

ANNEX 12

**FORM OF ASSIGNMENT, ASSUMPTION, AND NOVATION  
AGREEMENT**

**ASSIGNMENT, ASSUMPTION, AND NOVATION AGREEMENT**

<b>Outgoing Customer Name:</b> _____ (“Assignor”)	<b>Incoming Customer Name:</b> _____ (“Assignee”)
	<b>Updated Address:</b> _____ _____
	<b>Updated Contact Name:</b> _____
	<b>Updated Contact Tel.:</b> _____
	<b>Updated Contact Fax:</b> _____
	<b>Updated Contact E-mail:</b> _____

<b>Effective Date:</b> _____ To Be Determined by the NYISO
---

This Assignment, Assumption, and Novation Agreement (“Agreement”), is entered into as of the date indicated above, by and among the New York Independent System Operator, Inc. (the “NYISO”), Assignor, and Assignee. Assignor, Assignee, and the NYISO are each referred to herein as a “Party” or collectively as the “Parties.”

**RECITALS**

WHEREAS, Assignor and the NYISO have entered into the agreements specified in Appendix A (“Assigned Agreements”); and

WHEREAS, effective as of the Effective Date, Assignor wishes to transfer and novate to Assignee, and Assignee wishes to accept the transfer and novation of, all of the rights, liabilities, duties and obligations of Assignor under and in respect of the Assigned Agreements, and the NYISO wishes to consent to the same, each on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

Section 1.1 Definitions. Capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in the NYISO’s tariffs.

Section 1.2 Effective Date. This Agreement shall take effect on the date determined by the NYISO in consultation with Assignor and Assignee. The NYISO will notify Assignor and Assignee of the Effective Date by email.

## **ARTICLE 2 ASSIGNMENT, ASSUMPTION, AND NOVATION**

Section 2.1 Assignment, Assumption and Novation. Effective as of the Effective Date, Assignor hereby assigns, transfers, and conveys to Assignee the Assigned Agreements and all of its rights, titles, benefits, privileges, and interests in and to, and delegates all of its burdens, obligations, and liabilities in connection with, the Assigned Agreements, and Assignee hereby accepts the assignment and agrees to assume and perform all of Assignor's duties, obligations, terms, provisions, and covenants under the Assigned Agreements, *mutatis mutandis*, whenever created or incurred, including without limitation the obligation to pay liabilities of Assignor arising or accruing on or before the Effective Date, in the same manner as if Assignee were the original party to the Assigned Agreements. For the avoidance of doubt, Assignee hereby acknowledges and agrees that as of the Effective Date it will be responsible to the NYISO for all rebills, resettlements, and any other financial obligations incurred by Assignor prior to the Effective Date pursuant to the Assigned Agreements.

Section 2.2 Ratification. Effective as of the Effective Date, Assignee hereby ratifies all previous actions taken by Assignor with respect to the Assigned Agreements, with the same force and effect as if the actions had been taken by Assignee.

Section 2.3 Release. Effective as of the Effective Date, Assignor hereby waives any claims and rights against the NYISO that it now has or may have in the future in connection with the Assigned Agreements.

Section 2.4 Novation. Effective as of the Effective Date, the NYISO hereby agrees to recognize Assignee as the successor-in-interest of Assignor under the Assigned Agreements and recognizes the novation of Assignor's liabilities and obligations under the Assigned Agreements.

Section 2.5 Form 1099. Assignor and Assignee acknowledge and agree that (a) for all payments made by the NYISO to either Assignor or Assignee during the calendar year that includes the Effective Date, the NYISO will issue only one federal tax form reflecting the total amount of the payments made to both Assignor and Assignee, (b) the NYISO will issue this tax form to Assignee, and (c) Assignee shall be the nominee recipient for any amounts listed on such form that belong to Assignor.

Section 2.6 Effect of Agreement. Effective as of the Effective Date, all references to Assignor in the Assigned Agreements shall be deemed to be references to Assignee, and to the extent any of the Assigned Agreements specifies a contact name and/or address for Assignor, the contact and/or address shall be replaced with Assignee's contact and address information indicated above. Except as modified by this Agreement, the Assigned Agreements, and the transactions entered into pursuant to the Assigned Agreements, shall remain in full force and effect after the Effective Date.

**ARTICLE 3  
CREDIT RELATED ISSUES**

Section 3.1 Creditworthiness Provisions. For the purposes of calculating Assignee's credit requirements under the Assigned Agreements, including without limitation pursuant to Attachment K to the NYISO's Services Tariff, and Attachment W to the NYISO's OATT, all prior and existing transactions entered into by Assignor under the Assigned Agreements shall be treated as if such transactions had been entered into by Assignee.

Section 3.2 Assignee's Credit Related Representation and Warranty. Assignee acknowledges that the NYISO will calculate Assignee's credit requirements from the Effective Date based on Assignor's historical activity in the NYISO-administered markets. Accordingly, Assignee represents and warrants that its activity in NYISO-administered markets will, to Assignee's knowledge, be comparable to Assignor's prior activity in NYISO-administered markets.

**ARTICLE 4  
REPRESENTATIONS AND WARRANTIES**

Section 4.1 Assignor Representations and Warranties. As of the Effective Date, Assignor represents and warrants as follows:

- (a) Organization. Assignor is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and is qualified to do business under the laws of the State of New York;
- (b) Authority. Assignor has full power and authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement;
- (c) Obligations Binding. Assignor's obligations under this Agreement constitute legal, valid, and binding obligations of Assignor, enforceable in accordance with the terms of this Agreement (subject to applicable bankruptcy, reorganization, insolvency, moratorium, or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));
- (d) Consents. All governmental and other consents that are required to be obtained by Assignor with respect to this Agreement have been obtained and are in full force and effect, and all conditions of any such consents have been satisfied;
- (e) No Violation or Conflict. The execution, delivery, and performance of this Agreement will not materially conflict with, constitute a material breach of, or a material default under, any of the terms, conditions, or provisions of any law or order of any agency of government, the organizational documents of Assignor, any contractual limitation, organizational limitation or outstanding trust indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness, or any other agreement or instrument to which Assignor is a party or by which it or any of its property is bound, or result in a material breach of, or a material default under, any of the foregoing;

(f) No Prior Transfer. Assignor has made no prior transfer of the Assigned Agreements or any of its rights, titles, or interests under the Assigned Agreements; and

(g) No Other Agreements. Other than the Assigned Agreements, Assignor is not a party to any other agreement with the NYISO pertaining to its rights and obligations pursuant to the NYISO's tariffs.

Section 4.2 Assignee Representations and Warranties. As of the Effective Date, Assignee represents and warrants as follows:

(a) Organization. Assignee is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and is qualified to do business under the laws of the State of New York;

(b) Authority. Assignee has full power and authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement;

(c) Obligations Binding. Assignee's obligations under this Agreement and the Assigned Agreements constitute legal, valid, and binding obligations of Assignee, enforceable in accordance with the terms of each such agreement (subject to applicable bankruptcy, reorganization, insolvency, moratorium, or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));

(d) Consents. All governmental and other consents that are required to be obtained by Assignee with respect to this Agreement have been obtained and are in full force and effect, and all conditions of any such consents have been satisfied;

(e) No Violation or Conflict. The execution, delivery, and performance of this Agreement will not materially conflict with, constitute a material breach of, or a material default under, any of the terms, conditions, or provisions of any law or order of any agency of government, the organizational documents of Assignee, any contractual limitation, organizational limitation or outstanding trust indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness, or any other agreement or instrument to which Assignee is a party or by which it or any of its property is bound, or result in a material breach of, or a material default under, any of the foregoing; and

(f) Application. Assignee has met all applicable requirements set forth in the OATT and the Services Tariff necessary to become a NYISO customer and has submitted a completed application pursuant to Article 9 of the Services Tariff.

## **ARTICLE 5 OTHER PROVISIONS**

Section 5.1 Amendment, Transfer, Entire Agreement. No modification, amendment, cancellation, termination, or waiver of any provision of this Agreement shall be effective unless in writing and executed by the Parties. None of the Parties may assign, transfer, or otherwise convey any or all of its rights or obligations hereunder without the prior written consent of each

of the other Parties. This Agreement together with any appendices referred to herein sets out the entire understanding of the Parties and supersedes any and all prior agreements, arrangements, and understandings relating to the subject matter of this Agreement.

Section 5.2 Governing Law. The Parties agree and acknowledge that this Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of laws rules thereunder other than Section 5-1401 of the New York General Obligations Law.

Section 5.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes, and all of which together constitute one and the same instrument binding on all Parties as if all Parties had signed the same document.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

ASSIGNOR

ASSIGNEE

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

THE NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.

By: \_\_\_\_\_  
Name:  
Title:

**APPENDIX A**  
**List of Assigned Agreements**

**PLEASE NOTE:**

Assignor should replace this form Appendix A with a list of all contracts between Assignor and the NYISO regarding Assignor's rights and obligations under the NYISO's tariffs. Several potential agreements are listed below, but it is the obligation of the Assignor to identify in Appendix A all agreements between the NYISO and the Assignor.

By transferring the Service Agreements under the Services Tariff and the OATT, all rights and obligations arising under the respective NYISO tariffs (e.g., TCCs, UDRs, External CRIS Rights, etc.) will transfer to the Assignee and need not be specifically provided for in this list of Assigned Agreements.

NYISO may also require the Assignee to sign, as applicable, an Amendment of ICAP Purchase/Sell Agreement and/or Amendment of TCC Purchase/Sell Agreement.

1. **[Service Agreement under the Market Administration and Control Area Services Tariff, dated [●], between the NYISO and Assignor];**
2. **[Service Agreement for Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff, dated [●], between the NYISO and Assignor];**
3. **[Agreement to Purchase or Sell Unforced Capacity, dated [●], between the NYISO and Assignor]; and**
4. **[Agreement to Purchase or Sell Transmission Congestion Contracts, dated [●], between the NYISO and Assignor.].**

**FORM CONSENTS FOR ASSIGNMENT, ASSUMPTION, AND NOVATION**



**EXAMPLE 1**  
**FORM CONSENT FOR OUTGOING CUSTOMER**  
**UNANIMOUS WRITTEN CONSENT OF THE MEMBERS OF**

\_\_\_\_\_  
Name of Assignor

The undersigned, being all of the members of \_\_\_\_\_,  
Full Legal Name of Assignor  
a \_\_\_\_\_ (“Assignor”);  
Jurisdiction of Formation                      Type of Entity  
hereby consent to and adopt the following preamble and resolutions:

WHEREAS, the Assignor is an existing New York Independent System Operator, Inc. (“NYISO”) Customer;

WHEREAS, the Assignor desires to assign all of its rights, title, liabilities, duties, and obligations as a NYISO Customer to \_\_\_\_\_,  
Full Legal Name of Assignee  
a \_\_\_\_\_ (“Assignee”);  
Jurisdiction of Formation                      Type of Entity

WHEREAS, Assignee desires to assume all such rights, title, liabilities, duties and obligations of Assignor and participate in the markets of or otherwise take service from the NYISO; and

WHEREAS, the undersigned deems such assignment to be advisable and in the best interests of the Assignor.

NOW, THEREFORE, BE IT RESOLVED, that the terms, conditions, and provisions of that certain Assignment, Assumption, and Novation Agreement between Assignor and Assignee (the “Agreement”), substantially in the form attached hereto as Appendix A, are hereby approved; and further

RESOLVED, that any one of the following:

_____ Name	_____ Title	_____ Signature
_____ Name	_____ Title	_____ Signature

is hereby authorized and directed to execute and deliver the Agreement and all such other documents, instruments and agreements, and to take all such actions in the name and on behalf of the Assignor as may be reasonably necessary or desirable to give effect to the foregoing resolutions; and further

RESOLVED, that the authority given hereunder shall be deemed retroactive and any and all acts authorized hereunder performed prior to the passage of this resolution are hereby ratified and affirmed.

This consent of the members may be executed in any number of counterparts, each of which shall, taken together, constitute one and the same consent.

**IN WITNESS WHEREOF**, the undersigned, being all of the members of Assignor have executed this unanimous written consent effective as of the date indicated above.

Member Entity Name (if applicable): \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Member Entity Name (if applicable): \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Member Entity Name (if applicable): \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Appendix A

Assignment, Assumption, and Novation Agreement

See attached.

**EXAMPLE 2**  
**FORM CONSENT FOR INCOMING CUSTOMER**

**UNANIMOUS WRITTEN CONSENT OF THE MEMBERS OF**

\_\_\_\_\_  
Name of Assignee

The undersigned, being all of the members of \_\_\_\_\_,  
Full Legal Name of Assignee  
a \_\_\_\_\_ (“Applicant”);  
Jurisdiction of Formation Type of Entity  
hereby consent to and adopt the following preamble and resolutions:

WHEREAS, Applicant desires to participate in the markets of or otherwise take service from the New York Independent System Operator, Inc. (“NYISO”);

WHEREAS, \_\_\_\_\_, a \_\_\_\_\_,  
Full Legal Name of Assignor Jurisdiction of Formation  
\_\_\_\_\_ (“Assignor”), is an existing NYISO Customer  
Type of Entity  
that desires to assign all of its rights, title, liabilities, duties, and obligations as a NYISO Customer to Applicant;

WHEREAS, Applicant desires to assume all such rights, title, liabilities, duties and obligations of Assignor; and

WHEREAS, the undersigned deem such assignment, the Applicant’s NYISO application and the transactions contemplated thereby to be advisable and in the best interests of Applicant.

NOW, THEREFORE, BE IT RESOLVED, that the terms, conditions, and provisions of that certain Assignment, Assumption, and Novation Agreement between Applicant and Assignor (“Agreement”), substantially in the form attached hereto as Appendix A, are hereby approved; and further

RESOLVED, that any one of the following:

\_\_\_\_\_  
Name Title Signature

\_\_\_\_\_  
Name Title Signature

is hereby authorized and directed to execute and deliver the Agreement and all such other documents, instruments and agreements, and to take all such actions in the name and on behalf of Applicant as may be reasonably necessary or desirable to give effect to the foregoing resolutions; and further

RESOLVED, that the authority given hereunder shall be deemed retroactive and any and all acts authorized hereunder performed prior to the passage of this resolution are hereby ratified and affirmed.

This unanimous written consent of the members may be executed in any number of counterparts, each of which shall, taken together, constitute one and the same consent.

**IN WITNESS WHEREOF**, the undersigned, being all of the members of Applicant have executed this unanimous written consent effective as of the date indicated above.

Member Entity Name (if applicable): \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Member Entity Name (if applicable): \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Member Entity Name (if applicable): \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Appendix A

Assignment, Assumption, and Novation Agreement

See attached.