



Transmission Congestion Contracts Manual Attachments

Attachment A: BINDING AGREEMENT TO SELL TRANSMISSION CONGESTION
CONTRACTS IN THE NYISO-ADMINISTERED INITIALCENTRALIZED TCC
AUCTIONS AND RECONFIGURATION AUCTIONS
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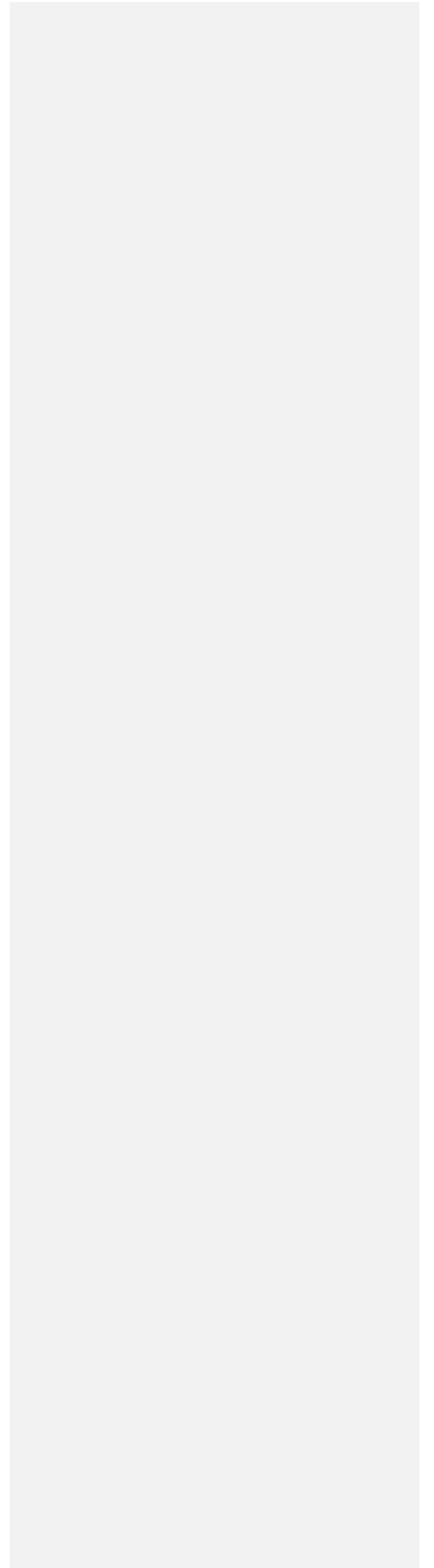
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NYISO TRANSMISSION CONGESTION CONTRACTS MANUAL ATTACHMENTS

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Attachment A.

BINDING AGREEMENT TO SELL TRANSMISSION CONGESTION CONTRACTS IN THE NYISO-ADMINISTERED ~~INITIALCENTRALIZED~~ TCC AUCTIONS AND RECONFIGURATION AUCTIONS

THIS BINDING AGREEMENT TO SELL TRANSMISSION CONGESTION CONTRACTS (the "Sale Agreement"), dated as of this _____ day of _____, _____, is given by _____, having a principal business address at _____ (the "Seller").

RECITALS

WHEREAS, pursuant to the terms of the New York Independent System Operator Open Access Transmission Tariff (the "ISO OATT") and the Market Administration and Control Area Services Tariff ("ISO Services Tariff"), the New York Independent System Operator, Inc. ("NYISO") will conduct ~~InitialCentralized TCC~~ Auctions ("~~InitialCentralized TCC~~ Auction") and subsequent monthly Reconfiguration Auctions ("Reconfiguration Auction") (collectively, the "Auctions") as described in Attachment M of the ISO OATT ~~and Attachment B of the ISO Services Tariff~~, in which holders of Transmission Congestion Contracts ("TCCs") may offer to sell TCCs and parties wishing to acquire TCCs may buy them;

WHEREAS, all capitalized terms that are not otherwise defined herein shall have the meaning set forth for such terms ascribed thereto in the ISO OATT, the ISO Services Tariff, and/or the Independent System Operator Agreement (the "ISO Agreement");

WHEREAS, a TCC represents the right to collect, or the obligation to pay, the Day-Ahead Congestion Rents associated with one (1) megawatt of transmission between a specified Point of Injection ("POI") and a specified Point of Withdrawal ("POW") for all hours of each day during the relevant period, as such Congestion Rents are determined and settled according to the ISO OATT and ISO Services Tariff; and

WHEREAS, the Seller has been designated a registrant name for purposes of the Auctions and intends to submit this Sale Agreement, coupled with the submission of properly formatted offers (~~each such offers together being~~ an "Electronic Offer") ~~and such offers an~~ Electronic Offer together with the Sale Agreement constituting an "Offer Package") to Auctions operated on an automated basis through the submission of Electronic Offers over the internet (the "TCC Automated TCC Market System"); and

WHEREAS, the Seller intends that such Offer Package shall constitute an official offer for purposes of the ~~InitialCentralized TCC~~ Auction and any Reconfiguration Auction and that the Offer Package will be recorded and objectively analyzed pursuant to ~~the applicable set of~~ "Rules,"

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~~Procedures and Guidelines~~ provisions for the ~~Initial~~ Centralized TCC Auction and Reconfiguration Auctions ~~of TCCs~~ (“~~Auction Rules~~”), ~~and as found in ISO Procedures, Attachments M and N of the ISO OATT, Attachment B and K of the ISO Services Tariff, and any other applicable provisions of the ISO OATT and ISO Services Tariff, (“Auction Rules”), any of which may be amended from time to time and copies of which have been delivered~~ made available to and reviewed by the Seller on the NYISO website; and

WHEREAS any prior ~~Sale Agreement to Sell Transmission Congestion Contracts in the NYISO Administered Initial TCC Auctions and Reconfiguration Auctions (“previous Sale Agreement”)~~ executed by ~~the~~ Seller and the NYISO shall remain in full force and effect until ~~the implementation of the Automated TCC Market System~~ a new Sale Agreement (“new Sale Agreement”) is signed, at which time ~~such prior agreement~~ the previous Sale Agreement shall be superseded by this new Sale Agreement, and thereafter this new Sale Agreement shall govern ~~the~~ Seller’s TCC Market participation; and

NOW, THEREFORE, in consideration of the NYISO including ~~the~~ Seller’s Offer Package in the ~~Initial~~ Centralized TCC Auction or any of the Reconfiguration Auctions, which ~~the~~ Seller acknowledges and agrees is adequate consideration for its obligations hereunder, ~~the~~ Seller hereby agrees to the following:

1. Offer to Sell TCCs.

- (a) The Seller agrees to sell TCCs pursuant to the ~~Auctions~~ Auction Rules, as determined by the NYISO, provided that the selling price for each TCC shall be the Market Clearing Price established in the Auctions (as determined by the NYISO, or its designee) ~~and~~, that the TCCs to be sold shall not exceed the number of TCCs set forth in the Electronic Offer, ~~and the Market Clearing Price for each TCC sold shall not be less than the Offer Price set forth in the Electronic Offer as described in the Rules.~~
- (b) The Seller acknowledges and understands that the Seller’s submission of a valid Offer Package represents a binding obligation of the Seller to sell the TCCs. The Seller further acknowledges and understands that the submission of an Offer Package does not obligate the NYISO to accept the Offer Package, in whole or in part, nor does the submission of an Offer Package grant any right to the Seller to sell any TCCs.
- (c) The Seller acknowledges and understands that the Auctions shall be conducted in accordance with the applicable ~~“Auction Rules, Procedures and Guidelines for the Initial Auction and Reconfiguration Auctions of TCCs” (“Rules”)~~ Auction Rules.
- (d) The Seller acknowledges and understands that the Market Clearing Price for the TCCs offered ~~in~~ pursuant to this Sale Agreement could be positive, negative or zero.
- (e) The Seller acknowledges that its statements made in any Electronic Offer (which term is used in the TCC Automated Market System as “Set” or “Bid and Offer Set”) may be amended by the Seller at any time during the period to offer TCCs for sale in the Auctions (“Offering Period”) by submitting a new Electronic Offer which must be received in accordance with this Section, ~~and the Auction Rules, and Attachment M of the ISO OATT.~~ If such new Electronic Offer is timely and correctly and

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completely submitted by the Seller as provided herein, the most recently received Electronic Offer, as indicated by the date and time of submission reported in the TCC Automated TCC-Market System, will supersede any previous Electronic Offer (s) and any previous Electronic Offer (s) will have no further force or effect. A newly submitted Electronic Offer must include all Individual Offers properly formatted offers that the Seller intends to be in effect, including and must also include any previously submitted Individual Offers properly formatted offers that are not being amended.

(f) The Seller acknowledges that its statements made in any Electronic Offer may be withdrawn by the Seller at any time during the Offering Period by submitting a Withdrawal Request, which must be received in accordance with this Section, and the Auction Rules. If such Withdrawal Request is timely, correctly and completely submitted by the Seller as provided herein, the most recently received Electronic Offer, as indicated by the date and time of submission reported in the TCC Automated Market System, will be removed from the Auction and will have no further force or effect. The Seller must submit a new Electronic Offer if it intends to participate in the Auction.

(g) The Seller acknowledges that this Sale Agreement form must be submitted to the address referenced in the Auction Rules, via an overnight mail or delivery service that requires the signature of the addressee as a record of the date and time of delivery. The Seller hereby acknowledges that a Sale Agreement submitted via an overnight mail or delivery service to the address referenced in the Rules shall be evidenced as being submitted in a timely manner only by the signature of the NYISO, or its designated recipient, upon delivery made in accordance with the schedule established by these Rules. The Seller may also provide an electronic version of this Sale Agreement to the NYISO at the email address referenced in the Auction Rules prior to submitting it via overnight mail or delivery service which shall not be used to establish timely submission.

(h) The Seller acknowledges that the timely submission of an Offer Package does not guarantee that the Offer Package is valid for inclusion in any Auction, and that an Offer Package that has not been completed or submitted in conformity with the Auction Rules, in the NYISO's sole judgment, shall be invalid and shall be rejected.

(i) The Seller acknowledges that the Seller bears the sole responsibility for submitting a correct and complete Offer Package in accordance with the Auction Rules.

2. Billing and Payment Procedures for Sale of TCCs

(a) The NYISO, or its designee, shall distribute written notice make available to the Seller (the "information constituting an Award Notice") by posting such information to a secure location on the NYISO's website that is accessible to the Seller according to the schedule established by these the Auction Rules, which notice Award Notice shall specify the number of TCCs that the Seller has sold in any Auction, the Market Clearing Price for each TCC, and the Total Selling Price (the product of the number of TCCs to be sold, and the amount due as a result of the sale of each sold TCC -

- which shall be the Market Clearing Price of each sold TCC. The amount due for such TCCs, "Total Selling Price").
- ~~(b)~~(a) Upon each sold TCC may be summed together as a total amount due for sold TCCs. A Seller shall be deemed to be in receipt of the Award Notice, Seller shall transfer to on the day the NYISO, or its designee, that number of TCCs set forth in has posted the Award Notice, and shall take all steps reasonably necessary to complete such transfer, a secure location on the NYISO's website that is accessible to the Seller.
- (b) If the Total Selling Price is greater than zero, within six (6) business days of Seller's receipt of the Award Notice, The NYISO, or its designee, shall make available to the Seller as part of the information constituting an Award Notice an "Invoice" or series of Invoices, as described herein, according to the schedule established by the Auction Rules, which Invoice(s) shall reflect all the Seller's activity in an Auction by specifying the total amount due to the NYISO from the Seller or due from the NYISO to the Seller ("Net Invoiced Amount") and the date by which such Net Invoiced Amount is to be paid to the NYISO or will be paid by the NYISO. A Seller shall be deemed to be in receipt of the Invoice on the day the NYISO has posted the Invoice to a secure location on the NYISO's website that is accessible to the Seller.
- (c) The payment obligation for a TCC sold for a duration of one year or less shall be included in one invoice in an amount equal to the Market Clearing Price of each TCC sold for a duration of one year or less. The payment obligation for a TCC sold for a duration of two years shall be included in two invoices. The payment obligation that is included in the first Invoice for a TCC sold for a duration of two years shall be the Market Clearing Price of the TCC sold divided by two (rounded up to the nearest cent). The payment obligation included in the second Invoice for a TCC sold for a duration of two years shall be the Market Clearing Price of the TCC sold divided by two (rounded down to the nearest cent). The Auction Rules shall describe the dates by which the first and second Invoices will be provided to the Seller by the NYISO.
- ~~(e)~~(d) If the Net Invoiced Amount is less than zero, within six (6) business days of the Invoice being accessible to the Seller at a secure location on the NYISO's website, the Seller shall give wiring instructions to the NYISO, or its designee, designating the account(s) to which funds generated from any the Auction will be disbursed and allocated by the NYISO pursuant to the Rules and Attachment M of the ISO-OATT Auction Rules.
- ~~(d)~~(e) If the Total Selling Price Net Invoiced Amount is less greater than zero, within three (3) business days of Seller's receipt of the Award Notice Invoice being accessible to the Seller at a secure location on the NYISO's website, the Seller shall cause funds to be wired, to the accounts account specified in writing by the NYISO, or its designee, the Invoice in an amount that would satisfy the Seller's obligation to pay the Total Selling Price Net Invoiced Amount.
- ~~(e)~~(f) Within two (2) business days after receipt of an Award Notice the Invoice is accessible to the Seller, to the extent that the Seller disputes the calculation of the Total Selling Price due and payable Net Invoiced Amount, the Seller shall give written

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notice to the NYISO, or its designee, setting forth in reasonable detail the basis for any such disagreement (“Dispute~~2~~.”) which dispute may reflect information included in the Award Notice if such information impacts the Net Invoiced Amount. If the Seller does not give written notice within the two (2) business day period, the Seller shall be deemed to have irrevocably accepted the ~~Total Selling Price~~Net Invoiced Amount in the manner specified in the ~~Award Notice~~Invoice as ~~delivered~~made available to the Seller by the NYISO, or its designee.

~~(f)~~ If a timely filed written notice of Dispute is given, the ~~Seller and the NYISO, or its designee, shall promptly commence good faith negotiations with a view to resolving the Dispute(s) within five (5) business days of the NYISO’s receipt of such notice. If the Dispute is not resolved within the five (5) business day period, then the Dispute shall thereafter be referred by either the Seller or the NYISO, or its designee, to Richard L. Miles, Director, of the FERC Office of Expedited Dispute Resolution Service, or his successor in office (the “Director”) for a resolution of such Dispute in accordance with Procedures, included as Appendix A to this Sale Agreement and the Rules. The resolution of the Dispute shall be conducted in the following manner:~~

~~(i)~~ Within three (3) business days after being notified of a Dispute, the Director shall identify and create a list of five (5) arbitrators, who must be knowledgeable regarding businesses engaged in the energy industry, to be delivered to the Seller and the NYISO, or its designee.

~~(ii)~~ Within five (5) business days of receipt of such list from the Director, the Seller and the NYISO, or its designee, separately, shall select three (3) arbitrators from the Director’s list and resubmit their selections to the Director.

~~(iii)(g)~~ Within two (2) business days of the Director’s receipt of the resubmitted list of arbitrators from the Seller and the NYISO, or its designee, the Director shall select in its sole discretion one arbitrator (the “Arbitrator”) to resolve the Dispute in accordance with the terms and conditions of this Sale Agreement and the Rules. The decision and resolution of the Arbitrator shall be rendered within twenty (20) business days after referral of the Dispute to the Arbitrator and shall be final and binding upon the parties. During this twenty (20) business day period, the Seller and the NYISO, or its designee, will be allowed to make written and oral presentations to the Arbitrator. The Seller and the NYISO, or its designee, shall use their best efforts to cause the Arbitrator to render its decision within the twenty (20) business day period described above, and each shall cooperate with the Arbitrator and provide the Arbitrator with access to the books, records and representatives of each as the Arbitrator may require in order to render its determination. All of the fees and expenses of any Arbitrator retained pursuant to this Section shall be paid by the party who does not prevail in the Dispute.followed.

~~(g)(h)~~ To the extent that the Seller disputes the calculation of the ~~Total Selling Price due and payable~~Net Invoiced Amount, the Seller or the NYISO, depending on which is the obligated party, shall remain obligated to make payment in full for the TCCs as indicated in the ~~Award Notice~~Invoice. However, if it is later determined, in accordance with this Section 2 that an overpayment or underpayment has been made, the NYISO shall refund that overpayment or underpayment, including interest

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calculated from the date that the overpayment or underpayment was made in accordance with the methodology specified for interest on refunds in the ~~FERC regulations at 18 C.F.R. § 35.19a(a)(2)(iii)-~~ NYISO Procedures for energy market settlements.

- ~~(h)~~(i) If a mistake is discovered in the calculation of information provided in an Award Notice ~~after its delivery~~ or an Invoice after it was made available to the Seller at a secure location on the NYISO's website, the NYISO reserves the right to revise the Award Notice and ~~or the information therein~~ Invoice, and the Seller acknowledges that it will be obligated to make arrangement for payment or receipt of payment in accordance with the revised ~~Award Notice-~~ Invoice.

3. Representation and Warranties of the Seller.

- (a) The Seller hereby represents and warrants to the NYISO as follows:
- (i) Seller is ~~an Eligible~~ Customer and the sale or purchase of Transmission Congestion Contracts is done as part of ~~the~~ Seller's business;
 - (ii) Seller has full power and authority to execute and submit the Offer Package and to perform its obligations thereunder. The Offer Package constitutes a valid and legally binding obligation of the Seller.
 - (iii) The execution and submission of the Offer Package and the consummation of the transactions contemplated thereby have been duly and validly approved by all requisite action, corporate or otherwise, on the part of ~~the~~ Seller, and no other proceedings, corporate or other, on the part of ~~the~~ Seller are necessary to approve and submit the Offer Package and to consummate the transactions contemplated hereby.
 - (iv) Seller is the Primary Holder of the TCCs being offered pursuant to this Offer Package free and clear of any restrictions on transfer (other than imposed under the ISO OATT and the Auction Rules), taxes, security interests, options, warrants, purchase rights, contracts, commitments, equities, claims or demands.
 - (v) Seller has ~~received access to~~ and has reviewed ~~a copy of the ISO OATT and the Auction Rules~~ and understands the terms and conditions contained ~~in each~~ therein.
 - (vi) Seller shall meet all requirements of the NYISO Credit Policy ~~- as provided in Attachment K to the Services Tariff and ISO Procedures.~~
 - (vii) Seller shall hold, use, and transfer any TCCs offered in the Auctions in accordance with the terms and conditions set forth in the ISO OATT and the Auction Rules.
 - (viii) Other than providing the information as required by this Agreement, the Seller has not amended or changed this Sale Agreement in any way to make it different from the "Sale Agreement", found at Attachment A to the ~~Rules-~~ Auction Rules. Any change to this Sale Agreement made by the Seller, other than to provide the information as required by the Sale Agreement, shall be null, void and unenforceable.

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- (b) All representations and warranties contained herein shall apply to each ~~purchase and sale of TCCs in all Auctions contemplated in this Sale Agreement.~~
- (c) It is understood and agreed by the Seller that if ~~the Seller~~ is found to be in breach of Section 3(a)(iv), then the NYISO be entitled, in addition to such other remedies, damages, and relief as may be available under applicable law, to ~~revoke any declare as invalid, null and void the Seller's Award Notice and / or Net Invoiced Amount with regard to such TCCs that may be awarded hereunder and and~~ to seek equitable relief, ~~including an injunction prohibiting the Seller from using any awarded TCC~~, and the Seller shall not resist such application for relief on the basis that the NYISO has an adequate remedy at law.

4. Indemnification; Release of Liability.

- (a) Seller agrees to indemnify and save and hold harmless the NYISO, and all of its respective officers, directors, employees, and agents, from and against any and all losses, damages, expenses, liabilities, claims or demands, including attorney's fees, (collectively, the "Damages") whatsoever suffered or incurred by such parties resulting, arising from or relating to the Seller's breach of any of its agreements, covenants, representations, or warranties contained herein, except for those Damages resulting from the NYISO's gross negligence or willful misconduct.
- (b) Seller hereby releases the NYISO, and all of its officers, directors, employees and agents, from any and all liability arising from or relating to the ~~Initial Auction~~Auctions, except with respect to any gross negligence or willful misconduct on the part of the NYISO, its officers, directors, employees or agents.

5. Miscellaneous.

- (a) All inquires, notices and communications can be given by the NYISO in writing to the Seller ~~as at the address that~~ follows, except that the NYISO may deliver the Award Notice and the Invoice by posting all required information to a secure location on the NYISO's website that is accessible to the Seller:

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

- (b) All representation, warranties, covenants, and obligations of this Sale Agreement shall survive the sale of the TCCs by the Seller.

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- (c) It is understood and agreed that the provisions of this Sale Agreement are intended for the benefit of the Seller and the NYISO and may be enforced directly by the NYISO against the Seller or by the Seller against the NYISO.
- (d) This Sale Agreement and all Electronic Offers shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict of law provisions.

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IN WITNESS WHEREOF, this Sale Agreement has been respectfully submitted as of the date first above written.

NAME OF SELLER:

By: _____ (signature)

Name: _____ (please print clearly or type)

Title: _____

(must be Corporate Officer or employee with legal authority to bind Seller)

New York Independent System Operator, Inc.

By: _____

Name: _____

Title: _____

Appendix A

EXPEDITED DISPUTE RESOLUTION PROCEDURES

Five-Day Consultation Period

Parties to a dispute involving a matter that is subject to the procedures of this Appendix A must immediately confer and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute within five (5) calendar days by mutual agreement, the dispute shall be immediately submitted to the ISO's Dispute Resolution Administrator ("DRA").

Written Submissions

Immediately upon conclusion of the five-day consultation period, the party requesting the dispute resolution shall submit to the DRA and all other parties to the dispute, a concise written statement specifying that expedited dispute resolution under this Appendix A is requested and describing the nature of the dispute, the issues to be resolved and the specific award requested. The party opposing the requested relief shall then have five (5) calendar days to submit to the DRA and the party requesting the dispute resolution, a concise written response which shall include a proposed disposition of the dispute.

Appointment of the Arbitrator

The DRA shall keep at all times a list of ten (10) qualified arbitrators for matters which may be subject to the procedures of this Appendix A. Within five (5) calendar days of receipt of a request for dispute resolution under this Appendix A, the DRA shall appoint one arbitrator from that list to preside over the dispute. The arbitrator shall be selected by the DRA by randomly drawing names from the list until an available arbitrator is found. If none of the arbitrators on the list is available, the DRA shall appoint a qualified arbitrator to preside over the dispute. No person shall be eligible to act as an arbitrator who is a past or present officer, employee of, or NYISO consultant to any of the disputing parties, or of an entity related to or affiliated with any of the disputing parties, or is otherwise interested in the matter to be arbitrated except upon the express written consent of the parties. Any individual appointed as an arbitrator shall make known to the disputing parties any such disqualifying relationship or interest and a new arbitrator shall be appointed by the DRA, unless express written consent is provided by each party.

Arbitration Proceeding

There shall be no right to discovery between the parties, including, but not limited to, depositions, interrogatories or other information requests. The arbitrator may request, and the parties shall produce, any information in addition to the written statements that is deemed by the arbitrator to be relevant to the issues presented. The arbitrator shall resolve the arbitration matter solely on the basis of the written statements and evidence submitted by the parties unless, in the sole discretion of the arbitrator, a hearing is deemed necessary. Any such hearing shall be limited to one (1) day and conducted in accordance with the procedures determined by the arbitrator.

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Absent agreement to the contrary by all parties to the dispute, no person or entity shall be permitted to intervene. Except as otherwise set forth in this Appendix A, the arbitrator will follow the Commercial Arbitration Rules of the American Arbitration Association and the expedited procedures contained therein.

Arbitration Award

Within fifteen (15) calendar days of the appointment of the arbitrator, the arbitrator shall select as an arbitration award the award proposed by one of the parties in their written submission and shall render a concise written decision including findings of fact and the basis for the decision. All costs associated with the time, expenses, and other charges of the arbitrator shall be borne by the unsuccessful party. Each party shall bear its own costs, including attorney and expert fees, if any. No award shall be deemed to be precedential in any other arbitration related to a different dispute.

Limited Appeal

The decision of the arbitrator shall be final and binding upon the parties, except that, within one year of the arbitration decision, a party may request that any federal, state regulatory or judicial authority (in the State of New York) having jurisdiction take such action as may be appropriate with respect to any arbitration decision that is based on fraudulent conduct or demonstrable bias of the arbitrator.

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