Customer, and shall install (or cause to be installed) and construct (or cause to be constructed) any transmission facilities required to connect the facilities of a non-Party to the Transmission Facilities to the extent such connection or construction is required by applicable law, including the Federal Power Act and any applicable regulations issued by FERC and provided that the construction of any such transmission facilities shall be subject to the conditions associated with NTD's obligation to build set forth in Schedule 3.09(a). Any such connection shall be subject further to: (1) the receipt of any necessary regulatory approvals, (2) compliance with the procedures set forth in the ISO OATT for review of the reliability and operational impacts of a proposed interconnection (including the procedures for interconnection of a Generating Unit under the Interconnection Standard); and (3) execution of an Interconnection Agreement with such entity containing provisions for the safe and reliable operation of each interconnection with respect to such entity's facilities in accordance with Good Utility Practice, applicable NERC/NPCC Requirements, and applicable Law (including the Federal Power Act); provided that

(i) Except as provided in 2.05(a)(ii) below, NTD shall engage in good faith negotiations as to the terms and conditions of such Interconnection Agreement with any such non-Party, but, except as may be required pursuant to regulations issued by FERC, NTD shall not be required to enter into any Interconnection Agreement containing terms and conditions unacceptable to NTD and shall reserve the right to resolve any disputes, and/or make any filings with FERC, with respect thereto.

(ii) With respect to the interconnection of a Large Generating Facility or a Small Generating Facility to any Transmission Facility, the Interconnection Agreement shall be a three-party agreement among NTD, the ISO, and the interconnecting non-Party based on the Schedule 22 Large Generator Interconnection Agreement or Schedule 23 Small Generator Interconnection Agreement, respectively, in the ISO OATT. With respect to the interconnection of other Generating Units to any Transmission Facility of NTD, the ISO shall be a party to Interconnection Agreements if and to the extent that FERC regulations require the ISO to be a party. Either the ISO or the PTOs (working with NTD as a party to the Disbursement Agreement), may propose amendments to the Schedule 22 Large Generator Interconnection Agreement or Schedule 23 Small Generator Interconnection Agreement under Section 205 of the Federal Power Act and shall include in such proposal the views of the ISO and NTD and PTOs, as applicable, provided that the standard applicable under Section 205 of the Federal Power Act shall



apply only to the NTD and/or PTOs' position on any financial obligations of the PTOs and/or NTD (as applicable) or the interconnecting non-Party, and any provisions related to physical impacts of the interconnection on the Transmission Facilities or other assets. If NTD, the ISO and the interconnecting non-Party agree to the terms and conditions of a specific Large Generator Interconnection Agreement or Small Generator Interconnection Agreement, as applicable, or any amendments to such an Interconnection Agreement, then NTD and the ISO shall jointly file the executed Interconnection Agreement, or amendment thereto, with FERC under Section 205 of the Federal Power Act. To the extent NTD, the ISO and such interconnecting non-Party cannot agree to proposed variations from the Schedule 22 or 23 Interconnection Agreement applicable to a Large Generating Facility or Small Generating Facility, respectively, or cannot otherwise agree to the terms and conditions of the Interconnection Agreement, or any amendments to such an Interconnection Agreement, then NTD and the ISO shall jointly file an unexecuted Interconnection Agreement, or amendment thereto, with FERC under Section 205 of the Federal Power Act and shall identify the areas of disagreement in such filing, provided that, in the event of disagreement on terms and conditions of the Interconnection Agreement related to the costs of upgrades to the Transmission Facilities, the anticipated schedule for the construction of such upgrades, any financial obligations of NTD, and any provisions related to physical impacts of the interconnection on the Transmission Facilities or other assets, then the standard applicable under Section 205 of the Federal Power Act shall apply only to NTD's position on such terms and conditions.

The costs of interconnection facilities shall be allocated in the manner specified in the ISO OATT.

(b) NTD shall also connect its Transmission Facilities (once placed in service) with the facilities of any entity that is not a Party upon satisfaction of the "Elective Transmission Upgrade" provisions of the ISO OATT, provided that NTD shall only connect the facilities of such entity (the "Elective Transmission Upgrade Applicant") upon satisfaction of the following conditions:

(i) The Elective Transmission Upgrade Applicant shall enter into an Interconnection Agreement with the affected PTO(s) and NTD and, to the extent necessary and appropriate, enter into support agreements with the affected PTO(s) and

NTD, provided that the Elective Transmission Upgrade Applicant may request, upon providing the security, credit assurances, and/or deposits required by the affected PTO, the filing with the Commission by NTD and/or affected PTOs of unexecuted Interconnection Agreements and support agreements.

(ii) The Elective Transmission Upgrade Applicant shall obtain all necessary legal rights and approvals for the construction and maintenance of the upgrade and shall cooperate with NTD in obtaining all necessary legal rights and approvals for the construction and maintenance of additions or modifications, if any, required in conjunction with the upgrade.

(iii) The Elective Transmission Upgrade Applicant shall be responsible for 100% of all of the costs of said upgrade and of any additions to or modifications of the Transmission Facilities that are required to accommodate the Elective Transmission Upgrade. A request for rate treatment of an Elective Transmission Upgrade, if any, shall be determined by FERC in the appropriate proceeding.

2.06 **Review of Transmission Plans.** NTD shall submit to the ISO in such form, manner and detail as the ISO may reasonably prescribe: (i) any new or materially changed plans for retirements of or changes in the capacity of such Transmission Facilities rated 69 kV or above or plans for construction of New Transmission Facilities or Transmission Upgrades rated 69 kV or above; and (ii) any new or materially changed plan for any other action to be taken by NTD which may have a significant effect on the stability, reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant. The ISO shall provide notification of any such NTD submissions to the appropriate Technical Committee(s). Unless prior to the expiration of ninety (90) days, the ISO notifies NTD in writing that it has determined that implementation of the plan will have a significant adverse effect upon the reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant, NTD shall be free to proceed. If the ISO notifies NTD that implementation of such plan has been determined to have a significant adverse effect upon the reliability or operating characteristics of the Transmission Facilities, the facilities of any Transmission Owner, or the system of a Participant, NTD shall not proceed to implement such plan unless NTD takes such action or constructs such facilities as the ISO determines to be reasonably necessary to avoid such adverse effect.

2.07 **Condemnation.** If, at any time, any Governmental Authority commences any process to acquire any Transmission Facilities or any other interest in Transmission Facilities then held by NTD through condemnation or otherwise through the power of eminent domain, (i) NTD shall provide the ISO with written notice of such process, (ii) NTD shall, at its cost, direct any litigation or proceeding regarding such condemnation or eminent domain matter, (iii) NTD shall have the right to settle any such proceeding without the consent of the ISO, and (iv) any award in condemnation or eminent domain shall be paid to NTD without any claim to such award by the ISO.

### **ARTICLE III**

#### **OPERATING AUTHORITY**

3.01 **Grant of Operating Authority.** Subject to the terms set forth in this Agreement, including Article III and Article X hereof, NTD hereby authorizes the ISO, through its officers, employees, consultants, independent contractors and other personnel, to exercise Operating Authority over the Transmission Facilities once they are placed in service, including provision of Transmission Service over the Transmission Facilities under the TOA and ISO OATT, and the ISO hereby agrees to assume and exercise Operating Authority over the Transmission Facilities in accordance with the TOA once they are placed in service. Coincident with the NTD's Transmission Facilities being placed in service or the acquisition of operational Transmission Facilities, the NTD shall execute the TOA pursuant to Section 10.05 hereof, list such Transmission Facilities under the TOA and, by doing so, authorize the ISO to exercise Operating Authority over such Transmission Facilities via the TOA.

3.02 **[reserved]**

3.03 **Transmission Services and OATT Administration.**

(a) The ISO shall administer the ISO OATT in the manner specified in this Section 3.03. The ISO's OATT administration responsibilities shall include those enumerated below:

(i) The ISO shall receive, post on OASIS as required by Commission regulations, and respond to requests by Large Generating Facilities and Small Generating Facilities to be interconnected under the ISO OATT, and all Transmission Service. Except as provided in Section 3.03(a)(ii), the ISO shall perform the system impact studies and facilities studies (and execute and administer agreements for such studies) in

connection with such requests to the Administered Transmission System.

Notwithstanding the foregoing, (A) the ISO shall consult with NTD prior to completion of system impact studies and facilities studies in connection with requests that affect the Transmission Facilities and distribution facilities and shall include in any such studies NTD's reasonable estimates of the costs of upgrades to the Transmission Facilities needed to implement the conclusions of such studies and NTD's reasonable anticipated schedule for the construction of such upgrades; (B) nothing in this Agreement shall preclude the ISO from entering into a separate agreement(s) with NTD for such studies, pursuant to the ISO's supervision and the ISO's authority to require modifications to such studies, to perform system impact studies and facilities studies; (C) except as provided in Section 3.03(a)(ii) with respect to interconnection of Generating Units that would not have an impact on facilities used for the provision of regional transmission service, nothing in this Agreement shall preclude the performance of studies related to the interconnection of Generating Units by a third party consultant to the extent permitted by applicable procedures in the ISO OATT (including procedures governing the treatment of confidential information) and provided that such studies performed by any third party consultant must include NTD's reasonable estimates of the costs of upgrades to such Transmission Facilities needed to implement the conclusions of such studies and NTD's reasonable anticipated schedule for the construction of such upgrades; and (D) NTD shall, upon request by the ISO, conduct any necessary studies related to the Transmission Facilities, including system impact studies and facilities studies, and shall assist in the performance of any such studies, including the provision of information and data in accordance with Section 11.07 of this Agreement.

(ii) The ISO shall review applications for Transmission Service or requests for the interconnection of Large Generating Facilities and Small Generating Facilities to be interconnected to a Transmission Facility to determine whether the service or interconnection would have an impact on facilities used for the provision of regional transmission service. If so, and the interconnection is to a Transmission Facility, the ISO will perform a system impact study and facilities study, as necessary to address the impacts on facilities used for the provision of regional transmission service.

(iii) The ISO shall operate and maintain the OASIS (or a successor system) as required by FERC. NTD shall provide updates to the NTD-specific pages on the OASIS site, subject to the ISO's review of such updates. The ISO shall have the authority to direct any changes to such NTD-specific pages that it deems appropriate to conform to FERC requirements and the terms and conditions of the ISO OATT.

(b) Notwithstanding Section 3.03(a), retail load customers requesting to interconnect with the Transmission Facilities of NTD shall submit service requests to NTD. Such service requests submitted to the ISO shall be forwarded to NTD. NTD shall execute and administer the agreements, and shall be responsible for billing, collections, dispute resolution and the performance of system impact studies and facilities studies, in coordination with the ISO as necessary, in connection with such requests.

(c) Transmission Service Agreements. The ISO and NTD shall enter into all agreements for Transmission Service over the Transmission Facilities; provided that:

(i) A pro forma regional transmission service agreement (or service agreements) shall be attached to the ISO OATT and such pro forma service agreement(s) shall set forth the respective rights and responsibilities of the Transmission Customer, the ISO, the PTOs and NTD. The ISO shall have the authority, pursuant to Section 205 of the Federal Power Act, to amend the pro forma service agreement(s) or the Market Participant Service Agreement ("MPSA") or executed service agreements related to the terms and conditions of regional Transmission Service.

(ii) The ISO shall be responsible for filing with the FERC, or electronically reporting to the FERC as applicable, all new agreements for Transmission Service over the Transmission Facilities. In the event of any dispute between the ISO or NTD and a Transmission Customer concerning the terms and conditions of such service agreements, the ISO shall file an unexecuted copy of the pro forma service agreement set forth in the ISO OATT and shall include in such filing any statement provided by NTD, affected PTO(s) and the Transmission Customers concerning their respective positions on any proposed changes or additions to the pro forma service agreement.

#### 3.04 Application Authority.

(a) NTD shall have the authority to submit filings under Section 205 of the Federal Power Act to establish and to revise (pursuant to an NTD rate schedule filed under Schedules 13 or 14, as applicable, of the ISO OATT):

(i) charges for costs permitted to be recovered under Sections 4.3 and 4A of Attachment K to the ISO OATT;

(ii) once its project is listed as “Proposed” in the RSP Project List, charges for the costs of Commission-approved construction work in process; and

(iii) once its project is listed as “Proposed” in the RSP Project List, any rates, charges, terms or conditions for transmission services that are based solely on the revenue requirements of the Transmission Facilities (including Transmission Facilities leased to NTD or to which NTD has contractual entitlements).

NTD shall not have the authority to revise such rates, terms and conditions in a manner that would abridge the rights granted to the ISO in Section 3.04(b). NTD shall provide written notification to the ISO and stakeholders of any filing described in sub-paragraph (i) through (iv), above, which notification shall include a detailed description of the filing, at least 30 days in advance of a filing. NTD shall consult with interested stakeholders upon request. NTD shall retain the right to modify aspects of any filing authorized by this Section 3.04(a) after it provides written notification to the ISO and stakeholders, and shall provide notification to the ISO and stakeholders of any material modification to such filings.

With respect to any filing described in sub-paragraph (iii) above, NTD shall include in any filing a statement that, in the good faith judgment of NTD, the proposal will not be inconsistent with the design of the New England Markets, as accepted or approved by FERC. In the event the ISO believes that a proposed filing described in sub-paragraph (iii) above, would have such an inconsistency, it shall so advise NTD and NTD and the ISO shall consult in good faith to resolve any ISO concerns, but, if such disagreement cannot be resolved, NTD may submit a filing under Section 205, provided that NTD’s filing (including the transmittal letter for such filing) to FERC shall include any written statement provided by the ISO setting forth the basis for the ISO’s concerns.

NTD shall consult with the ISO to determine whether the ISO will need to make any software modifications in order to implement any filing authorized by this Section 3.04(a) and when any needed

software modifications could reasonably be expected to be implemented. NTD's filing to FERC (and the transmittal letter for such a filing) shall include any written statement provided by the ISO setting forth the basis for any software-related implementation concerns raised by the ISO. The ISO shall make Commercially Reasonable Efforts to implement any needed software modifications by the effective date accepted by the FERC for a filing authorized by this Section 3.04(a), provided that, if the ISO has exercised such Commercially Reasonable Efforts, a failure to implement needed software modifications by the FERC-accepted effective date shall not constitute an event of default by the ISO under this Agreement or subject the ISO to financial damages, and further provided that the ISO shall run retroactive settlements consistent with the FERC-accepted effective date for a filing authorized by this Section 3.04(a) once such software modifications have been implemented.

(b) The ISO has the authority to submit filings under Section 205 of the Federal Power Act as set forth in the TOA.

(c) NTD shall have no authority to submit a filing under Section 205 of the Federal Power Act to modify any provision of the ISO OATT that implements any of the items listed in Section 3.04(b) of the TOA.

3.05 **The ISO's Responsibilities.**

(a) In addition to its other obligations under this Agreement, in performing its obligations and responsibilities hereunder, and in accordance with Good Utility Practice, the ISO shall:

(i) maintain system reliability; and

(ii) in all material respects, act in accordance with applicable Laws and conform to, and implement, all applicable reliability criteria, policies, standards, rules, regulations, orders, license requirements and all other applicable NERC/NPCC Requirements, and other applicable reliability organizations' reliability rules, and all applicable requirements of federal or state laws or regulatory authorities.

(b) The ISO shall obtain and retain all necessary authorizations of FERC and other regulatory authorities to function as the New England RTO and shall possess the characteristics and perform the functions required for that purpose.

3.06 **NTD's Responsibilities.**

- (a) NTD shall, in accordance with Good Utility Practice:
  - (i) collaborate with the ISO with respect to:
    - (A) the development of Rating Procedures,
    - (B) the establishment of ratings for New Transmission Facilities;
    - (C) the establishment of ratings for Acquired Transmission Facilities that do not have an existing rating; and
    - (D) the establishment of any changes to existing ratings for Transmission Facilities in effect as of the Operations Date.

To the extent there is any disagreement between the ISO and NTD concerning Rating Procedures or the rating of a Transmission Facility, such disagreement shall be the subject of good faith negotiations between NTD and the ISO, provided that (x) NTD's position concerning such Rating Procedures or Transmission Facility ratings shall govern until NTD and the ISO agree on a resolution to such disagreement; and (y) nothing in this Section 3.06(a)(iv) shall limit the rights of the ISO or of NTD to submit a filing under Section 206 of the Federal Power Act with respect to Transmission Facility ratings or Rating Procedures. During any collaboration or discussions concerning Transmission Facility ratings, NTD shall continue to provide the ISO with up-to-date ratings information in accordance with the applicable Rating Procedures.

- (ii) cooperate with actions taken by PTOs' Local Control Centers with respect to the Transmission Facilities; and
    - (iii) in all material respects, comply with all applicable laws, regulations, orders and license requirements, and with all applicable requirements, and with all applicable NERC/NPCC Requirements, other applicable reliability organizations' local reliability rules, and all applicable requirements of federal or state laws or regulatory authorities.



3.07 **Reserved Rights of NTD.**

(a) Notwithstanding any other provision of this Agreement to the contrary, NTD shall retain all of the rights set forth in this Section 3.07; provided, however, that such rights shall be exercised in a manner consistent with applicable NERC/NPCC Requirements and applicable regulatory standards. This Section 3.07 is not intended to reduce or limit any other rights of NTD as a signatory to this Agreement or under the ISO OATT.

(i) Nothing in this Agreement shall restrict any rights: (A) of NTD if it 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 NTD's reallocation or redistribution of revenues or the assignment of such NTD's rights or obligations, to the extent the Federal Power Act requires such filings; or (B) of NTD to terminate its participation in this Agreement pursuant to Article X of this Agreement.

(ii) Except as expressly provided in the grant of Operating Authority to the ISO, NTD retains all rights that it otherwise has incident to its ownership of, and legal and equitable title to, its assets, including its Transmission Facilities and all land and land rights, including the right to build, acquire, sell, lease, merge, dispose of, retire, use as security, or otherwise transfer or convey all or any part of its assets, subject to NTD's compliance with Section 2.06 of this Agreement. Subject to Article X, NTD may, directly or indirectly, by merger, sale, conveyance, consolidation, recapitalization, operation of law, or otherwise, transfer all or any portion of the Transmission Facilities subject to this Agreement but only if such transferee or successors shall agree in writing to be bound by terms of this Agreement.

(iii) NTD shall have the right to adopt and implement, consistent with Good Utility Practice, procedures and to take such actions it deems necessary to protect its facilities from physical damage or to prevent injury or damage to persons or property.

(iv) NTD retains the right to take whatever actions, consistent with Good Utility Practice, it deems necessary to fulfill its obligations under applicable Law.

(v) Nothing in this Agreement shall be construed as limiting in any way the rights of NTD to make any filing with any applicable state or local regulatory authority.

(vi) NTD shall have the right to retain one or more subcontractors to perform any or all of its obligations under this Agreement. The retention of a subcontractor pursuant to the terms of this Section 3.07 shall not relieve NTD of its primary liability for the performance of any of its obligations under this Agreement.

(b) Any and all other rights and responsibilities of NTD related to the ownership or operation of its Transmission Facilities not expressly assigned to the ISO under this Agreement will remain with NTD.

(c) Nothing in this Agreement shall be deemed to impair or infringe on any rights or obligations of NTD under the Federal Power Act and FERC's rules and regulations thereunder, provided that any such rights are not inconsistent with the express terms of this Agreement. Nothing contained in this Agreement shall be construed to limit in any way the right of NTD to take any position, including opposing positions, in any administrative or judicial proceeding or filing by NTD or the ISO, notwithstanding that such proceeding or filing may be undertaken or made, explicitly or implicitly, pursuant to this Agreement.

3.08 [reserved]

3.09 [reserved]

3.10 **Invoicing, Collection and Disbursement of Payments.**

(a) Invoicing. Except as provided in Section 3.10(a)(ii), the ISO will administer its current net settlement system, including invoicing of charges to Transmission Customers for Transmission Services on the Transmission Facilities as follows:

(i) The charges invoiced by the ISO on behalf of NTD shall include the following (each, an "Invoiced Amount"):

(A) all charges listed in NTD's Commission-accepted rate schedule under Schedules 13 and 14 of the ISO OATT; and

(B) any and all rates, charges, fees and/or penalties under interconnection agreements which have been filed with and accepted by FERC, other than amounts billed directly by NTD pursuant to Section 3.10(a)(ii) below.

(ii) Payments relating to all services provided by NTD outside of Schedules 13 and 14 that provide for payment to NTD, and any other payments shall be invoiced by NTD and shall not be invoiced by the ISO; provided that, notwithstanding the foregoing, NTD and the ISO may enter into separate agreements such that the ISO provides invoicing services for such payments.

(iii) The ISO shall remit or credit to NTD, consistent with the ISO Tariff and the net settlement system, any and all payments received or collected from Transmission Customers for Invoiced Amounts in accordance with this Agreement. NTD shall designate (and notify the ISO of the identity of) a single authorized individual to provide such directions to the ISO. This individual shall also respond to any ISO questions or requests for clarification concerning such directions; provided that the ISO shall be able to rely upon the direction of the designated individual unless and until it receives notification from NTD or from a Governmental Authority of reversal of such direction by any Governmental Authority with jurisdiction over this Agreement.

(b) The ISO's Collection Obligations and Application of Financial Assurances Policies. If a Transmission Customer defaults on any payment of any Invoiced Amount (the "Owed Amounts"), the ISO shall take all necessary actions to execute or call upon any Financial Assurances held by the ISO attributable to such Transmission Customer.

(c) No Pledge of Invoiced Amounts. The ISO shall not create, incur, assume or suffer to exist any lien, pledge, security interest or other charge or encumbrance, or any other type of preferential arrangement (including a banker's right of set off) against any Invoiced Amounts, any accounts receivables representing Invoiced Amounts, the settlement account maintained by the ISO into which payments on Invoiced Amounts are made and from which remittances are made to NTD or any Financial Assurances.

3.11 **Subcontractors.** NTD acknowledges and agrees that, subject to the terms set forth herein, the ISO has the right to retain one or more subcontractors to perform any or all of its obligations under this Agreement. The retention of a subcontractor pursuant to the terms of this Section 3.11 shall not relieve the ISO of its primary liability for the performance of any of its obligations under this Agreement.

3.12 **No Impairment of the ISO's Other Legal Rights and Obligations.** Nothing in this Agreement shall be deemed to impair or infringe on any rights or obligations of the ISO under the Federal Power Act and FERC's rules and regulations thereunder, including the ISO's rights and obligations to submit filings to recover its administrative, capital, and other costs.

#### **ARTICLE IV**

##### **REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

4.01 **Representations and Warranties of NTD.** NTD represents and warrants to the ISO as follows:

(a) **Organization.** It is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) **Authorization.** It has all requisite power and authority to execute, deliver and perform this Agreement; the execution, delivery and performance by NTD of this Agreement have been duly authorized by all necessary and appropriate action on the part of NTD; and this Agreement has been duly and validly executed and delivered by NTD and constitutes the legal, valid and binding obligations of NTD, enforceable against NTD in accordance with its terms.

(c) **No Breach.** The execution, delivery and performance by NTD of this Agreement will not result in a breach of any terms, provisions or conditions of any agreement to which NTD is a party which breach has a reasonable likelihood of materially and adversely affecting NTD's performance under this Agreement.

4.02 **Representations and Warranties of the ISO.** The ISO represents and warrants to NTD as follows:

(a) **Organization.** It is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) **Authorization.** It has all requisite power and authority to execute, deliver and perform this Agreement; the execution, delivery and performance by the ISO of this Agreement have been duly authorized by all necessary and appropriate action on the part of the ISO; and this Agreement has been duly and validly executed and delivered by the ISO and constitutes the legal, valid and binding obligation of the ISO, enforceable against the ISO in accordance with its terms.

(c) **No Breach.** The execution, delivery and performance by the ISO of this Agreement will not result in a breach of any of the terms, provisions or conditions of any agreement to which the ISO is a party which breach has a reasonable likelihood of materially and adversely affecting the ISO's performance under this Agreement.

## **ARTICLE V**

### **COVENANTS OF NTD**

5.01 **Covenants of NTD.** NTD covenants and agrees that during (i) the Term, or (ii) the period expressly specified herein, as applicable, NTD shall comply with all covenants and provisions of this Article V, except to the extent the ISO waives such covenants or performance is excused pursuant to Section 11.11(b).

5.02 **[reserved]**

5.03 **Expenses.** Except to the extent specifically provided herein, all costs and expenses incurred by NTD in connection with the negotiation of this Agreement shall be borne by NTD; provided that nothing herein shall prevent NTD from recovering such expenses in accordance with applicable law.

5.04 **Consents and Approvals.**

(a) NTD shall exercise Commercially Reasonable Efforts to promptly prepare and file all necessary documentation to effect all necessary applications, notices, petitions, filings and other documents, and shall exercise Commercially Reasonable Efforts to obtain (and will cooperate with each other in obtaining) any consent, acquiescence, authorization, order or approval of, or any exemption or

nonopposition by, any Governmental Authority required to be obtained or made by NTD in connection with this Agreement or the taking of any action contemplated by this Agreement.

(b) NTD shall exercise Commercially Reasonable Efforts to obtain consents of all other third parties necessary to the performance of this Agreement by NTD. NTD shall promptly notify the ISO of any failure to obtain any such consents and, if requested by the ISO, shall provide copies of all such consents obtained by NTD.

(c) Nothing in this Section 5.04 shall require NTD to pay any sums to a third party, including any Governmental Authority, excluding filing fees paid to any Governmental Authority in connection with a filing necessary or appropriate to further action.

5.05 **Notice and Cure.** NTD shall notify the ISO in writing of, and contemporaneously provide the ISO with true and complete copies of any and all information or documents relating to, any event, transaction or circumstance, as soon as practicable after it becomes Known to NTD, that causes or shall cause any covenant or agreement of NTD under this Agreement to be breached or that renders or shall render untrue any representation or warranty of NTD contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. NTD shall use all Commercially Reasonable Efforts to cure such event, transaction or circumstance as soon as practicable after it becomes Known to NTD. No notice given pursuant to this Section 5.05 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or shall in any way limit the ISO's right to seek indemnity under Article IX.

## **ARTICLE VI**

### **COVENANTS OF THE ISO**

6.01 **Covenants of the ISO.** The ISO covenants and agrees that during (i) the Term, or (ii) the period expressly specified herein, as applicable, the ISO shall comply with all covenants and provisions of this Article VI, except to the extent the Parties consent in writing to a waiver of such covenants or performance is excused pursuant to Section 11.11(b).

6.02 **[reserved]**

6.03 **Expenses.** Except to the extent specifically provided herein, all costs and expenses incurred by the ISO in connection with the negotiation of this Agreement shall be borne by the ISO; provided that nothing herein shall prevent the ISO from recovering such expenses in accordance with applicable law.

6.04 **[reserved]**

6.05 **Notice and Cure.** The ISO shall notify NTD in writing of, and contemporaneously shall provide NTD with true and complete copies of any and all information or documents relating to, any event, transaction or circumstance, as soon as practicable after it becomes Known to the ISO, that causes or shall cause any covenant or agreement of the ISO under this Agreement to be breached or that renders or shall render untrue any representation or warranty of the ISO contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. The ISO shall use all Commercially Reasonable Efforts to cure such event, transaction or circumstance as soon as practicable after it becomes Known to the ISO. No notice given pursuant to this Section 6.05 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or shall in any way limit any right of NTD to seek indemnity under Article IX.

## **ARTICLE VII**

### **TAX MATTERS**

7.01 **Responsibility for NTD Taxes.** NTD shall prepare and file all Tax Returns and other filings related to its Transmission Business and Transmission Facilities and pay any Tax liabilities related to its Transmission Business and Transmission Facilities. The ISO shall not be responsible for, or required to file, any Tax Returns or other reports for NTD and shall have no liability for any Taxes related to NTD's Transmission Business or Transmission Facilities. The ISO and NTD hereby agree that, for tax purposes, the Transmission Facilities shall be deemed to be owned by NTD.

7.02 **Responsibility for ISO Taxes.** The ISO shall prepare and file all Tax Returns and other filings related to its operations and pay any Tax liabilities related to its operations. NTD shall not be responsible for, or required to, file any Tax Returns or other reports for the ISO and shall have no liability for any Taxes related to the ISO's operations.

**ARTICLE VIII**  
**RELIANCE; SURVIVAL OF AGREEMENTS**

8.01 **Reliance; Survival of Agreements.** Notwithstanding any right of any Party (whether or not exercised) to investigate the accuracy of any of the matters subject to indemnification by any other Party contained in this Agreement, each of the Parties has the right to rely fully upon the representations, warranties, covenants and agreements of the other Party contained in this Agreement. The provisions of Sections 11.01, 11.07, 11.11 and 11.15 and Articles VII and IX shall survive the termination of this Agreement. With regard to Section 3.10 of this Agreement, the ISO will perform final billing consistent with Section 3.10 of this Agreement for all services provided until the Termination Date.

**ARTICLE IX**  
**INSURANCE; LIMITATION OF LIABILITIES**

9.01 **Hold Harmless.** NTD will indemnify and hold harmless all affected PTOs from any and all liability (except for that stemming from an affected PTO's negligence, gross negligence or willful misconduct), resulting from the NTD's failure to timely complete (based on the milestone provisions contained in the ISO OATT) a Reliability Transmission Upgrade (as defined in the ISO OATT) that the NTD was chosen in the Regional System Plan to construct. As used herein, an "affected PTO" is one that would be subject to penalties assessed by NERC or FERC or adverse regulatory orders or monetary claims or damages due to the NTD's failure to timely complete the Reliability Transmission Upgrade.

9.02 – 9.04 **[Reserved]**

9.05 **Insurance.**

(a) NTD will maintain property insurance on its Transmission Facilities and liability insurance in accordance with good utility practice.

(b) All insurance required under this Section 9.05 by outside insurers shall be maintained with insurers qualified to insure the obligations or liabilities under this Agreement and having a Best's rating of at least B+ VIII (or an equivalent Best's rating from time to time of B+ VIII), or in the event that from time to time Best's ratings are no longer issued with respect to insurers, a comparable rating by a nationally recognized rating service or such other insurers as may be agreed upon by the Parties.



(c) Upon execution of this Agreement, and when requested thereafter, NTD shall furnish the ISO with certificates of all such insurance policies setting forth the amounts of coverage, policy numbers, and date of expiration for such insurance in conformity with the requirements of this Agreement.

9.06 **Liability.**

(a) Neither Party shall be liable to the other Party for any incidental, indirect, special, exemplary, punitive or consequential damages, including lost revenues or profits, even if such damages are foreseeable or the damaged Party has advised such Party 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.

(b) Nothing in this Agreement shall be deemed to affect the right of the ISO to recover its costs due to liability under this Article IX through the ISO Participants Agreement or the ISO Administrative Tariff.

**ARTICLE X**

**TERM; DEFAULT AND TERMINATION**

10.01 **Term; Termination Date.**

(a) **Term.** Subject to the terms set forth in this Section 10.01, the term of this Agreement (the “Term”) shall commence on the Effective Date and shall continue in force until terminated pursuant to Article X hereof. The date of such termination shall be referred to herein as the “Termination Date.”

(b) **Termination by NTD.** NTD may terminate this Agreement:

(i) upon no less than 180 day’s prior notice to the ISO; or

(ii) upon an ISO event of default in accordance with Section 10.03(a), provided that NTD shall exercise this right in accordance with Section 10.03(b)(i).

(c) **Termination By the ISO.** By notice to NTD, the ISO may terminate its obligations under this Agreement:

(i) upon the withdrawal of one or more PTOs from the Transmission Operating Agreement and the ISO has given notice to the PTOs that it is terminating the Transmission Operating Agreement pursuant to Section 10.01(c)(i) thereof;

(ii) if FERC issues an order putting into effect material changes in the liability and indemnification protections afforded to the ISO under this Agreement or the ISO Tariff;

(iii) if FERC issues an order putting into effect an amendment or modification of this Agreement that materially adversely affects the ISO's ability to carry out its responsibilities under this Agreement, unless the ISO has agreed to such changes in accordance with Section 11.04;

(iv) upon a NTD event of default in accordance with Section 10.04(a), provided that the ISO shall exercise this right in accordance with Section 10.04(b)(i); or

(v) if, within the period of ten years from the Effective Date, no NTD project has been listed by the ISO on the RSP Project List as "Proposed."

(d) Continuing Obligations. The withdrawing or terminating Party shall have the following continuing obligations following withdrawal from this Agreement: All financial obligations incurred and payments applicable to the time period prior to the Termination Date shall be honored by the terminating or withdrawing Party and the other Party in accordance with the terms of this Agreement, and each Party shall remain liable for all obligations arising hereunder prior to the Termination Date.

#### 10.03 [reserved]

#### 10.03 Events of Default of the ISO.

(a) Events of Default of the ISO. Subject to the terms and conditions of this Section 10.03, the occurrence of any of the following events shall constitute an event of default of the ISO under this Agreement:

(i) Failure by the ISO to perform any material obligation set forth in this Agreement and continuation of such failure for longer than thirty (30) days after the

receipt by the ISO of written notice of such failure from NTD; provided, however, that if the ISO is diligently pursuing a remedy during such thirty (30) day period, said cure period shall be extended for an additional thirty (30) days or as otherwise agreed by NTD;

(ii) If there is a dispute between the ISO and NTD as to whether the ISO has failed to perform a material obligation, the cure period(s) provided in Section 10.03(a)(i) above shall run from the point at which a finding of failure to perform has been made by a Governmental Authority;

(iii) Any attempt (not including consideration of strategic options or entering into exploratory discussions) by the ISO to transfer an interest in, or assign its obligations under, this Agreement, except as otherwise permitted hereunder;

(iv) Failure of the ISO (if it has received the necessary corresponding funds from ISO customers) to pay when due any and all amounts payable to NTD by the ISO as part of the settlement process pursuant to Section 3.10 within three (3) Business Days;

(v) With respect to the ISO, (A) the filing of any petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws, (B) assignment by the ISO for the benefit of creditors; or (C) allowance by the ISO of the appointment of a receiver or trustee of all or a material part of its property if such receiver or trustee is not discharged within thirty (30) days after such appointment.

(b) Remedies for Default. If an event of default by the ISO occurs, NTD shall have the right to avail itself of any or all of the following remedies, all of which shall be cumulative and not exclusive:

(i) To terminate this Agreement in accordance with Section 10.01(b)(ii); provided that if the ISO contests such allegation of an ISO event of default, this Agreement shall remain in effect pending resolution of the dispute, but any applicable notice period shall run during the pendency of the dispute;

(ii) To demand that the ISO shall terminate any right of the ISO, immediately make arrangements for the orderly transfer of the ISO's invoicing and collection functions with respect to NTD and assist NTD or NTD's designee in resuming performance of the functions the later of 20 days from the date of making such demand or the start of the next billing cycle.

10.04 **Events of Default of NTD.**

(a) **Events of Default of NTD.** Subject to the terms and conditions of this Section 10.04, the occurrence of any of the events listed below shall constitute an event of default of NTD under this Agreement (in each instance, a "NTD Default"):

(i) Failure by NTD to perform any material obligation set forth in this Agreement and continuation of such failure for longer than thirty (30) days after the receipt by NTD of written notice of such failure from the ISO, provided, however, that if NTD is diligently pursuing a remedy during such thirty (30) day period, said cure period shall be extended for an additional thirty (30) days or as otherwise agreed by the ISO and NTD;

(ii) If there is a dispute between NTD and the ISO as to whether NTD has failed to perform a material obligation, the cure period(s) provided in Section 10.04(a)(i) above shall run from the point at which a finding of failure to perform has been made by a Governmental Authority; or

(iii) With respect to NTD, (A) the filing of any petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws, (B) assignment by NTD for the benefit of creditors; or (C) allowance by NTD of the appointment of a receiver or trustee of all or a material part of its property if such receiver or trustee is not discharged within thirty (30) days after such appointment.

(b) **Remedies for Default.** If an event of default by NTD occurs, the ISO shall have the following remedy: to terminate this Agreement in accordance with Section 10.01(c)(iv); provided that

if NTD contests such allegation of an NTD event of default, this Agreement shall remain in effect pending resolution of the dispute, but any applicable notice period shall run during the pendency of the dispute.

**10.05 Transmission Operating Agreement and Disbursement Agreement; Registration.**

On the date on which (1) any of the Transmission Facilities or a New Transmission Facility is placed into service or (2) NTD's acquisition of Acquired Transmission Facilities is consummated, whichever occurs earlier:

(a) NTD shall execute and deliver to the ISO a counterpart of the Transmission Operating Agreement as an Additional PTO (as defined therein). Upon such execution and delivery, this Agreement shall terminate automatically.

(b) NTD shall promptly execute a signature page for the Disbursement Agreement and deliver it to the parties thereto and shall become a party to the Disbursement Agreement.

(c) NTD shall register with NPCC as a Transmission Owner [and Transmission Service Provider][under discussion].

**ARTICLE XI**  
**MISCELLANEOUS**

11.01 **Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing and any such communication or notice shall become effective (a) upon personal delivery thereof, including by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by facsimile, upon receipt thereof; provided that such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to the relevant party and copy party hereto at its address set forth in Schedule 11.01 or at such other address as such party or copy party may from time to time designate by written notice to the other party hereto; further provided that a notice given in connection with this Section 11.01 but received on a day other than a Business Day, or after business hours in the situs of receipt, will be deemed to be received on the next Business Day.

11.02 **Supersession of Prior Agreements.** With respect to the subject matter hereof, this Agreement (together with all schedules and exhibits attached hereto) constitutes the entire agreement and understanding among the Parties with respect to all subjects covered by this Agreement and supersedes all prior discussions, agreements and understandings among the Parties with respect to such matters.

11.03 **Waiver.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by a Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, shall be cumulative and not alternative.

11.04 **Amendment; Limitations on Modifications of Agreement.**

(a) This Agreement shall only be subject to modification or amendment by agreement of the Parties and the acceptance of any such amendment by FERC.

(b) In light of the foregoing, the Parties agree that they shall not rely to their detriment on any purported amendment, waiver or other modification of any rights under this Agreement unless the requirements of this Section 11.04 are satisfied and further agree not to assert equitable estoppel or any other equitable theory to prevent enforcement of this provision in any court of law or equity, arbitration or other proceeding.

11.05 **No Third Party Beneficiaries.** Except as provided in Article IX, it is not the intention of this Agreement or of the Parties to confer a third party beneficiary status or rights of action upon any Person or entity whatsoever other than the Parties and nothing contained herein, either express or implied, shall be construed to confer upon any Person or entity other than the Parties any rights of action or remedies either under this Agreement or in any manner whatsoever.

11.06 **No Assignment; Binding Effect.** Neither this Agreement nor any right, interest or obligation hereunder may be assigned by a Party, (including by operation of law) law (an "Assignment")-, without the prior written consent of the other Party in its sole discretion and any attempt at Assignment in contravention of this Section 11.06 shall be void, provided, however, that NTD may assign its rights and

interests hereunder as security in connection with any financing for the construction or operation of NTD's Transmission Facilities (a "Collateral Assignment") without prior written consents or approvals. NTD may assign or transfer any or all of its rights, interests and obligations hereunder upon the transfer of its assets through sale, reorganization, or other transfer, provided that:

(a) NTD's successors and assigns shall agree to be bound by the terms of this Agreement except that NTD's successors and assigns shall not be required to be bound by any obligations hereunder to the extent that NTD has agreed to retain such obligations; and

(b) notwithstanding (a), NTD shall assign or transfer to any new owner of Transmission Facilities subject to this Agreement all of the rights, responsibilities and obligations associated with the physical operation of such Transmission Facilities as well as all of the rights, responsibilities and obligations associated with the ISO's Operating Authority with respect to such Transmission Facilities, further provided that the new owner shall have the right to retain one or more subcontractors to perform any or all of its responsibilities or obligations under this Agreement.

Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective permitted successors and assigns. No Assignment shall be effective until NTD receives all required regulatory approvals for such Assignment.

#### **11.07 Further Assurances; Information Policy; Access to Records.**

(a) Each Party agrees, upon the other Party's request, to make Commercially Reasonable Efforts to execute and deliver such additional documents and instruments, provide information, and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and of the transactions contemplated hereby.

(b) The ISO shall, upon NTD's request, make available to NTD any and all information within the ISO's custody or control that is necessary for NTD to perform its responsibilities and obligations or enforce its rights under this Agreement, provided that such information shall be made available to NTD only to the extent permitted under the ISO Information Policy and subject to any applicable restrictions in the ISO Information Policy, including provisions of the ISO Information Policy governing the confidential treatment of non-public information, and provided further that any NTD

employee or employee of NTD's Local Control Center shall comply with such ISO Information Policy and any applicable standards of conduct to prevent the disclosure of such information to any unauthorized Person. Any dispute concerning what information is necessary for NTD to perform its responsibilities and obligations or enforce its right under this Agreement shall be subject to dispute resolution under Section 11.12 of this Agreement.

(c) NTD shall, upon the ISO's request, make available to the ISO any and all information within NTD's custody or control that is necessary for the ISO to perform its responsibilities and obligations or enforce its rights under this Agreement, provided that such information shall be made available to the ISO only to the extent permitted under the ISO Information Policy and subject to any applicable restrictions in the ISO Information Policy, including provisions of the ISO Information Policy governing the confidential treatment of non-public information, and provided further that any ISO employee shall comply with such ISO Information Policy and any applicable standards of conduct to prevent the disclosure of such information to any unauthorized Person. Any dispute concerning what information is necessary for the ISO to perform its responsibilities and obligations or enforce its right under this Agreement shall be subject to dispute resolution under Section 11.12 of this Agreement.

(d) If, in order to properly prepare its Tax Returns, other documents or reports required to be filed with Governmental Authorities or its financial statements or to fulfill its obligations hereunder, it is necessary that the ISO or NTD be furnished with additional information, documents or records not referred to specifically in this Agreement, and such information, documents or records are in the possession or control of the other Party, the other Party shall use its best efforts to furnish or make available such information, documents or records (or copies thereof) at the ISO's or NTD's request, cost and expense. Any information obtained by the ISO or NTD in accordance with this paragraph shall be subject to any applicable provisions of the ISO Information Policy

(e) Notwithstanding anything to the contrary contained in this Section 11.07:

(i) no Party shall be obligated by this Section 11.07 to undertake studies or analyses that such Party would not otherwise be required to undertake or to incur costs outside the normal course of business to obtain information that is not in such Party's custody or control at the time a request for information is made pursuant to this Section 11.07;



(ii) if NTD and the ISO are in an adversarial relationship in litigation or arbitration (other than with respect to litigation or arbitration to enforce this Section 11.07), the furnishing of information, documents or records by the ISO or NTD in accordance with this Section 11.07 shall be subject to applicable rules relating to discovery;

(iii) no Party shall be compelled to provide any privileged and/or confidential documents or information that are attorney work product or subject to the attorney/client privilege; and

(iv) no Party shall be required to take any action that impairs or diminishes its rights under this Agreement or otherwise lessens the value of this Agreement to such Party.

11.08 **Business Day.** Notwithstanding anything herein to the contrary, if the date on which any payment is to be made pursuant to this Agreement is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such scheduled date and, provided such payment is made on such succeeding Business Day, no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

11.09 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware including all matters of construction, validity and performance without regard to the conflicts-of-laws provisions thereof.

11.10 **Consent to Service of Process.** Each of the Parties hereby consents to service of process by registered mail, Federal Express or similar courier at the address to which notices to it are to be given, it being agreed that service in such manner shall constitute valid service upon such Party or its successors or assigns in connection with any such action or proceeding; provided, however, that nothing in this Section 11.10 shall affect the right of any Party or its successors and permitted assigns to serve legal process in any other manner permitted by applicable Law or affect the right of any such Party or its successors and assigns to bring any action or proceeding against the other Party or its property in the courts of other jurisdictions.

11.11 **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, in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials (not including as a result of non-payment), act of the public enemy or terrorists, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes (not including a lack of funds or other financial causes) beyond such Party's reasonable control, including any order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities. A Party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except that the settlement of any labor disturbance shall be in the sole judgment of the affected Party.

11.12 **Dispute Resolution.** The Parties agree that any dispute arising under this Agreement shall be the subject of good-faith negotiations among the Parties and affected market participants, if any. Each Party and each affected market participant shall designate one or more representatives with the authority to negotiate the matter in dispute to participate in such negotiations. The Parties and affected market participants shall engage in such good-faith negotiations for a period of not less than 60 calendar days. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to arbitration or any other form of alternative dispute resolution upon the agreement of the Parties and all affected market participants to participate in such an alternative dispute resolution process. Nothing in this Agreement shall, however, restrict a Party's right to file a complaint with FERC under the relevant provisions of the Federal Power Act.

11.13 **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby, (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (d) the court holding such provision to be illegal, invalid or unenforceable may in lieu of such provision add as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as it deems appropriate.

11.14 **Headings and Table of Contents.** The headings of the sections of this Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

11.15 **Liabilities; No Joint Venture.**

(a) The obligations and liabilities of the ISO and NTD arising out of or in connection with this Agreement shall be several, and not joint, and each Party shall be responsible for its own debts, including Taxes. No Party shall have the right or power to bind any other Party to any agreement without the prior written consent of such other Party. The Parties do not intend by this Agreement to create nor does this Agreement constitute a joint venture, association, partnership, corporation or an entity taxable as a corporation or otherwise. No express or implied term, provision or condition of this Agreement shall be deemed to constitute the parties as partners or joint venturers.

(b) To the extent any Party has claims against the other Party, such Party may only look to the assets of the other Party for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees, affiliates, or agents of such other Party who, each Party acknowledges and agrees, have no liability, personal or otherwise, by reason of their status as directors, members, officers, employees, affiliates, or agents of that Party, with the exception of fraud or willful misconduct.

11.16 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. The parties hereto agree that any document or signature delivered by facsimile transmission shall be deemed an original executed document for all purposes hereof.

11.17 **Effective Date.**

This Agreement shall become effective on the date of execution (the "Effective Date").

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date written below.

**For ISO New England Inc.**

Name: \_\_\_\_\_

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

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

**For [NTD]**

Name: \_\_\_\_\_

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

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

## **Schedule 1.01**

### **Schedule of Definitions**

Acquired Transmission Facilities. Any transmission facility acquired within the New England Control Area by NTD after the Operations Date that meets the classification standards set forth in Section 2.02(a).

Additional Term. “Additional Term” shall have the meaning ascribed thereto in Section 10.01(a) of this Agreement.

Affiliate. Any person or entity which controls, is controlled by, or is under common control by another person or entity. For purposes of this definition, "control" shall mean the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct the management or policies of a person or entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

Agreement. This Operating Agreement between the ISO and NTD, as it may be amended from time to time.

Ancillary Service. Those services that are necessary to support the transmission of electric capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with Good Utility Practice.

Approved Outages. “Approved Outages” shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

Best’s. The A.M. Best Company.

Business Day. Any day other than a Saturday or Sunday or an ISO holiday, as posted by the ISO on its website.

Commercially Reasonable Efforts. A level of effort which, in the exercise of prudent judgment in the light of facts or circumstances known or which should reasonably be known at the time a decision is made, can be expected by a reasonable person to accomplish the desired result in a manner consistent with Good Utility Practice and which takes the performing party's interests into consideration.

"Commercially Reasonable Efforts" will not be deemed to require a Person to undertake unreasonable measures or measures that have a significant adverse economic affect on such Person, including the payment of sums in excess of amounts that would be expended in the ordinary course of business for the accomplishment of the stated purpose.

Commission. The Federal Energy Regulatory Commission.

Control Area. An electric power system or combination of electric power systems, bounded by metering, to which a common automatic generation control scheme is applied in order to:

- (a) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);
- (b) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;
- (c) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice and applicable NERC/NPCC Requirements; and
- (d) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

Coordination Agreement. An agreement between the ISO and the operator(s) of one or more neighboring Control Areas addressing issues including interchange scheduling, operational arrangements, emergency procedures, energy for emergency and reliability needs, the exchange of information among Control Areas, and other aspects of the coordinated operation of the Control Areas.

Disbursement Agreement. The Rate Design and Funds Disbursement Agreement among the PTOs, as amended and restated from time to time.

Effective Date. "Effective Date" shall have the meaning ascribed thereto in Section 11.18(a) of this Agreement.

Elective Transmission Upgrade. A Transmission Upgrade constructed by any Person which is not required to be constructed pursuant to any applicable requirement of this Agreement, but which may be subject to applicable requirements set forth in the ISO OATT and this Agreement.

Elective Transmission Upgrade Applicant. “Elective Transmission Upgrade Applicant” shall have the meaning ascribed thereto in Section 2.05 of this Agreement.

Environment. Soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

Environmental Damages. “Environmental Damages” shall mean any cost, damages, expense, liability, obligation or other responsibility arising from or under Environmental Law consisting of or relating to:

- (a) any environmental matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products);
- (b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial or inspection costs and expenses arising under Environmental Law;
- (c) financial responsibility under Environmental Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment or other remediation or response actions (“Cleanup”) required by applicable Environmental Law (whether or not such Cleanup has been required or requested by any Governmental Authority or any other Person) and for any natural resource damages; or
- (d) any other compliance, corrective, investigative, or remedial measures required under Environmental Law.

Environmental Laws. Any Law now or hereafter in effect and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the Environment, health or safety or to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

Excluded Assets. “Excluded Assets” shall have the meaning ascribed thereto in Section 2.04 of this Agreement.

Existing Operating Procedures. “Existing Operating Procedures” shall have the meaning ascribed thereto in Section 3.02(d) of this Agreement.

External Transactions. Interchange transactions between the New England Transmission System and neighboring Control Areas.

FACTS. Flexible AC Transmission Systems.

FERC. The Federal Energy Regulatory Commission.

Final Order. An order issued by a Governmental Authority in a proceeding after all opportunities for rehearing are exhausted (whether or not any appeal thereof is pending) that has not been revised, stayed, enjoined, set aside, annulled or suspended, with respect to which any required waiting period has expired, and as to which all conditions to effectiveness prescribed therein or otherwise by law, regulation or order have been satisfied.

Financial Assurances. “Financial Assurances” shall have the meaning ascribed thereto in Section 3.10(b) of this Agreement.

FPA. The Federal Power Act.

FTR. A Financial Transmission Right, as defined in the ISO OATT.

Generally Accepted Accounting Principles. The widely accepted set of rules, conventions, standards, and procedures for reporting financial information, as established by the Financial Accounting Standards Board.

Generating Unit. A device for the production of electricity.

Good Utility Practice. Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good



business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority. The government of any nation, state or other political subdivision thereof, including any entity exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government, not including NTD or the ISO.

Hazardous Materials. Any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

Indemnifiable Loss. “Indemnifiable Loss” shall have the meaning ascribed thereto in Section 9.01(a)(i) of this Agreement.

Indemnifying Party. “Indemnifying Party” shall have the meaning ascribed thereto in Section 9.02 of this Agreement.

Indemnitee. “Indemnitee” shall have the meaning ascribed thereto in Section 9.02 of this Agreement.

Interconnection Agreement. An agreement or agreements for the interconnection of any entity to the Transmission Facilities of NTD.

Interconnection Standard. The applicable interconnection standards set forth in the ISO OATT.

Invoiced Amount. “Invoiced Amount” shall have the meaning ascribed thereto in Section 3.10(a)(i) of the Agreement.

ISO. ISO New England Inc., the RTO for New England authorized by the Federal Energy Regulatory Commission to exercise the functions required pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations.

ISO Control Center. The primary control center established by the ISO for the exercise of its Operating Authority and the performance of functions as an RTO.

ISO Information Policy. The information policy set forth in the ISO OATT.

ISO-NE. ISO New England Inc.

ISO OATT. The ISO Open Access Transmission Tariff, as in effect from time to time.

ISO Participants Agreement. The agreement among the ISO and stakeholder participants addressing, inter alia, the stakeholder process for the ISO.

ISO Planning Process. The process set forth in the ISO OATT, for the coordinated planning and expansion of the New England Transmission System with provision for the participation of all state regulatory authorities with jurisdiction over retail rates in the ISO region acceptable to those authorities, which process shall be subject to certain terms and conditions set forth in Schedule 3.09(a).

ISO System Plan. The “Regional System Plan” as defined in the ISO OATT.

ISO Tariff. The ISO Transmission, Markets and Services Tariff, as amended from time to time, on file with FERC.

Large Generating Facility. “Large Generating Facility” shall have the meaning ascribed thereto in the ISO OATT.

Law. Any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law.

Load Shedding. The systematic reduction of system demand by temporarily decreasing load.

Market Monitoring Unit. Any market monitoring unit established by the ISO, including any internal market monitoring unit of the ISO and any independent market monitoring unit of the ISO.

Market Participant Service Agreement. The agreement among the ISO and market participants addressing, inter alia, the requirements for participating in the New England Markets.

Market Rules. The rules describing how the New England Markets are administered.

Merchant Facility. A transmission facility constructed by an entity that assumes all market risks associated with the recovery of costs for the facility and whose costs are not recovered through traditional

cost-of-service based rates, but instead are recovered either through negotiated agreements with customers or through market revenues.

NTD Category A Facilities. Those transmission facilities listed in Schedule 2.01(a) of the Agreement, as that list may be modified from time to time in accordance with the terms of this Agreement.

NTD Category B Facilities. Those transmission facilities listed in Schedule 2.01(b) of the Agreement, as that list may be modified from time to time in accordance with the terms of this Agreement.

NTD Local Area Facilities. “Local Area Facilities” shall have the meaning ascribed thereto in Section 2.01 of this Agreement.

NTD Local Restoration Plan. The restoration plan developed by NTD with respect to the Transmission Facilities.

NERC. The North American Electric Reliability Corporation.

NERC/NPCC Requirements. NPCC criteria, guides, and procedures, NERC reliability standards, and NERC operating policies and planning standards (until such time as they are replaced by NERC reliability standards) and any successor documents.

New England Control Area. The Control Area consisting of the interconnected electric power system or combination of electric power systems in the geographic region consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut and Rhode Island.

New England Markets. Markets or programs (including congestion pricing and design and implementation of FTRs) for the purchase of energy, capacity, ancillary services, demand response services or other related products or services that are offered in the New England Control Area and that are administered by the ISO pursuant to rules, rates, or agreements on file from time to time with the Commission.

New England Transmission System. The system comprised of the transmission facilities over which the ISO has operational jurisdiction, including the Transmission Facilities of NTD and the PTOs and the transmission system of any ITC formed pursuant to Attachment M to the ISO OATT.

New Transmission Facility. Any new transmission facility constructed within the New England Transmission System that is owned by NTD and that goes into commercial operation after the Effective Date. For the avoidance of doubt, in the case of a high-voltage, direct-current system, a New Transmission Facility shall include the transmission cable and the AC/DC converter stations as a single project.

Non-PTF. “Non-PTF” shall have the meaning ascribed thereto in the ISO OATT.

NPCC. The Northeast Power Coordinating Council.

OASIS. The Open Access Same-Time Information System of the ISO.

Operating Authority. “Operating Authority” shall have the meaning ascribed thereto in the TOA.

Operating Limits. The transfer limits for a transmission interface or generation facility.

Operating Procedures. The operating manuals, procedures, and protocols relating to the exercise of Operating Authority over the Transmission Facilities, as such manuals, procedures, and protocols may be modified from time to time in accordance with this Agreement.

Order 2000. FERC’s Order No. 2000, *i.e.*, *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶31,092 (2000), *petitions for review dismissed sub nom.*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 . (D.C. Cir. 2001).

Owed Amounts. “Owed Amounts” shall have the meaning ascribed thereto in Section 3.10(c) of this Agreement.

PARS. Phase angle regulators.

Participant. A participant in the New England Markets, Transmission Customer, or other entity that has entered into the ISO Participants Agreement.

Participants Committee. “Participants Committee” shall mean the stakeholder participants committee established pursuant to the ISO Participants Agreement.

Party or Parties. A “Party” shall mean the ISO or NTD, as the context requires. “Parties” shall mean NTD and the ISO.

Person. An individual, partnership, joint venture, corporation, business trust, limited liability company, trust, unincorporated organization, government or any department or agency thereof, or any other entity.

Planned Outages. “Planned Outages” shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

Planning Procedures. The manuals, procedures and protocols for planning and expansion of the New England Transmission System, as such manuals, procedures, and protocols may be modified from time to time in accordance with this Agreement.

Prime Rate. The interest rate that commercial banks charge their most creditworthy borrowers, as published in the most recent Wall Street Journal in its “Monday Rates” column.

PTF. “PTF” shall have the meaning ascribed thereto in the ISO OATT.

PTO or Participating Transmission Owner. “PTO” shall have the meaning ascribed thereto in the opening paragraph of the TOA. “Participating Transmission Owner” shall have the same meaning as “PTO.”

Rating Procedures. “Rating Procedures” shall have the meaning ascribed thereto in Section 3.02(d) of this Agreement.

Regulation and Frequency Response Service. An Ancillary Service as defined in the ISO OATT.

Reliability Authority. “Reliability Authority” shall have the meaning established by NERC, as such definition may change from time to time, provided such definition of Reliability Authority shall not be inconsistent with the specific rights and responsibilities of the ISO and the PTOs under this Agreement.

Restoration Plans. The System Restoration Plan, all PTO Local Restoration Plans and the NTD Local Restoration Plan.

RSP Project List. “RSP Project List” shall have the meaning ascribed thereto in the ISO OATT.

RTO. An independent entity that complies with Order No. 2000 and FERC's corresponding regulations (or an entity that complies with all such requirements except for the scope and regional configuration requirements), as determined by the FERC.

Schedule 22 Large Generator Interconnection Agreement. The interconnection agreement included in Schedule 22 of the ISO OATT.

Schedule 23 Small Generator Interconnection Agreement. The interconnection agreement included in Schedule 23 of the ISO OATT.

Scheduled Outages. "Scheduled Outages" shall have the meaning ascribed thereto in Market Rule 1 of the ISO Tariff.

Small Generating Facility. "Small Generating Facility" shall have the meaning ascribed thereto in the ISO OATT.

System Failure. Widespread telecommunication, hardware or software failure or systemic the ISO hardware or software failures that makes it impossible to receive or process bid information, dispatch resources, or exercise Operating Authority over the Transmission Facilities.

Tax or Taxes. All taxes, charges, fees, levies, penalties or other assessments imposed by any United States federal, state or local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions attributable thereto.

Tax Return. Any return, report, information return, or other document (including any related or supporting information) required to be supplied to any authority with respect to Taxes.

Technical Committees. "Technical Committee" shall mean the stakeholder technical committees established pursuant to the ISO Participants Agreement.

Term. "Term" shall have the meaning ascribed thereto in Section 10.01 of this Agreement.

Third Party. "Third Party" shall have the meaning ascribed thereto in Section 9.01(a) of this Agreement.

Termination Date. “Termination Date” shall have the meaning ascribed thereto in Section 10.01(a) of this Agreement.

TOA. The Transmission Operating Agreement entered into by the ISO and the PTOs, effective February 1, 2005, as it may be amended from time to time.

Transmission Business. The business activities of each PTO related to the ownership, operation and maintenance of its Transmission Facilities.

Transmission Customer. Any entity taking Transmission Service under the ISO OATT.

Transmission Facilities. “Transmission Facilities” shall have the meaning ascribed thereto in Sections 2.01 and 2.02 of this Agreement.

Transmission Owner. “Transmission Owner” shall have the meaning ascribed thereto in the ISO OATT.

Transmission Provider. The ISO, in its capacity as the provider of transmission services over the Transmission Facilities of the PTOs in accordance with FERC’s Order No. 2000 and FERC’s RTO regulations.

Transmission Service. The non-discriminatory, open access, wholesale transmission services provided to customers by the ISO in accordance with the ISO OATT.

Transmission Upgrade. Any upgrade to an existing Transmission Facility owned by NTD that goes into commercial operation after the Effective Date.

VAR. Volt-Amps Reactive.

**Schedule 2.01(a)**



**Schedule 2.01(b)**

**Schedule 11.01**

**NOTICES**

**ISO New England Inc.**

President and Chief Executive Officer

ISO New England Inc.

One Sullivan Road

Holyoke, MA 01040

Telephone: (413) 535-4000

Facsimile: 413-535-4379

General Counsel

ISO New England Inc.

One Sullivan Road

Holyoke, MA 01040

Telephone: (413) 535-4000

Facsimile: (413) 535-4379

**[NTD]**

Name:

Company:

Address:

Phone:

Fax: