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**POWER AUTHORITY OF THE STATE OF NEW YORK  
EMPIRE STATE DEVELOPMENT**

**FRAMEWORK AGREEMENT**

**AMONG**

**POWER AUTHORITY OF THE STATE OF NEW YORK,  
NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT**

**AND**

**ALCOA INC.**

**DECEMBER 18, 2015**

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**POWER AUTHORITY OF THE STATE OF NEW YORK**

30 South Pearl Street, 10th Floor  
Albany, New York 12207-3425

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION**

**d/b/a EMPIRE STATE DEVELOPMENT**

633 Third Avenue  
New York, NY 10017

**ALCOA INC.**

390 Park Avenue  
New York, NY 10022-4608

**FRAMEWORK AGREEMENT**

**AMONG**

**POWER AUTHORITY OF THE STATE OF NEW YORK,**

**EMPIRE STATE DEVELOPMENT**

**AND**

**ALCOA INC.**

Alcoa Inc. hereby enters into this Framework Agreement (this "Framework Agreement") with the Power Authority of the State of New York (the "Authority" or "NYPA") and New York State Urban Development Corporation d/b/a Empire State Development ("ESD," and collectively with Alcoa and NYPA, the "Parties"), pursuant to which Alcoa will continue operations at its Park Avenue East Plant (the "West Plant"), Massena, New York, 13622, in exchange for operating expense and capital support to be provided by ESD and for electric power and energy supply discounts to be provided by the Authority, as follows:

**WHEREAS**, the Authority and Alcoa, in or around February 2009, entered into a contract entitled "Agreement for the sale of Firm and Interruptible Hydroelectric Power and Energy From the St. Lawrence-FDR Power Project to Alcoa Inc." (the "2009 Agreement");

**WHEREAS**, the Authority and Alcoa, in or around January 2011, entered into an amendment entitled "First Supplemental Agreement Modifying Certain Agreements and Understandings Between the Parties Regarding the Sale of Hydroelectric Power and Energy" (the "2011 Supplemental Agreement") which, among other things, modified the 2009 Agreement;

**WHEREAS**, the Authority and Alcoa, in or around March 2014, entered into an amendment entitled "Supplemental Agreement Further Modifying the 2009 Agreement Between the Parties Regarding the Sale of Hydroelectric Power and Energy" (the "2014 Supplemental Agreement") which, among other things, further modified the 2009 Agreement;

**WHEREAS**, Alcoa announced on September 28, 2015 that its board of directors had approved a plan to separate into two independent, publicly-traded companies (the “Separation”) consisting of: (1) a company that will consist of the five business units that today make up Global Primary Products (the “Upstream Company”), and (2) a company that will include Global Rolled Products, Engineered Products and Solutions, and Transportation and Construction Solutions (the “Value-Add Company”);

**WHEREAS**, the Parties agree herein to the transfer, novation and/or assignment of Alcoa’s rights and obligations under this Framework Agreement to the Upstream Company or its affiliates in connection with or in anticipation of the Separation, and, notwithstanding anything to the contrary, further agree that following the Separation, all Upstream Company and Value-Add Company employees located at Massena, New York will continue to be counted toward the employment commitment of Alcoa set forth in this Framework Agreement;

**WHEREAS**, the Parties intend that this Framework Agreement provides a framework for the entire understandings of the Parties entered into simultaneously with this Framework Agreement that collectively form the transactions contemplated herein, including an “Agreement for the Sale of Firm Hydroelectric Power and Energy from the St. Lawrence-FDR Power Project to Alcoa Inc.”, which attaches and incorporates Service Tariff No. AL-1, with the Authority concerning the provision of electric capacity and energy, the form of which is set forth on Schedule 1 (the “Power Supply Agreement”) and a separate grant disbursement agreement with ESD concerning the provision of operating expense and capital support, which is attached hereto and incorporated herein as Schedule 2 (the “ESD Grant Agreement”), all of which Power Supply Agreement and ESD Grant Agreement and transactions contemplated therein are incorporated in this Framework Agreement as if set forth in full herein;

**WHEREAS**, in exchange for the support of the Authority and ESD, as provided for herein and in the transactions contemplated, Alcoa desires and hereby pledges to continue smelter operations at the West Plant and to make certain employment commitments at the West Plant, all as set forth more fully herein;

**NOW THEREFORE**, for and in consideration of the premises, mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties, each intending to be legally bound, agree as follows:

**I. Definitions; Construction**

A. Definitions: In addition to the initially capitalized terms and phrases defined in the preamble and recitals of this Framework Agreement, the following initially capitalized terms and phrases as and when used in this Framework Agreement shall have the respective meanings set forth below:

“2009 Agreement” has the meaning ascribed to it in the first “Whereas” clause.

“2011 Supplemental Agreement” has the meaning ascribed to it in the second “Whereas” clause.

“2014 Supplemental Agreement” has the meaning ascribed to it in the third “Whereas” clause.

“Additional Grant” has the meaning ascribed to it in Section IV.

“Alcoa” means Alcoa Inc. or its successors and assigns, including but not limited to the Upstream Company and the Value-Add Company.

“Allocation” has the meaning ascribed to it in the Power Supply Agreement.

“Authority” means the Power Authority of the State of New York.

“Base Employment Level” has the meaning ascribed to it in Section III.

“Base Employment Level Breach” has the meaning ascribed to it in Section VII.

“Business Day” means any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

“Claiming Party” has the meaning ascribed to it in Section XI.

“Confidential Curtailment Information” has the meaning ascribed to it in Section VIII.

“Curtailed Locations” has the meaning ascribed to it in Section III.

“Electric Service” is Power and Energy sold to Alcoa in accordance with this Framework Agreement, the Power Supply Agreement and the applicable Service Tariff and Rules.

“Employee Separation” has the meaning ascribed to it in Section III.

“ESD” means the Urban Development Corporation d/b/a Empire State Development.

“ESD Grant Agreement” has the meaning ascribed to it in the sixth “Whereas” clause.

“Event of Default” has the meaning ascribed to it in Section VI.

“Execution Date” has the meaning set forth in Section II.

“Firm Power and Energy” has the meaning ascribed to it in the Power Supply Agreement.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act.

“Force Majeure” has the meaning ascribed to it in Section XI.

“Framework Agreement” has the meaning ascribed to it in the Recitals.

“Full-Time Employee” means a full-time, permanent, private-sector employee on Alcoa’s payroll, working at the West Plant for a minimum of thirty-five hours per week for not less than four consecutive weeks who is entitled to receive the usual and customary fringe benefits

extended by Alcoa to other employees with comparable rank and duties. The requirement that a Full-Time Employee shall be employed for not less than four consecutive weeks shall not apply to any employee hired to fill a Full-Time Employee vacancy resulting from a termination for cause.

“Involuntary Separation Package” has the meaning ascribed to it in Section III.

“Liquidated Damages” has the meaning ascribed to it in Section VII.

“NYPA” means the Power Authority of the State of New York.

“NYISO” has the meaning ascribed to it in the Power Supply Agreement.

“Operative Documents” means this Framework Agreement, the Power Supply Agreement and the ESD Grant Agreement.

“PAL” means the New York Public Authorities Law, Chapter 43A, of the Consolidated Laws of New York.

“Parties” has the meaning ascribed to it in the Recitals.

“Power Supply Agreement” means the Agreement for the Sale of Firm Hydroelectric Power and Energy from the St. Lawrence-FDR Power Project to Alcoa Inc. which attaches and incorporates Service Tariff No. AL-1, as described in the sixth “Whereas” clause.

“Project” means the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.

“Rules” are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York) as they are modified from time to time.

“Section 1009 Approval” has the meaning ascribed to it in Section V.

“Separation” has the meaning ascribed to it in the fourth “Whereas” clause.

“Separation Packages” has the meaning ascribed to it in Section III.

“Service Tariff” is a schedule or tariff of the Authority establishing rates, terms and other conditions for sale of Electric Service to Alcoa, including Service Tariff No. AL-1 as it may be modified from time to time, except as noted herein.

“Term” has the meaning ascribed to it in Section II.

“Term Sheet” means the Term Sheet For Agreement Among the Power Authority of the State of New York, Empire State Development and Alcoa Inc. dated November 24, 2015.

“Upstream Company” has the meaning ascribed to it in the fourth “Whereas” clause.

“Value-Add Company” has the meaning ascribed to it in the fourth “Whereas” clause.

“Voluntary Separation Package” has the meaning ascribed to it in Section III.

“West Plant” has the meaning ascribed to it in the Recitals.

B. Rules of Construction: Unless otherwise indicated, (i) defined terms include the plural as well as the singular; (ii) any agreement defined or referred to herein includes each amendment, modification and supplement thereto and waiver, approval and consent in respect thereof as may become effective from time to time and includes references to all Appendices, Exhibits, Schedules and other attachments thereto and instruments, agreements or other documents incorporated therein; (iii) any term defined by reference to any instrument, agreement or other document has such meaning set forth in such document as of the date hereof and unless expressly amended, such meaning shall remain in effect whether or not such document is subsequently amended, modified or terminated; (iv) a reference to any law, Rules or legal requirements includes any amendment, modification or successor thereto; (v) a reference to any Party or person includes its permitted successors and assigns; (vi) the words “include,” “includes” and “including” are not limiting and shall be deemed to be followed by the words “without limitation” whether or not in fact followed by such words or words of like import; and (vii) the terms “hereof,” “herein,” “hereunder” and comparable terms refer to this entire Framework Agreement with respect to which such terms are used and not to any particular Article, Section or subdivision hereof; and (viii) the word “day” means a “Day” as defined herein and includes each calendar day including Saturdays, Sundays and holidays.

## II. Term

Upon final approvals and due execution of this Framework Agreement by each of the Parties pursuant to applicable law, this Framework Agreement and the transactions contemplated shall have effect from October 1, 2015 and end on March 31, 2019 (the “Term”).

This Framework Agreement will become effective upon execution by each of the Parties (the “Execution Date”).

## III. Alcoa Covenants

A. West Plant: During the Term, Alcoa will continue smelter operations at the West Plant in Massena, New York.

B. Alcoa Employee Separation:

1. Voluntary Separation. Alcoa expects that approximately eighty (80) to one hundred (100) employees will receive severance or early retirement benefits (“Employee Separation”) at the West Plant and Alcoa agrees to implement this Employee Separation by first offering a voluntary separation package to all employees, pursuant to the plan attached hereto as Appendix A (“Voluntary Separation Package”).
2. Involuntary Separation. Alcoa will not use the involuntary separation methods described in Appendix A (“Involuntary Separation Package”, and together with the Voluntary Separation Package, the “Separation

Packages”) until employees have been given a reasonable period of time, and in no event less than twenty-one (21) days, to elect Voluntary Separation, provided that the resultant employment level at the West Plant remains compliant with the employment commitment set forth in Section III (C) below.

C. Alcoa Employment Commitments: Once an employment level of six hundred (600) Full-Time Employees at the West Plant (the “Base Employment Level”) is reached pursuant to the separation programs described in Section III (B) above, Alcoa shall not reduce employment further by utilizing voluntary separation packages or involuntary separation at the West Plant.

The Authority and ESD acknowledge that following the Separation, all Upstream Company and Value-Add Company employees located at any Alcoa facility in Massena, New York will continue to be counted toward the Base Employment Level commitment of Alcoa set forth in this Framework Agreement.

D. Maintenance of Base Employment Level. In the event that Alcoa employment at the West Plant falls below the Base Employment Level at any time due to termination of employees for cause, Alcoa promptly, and in any event in not more than thirty (30) Business Days, will fill such Full-Time Employee vacancies with qualified persons following Alcoa’s usual practice, by new hires, recall of previous employees who were involuntarily separated subject to recall rights or transfers of employees (provided such transfers are not from facilities located in New York State) having wages and benefits equivalent to existing workers at the West Plant of equivalent seniority.

E. Curtailed Locations. The Parties acknowledge that, on November 2, 2015, Alcoa announced that it would curtail its Intalco and Wenatchee primary aluminum smelters in Washington State and would partially curtail alumina refining capacity at its Pt. Comfort, Texas facility (the “Curtailed Locations”). Alcoa agrees that the Separation Packages to be offered to employees of the West Plant will be no less favorable to the employees than the voluntary and involuntary separation packages to be offered by Alcoa to employees of the Curtailed Locations. From the Execution Date of this Framework Agreement until March 31, 2016, should Alcoa offer voluntary or involuntary separation packages to employees of any of the Curtailed Locations which are more favorable to the employees than the Separation Packages described in Appendix A, Alcoa will amend the Separation Packages offered to the West Plant employees so that the resulting Separation Packages are equivalent to the separation packages offered to the employees of such Curtailed Locations.

F. Re-Training and Job Placement Services: Alcoa agrees to work with the New York State Department of Labor to ensure that all re-employment and training services and programs available through New York State and/or through New York State-sponsored programs will be provided to Alcoa employees affected by the Employee Separation. Such services will include job referral and career counseling services and résumé preparation as well as any job re-training programs which may be made available through New York State or the federal government.

G. Enhanced Voluntary Separation Benefit for Hourly Employees: Alcoa agrees that the Voluntary Separation Package to be offered to hourly employees of the West Plant will contain enhanced financial benefits and broader retirement eligibility when compared to the standard benefits to which the hourly employees of the West Plant would otherwise be entitled to had Alcoa not offered the Voluntary Separation Package.

#### **IV. ESD Covenants**

ESD shall provide Alcoa a working capital grant of twenty million six hundred thousand dollars (\$20,600,000) in accordance with the ESD Grant Agreement. In addition, ESD shall provide Alcoa another grant of twenty-three million dollars (\$23,000,000) to fund capital upgrades to the West Plant (the "Additional Grant" and together with the ESD Grant Agreement, the "ESD Grants") provided such funds are made available to ESD in the New York State 2016-2017 budget. In the event ESD is unable to provide Alcoa the Additional Grant in accordance with the terms contained in the Term Sheet by June 30, 2016, Alcoa shall have the right to terminate all Operative Documents upon written notice to the other Parties and no Party shall have any obligations or rights as against the other Parties under this Framework Agreement or any of the Operative Documents, including any obligation to pay liquidated damages as a result of such termination.

#### **V. Authority Covenants: Firm Power and Energy**

During the Term of this Framework Agreement, and subject to the Section 1009 Approval, the Authority will sell and deliver to Alcoa Firm Power and Energy from the Project pursuant to the Power Supply Agreement and the Service Tariff, which are incorporated herein by reference. The Rules and the Service Tariff are hereby incorporated into this Framework Agreement with the same force and effect as if herein set forth at length. Except as may be provided in this Framework Agreement, the Authority shall provide at least thirty (30) days' prior written notice to Alcoa of any proposed change in the Rules or Service Tariff, but in no event shall the Authority provide less notice than that provided to similarly affected customers within New York State.

The Parties acknowledge that the Power Supply Agreement shall not become effective and binding upon the Authority and Alcoa until completion of all processes and procedures required for effectiveness pursuant to Section 1009 of the PAL and the subsequent execution of the Power Supply Agreement by the chairman and secretary of the Authority (the "Section 1009 Approval"). In the event the Power Supply Agreement does not receive the Section 1009 Approval by June 30, 2016, each Party shall have the right, upon written notice to the other Party(ies), to terminate all Operative Documents and no Party shall have any obligations or rights as against the other Parties under this Framework Agreement or any of the Operative Documents, including any obligation to pay Liquidated Damages, as a result of such termination.

#### **VI. Events of Default**

A. Events of Default: Each of the following shall constitute an event of default hereunder (an "Event of Default"):

1. if Alcoa commits a material breach of any covenant contained in Section III (A) – Section III (E) above or contained in Section VIII below;
2. if a Party commits a material breach under this Framework Agreement or any of the Operative Documents (except for the matters covered in Section VI (A) (1) above);
3. if any representation or warranty made by a Party herein or in any of the Operative Documents shall have been false or misleading in any material respect as of the date the representation or warranty was made;
4. if a Party attempts to assign its rights under this Framework Agreement or any of the Operative Documents or any interest herein or therein in contravention of this Framework Agreement or any of the Operative Documents, as the case may be;
5. if a Party fails to make payments pursuant to this Framework Agreement when due; or
6. if a receiver, liquidator or trustee shall be appointed for Alcoa, or Alcoa shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Alcoa or if any proceeding for the dissolution or liquidation of Alcoa shall be instituted.

B. Cure Period: Upon the occurrence of an Event of Default pursuant to this Framework Agreement, the non-defaulting Party(ies) shall send notice to the defaulting Party(ies) of such default and the defaulting Party(ies), or either of them, shall have thirty (30) days to cure such default before the non-defaulting Party(ies) become entitled to seek the remedies set forth in subsection (C) below, provided however, if such default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that the defaulting Party(ies) shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, then the non-defaulting Party(ies), by mutual agreement in its/their sole discretion, may extend such thirty (30) day period for such time as is reasonably necessary for the defaulting Party(ies) in the exercise of due diligence to cure such default.

C. Remedies: If an Event of Default extends beyond any cure periods provided in subsection (B) above, the non-defaulting Party(ies) by mutual agreement may terminate this Framework Agreement and the other Operative Documents upon written notice to the defaulting Party(ies) and/or pursue any other rights or remedies available pursuant to this Framework Agreement or the other Operative Documents.

## **VII. Termination; Liquidated Damages**

Liquidated Damages Upon Breach: In the event that (i) the Authority and ESD terminate this Framework Agreement as a result of the Events of Default set forth in Section VI(A)(1)

above or (ii) Alcoa terminates this Framework Agreement for reasons other than Force Majeure or material breach by the Authority or ESD, then Alcoa shall pay, promptly upon demand, Liquidated Damages as set forth in Appendix B ("Liquidated Damages") as full and final compensation to the Authority and ESD and no other payment or charge, including demand charges, shall be payable by Alcoa as a result of such termination, whether under this Framework Agreement or the other Operative Documents. For avoidance of doubt, (i) the Liquidated Damages remedies provided in this Framework Agreement are intended to include similar recoveries provided for in the Power Supply Agreement and ESD Grant Agreement, and the Authority and ESD collectively shall be entitled to recover such damages in full together only once under the Operative Documents and shall not be entitled to any duplicative recoveries; and (ii) such Liquidated Damages are not in lieu of (A) any outstanding payables or charges due under the Power Supply Agreement for electric capacity and energy provided by the Authority, including associated charges for transmission, taxes or other NYISO assessments, prior to termination or (B) following termination of the Power Supply Agreement for any reason, any outstanding payable or charges for market rate charges for any electric capacity and energy provided by the Authority, including associated charges for transmission, taxes or other NYISO assessments, following such termination, which amounts shall separately remain due and payable.

The Authority shall invoice Alcoa for any Liquidated Damages amount(s) due in the manner set forth in this Section VII within ten (10) Business Days following the end of the calendar month in which such Liquidated Damages become due, and Alcoa will promptly pay such Liquidated Damages to the Authority. The Authority shall forward on to ESD such portion of Liquidated Damages paid by Alcoa as agreed between the Authority and ESD.

In the event that this Framework Agreement, or any of the Operative Documents, is terminated in accordance with its terms, the Parties agree that the other Operative Documents shall be deemed terminated as of the same date and such termination of the Operative Documents shall be without liability and will not trigger the payment of Liquidated Damages under this Framework Agreement or any of the Operative Documents unless the termination results from Alcoa's default pursuant to subsections (i) or (ii) of the first paragraph of this Section VII.

### **VIII. Communications**

The Parties agree to coordinate the timing and content of any public communications regarding this Framework Agreement and the transactions contemplated hereby and Alcoa agrees that, prior to December 31, 2018, it will not make any announcements or other communications to the public, investors, or employees regarding any planned curtailment or employment reduction at the West Plant (except the Employee Separations described in Section III (C) above).

Alcoa will use its best efforts to maintain the confidentiality of any planned curtailment or employment reduction at the West Plant prior to December 31, 2018 (the "Confidential Curtailment Information") and will not disclose to any person such Confidential Curtailment Information except (a) as reasonably required in planning for the orderly and prudent operation, curtailment or closure of the West Plant following the Term hereof, provided that any

communications made to third parties shall be subject to a confidentiality agreement between Alcoa and such third party; (b) as required by any applicable law, governmental regulations, subpoena or other written demand made in accordance with applicable law or as required in connection with any legal proceedings arising from or in connection with this Framework Agreement; or (c) to any legal advisor, accountant or auditor (but labeled "CONFIDENTIAL" if appropriate with any applicable claim of exemption from public disclosure pursuant to the New York Freedom of Information Law).

#### **IX. Limitations on Damages**

THE PARTIES CONFIRM THAT, WHERE AN EXPRESS REMEDY OR SPECIFIC MEASURE OF DAMAGES IS PROVIDED IN THIS FRAMEWORK AGREEMENT, SUCH EXPRESS REMEDIES AND MEASURES OF DAMAGES SATISFY THE ESSENTIAL PURPOSES HEREOF. UNLESS EXPRESSLY HEREIN PROVIDED, A PARTY SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS, AND NOT A PENALTY.

#### **X. Notice**

All notices, consents, approvals and requests required or permitted under this Framework Agreement shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed as follows (or at such other address and person as shall be designated from time to time by any Party hereto, as the case may be, in a written notice to the other Parties hereto in the manner provided for in this Section X):

To: The Authority

Vice President -- Marketing  
New York Power Authority  
123 Main Street  
White Plains, NY 10601

To: ESD

Attention: Regional President  
317 Washington Avenue, 2<sup>nd</sup> Floor  
Watertown, New York 13601

With a copy to:  
Attention: General Counsel  
633 Third Avenue, 36<sup>th</sup> Floor  
New York, NY 10017

To: Alcoa

Alcoa Inc.  
Attention: Vice President -- Energy  
390 Park Avenue  
New York, NY 10022-4608

With a copy to:

Alcoa Inc.  
Attention: General Counsel  
201 Isabella St.  
Pittsburgh, PA 15212

## **XI. Force Majeure**

A. Events of Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Operative Documents (the "Claiming Party"), the Claiming Party shall be excused from the performance of its obligations with respect to the Operative Documents (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The non-Claiming Parties shall not be required to perform or resume performance of their obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. Failure to perform in whole or in part because of the occurrence of an event of Force Majeure shall not constitute a default hereunder or subject a Party to liability for any resulting loss or damage. The Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so, it being understood that no Party shall be required to make any concession or grant any demand or request in order to bring to an end any strike, lockout or other industrial disturbance where such course is deemed inadvisable in its sole discretion. Upon the occurrence of an event of Force Majeure, the Claiming Party shall promptly notify the other non-Claiming Parties hereto of such events and shall specify in reasonable detail the facts constituting such events of Force Majeure.

B. "Force Majeure" Definition. "Force Majeure" means strikes or other labor troubles; shortage of labor, transportation, raw materials, energy sources, or failure of usual means of supply; fire; flood; war, declared or undeclared; insurrection; riots, acts of God or the public enemy; accidents to or breakdown or mechanical failure of machinery or equipment

caused by an event of Force Majeure; “uncontrollable forces” as defined in Section 454.3(c) of the Rules; or any other cause whatsoever whether or not of any nature of character mentioned above which is beyond the reasonable control of the affected Party and which affects the performance by the affected Party of the whole or part of its obligations under this Framework Agreement. For the avoidance of doubt, Force Majeure shall not include (i) increased costs of performance or decline in revenues, including price disruption or deterioration in Alcoa’s sale markets; (ii) Alcoa’s inability economically to use the Electric Service; (iii) defaults or non-performance by contractors or suppliers unless caused by Force Majeure; or (iv) unavailability of financing. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by NYISO unless such curtailment is due to Force Majeure.

C. Force Majeure Remedy. In the event Alcoa is required to interrupt, suspend or limit production at the West Plant as a result of Force Majeure, the Authority may suspend or reduce scheduled Electric Service, as appropriate. If Alcoa, as the result of Force Majeure, temporarily reduces Full Time Employees at the West Plant below the Base Employment Level, then for each month during which Alcoa is not meeting the Base Employment Level as a result of such Force Majeure event, ESD shall be entitled to reduce its disbursements under the ESD Grant Agreement proportionally based upon the number of Full-Time Employees by which Alcoa is below the Base Employment Level.

## **XII. Miscellaneous**

A. Applicable Law: THIS FRAMEWORK AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND TO THE EXTENT THAT SUCH LAWS ARE NOT INCONSISTENT WITH THE FERC LICENSE.

B. Successors and Assigns: This Framework Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that (i) no Party may assign, transfer or convey, directly or indirectly, their rights in and under this Framework Agreement except as expressly permitted herein and not otherwise prohibited by the other Operative Documents; and (ii) this Framework Agreement may not be assigned or transferred by any receiver, liquidator or bankruptcy trustee in the event of the bankruptcy or insolvency of any Party. Notwithstanding the foregoing, the Parties agree to the transfer, novation and/or assignment of Alcoa’s rights and obligations under this Framework Agreement to the Upstream Company or its affiliates in connection with or in anticipation of the Separation.

C. Previous Agreements: This Framework Agreement and the other Operative Documents shall constitute the sole and complete agreement of the Parties hereto with respect to the transactions contemplated hereby and thereby, and all prior agreements among or between the Parties, whether oral or written, including but not limited to the 2009 Agreement, the 2011 Supplemental Agreement and the 2014 Supplemental Agreement, are superseded by the terms of this Framework Agreement and the other Operative Documents. No modifications of this

Framework Agreement shall be binding upon the Parties hereto or unless such modification is in writing and is signed by each of them.

D. Conflict. The Parties agree and acknowledge that this Framework Agreement provides the overall framework for the understandings of the Parties that collectively form the transactions contemplated herein and by the other Operative Documents. In the event of any conflict between the provisions of this Framework Agreement and (x) the provisions of the Power Supply Agreement, then the Power Supply Agreement shall control; or (y) the provisions of the ESD Grant Agreement, then the provisions of the ESD Grant Agreement shall control.

E. Severability: If any term or provision of this Framework Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining terms and provisions of this Framework Agreement, or the application of such terms or provisions to the person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Framework Agreement shall be valid and be enforced to the fullest extent permitted by law, provided, however, that in the event enforcement of this Framework Agreement in the absence of such invalid or unenforceable provision would deprive a party of a material element of its original bargain, the parties will negotiate in good faith a reformation of this Framework Agreement to reflect as nearly as possible the original intent of the parties in the absence of such provision.

F. No Third Party Beneficiaries: The terms of this Framework Agreement may only be enforced by the Parties hereto and their successors and permitted assigns and are not intended to create rights in any third party not a party hereto. This Framework Agreement may be amended by the Parties without the consent of any third party.

G. Headings: The Section headings of this Framework Agreement are included herein for convenience of reference only and shall not constitute a part of this Framework Agreement for any other purpose.

H. No Joint Venture, Partnership or Agency. Nothing herein shall constitute any Party the agent, partner or joint venturer of any other Party, and no Party is authorized to make or accept any offer or incur any obligation on behalf of another Party.

I. Counterparts. This Framework Agreement may be executed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto were upon the same instrument.

APPENDIX A  
Separation Packages

**Hourly Voluntary Separation Package (Pending USW Approval):**

Hourly employees who, if eligible, elect to retire from Alcoa will receive an Enhanced Pension Benefit

- A provision that opens the pension window to increase the number of employees eligible for retirement
- A \$400 per month addition to the employees' pension payment until age 62
- Lump sum payment equal to \$10,000 plus \$400 per year of service

Hourly employees who elect to leave Alcoa but are not immediately eligible to retire will receive a lump sum payment equal to \$10,000 plus \$400 per year of service.

Hourly employees who accept a transfer to another Customer location are eligible for relocation benefits.

**Hourly Involuntary Separation Package:**

Hourly employees who are laid off are eligible for the following benefits.

- Supplemental Unemployment Benefit (SUB-pay) which equates to 28 hours of weekly pay (net of unemployment pay for 26 weeks) to employees for a time period based on their seniority, subject to labor agreement terms:
  - at least 2 years but less than 10 years of seniority - 52 weeks maximum
  - at least 10 years but less than 20 years of seniority - 78 weeks maximum
  - 20 or greater years of seniority - 104 weeks maximum
- Recall rights
- Health care benefits for a time period depending on seniority
  - at least 2 years but less than 10 years of seniority - 1 year
  - 20 or greater years of seniority — 2 years
- Career services will be offered

**Salaried Voluntary Separation Package:**

Salaried employees who elect to retire or leave Alcoa will receive a lump sum payment equal to 4 weeks of base pay plus 2 weeks of pay for every year of service, up to a total maximum payout of 56 weeks. Salaried employees who accept a transfer to another Customer location are eligible for relocation benefits.

**Salaried Involuntary Separation Package:**

Salaried employees who are involuntarily separated from Alcoa will receive

- A lump sum payment equal to 4 weeks of base pay plus 2 weeks of pay for every year of service, up to a total maximum payout of 56 weeks
- Health care benefits for one year
- Career counseling services

APPENDIX B

Liquidated Damages pursuant to Section VII.

Year	Termination in Quarter	Total LDs \$ (m)	NYPAs share LDs \$ (m)	ESD share LDs \$ (m)
2016	1	40	20	20
	2	37	18.5	18.5
	3	34	17	17
	4	31	15.5	15.5
2017	1	28	14	14
	2	25	12.5	12.5
	3	22	11	11
	4	19	9.5	9.5
2018	1	16	8	8
	2	13	6.5	6.5
	3	10	5	5
	4	7	3.5	3.5
2019	1	4	2	2

SCHEDULE 1

Form of Power Supply Agreement

SCHEDULE 2

Form of ESD Grant Disbursement Agreement

In witness whereof, the Parties hereto have executed this Framework Agreement as of the date hereof.

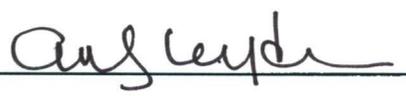
AGREED:

ALCOA INC.

BY: 

Title: President Global Primary Products

Date: 12-18-2015

(Seal)  
Attest by: 

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

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

Title: President and Chief Executive Officer

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

(Seal)  
Attest by: \_\_\_\_\_

AGREED:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT

BY: \_\_\_\_\_

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

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

(Seal)  
Attest by: \_\_\_\_\_

In witness whereof, the Parties hereto have executed this Framework Agreement as of the date hereof.

AGREED:

ALCOA INC.

BY: \_\_\_\_\_

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

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

(Seal)  
Attest by: \_\_\_\_\_

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: *Gil C. Amico*

Title: President and Chief Executive Officer

Date: 12 / 10 / 2015

(Seal)  
Attest by: *Reena Johnson*

AGREED:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT

BY: \_\_\_\_\_

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

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

(Seal)  
Attest by: \_\_\_\_\_

In witness whereof, the Parties hereto have executed this Framework Agreement as of the date hereof.

AGREED:

ALCOA INC.

BY: \_\_\_\_\_

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

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

(Seal)  
Attest by: \_\_\_\_\_

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

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

Title: President and Chief Executive Officer

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

(Seal)  
Attest by: \_\_\_\_\_

AGREED:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT

BY: *[Signature]*

Title: FSD - VP - LOANS & GRANTS

Date: 12/18/15

(Seal)  
Attest by: *Eileen M. Evoy*  
Corporate Secretary

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POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street  
10<sup>th</sup> Floor  
Albany, New York 12207-3425

AGREEMENT FOR THE SALE  
OF FIRM HYDROELECTRIC POWER AND ENERGY FROM  
THE ST. LAWRENCE-FDR POWER PROJECT  
TO ALCOA INC.

Service Tariff No. AL – 1 - Electric Service Tariff for Alcoa Inc. Firm Hydroelectric Power  
Service

[DATE]

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POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street, 10<sup>th</sup> Floor  
Albany, New York 12207-3425

**AGREEMENT FOR THE SALE  
OF FIRM HYDROELECTRIC POWER AND ENERGY FROM  
THE ST. LAWRENCE-FDR POWER PROJECT  
TO ALCOA INC.**

Alcoa Inc. ("Alcoa" or "Customer") hereby enters into this Agreement with the Power Authority of the State of New York ("Authority" or "NYPA," and collectively with Customer, the "Parties") for the sale of firm power and energy for its facilities at Park Avenue East ("West Plant"), Massena, New York 13662 as follows:

**WHEREAS**, the Authority and Alcoa, in or around February 2009, entered into a contract entitled "Agreement for the sale of Firm and Interruptible Hydroelectric Power and Energy From the St. Lawrence-FDR Power Project to Alcoa Inc." (the "2009 Agreement");

**WHEREAS**, the Authority and Alcoa, in or around January 2011, entered into an amendment entitled "First Supplemental Agreement Modifying Certain Agreements and Understandings Between the Parties Regarding the Sale of Hydroelectric Power and Energy" (the "2011 Supplemental Agreement") which, among other things, modified the 2009 Agreement;

**WHEREAS**, the Authority and Alcoa, in or around March 2014, entered into an amendment entitled "Supplemental Agreement Further Modifying the 2009 Agreement Between the Parties Regarding the Sale of Hydroelectric Power and Energy" (the "2014 Supplemental Agreement") which, among other things, further modified the 2009 Agreement;

**WHEREAS**, the Parties seek to replace the 2009 Agreement, as supplemented by the 2011 Supplemental Agreement and 2014 Supplemental Agreement, with a contract that will provide to Customer from the Authority's St. Lawrence-FDR Project 245,000 kW of Firm Power and Energy to be used by Customer at its - West Plant facilities as it sees fit; and

**WHEREAS**, such Allocation shall be sold by the Authority to Customer under this Agreement for the Sale of Firm Power and Energy ("Agreement"); and

**WHEREAS**, such Allocation is subject to the tariffs of the New York Independent System Operator, Inc. ("NYISO");

**NOW THEREFORE**, the Parties hereto agree as

follows: **I. Definitions**

- A. **2009 Agreement** has the meaning ascribed to it in the first "Whereas" clause.
- B. **2011 Supplemental Agreement** has the meaning ascribed to it in the second "Whereas" clause.
- C. **2014 Supplemental Agreement** has the meaning ascribed to it in the third "Whereas" clause.
- D. **Agreement** means this Agreement also known as the Power Supply Agreement, which attaches and incorporates Service Tariff No. AL - 1.
- E. **Allocation** means the allocation of Firm Power and Energy to Customer on the terms set forth herein.
- F. **Authority or NYPA** is the Power Authority of the State of New York, doing business as New York Power Authority.
- G. **Contract Demand** will be the amount set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- H. **Customer** is Alcoa.
- I. **Electric Service** is Firm Power and Energy sold to Customer in accordance with this Agreement and applicable Service Tariffs and Rules.
- J. **Firm Power and Energy** is power and associated energy from the Project as provided in Service Tariff No. AL - 1, and allocated by Authority for business use as Preservation Power pursuant to Section 1005 (13) of the New York Public Authorities Law ("PAL").
- K. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- L. **FERC License** means the license issued by FERC to Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act.
- M. **Force Majeure** has the meaning set forth in Section XIV.

- N. **Hydro Projects** is a collective reference to the Project (defined below) and Authority's Niagara Project, FERC Project No. 2216.
- O. **NYISO** means the New York Independent System Operator or any successor organization responsible for the transmission and the reliable supply of electricity in the State of New York.
- P. **Project** means Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- Q. **RECs** has the meaning set forth in Section II.
- R. **Rules** are the applicable provisions of Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York) as they are modified from time to time.
- S. **Service Tariff** is a schedule or tariff of Authority establishing rates and other conditions for sale of Electric Service to Customer, including Service Tariff No. AL - 1 attached hereto as Schedule B, which may be modified from time to time.
- T. **TSC** is the "NYPA Transmission Service Charge", authorized under the NYISO Open Access Transmission Tariff and applicable to deliveries of Electric Service to Customer.
- U. **Unforced Capacity** shall have the same meaning as set forth in the NYISO Market Services Tariff, as it may be modified from time to time.

Other capitalized terms herein that are not otherwise defined in this Agreement shall have the meaning set forth in Service Tariff or the Rules.

## II. Electric Service to be Provided

- A. Contract Demand. Authority shall provide Electric Service pursuant to Service Tariff No. AL - 1 ("ST AL - 1") for Firm Power and Energy to enable the Customer to receive its Allocation from the Project, in the amount set forth below, which amount shall be the Contract Demand:

**245,000 Kilowatts** of Firm Power and Energy

As part of the Allocation, Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation of Firm Power and Energy in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services (as defined in the rules and tariffs of the NYISO), nor "green" attributes or renewable energy credits (collectively referred to herein as "RECs," as may be hereinafter defined and as

modified from time to time by the New York State Public Service Commission or other agency having jurisdiction over such matters) are included in such

Allocation. Authority retains for its own use and benefit any such RECs associated with that portion of the Project that supports the Allocation; provided, however, that: (1) should Customer be required by federal or state law, rule or regulation to secure RECs in connection with the operation of the West Plant; and (2) such RECs are deemed transferable under applicable federal or state law, rule or regulation, then Authority shall make available such RECs to Customer on a basis consistent with the policies adopted by Authority's Trustees for all similarly situated customers.

- B. Delivery Points. At 115,000 Volts at the points of interconnection of Customer's transmission lines to the Barnhart Island Switchyard of Authority at the West Plant, Massena, New York, or at such other points and voltages as agreed between Customer and Authority.
- C. Reduction of Contract Demand. The foregoing Contract Demand may be reduced by Authority if the amount of Firm Power and Energy available for sale from the Project is reduced as required to comply with any unstayed ruling, order or decision of any regulatory or judicial body of competent jurisdiction. Any such reduction in the Contract Demand made by Authority under this subparagraph shall be in proportion to the overall reduction in the aggregate contract demands of hydroelectric customers sold by Authority from the Project.
- D. Authority and Customer shall cooperate in any relocation or installation of transformers or other related facilities servicing Customer's plant that either Party reasonably deems necessary or desirable. The costs of any such relocation or installation shall be the responsibility of Customer, except in cases where Authority seeks the relocation or installation; provided however, that Authority will, if requested by Customer, consider in good faith whether its other customers receive any substantial benefit from such relocation or installation. If NYPA determines that such substantial benefits exist, it shall negotiate in good faith with Customer regarding an alternative funding arrangement. In any event, NYPA shall not be obligated to agree upon an alternative funding arrangement.

### **III. Employment and Other Commitments; Liquidated Damages**

Schedule A to this Agreement entitled "Employment and Separation Package Commitments, Customer Curtailment, Customer Termination and Liquidated Damages" is attached to and made a part of this Agreement ("Schedule A").

### **IV. Rules, Regulations and Service Tariff**

The Rules and the Service Tariff are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any

inconsistencies, conflicts or differences between the provisions of the Service Tariff and the Rules, the provisions of the Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern. Except as may be provided under Section V.D., below, Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the Rules or Service Tariff, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

## **V. Power and Energy Rates, Other Charges and Bond Covenant**

- A. Base Rates: Firm Power and Energy associated with the Allocation shall be sold to Customer hereunder at rates for base commodity and TSC determined in accordance with ST AL - 1 attached hereto.
- B. Customer agrees to compensate Authority for all transmission costs incurred as set forth in ST AL - 1. Such charges or costs shall be in addition to the charges recovered through the base rates in ST AL - 1 for base commodity and TSC. Customer understands that delivery of the Allocation will be made over transmission facilities under the control of the NYISO, including those owned by Customer. Unless Customer provides Authority sixty (60) days written notice otherwise, Authority will act as the Load Serving Entity ("LSE") with respect to the NYISO, or arrange for another entity to do so on its behalf. Customer agrees and understands that it shall be responsible to Authority for all costs incurred by Authority with respect to the Allocation for the services established in the NYISO's applicable tariffs, as set forth in ST AL - 1, whether or not such charges are transmission-related. Such charges or costs shall be in addition to the charges recovered through the base rates in ST AL - 1 for base commodity and TSC.
- C. To the extent Authority incurs any taxes, assessments or other charges imposed by third parties associated with or attributable to the Allocation, Customer agrees to compensate Authority for all such costs incurred as set forth in ST AL - 1. Such charges or costs shall be in addition to the charges recovered through the base rates in ST AL - 1 for base commodity and TSC.
- D. Notwithstanding any provision of this Agreement to the contrary, the power and energy charges shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase

the power and energy charges pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

## **VI. Hydropower Curtailments and Substitute Energy**

- A. Firm Power and Energy. If hydraulic or hydrological conditions affecting the Hydro Projects require Authority to curtail the amount of Firm Power and Energy provided to Customer under this Agreement to an amount below such normal level, reductions shall be applied to all the firm power customers served from the Hydro Projects, including Customer, in proportion to their relative allocations of Firm Power and Energy from the Hydro Projects. Reductions as a percentage of the otherwise required Power and Energy deliveries will be the same for all firm Authority hydropower customers served from the Hydro Projects.
- B. Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied.
  - 1. Billing for Substitute Energy. For each kilowatt-hour of Substitute Energy supplied by the Authority, in lieu of paying the base rates set forth in Section V.A. above, the Customer shall pay the Authority directly for: (a) the market cost of the Substitute Energy; and (b) all costs, including but not limited to any NYISO Charges and Taxes, the Authority incurs in connection with the provision of Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of Section 454.6 of the Rules and shall apply directly to the Substitute Energy service supplied to the Customer.
  - 2. Substitute Energy Provision Effect on Contract. All other provisions of the Agreement shall continue in effect with Substitute Energy being delivered in the same manner as would have otherwise been the case.

## **VII. Billing**

Billing shall be performed in accordance with ST AL - 1.

## **VIII. Term, Termination of Service and Early Termination**

- A. Service under the Agreement shall commence on October 1, 2015 and continue until the earliest of (a) termination by Authority pursuant to Part 454 of the Rules upon required notice, (b) termination by Authority pursuant to default provisions as described in Schedule A, or (c) March 31, 2019. Authority may cancel service hereunder or modify the quantities of power and energy associated with the Allocation only (a) if such cancellation or modification is required to comply with any unstayed ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise expressly provided herein or in the Rules.
- B. Customer may, for any reason, reduce or terminate service at any time on written notice given to Authority no less than sixty days (60) in advance, subject to the payment of liquidated damages to Authority in accordance with Schedule A of this Agreement unless such reduction or termination is the result of Force Majeure or breach of this Agreement by Authority.
- C. In the event that this Agreement is terminated, the Parties agree that (i) the Framework Agreement dated December 18, 2015 shall be deemed terminated as of the same date and (ii) such termination of this Agreement and the Framework Agreement shall not trigger the payment of liquidated damages under either this Agreement or the Framework Agreement unless the termination results from Customer's default under the provisions of Schedule A.

For avoidance of doubt, (i) the liquidated damages remedies provided in this Agreement are intended to include similar recoveries provided in the Grant Disbursement Agreement between Customer and Empire State Development ("ESD") dated December 18, 2015 and the Framework Agreement dated December 18, 2015, and the Authority and ESD collectively shall be entitled to recover such damages in full together only once and shall not be entitled to any duplicative recoveries.

## **IX. Notification**

Correspondence involving the administration of this Agreement shall be addressed as follows:

To: Authority

Vice President – Marketing  
POWER AUTHORITY OF THE STATE OF  
NEW YORK  
123 Main Street

White Plains, NY 10601

To: Customer

Alcoa Inc.  
Attention: Vice President --  
Energy 390 Park Avenue  
New York, NY 10022-4608

With a copy to:

Alcoa Inc.  
Attention: General Counsel  
201 Isabella St.  
Pittsburgh, PA 15212

**X. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License.

**XI. Successors and Assigns, No Resale of Allocation**

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto. Customer announced on September 28, 2015 that its board of directors had approved a plan to separate into two independent, publicly-traded companies (the "Separation") consisting of: (1) a company that will consist of the five business units that today make up Global Primary Products (the "Upstream Company"), and (2) a company that will include Global Rolled Products, Engineered Products and Solutions, and Transportation and Construction Solutions (the "Value-Add Company"). The Authority consents to the transfer, novation and/or assignment of Customer's rights and obligations under this Agreement to the Upstream Company or its affiliates in connection with or in anticipation of the Separation. Subject to acceptance of all provisions of this Agreement by any successor or assignee, any assignment of this Agreement by Customer shall only be to another entity that will utilize the Allocation for the same purposes and same location as such Allocation is utilized by Customer. If Customer is unable to or does not use any portion of its Allocation for any period of time, then any such unused Firm Power and Energy (and all rights attendant thereto) shall be subject to Service Tariff provisions, including Minimum Monthly Capacity Charge, and shall revert to Authority for its exclusive use until utilized by Customer and Customer shall have no right to sell, transfer, assign, monetize or otherwise use such unutilized power and energy.

## **XII. Supplementary Provision**

Section 454.2(c) of the Rules is inapplicable to this Agreement.

## **XIII. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale, transmission and delivery of the Allocation and supersedes all prior agreements between the Parties, whether oral or written, including but not limited to the 2009 Agreement, the 2011 Supplemental Agreement and the 2014 Supplemental Agreement, and all previous communications between the Parties hereto, either oral or written, with reference to said Allocation. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them. In the event of any conflict between the provisions of this Agreement and the provisions of that certain Framework Agreement executed by each of the Parties and dated as of December 18, 2015, the provisions of this Agreement shall control.

## **XIV. Force Majeure**

A. Events of Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement (the "Claiming Party"), the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. Failure to perform in whole or in part because of the occurrence of an event of Force Majeure shall not constitute a default hereunder or subject a Party to liability for any resulting loss or damage. The Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so, it being understood that no Party shall be required to make any concession or grant any demand or request in order to bring to an end any strike, lockout or other industrial disturbance where such course is deemed inadvisable in its sole discretion. Upon the occurrence of an event of Force Majeure, the Claiming Party shall promptly notify the non-Claiming Party of such events and shall specify in reasonable detail the facts constituting such events of Force Majeure.

B. "Force Majeure" Definition. "Force Majeure" means strikes or other labor troubles; shortage of labor, transportation, raw materials, energy sources, or failure of usual means of supply; fire; flood; war, declared or undeclared; insurrection; riots, acts of God or the public enemy; accidents to or breakdown or mechanical failure of machinery or equipment caused by an event of Force Majeure; "uncontrollable forces" as defined in Section 454.3(c) of the Rules; or any other

cause whatsoever whether or not of any nature of character mentioned above which is beyond the reasonable control of the affected Party and which affects the performance by the affected Party of the whole or part of its obligations under this Agreement. For the avoidance of doubt, Force Majeure shall not include (i) increased costs of performance or decline in revenues, including price disruption or deterioration in Customer's sale markets; (ii) Customer's inability economically to use the Allocation; (iii) defaults or non-performance by contractors or suppliers unless caused by Force Majeure; or (iv) unavailability of financing. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by NYISO unless such curtailment is due to Force Majeure.

C. In the event Customer is required to interrupt, suspend or limit production at the West Plant as a result of Force Majeure, the Authority may suspend or reduce scheduled Electric Service, as appropriate.

#### **XV. Severability and Voidability**

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

#### **XVI. Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto were upon the same instrument.

#### **XVII. Effectiveness of Agreement**

This Agreement shall become effective upon execution by both Parties.

AGREED:

**ALCOA INC. (CUSTOMER)**

BY: \_\_\_\_\_

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

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

(Seal)

Attest by: \_\_\_\_\_

AGREED:

**POWER AUTHORITY OF THE STATE OF NEW YORK**

BY: \_\_\_\_\_

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

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

(Seal)

Attest by: \_\_\_\_\_

## SCHEDULE A

### EMPLOYMENT AND SEPARATION PACKAGE COMMITMENTS, CUSTOMER CURTAILMENT, CUSTOMER TERMINATION AND LIQUIDATED DAMAGES

#### Section I. Customer Commitments

A. West Plant: During the Term, Customer will continue smelter operations at the West Plant in Massena, New York.

B. Customer Employee Separation:

(1) Voluntary Separation. Customer expects that approximately eighty (80) to one hundred (100) employees will receive severance or early retirement benefits ("Employee Separation") at the West Plant and Customer agrees to implement this Employee Separation by first offering a voluntary separation package to all employees, pursuant to the plan attached hereto as Appendix 1 to this Schedule A ("Voluntary Separation Package").

(2) Involuntary Separation. Customer will not use the involuntary separation methods described in Appendix 1 of this Schedule A ("Involuntary Separation Package", and together with the Voluntary Separation Package, the "Separation Packages") until employees have been given a reasonable period of time, and in no event less than twenty-one (21) days, to elect Voluntary Separation, provided that provided that the resultant employment level at the West Plant remains compliant with the employment commitment set forth in Section I (C) below.

C. Customer Employment Commitments: Once an employment level of six hundred (600) Full-Time Employees at the West Plant (the "Base Employment Level") is reached pursuant to the separation programs described in Section I (B) above, Customer shall not reduce employment further by utilizing voluntary separation packages or involuntary separation at the West Plant. As used herein, "Full-Time Employee" means a full-time, permanent, private-sector employee on Customer's payroll, working at the West Plant for a minimum of thirty-five hours per week for not less than four consecutive weeks who is entitled to receive the usual and customary fringe benefits extended by Customer to other employees with comparable rank and duties. The requirement that a Full-Time Employee shall be employed for not less than four consecutive weeks shall not apply to any employee hired to fill a Full-Time Employee vacancy resulting from a termination for cause.

The Authority acknowledges that following the Separation, all Upstream Company and Value-Add Company employees located at any Customer facility in Massena, New York will continue to be counted toward the Base Employment Level commitment of Customer set forth in this Agreement.

D. Maintenance of Base Employment Level. In the event that Customer employment at the West Plant falls below the Base Employment Level at any time due

to termination of employees for cause, Customer promptly, and in any event in not more than thirty (30) Business Days, will fill such Full-Time Employee vacancies with qualified persons following Customer's usual practice, by new hires, recall of previous employees who were involuntarily separated subject to recall rights or transfers of employees (provided such transfers are not from facilities located in New York State) having wages and benefits equivalent to existing workers at the West Plant of equivalent seniority.

E. Curtailed Locations. The Parties acknowledge that, on November 2, 2015, Customer announced that it would curtail its Intalco and Wenatchee primary aluminum smelters in Washington State and would partially curtail alumina refining capacity at its Pt. Comfort, Texas facility (the "Curtailed Locations"). Customer agrees that the Separation Packages to be offered to employees of the West Plant will be no less favorable to the employees than the voluntary and involuntary separation packages to be offered by Customer to employees of the Curtailed Locations. From the effective date of this Agreement until March 31, 2016, should Customer offer voluntary or involuntary separation packages to employees of any of the Curtailed Locations which are more favorable to the employees than the Separation Packages described in Appendix 1 of this Schedule A, Customer will amend the Separation Packages offered to the West Plant employees so that the resulting Separation Packages are equivalent to the separation packages offered to the employees of such Curtailed Locations.

F. Re-Training and Job Placement Services: Customer agrees to work with the New York State Department of Labor to ensure that all re-employment and training services and programs available through New York State and/or through New York State-sponsored programs will be provided to Customer employees affected by the Employee Separation. Such services will include job referral and career counseling services and résumé preparation as well as any job re-training programs which may be made available through New York State or the federal government.

G. Enhanced Voluntary Separation Benefit for Hourly Employees: Customer agrees that the Voluntary Separation Package to be offered to hourly employees of the West Plant will contain enhanced financial benefits and broader retirement eligibility when compared to the standard benefits to which the hourly employees of the West Plant would otherwise be entitled to had Customer not offered the Voluntary Separation Package.

H. Employment Records and Reports: A record shall be provided on a quarterly basis to Authority, of the total number of Full-Time Employees at Customer's facilities located at Massena, NY for each month, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by Authority and the Customer). Such report shall be certified to be correct by the plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to Authority on or before the 15th day of the month following the end of the most recent calendar quarter. Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records

and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

I. Communications: The Parties agree to coordinate the timing and content of any public communications regarding this Agreement and the transactions contemplated hereby and Customer agrees that, prior to December 31, 2018, it will not make any announcements or other communications to the public, investors, or employees regarding any planned curtailment or employment reduction at the West Plant (except the Employee Separations described in Section I (C) above). Customer will use its best efforts to maintain the confidentiality of any planned curtailment or employment reduction at the West Plant prior to December 31, 2018 (the "Confidential Curtailment Information") and will not disclose to any person such Confidential Curtailment Information except (a) as reasonably required in planning for the orderly and prudent operation, curtailment or closure of the West Plant following the Term hereof, provided that any communications made to third parties shall be subject to a confidentiality agreement between Alcoa and such third party; (b) as required by any applicable law, governmental regulations, subpoena or other written demand made in accordance with applicable law or as required in connection with any legal proceedings arising from or in connection with this Agreement; or (c) to any legal advisor, accountant or auditor (but labeled "CONFIDENTIAL" if appropriate with any applicable claim of exemption from public disclosure pursuant to the New York Freedom of Information Law).

## **Section II. Liquidated Damages**

In the event that (i) the Authority terminates this Agreement as a result of Customer's material breach of one or more of the covenants set forth in Section I (A), (B), (C), (D), (E) or (I) of this Schedule A and failure to cure such breach within thirty (30) days following receipt of written notice thereof from Authority or (ii) Customer terminates this Agreement for reasons other than Force Majeure or material breach by the Authority, then Customer shall pay to Authority, promptly upon demand, liquidated damages on a sliding scale as set forth in Appendix 2 of this Schedule A ("Liquidated Damages"). Such Liquidated Damages paid by Customer shall constitute full and final compensation to the Authority and ESD and no other payment or charge, including demand charges, shall be payable by Customer as a result of such termination, whether under this Agreement, the Framework Agreement dated December 18, 2015 or the ESD Grant Agreement dated December 18, 2015. Notwithstanding the foregoing, Liquidated Damages are not in lieu of (i) any outstanding payables or charges due under the Power Supply Agreement for electric capacity and energy provided by the Authority, including associated charges for transmission, taxes or other NYISO assessments, prior to termination or (ii) following termination of the Power Supply Agreement for any reason, any outstanding payable or charges for market rate charges for any electric capacity and energy provided by the Authority, including associated charges for transmission, taxes or other NYISO assessments, following such termination, which amounts shall separately remain due and payable.

## APPENDIX 1 of SCHEDULE A

### Separation Packages

#### **Hourly Voluntary Separation Package (Pending USW Approval):**

Hourly employees who, if eligible, elect to retire from Customer will receive an Enhanced Pension Benefit

- A provision that opens the pension window to increase the number of employees eligible for retirement
- A \$400 per month addition to the employees' pension payment until age 62
- Lump sum payment equal to \$10,000 plus \$400 per year of service

Hourly employees who elect to leave Customer but are not immediately eligible to retire will receive a lump sum payment equal to \$10,000 plus \$400 per year of service.

Hourly employees who accept a transfer to another Customer location are eligible for relocation benefits.

#### **Hourly Involuntary Separation Package:**

Hourly employees who are laid off are eligible for the following benefits.

- Supplemental Unemployment Benefit (SUB-pay) which equates to 28 hours of weekly pay (net of unemployment pay for 26 weeks) to employees for a time period based on their seniority, subject to labor agreement terms:
  - at least 2 years but less than 10 years of seniority - 52 weeks maximum
  - at least 10 years but less than 20 years of seniority - 78 weeks maximum
  - 20 or greater years of seniority - 104 weeks maximum
- Recall rights
- Health care benefits for a time period depending on seniority
  - at least 2 years but less than 10 years of seniority - 1 year
  - 20 or greater years of seniority — 2 years
- Career services will be offered

#### **Salaried Voluntary Separation Package:**

Salaried employees who elect to retire or leave Customer will receive a lump sum payment equal to 4 weeks of base pay plus 2 weeks of pay for every year of service, up to a total maximum payout of 56 weeks. Salaried employees who accept a transfer to another Customer location are eligible for relocation benefits.

#### **Salaried Involuntary Separation Package:**

Salaries employees who are involuntarily separated from Customer will receive

- A lump sum payment equal to 4 weeks of base pay plus 2 weeks of pay for every year of service, up to a total maximum payout of 56 weeks
- Health care benefits for one year
- Career counseling services

**APPENDIX 2 of SCHEDULE A**

**Liquidated Damages pursuant to Section II of this Schedule A ("Default")**

Year	Quarter	Total LDs \$ (m)
2016	1	40
	2	37
	3	34
	4	31
2017	1	28
	2	25
	3	22
	4	19
2018	1	16
	2	13
	3	10
	4	7
2019	1	4

**Schedule B**

**Service Tariff No. AL – 1**



**NY Power  
Authority**

**POWER AUTHORITY OF THE STATE OF NEW YORK**

**30 SOUTH PEARL STREET**

**ALBANY, NY 12207**

Electric Service Tariff for Alcoa Inc.  
Firm Hydroelectric Power Service

**Service Tariff No. AL – 1**

Date of Issue:

Date Effective:

Issued by James F. Pasquale, Senior Vice President  
Power Authority of the State of New York  
30 South Pearl Street, Albany, NY 12207

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## Schedule of Rates for Firm Hydroelectric Power Service

### I. Applicability

This Service Tariff is applicable to the sale of firm hydroelectric power service produced by the Authority's St. Lawrence-FDR Project to Alcoa Inc. ("Alcoa" or "Customer") and as further defined in the Agreement.

### II. Frequently Used Abbreviations and Terms

- kW kilowatt(s)
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- OATT NYISO Open Access Transmission Tariff
- PAL New York Public Authorities Law
- UCAP Unforced Capacity

**Agreement:** An executed agreement between the Authority and the Customer setting forth the terms and conditions applicable to the allocation and sale of firm hydroelectric power to the Customer, including an agreement entitled "Agreement for the Sale of Firm Hydroelectric Power and Energy from the St. Lawrence-FDR Power Project to Alcoa Inc."

**Aluminum Price:** Aluminum price derived as a reference point for assigning applicable base rates and is calculated as the sum of the London Metal Exchange and Midwest Aluminum Premium reference prices as further defined herein.

**Authority:** The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the "New York Power Authority" and "NYPA."

**Billing Energy:** This term has the meaning provided for in Section III.G.1 of this Service Tariff.

**Billing Period:** Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements.

**Capacity Tag:** Capacity (kW) as expressed by the NYISO as the Unforced Capacity ("UCAP") obligation for a capability period. The UCAP obligation is inclusive of any adjustments for reserves needed to meet the installed reserve margin as required by the NYISO.

**Contract Demand:** This term has the meaning provided for in the Agreement.

**Electric Service:** The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

**Firm Power and Energy:** This term has the meaning provided for in Section IV.B. of this Service Tariff.

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**Hydro Projects:** Collective reference to the Project and Authority's Niagara Project, FERC Project No. 2216.

**London Metal Exchange or LME:** Center for industrial metals trading used as reference to derive Aluminum Prices within this Service Tariff. Specifically, the LME component used in calculating the Aluminum Price for a particular month (M) shall be the average LME Cash Buyer's Price for the month prior (M-1).

**Load Serving Entity or LSE:** This term has the meaning provided for in the Agreement.

**Load Factor Share:** Methodology used to determine firm hydroelectric Billing Energy share of the total Native System Load as further defined in Section III.G.1 of this Service Tariff.

**Midwest Aluminum Premium or MWP:** Midwest U.S. Premium price published by Platt's Metals Week, converted to dollars per metric tonne (\$/metric tonne), in addition to LME aluminum price, used to derive Aluminum Prices within this Service Tariff. Specifically, the MWP component used in calculating the Aluminum Price for a particular month (M) shall be the average MWP for the month prior (M-1).

**Minimum Monthly Capacity Charge:** This term has the meaning provided for in Section III.D.1 of this Service Tariff.

**Native System:** Customer's electric system at Park Avenue East ("West Plant"), Massena, New York 13662.

**Native System Load:** Total consumption within the boundaries of the Customer's electric system, as determined by the Authority's revenue-grade metering equipment. This includes incoming bilateral energy, market purchases taken from the transmission grid, and internal generation. The coincident sum of all incoming power and internal generation minus the outgoing power being sent back to the transmission grid will be considered the Native System Load and will be the value used to calculate the monthly Native System Load Factor.

**Native System Load Factor:** Percent value calculated every Billing Period as follows: (Native System Load) ÷ [(Peak Demand) \* (# of Hours in the Billing Period)].

**NYISO Tariffs:** The tariffs of the NYISO, including the NYISO OATT, as such tariffs are amended and in effect from time to time.

**Peak Demand:** The highest coincident sixty (60) minute integrated demand of the Native System Load measured during the Billing Period and expressed in kW.

**Project:** The Authority's St. Lawrence-FDR Power Project.

**Rural/Domestic Rate:** Rates charges by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL §1005(5).

**Rules:** The Authority's rules and regulations set forth in Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York as may be modified from time to time by the Authority.

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**Service Tariff:** This service tariff, denominated as “Electric Service Tariff for Alcoa Inc. Firm Hydroelectric Power Service, Service Tariff No. AL - 1,” as amended from time to time by the Authority.

**Substitute Energy:** Energy the Authority procures and sells to the Customer to replace Firm Power and Energy that would otherwise have been sold to the Customer but for a curtailment made in accordance with the Agreement and this Service Tariff.

**Taxes:** This term has the meaning provided for in Section III.D.2 of this Service Tariff.

**Transmission Service Charge or TSC:** The NYPA Transmission Service Charge as provided for and defined in the NYISO OATT.

Additional terms are defined in the text of this Service Tariff.

Unless otherwise indicated, all other capitalized terms and abbreviations used but not defined in this Service Tariff shall have the meaning as set forth in the Agreement. In the event that publication of any index price utilized in this Tariff, including the LME Cash Buyer’s Price or Platt’s Midwest Aluminum Premium, is discontinued or the methodology for determination thereof is substantially revised, the Parties will meet and discuss in good faith the amendment of the Tariff by substitution of an alternative index or other alternative means of determination of pricing most closely approximating their original intent.

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### III. Base Rates and Related Matters

#### A. Base Rates

1. Subject to the other provisions of this Service Tariff, the base rates to be charged to the Customer by the Authority shall be tied directly to Aluminum Prices as follows:

<b>Aluminum Price (\$/metric ton)</b>	<b>Base Rate (\$/MWh)</b>
Below 1,500	12.25
1,500 - 1,799	12.25
1,800 - 1,899	14.00
1,900 - 1,999	15.75
2,000 - 2,099	17.50
2,100 - 2,199	19.25
2,200 - 2,299	21.00
2,300 - 2,399	22.75
2,400 - 2,499	24.50
2,500 - 2,599	26.25
2,600 - 2,699	28.00
2,700 - 2,799	29.75
2,800 - 2,899	31.50
2,900 - 2,999	33.25
3,000 - 3,099	35.00
3,100 - 3,199	36.75
3,200 - 3,299	38.50
3,300 - 3,399	40.25
3,400 and above	42.00

The base rates, as set forth above, include a monthly base rate for commodity, and a base Transmission Service Charge valued at \$1.75/MWh at a ninety-eight (98) percent load factor, both of which are subject to monthly billing adjustments for full cost recovery at the Customer Native System Load Factor, as per Sections III.E. and III.C. of this Service Tariff.

#### B. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to the NYISO Tariffs associated with providing Electric Service to the Customer:

1. Charges for OATT Rate Schedules 1 through 9 and any new ancillary services and/or rate schedules as may be provided in accordance with the NYISO Tariffs;
2. Transmission Usage Charges (“TUC”) which are Marginal Losses and Congestion costs as provided for in the NYISO Tariffs;
3. The New York Power Authority “Transmission Adjustment Charge” or “NTAC” as provided for in the NYISO Tariffs;
4. NYISO wide uplift as provided for in the NYISO Tariffs;
5. Any and all other charges, assessments, or other amounts associated with delivery of Firm Power and Energy sold to the Customer by the Authority, or otherwise associated

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with the Authority's responsibilities as a Load Serving Entity for the Customer, that the NYISO assesses on the Authority under the provisions of the NYISO Tariffs; and

6. Any charges assessed on the Authority with respect to the provision of Electric Service to the Customer for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority's base rates that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO Charges to the Customer will be based on the Authority's discretion.

#### **C. Transmission Charges and Monthly TSC Reconciliation**

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the NYISO Tariffs. Any difference between TSC costs recovered through the base rates as set forth in Section III.A.1 of this Service Tariff and actual TSC costs shall be reconciled on a monthly basis by the Authority. The difference of any under collection or over collection of the TSC costs shall be passed through to the Customer on the bill.

#### **D. Other Charges**

The base rates do not reflect any of the charges discussed in this Section III.D. (collectively, "Other Charges"). The Customer shall be responsible for payment of such Other Charges as a separate charge from base rates to the extent they apply to the Customer.

##### **1. Minimum Monthly Capacity Charge**

If in any given month the Customer's monthly Peak Demand (kW) is less than the Capacity Tag, the Customer shall be subject to a Minimum Monthly Capacity Charge equal to the difference between the Customer's monthly Peak Demand (kW) and the Capacity Tag as expressed by the NYISO for the applicable month, times the applicable NYISO locational capacity spot auction market rate.

Such Minimum Monthly Capacity Charge shall be in addition to all other charges provided for in this Service Tariff, including but not limited to, charges included in the base rates and NYISO Charges as provided for in this Service Tariff.

##### **2. Taxes**

The Authority will charge and collect from the Customer all local, state and federal taxes, assessments or other charges mandated by local, state or federal agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer ("Taxes") if and to the extent such Taxes are not recovered by the Authority pursuant to another provision of this Service Tariff.

##### **3. Curtailments and Substitute Energy**

Firm Power and Energy is subject to curtailment as provided for in the Agreement and Section IV.C. of this Service Tariff. The Authority shall provide Substitute Energy to the

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Customer, and the Customer shall pay the Authority for Substitute Energy, in accordance with the Agreement and Section IV.C. of this Service Tariff.

**E. Niagara and St. Lawrence-FDR Hydroelectric Rates**

The base rates, as set forth in Section III.A. of this Service Tariff, include both commodity and TSC related charges. At all times the commodity component of the base rate (base rate less the TSC rate) shall be no lower than the overall Rural/Domestic Rate (Rural/Domestic Rates computed at the Customer Native System Load Factor). For each Billing Period, if the commodity component of the base rate is lower than the overall Rural/Domestic Rate, the difference between the commodity component of the base rate and the overall Rural/Domestic Rate will be added to the base rate. Concurrently, for each Billing Period, if the commodity component of the base rate is equal to or greater than the overall Rural/Domestic Rate, the base rates, as set forth in Section III.A. of this Service Tariff, will be the month's applicable billing rates, without adjustment.

**F. New Charges**

The Customer shall be responsible for payment of any and all new third-party charges incurred by the Authority and attributable to its provision of Electric Service to the Customer, including but not limited to, charges and costs incurred for supplying Firm Power and Energy, any new NYISO Charges as may be defined and applied in any NYISO Tariffs, NYISO-related agreements and NYISO procedures from time to time (collectively, "New Charges"). The Authority, in its sole discretion, may include any such New Charges in the base rates or bill the Customer separately for such New Charges.

**G. Billing and Billing Methodology**

Unless otherwise specified in the Agreement, the following provisions will apply:

**1. Billing Energy**

The kilowatt-hours (kWh) charged by the Authority to the Customer will be based on the Load Factor Share of the total number of kilowatt-hours recorded on the Authority's revenue grade meters for the Billing Period as follows.

- If the Peak Demand is higher than the Contract Demand in a given month, the Billing Energy shall be equal to the product of the Contract Demand multiplied by the Native System Load Factor and number of hours in the Billing Period.
- If the Peak Demand is less than the Contract Demand, the Billing Energy shall be equal to the total number of kilowatt-hours recorded on the Authority's revenue grade meters for the Billing Period.

**2. Scheduling and Settlements of Load**

Each hour the Authority will schedule the Customer's load for the full Contract Demand. Any resulting overscheduled load, as reported as Balancing Energy Sell transactions by the NYISO, shall not be reflected on the Customer's bill as there is no entitlement to said transaction. The Customer is encouraged to voluntarily provide an hourly load schedule each month to the Authority. The Customer is required to provide any planned or unplanned outage information to the Authority in a timely manner as follows; the Customer shall provide a minimum of three (3) business days' notice to the Authority when planned load reductions greater than five (5%) percent of the Contract Demand are to occur in excess of a one hour interval. The customer is required to provide any

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unplanned outage information in excess of a one hour interval to the Authority within no less than three (3) business days of the occurrence.

3. Market Purchases

If in any given hour during a Billing Period the Customer load requirements exceed the Customer's Contract Demand (reported as Balancing Energy Purchase transactions), these purchases shall be reflected on the Customer's bill including, but not limited to, TSC charges for the Market Purchase share.

4. Estimated Billing

If the Authority, in its reasonable discretion, determines that it lacks reliable data on the Customer's actual energy usage for a Billing Period during which the Customer receives electric service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated usage ("Estimated Bill").

For the purpose of calculating an Estimated Bill, the Billing Energy used in the base charge calculation shall be equal to the Contract Demand (kW) amount as defined in the Agreement at ninety-eight (98) percent load factor for that Billing Period.

If data indicating the Customer's actual usage for any Billing Period in which an Estimated Bill was rendered subsequently becomes available to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill in accordance with Section III.H.1 of this Service Tariff and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement or otherwise regarding metering arrangements.

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## H. Adjustments to Charges

### 1. Billing Adjustments

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy usage.

### 2. Power Factor

For service provided under this and any other Service Tariff or agreement Customer shall maintain not less than ninety-seven and one-half percent (97.5%) power factor at the point of delivery. The Customer's Peak Demand under this Service Tariff will be increased one-half percent (1/2%) for each one-half percent (1/2%) by which the average power factor at which energy is supplied during such Billing Period is less than ninety-seven and one-half percent (97.5%). Average power factor will be computed to the nearest one-half percent (1/2%) according to the following formula:

$$\text{Average Power Factor} = \frac{kWh}{\sqrt{kWh^2 + kvar h^2}}$$

The data used in the above formula shall be obtained from meters which are ratcheted to prevent reverse registration.

### 3. Adjustment for Transformer Losses

If delivery is made at a transmission voltage but metered on the low-voltage side of Customer's substation, the meter readings will be increased by two percent (2%) to compensate for transformer losses; provided, however, that this percentage may be reduced to reflect improvements in loss rates should new transformers be put in use at Customer's plants.

## I. Adjustment of Rates

To the extent consistent with the Agreement between the Authority and the Customer, the base rates contained in this Service Tariff may be revised from time to time as set forth in Section III.E. of this Service Tariff or in order to meet all requirements specified in its bond and note resolutions and covenants with holders of its financial obligations. Should the Authority need to adjust the base rates, the Authority will provide thirty (30) days written notice to the Customer.

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#### **IV. General Provisions**

##### **A. Character of Service**

Alternating current; 60 hertz, three-phase.

##### **B. Firm Power Service**

Firm Power and Energy under this Service Tariff are hydropower and associated energy intended to be available at all times except for limitations provided in the Agreement, the Rules and in this Service Tariff.

##### **C. Availability of Energy**

1. Subject to Section IV.C.2 of this Service Tariff, the Authority shall provide to the Customer in any Billing Period Firm Power and Energy.
2. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's Firm Power and Energy customers served from the Hydro Projects, curtailments in the amount of Firm Power and Energy to which the Customer is entitled under the Agreement will be applied on a pro rata basis to all Firm Power and Energy customers served by the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served by the Hydro Projects.
3. The Authority will provide Substitute Energy to the Customer to replace the Firm Power and Energy that would otherwise have been supplied under this Agreement but for the curtailment. For each kilowatt-hour of Substitute Energy supplied by the Authority, in lieu of paying the base rates set forth in Section III.A. above, the Customer shall pay the Authority directly for: (a) the market cost of the Substitute Energy; and (b) all costs, including but not limited to any NYISO Charges and Taxes, the Authority incurs in connection with the provision of Substitute Energy.
4. The Authority will give the Customer advance notice of forecasted shortfalls in Firm Power and Energy which will advise the Customer of the forecasted shortfall of Firm Power and Energy, the period to which the forecast applies (usually a Billing Period), and the Customer's anticipated share of the forecasted shortfall. After the Billing Period to which the notice applies, the Authority will determine after the fact the actual shortfall and make any appropriate adjustments to charges and billings to the Customer in accordance with the rates provided for in this Service Tariff.
5. The Authority is under no obligation to supply and will not supply to the Customer in later Billing Periods any curtailed Firm Power and Energy.

##### **D. Delivery**

For the purpose of this Service Tariff, power shall be deemed to be offered when the Authority is able to supply power and NYISO transmits it to its designated points of interconnection with the Customer's transmission agent(s). If, despite such offer, there is a failure of delivery by the Customer or the transmission agents(s), such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

##### **E. Electrical Fluctuations**

The power and energy taken hereunder shall not be used in such a manner as to cause unusual fluctuations or disturbances on Authority's system. Customer shall provide, at its expense,

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suitable apparatus which will reasonably limit such fluctuations. In the event that unreasonable fluctuations or disturbances, including without limitation harmonic currents resulting in actionable interference with communications systems or in harmonic resonance of now existing facilities, are caused by Customer's facilities, Authority shall immediately notify Customer of the circumstances and Authority shall then have the right to discontinue the delivery of power and energy under this contract upon thirty (30) days prior written notice until conditions causing such fluctuations or disturbances are corrected by Customer. Despite such discontinuance of service Customer shall be obligated to pay the amounts due for Electrical Service under this Service Tariff.

#### **F. Rendition and Payment of Bills**

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10<sup>th</sup>) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in this Agreement, Service Tariff No. AL-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer by the first day of the following month of the date the Authority renders the bill. Payment of bills by the Customer shall be paid through the means as directed on the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1.5%) of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of a bill rendered by Authority, the Customer shall pay such bill in the time provided for by this Agreement, and adjustments, if necessary, will be made thereafter.
5. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money, or provide an irrevocable standby letter of credit, which may be presented for draw at a location in New York State, issued for benefit of the Authority by a bank having a Standard and Poor's long-term issuer rating of "A" or better, or an equivalent rating by Moody's, or Fitch's, and acceptable to the Authority in its reasonable discretion, in either case in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit or standby letter of credit will be deemed security for the payment of unpaid bills. The failure or refusal of the Customer to provide the deposit or standby letter of credit within thirty (30) days of a request made by the Authority consistent with this paragraph will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

#### **G. Conflicts**

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of the Service Tariff will govern. In the event of any

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inconsistencies, conflicts or differences between the Service Tariff and any provisions of the Agreement, the provisions of the Agreement will govern.

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Issued by James F. Pasquale, Senior Vice President  
Power Authority of the State of New York  
30 South Pearl Street, Albany, NY 12207

## WORKING CAPITAL GRANT

This **GRANT DISBURSEMENT AGREEMENT ("Agreement")** includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

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**NEW YORK STATE  
URBAN DEVELOPMENT  
CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT  
("ESD" or "GRANTOR"):**

317 Washington Street, 2<sup>nd</sup> Floor  
Watertown, New York 13601  
Contact: John VanDeloo  
Phone: 315-785-7931  
Fax: 518-292-5803  
E-mail: john.vandeloo@esd.ny.gov

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**THE GRANTEE:**

Alcoa Inc.  
Park Ave. East  
Massena NY 13662  
Phone: (315) 764-6314  
Contact: Robert Lenney  
Title: Location Manager  
Phone: (315) 764-6314  
E-mail: Robert.Lenney@alcoa.com  
Federal Taxpayer ID#: 25-0317820

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**PROJECT NAME:**

Massena West Plant Project

**PROJECT LOCATION:**

Massena, St. Lawrence County

**PROJECT NUMBER:**

AA364

**GRANT AMOUNT:**

\$20,600,000

**FUNDING SOURCE:**

New York Power Authority

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**ESD APPROVAL DATE:**

December 17, 2015

**EXPIRATION DATE:**

March 31, 2019

## TERMS AND CONDITIONS

### 1. The Project

The project will occur as described in Exhibit A and the ESD Approval materials attached. The Grantee will perform the tasks on the schedule and as described in Exhibit A to this Agreement.

### 2. Employment Goals & Reporting

- (a) The Grantee represents and warrants that it is in compliance with the commitments set forth in Exhibit C to this Agreement entitled "Employment and Separation Package Commitments, Customer Curtailment, Customer Termination and Liquidated Damages" which Exhibit C is attached to and made a part of this Agreement.
- (b) Grantee shall submit, by February 1 of each year during the term of this Agreement, the Employment Reporting Form attached hereto as Exhibit H, indicating the average number of Grantee's Full-Time Employees (as defined in Exhibit C) for the 12 month period ending as of December 31 of the prior year.

### 3. Conditions Precedent to Disbursement of the Grant

No grant funds shall be disbursed unless the Grantee is in material compliance with the Terms and Conditions of this Agreement, including, but not limited to, Exhibit E (Disbursement Terms), and the following conditions have been satisfied (and as to 3(d) below continue to be satisfied prior to each disbursement):

- (a) If the Grant Amount exceeds \$100,000, or if, as described in Exhibit A, it is expected that there will be additional grants that in the aggregate exceed \$100,000, ESD has received an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit D.
- (b) Any necessary approval has been issued by the Director of the Budget of the State of New York, and the Grant funds have been received by ESD.
- (c) There have been no materially adverse changes in the financial condition of the Grantee from the date of submission of its application to ESD to the date of this Agreement.
- (d) The Grantee is in compliance with the requirements of Exhibit C.

### 4. Disbursement Terms

Subject to the terms and conditions contained in this Agreement, ESD shall disburse the Grant to the Grantee as follows:

(a) ESD shall reimburse the Grantee for Project expenditures incurred by the Grantee as set forth in Exhibit E to this Agreement. Disbursements will be made upon submittal to ESD of a Payment Requisition Form, together with such supporting documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and its attachments, and Exhibit H.

(b) In no event will ESD make any payment which would cause ESD's aggregate disbursements to exceed the Grant Amount.

5. Non Discrimination and Contractor & Supplier Diversity

The Grantee will comply with ESD's Non-Discrimination and Contractor & Supplier Diversity policies set forth in Exhibit G to this Agreement.

6. No Liability of ESD

ESD shall not in any event whatsoever be liable for any third party claims for injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to indemnify and hold harmless ESD, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability other than that caused by the negligence or the willful misconduct of the Indemnitees. Notwithstanding the foregoing, this Section 5 shall not apply to any claims arising out of ESD's decision to award Grant funds to Grantee including any claims challenging whether such award was appropriate and duly authorized under the regulations applicable to ESD.

7. Responsibility Provisions

(a) The Grantee shall at all times during the Agreement term remain responsible. The Grantee agrees, if requested by the President and Chief Executive Officer of ESD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(b) The President and Chief Executive Officer of ESD or his or her designee, in his or her reasonable discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Grantee. In the event of such suspension, the Grantee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Grantee must comply with the terms of the suspension order. Activities under this Agreement may resume at such time as the President and Chief Executive Officer of ESD or his or her designee issues a written notice authorizing a resumption of performance under this Agreement.

- (c) Upon written notice to the Grantee, and a reasonable opportunity to be heard with appropriate ESD officials or staff, this Agreement may be terminated by the President and Chief Executive Officer of ESD or his or her designee where the Grantee is determined by the President and Chief Executive Officer of ESD or his or her designee to be non-responsible. Alternatively, in the event that activities under this Agreement are suspended by ESD pursuant to subsection (b) above and such suspension continues for a period of thirty (30) days, then this Agreement may be terminated by Grantee.
- (d) In the event that this Agreement is terminated by either ESD or Grantee for the reasons set forth in this Section 7, the parties agree that (i) the Framework Agreement dated December 18, 2015 shall be deemed terminated as of the same date and (ii) such termination of this Agreement and the Framework Agreement shall not trigger the payment of liquidated damages under either this Agreement or the Framework Agreement.

#### 8. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

- (a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) It is a duly organized corporation, validly existing and in good standing under the laws of the State of its incorporation, has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its corporate existence in good standing in each such jurisdiction.
- (d) As of the date of this Agreement, there are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which would be reasonably likely to, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESD.
- (e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders with respect to implementation of this Agreement.

- (f) The information contained in the application submitted by the Grantee in connection with the project and the Grant, as such application may have been amended or supplemented (the "Application"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Application, the provisions of this Agreement shall govern. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Application or otherwise in connection with the Grant and, except as otherwise disclosed in writing to ESD, there has been no adverse material change in the financial condition of Grantee from the date of submission of the Application to the date of this Agreement and that the information contained in the Application continues to be materially correct and complete as of the date of this Agreement.
- (g) The Grantee covenants that it will neither hold itself out as, nor claim to be an officer, employee, agent or representative of ESD or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of ESD or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.
- (h) Apart from the commitments made by the Grantee in Exhibit C, neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to influence any official act or the judgment of any person in the award of the Grant or the performance of any of the terms of this Agreement.
- (i) It shall maintain business operations at the Project Location for the term of this Agreement in accordance with Exhibit C.
- (j) The Grant shall be used solely for Project expenses in accordance with the terms and conditions of this Agreement.
- (k) The Grantee is solely responsible and has sufficient funding for all Project costs in excess of the Grant.
- (l) Grantee is in compliance and shall continue to comply with Section 7 of this Agreement.

#### 9. Default and Remedies

- (a) Each of the following shall constitute a default by the Grantee under this Agreement:

- (i) Failure to perform or observe any material obligation or covenant of the Grantee contained herein, other than a default as set forth in (iii) below, within the time frames established under this Agreement.
  - (ii) The making by the Grantee of any material misstatement or omission of fact in connection with this Agreement or the Grant.
  - (iii) Failure of the Grantee to comply with its commitments set forth in Exhibit C beyond any applicable cure period contained in Exhibit C.
  - (iv) A default beyond any applicable grace period by the Grantee under any other agreement with ESD.
  - (v) if a receiver, liquidator or trustee shall be appointed for Grantee, or Grantee shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Grantee or if any proceeding for the dissolution or liquidation of Grantee shall be instituted.
  - (vi) Failure by the Grantee, for any period of time, to comply with Section 7 of this Agreement.
- (b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESD shall have the right to terminate this Agreement, provided however, that if the default is pursuant to paragraph 9(a)(i) or 9(a)(iii), no default shall be deemed to have occurred if Grantee cures such default within thirty (30) days of notice of default from ESD, or if the default pursuant to paragraph 9(a)(i) cannot be reasonably cured within such thirty day period, Grantee commences to cure such default within the thirty (30) day cure period and cures the default within ninety (90) days thereafter, provided further that ESD shall not be obligated to make any disbursements until such default has been cured.

Upon termination of this Agreement, ESD may (i) withhold any Grant proceeds not yet disbursed and (ii) where such termination results from Grantee's default under Section 9(a)(iii) above, require payment of liquidated damages in accordance with Exhibit C of this Agreement. Notwithstanding the foregoing, if ESD determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESD may pursue repayment of all funds and may refer the matter to the appropriate authorities for prosecution. In the event that this Agreement is terminated, the parties agree that (i) the Framework Agreement dated December 18, 2015 shall be deemed terminated as of the same date and (ii) such termination of this Agreement and the Framework Agreement shall not trigger the payment of liquidated damages under either this Agreement or

the Framework Agreement unless the termination results from Grantee's default under Section 9(a)(iii) above.

For avoidance of doubt, (i) the liquidated damages remedies provided in this Agreement are intended to include similar recoveries provided in the Power Supply Agreement between Grantee and the New York Power Authority applicable for the period October 1, 2015 – March 31, 2019 and the Framework Agreement dated December 18, 2015, and the New York Power Authority and ESD collectively shall be entitled to recover such damages in full together only once and shall not be entitled to any duplicative recoveries.

#### 10. Term

The term of this Agreement shall commence on the date hereof and expire on the Expiration Date, as set forth on the first page of this Agreement.

#### 11. Books and Records; Project Audit

- (a) The Grantee will maintain accurate books and records concerning its use of Grant funds for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to ESD, its agents, officers and employees during Grantee's business hours upon reasonable request.
- (b) ESD shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

#### 12. Maintenance of Insurance

Grantee shall maintain in full force and effect insurance in such amounts and covering such risks as Grantee deems prudent.

#### 13. Survival of Provisions

It is agreed that the provisions of this Agreement that are expressed to take effect in whole or in part on or after termination, or are capable of having effect after termination, shall remain in full force and effect despite termination.

#### 14. Notices

- (a) All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by personal delivery; or
- (iii) by expedited delivery service.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Empire State Development

Name: John VanDeloo  
Title: Project Manager  
Address: 317 Washington Street. 2<sup>nd</sup> Fl., Watertown New York, NY 13601

With a copy to:

Title: General Counsel  
Address: 633 Third Avenue, 34<sup>th</sup> Floor, New York, NY 10017

Alcoa Inc.

Name: Robert Lenney  
Title: Location Manager  
Address: Park Ave. East, Massena, NY 13662

With a copy to:

Alcoa Inc.  
Attention: General Counsel  
201 Isabella St.  
Pittsburgh, PA 15212

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of mailing to the address provided herein.
- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

#### 15. Assignment

ESD acknowledges that Grantee announced on September 28, 2015 that its board of directors has approved a plan to separate into two independent, publicly-traded companies (the "Separation"): (1) a company that will consist of the five business units that today make up Global Primary Products ("Upstream Company"), and (2) a company that will include Global Rolled Products, Engineered Products and Solutions, and Transportation and Construction Solutions ("Value-Add Company"). ESD consents to the transfer, novation and/or assignment of Grantee's rights and obligations under the Agreement to Upstream Company or its affiliates in connection with or in anticipation of the Separation

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of each Party hereto; provided, however, that (i) Grantee may not assign, transfer or convey, directly or indirectly, its rights in and under this Agreement except as expressly permitted herein and (ii) this Agreement may not be assigned or transferred by any receiver, liquidator or bankruptcy trustee in the event of the bankruptcy or insolvency of any Party.

#### 16. No Waiver

No waiver of either Party's rights arising under this Agreement, or any other source, can occur unless such waiver shall be in writing and signed by such party and such written document manifests a clear and unequivocal intent by such party to waive its contractual or other legal rights.

#### 17. Integration/Modification

This Agreement and that certain Framework Agreement dated December 18, 2015 contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter. In addition, this Agreement may be modified only by a written instrument executed by the Parties.

#### 18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein. In the event of a conflict between the Exhibits hereto and any other term or condition of this Agreement, then the term or condition of this Agreement shall govern.

19. Confidentiality of Information

Information contained in reports made to ESD or otherwise obtained by ESD relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "Confidential" by the Grantee, will be kept confidential by ESD, to the extent such information is reasonably determined by ESD to be exempt from public disclosure under the Freedom of Information Law and not otherwise required by law to be disclosed. Notwithstanding the foregoing, ESD will not be liable for any information disclosed, in ESD's reasonable discretion, pursuant to the Freedom of Information Law or other applicable law, or which ESD is required to disclose pursuant to law or legal process provided that ESD will provide Grantee with advance written notice of any such requirement so that Grantee may have an opportunity to seek any protection available for its information.

20. Force Majeure

To the extent that either ESD or the Grantee is prevented by Force Majeure, as defined in the Framework Agreement dated December 18, 2015, from carrying out, in whole or in part, its obligations under this Agreement (the "Claiming Party"), then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement in accordance with the terms contained in Article XI of the Framework Agreement.

This agreement is entered into as of the latest date written below:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT



---

(Signature) Edwin Lee, Vice President, Loans and Grants

12/10/15

---

(date)

Alcoa Inc.

---

(Signature)

Roy Harvey, President, Global Primary Products  
(Printed name and title)

---

(date)

This agreement is entered into as of the latest date written below:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT

---

(Signature) Edwin Lee, Vice President, Loans and Grants

---

(date)

Alcoa Inc.



---

(Signature)

Roy Harvey, President, Global Primary Products

---

(Printed name and title)

12-18-2015

---

(date)

**ESD WORKING CAPITAL GRANT DISBURSEMENT AGREEMENT**

**EXHIBITS**

EXHIBIT A	Project Description
EXHIBIT B	NOT APPLICABLE
EXHIBIT C	Employment and Separation Package Commitments, Grantee Curtailment, Grantee Termination and Liquidated Damages
EXHIBIT D	Opinion of Counsel
EXHIBIT E	Disbursement Terms
EXHIBIT F	Payment Requisition Form
EXHIBIT F-1	Financial Condition Affidavit
EXHIBIT F-2	Project Cost Affidavit
EXHIBIT G	Non-Discrimination and Contractor & Supplier Diversity – Requirements and Procedures
EXHIBIT H	Employment Reporting Form (With Company's NYS Form 45 Attached)
EXHIBIT I	NOT APPLICABLE

**EXHIBIT A: PROJECT DESCRIPTION**

**See Materials Attached**



FOR CONSIDERATION

December 17, 2015

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Massena (North Country Region – St. Lawrence County) – ALCOA  
Massena Working Capital - New York Power Authority (Working Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Section 10 (g) of the Act;  
Authorization to Make a Grant and to Take Related Actions

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I. Project Summary

Grantee: ALCOA, Inc. (“ALCOA” or the “Grantee”)

ESD\* Investment: Subject to ESD receipt of Grant funds, Grants of up to \$20,600,000, over a five-year period, to be funded via the New York Power Authority (“NYPA”) for working capital purposes.

\* The New York State Urban Development Corporation doing business as Empire State Development (“ESD” or the “Corporation”)

Project Location: Park Avenue East, Massena, St. Lawrence County

Proposed Project: ALCOA Massena plant will continue plant operations and maintain employment in New York State

Project Type: Working capital involving job retention

Regional Council: The North Country Regional Council has been made aware of this item. The project is consistent with the Regional Plan to support existing employers.

Employment:	Initial employment at time of application to ESD:	Approx 700
	Current employment level:	Approx 700
	Minimum employment through March 31, 2019:	Approx 600

## II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>	
Payroll/Operations	<u>\$20,600,000</u>	
Total Project Costs	<u>\$20,600,000</u>	
<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD Grant-working capital	<u>\$20,600,000</u>	<u>100%</u>
Total Project Financing	<u>\$20,600,000</u>	<u>100%</u>

## III. Project Description

### A. Company

- Industry:** Manufacturing of aluminum and aluminum products
- Company History:** Formed in 1888 in Pittsburgh Pennsylvania, with headquarters presently in New York City, Alcoa is a global leader in lightweight metals engineering and manufacturing. The ALCOA Massena plant is the oldest continuously operating aluminum production facility in the Western Hemisphere. The Massena plant is one of the largest employers in the North Country.
- Ownership:** Alcoa is a publicly traded corporation listed on the New York Stock Exchange.
- Size:** Alcoa operates in 30 countries with over 59,000 employees worldwide.
- Market:** The Company's products are used in worldwide industries such as aircraft, automobile, transportation, and construction.
- ESD Involvement:** In early November of 2015, ALCOA announced it would idle one smelting plant in Massena and permanently close another due to low aluminum prices and uncompetitive smelting and refining capacity at the Massena location. The resulting plant closures would have resulted in the loss of nearly 500 jobs in the economically depressed County of St. Lawrence. As a result of the announcement, the State of New York ("State") offered a package of incentives to ALOCA to ensure that the largest employer north of Syracuse would remain open and viable.
- As a result of the negotiations with ALCOA, on November 24, 2015, Governor Cuomo announced that a deal had been reached with ALCOA that would retain 600 jobs and ensure the continued operation of the

Massena West Plant. As part of that agreement, ESD will provide \$20.6 million to ALCOA for working capital purposes in accordance with the terms contained in these materials and will provide another \$23 million in support for future capital upgrades to the facility. It is expected that the capital funds will be made available in the State's next budget cycle at which time, additional ESD Board approval will be required to allocate those funds. In addition to the State's contribution through ESD, ALCOA will receive 245 MW of low cost power from NYPA pursuant to an agreement entered into between NYPA, ESD and ALCOA.

In exchange for the State support, ALCOA has agreed to keep the Massena West plant operational with an employment commitment of 600 jobs through March 2019. Currently, the Massena operation employs approximately 700 employees. In the event the employment level is lowered to 600 as expected, ALCOA has agreed to first initiate a voluntary severance and early retirement package to all employees at the Massena operation. Once the employment commitment level is reached, Alcoa has agreed that it will not reduce employment further by utilizing voluntary separation packages or involuntary separation. In addition, should ALCOA not meet the employment commitment, it would be subject to liquidated damages of \$40 million should the default occur in the first quarter of 2016 and decreasing thereafter \$3 million per quarter.

Competition: N/A

Past ESD Support: Since 1992, ALCOA has received approximately \$1.5 million in assistance for worker training projects.

#### B. The Project

Completion: March 2019

Activity: ALCOA Massena plant will continue operations and maintain employment for manufacturing of aluminum in New York State.

Results: Retain approximately 600 existing jobs

Business  
Investment  
Project:

Benefit-Costs Evaluations are used in evaluating projects that are categorized as Business Investment, Infrastructure Investment, and Economic Growth Investment and that involve 1) job retention and/or creation and/or 2) construction-related activity. For Business Investment projects, benefits typically reflect the impact of both jobs and construction-related activity. For Infrastructure Investment and

Economic Growth Investment projects, which generate long-term benefits not captured in the period of analysis and may involve no permanent job commitments, the estimated benefits typically reflect only construction-related activity.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$61,008,043;
- Fiscal cost to NYS government is estimated at \$20,600,000;
- Project cost to NYS government per direct job is \$42,917;
- Project cost to NYS government per job (direct plus indirect ) is estimated at \$10,022;
- Ratio of project fiscal benefits to costs to NYS government is 2.96:1;
- Fiscal benefits to all governments (state and local) are estimated at \$104,134,131;
- Fiscal cost to all governments is \$20,600,000;
- All government cost per direct job is \$42,917;
- All government cost per total job is \$10,022;
- The fiscal benefit to cost ratio for all governments is 5.06:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$811,675,606, or \$394,895 per job (direct and indirect);
- The economic benefit to cost ratio is 39.40:1;
- There is no construction activity related to this project;
- For every permanent direct job generated by this project, an additional 3.3. indirect job is anticipated in the state's economy;
- The payback period for NYS costs is three years.

See Project Summary Benefit-Cost Evaluation (attached) for detail and definitions.

Grantee Contact: John Martin  
Park Avenue East  
Massena NY 13662  
Phone: (315) 764-6314

ESD Project No.: AA364

Project Team:	Project Management	John Vandelloo
	Legal	Stephen Gawlik
	Contractor & Supplier Diversity	Denise Ross
	Finance	Rob Kwon
	Environmental	Soo Kang

C. Financial Terms and Conditions

1. The Company will not reduce employment below 600 Full-time Permanent Employees using voluntary separation packages or involuntary separation. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who work at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who work at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.
  
2. Up to \$20,600,000 will be will be disbursed to the Grantee as reimbursement for eligible working capital needs at the Massena location including costs for payroll, materials and supplies during the course of operations and documentation of continued compliance with the employment commitment described above, assuming that all project requirements have been completed and funds are available and in accordance with the following schedule:  
  
\$1.8 million in 4Q 2015; \$7 million in 2016; \$6 million in 2017; \$4 million in 2018; and \$1.8 million in 1Q 2019.  
  
Expenses reimbursed by ESD's grant must be incurred on or after October 1, 2015, to be considered eligible project costs. All disbursements must be requested by March 31, 2020.
  
3. The source of funding shall be funds made available by the New York State Power Authority for economic development purposes. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$20,600,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
  
4. In consideration for the making of the Grant, Grantee will not reduce employment below 600 Full-Time Employees at the Project Location using voluntary separation packages or involuntary separation. In the event that the Grantee is not able to meet the employment goals, it shall be subject to liquidated damages after an appropriate cure period:

If a Default occurs Before the end of:		Liquidated Damages: (\$MM)
Year 1	Q1	40
	Q2	37
	Q3	34
	Q4	31
Year 2	Q1	28
	Q2	25
	Q3	22
	Q4	19
Year 3	Q1	16
	Q2	13
	Q3	10
	Q4	7
Year 4	Q1	4

IV. Statutory Basis

No residential relocation is required as there are no families or individuals residing on the site.

V. Environmental Review

ESD staff has determined that the project does not constitute an action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

VI. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned businesses ("MWBES") in the performance of ESD contracts. Accordingly, ESD's Non-discrimination and Contractor & Supplier Diversity policy will apply to the project. No specific MWBE participation goals shall be required of this project, however, the grantee shall adhere to ESD's Non-discrimination and Equal Employment Opportunity ("EEO") policy. Inquiries relating to the EEO policy may be addressed to the Office of Contractor and Supplier Diversity ("OCSD") at [ocsd@esd.ny.gov](mailto:ocsd@esd.ny.gov).

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions

New York State Map

Benefit-Cost Analysis

Project Finance Memorandum

December 17, 2015

Massena (North Country Region – St. Lawrence County) – ALCOA Massena Working Capital – New York Power Authority (Working Capital Grant) – Findings and Determinations Pursuant to Section 10 (g) of the Act; Authorization to Make a Grant and to Take Related Actions

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RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the ALCOA Massena Working Capital project (the "Project"), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, the President and Chief Executive Officer of the Corporation or his designee(s) is, authorized to make to ALCOA Inc. a grant for a total amount not to exceed Twenty Million Six Hundred Thousand Dollars (\$20,600,000) from New York Power Authority funds, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

\* \* \*

**EXHIBIT B: NOT APPLICABLE**

## EXHIBIT C

### EMPLOYMENT AND SEPARATION PACKAGE COMMITMENTS, CUSTOMER CURTAILMENT, CUSTOMER TERMINATION AND LIQUIDATED DAMAGES

**Section I. Grantee Commitments:** The commitments of Grantee set forth in this Section I shall apply from October 1, 2015 through March 31, 2019 (the "Term"):

A. West Plant: During the Term, Grantee will continue smelter operations at the West Plant in Massena, New York.

B. Grantee Employee Separation:

(1) Voluntary Separation. Grantee expects that approximately eighty (80) to one hundred (100) employees will receive severance or early retirement benefits ("Employee Separation") at the West Plant and Grantee agrees to implement this Employee Separation by first offering a voluntary separation package to all employees, pursuant to the plan attached hereto as Appendix 1 to this Exhibit C ("Voluntary Separation Package").

(2) Involuntary Separation. Grantee will not use the involuntary separation methods described in Appendix 1 of this Exhibit C ("Involuntary Separation Package", and together with the Voluntary Separation Package, the "Separation Packages") until employees have been given a reasonable period of time, and in no event less than twenty-one (21) days to elect Voluntary Separation, provided that provided that the resultant employment level at the West Plant remains compliant with the employment commitment set forth in Section I (C) below.

C. Grantee Employment Commitments: Once an employment level of six hundred (600) Full-Time Employees at the West Plant (the "Base Employment Level") is reached pursuant to the separation programs described in Section I (B) above, Grantee shall not reduce employment further by utilizing voluntary separation packages or involuntary separation at the West Plant. As used herein, "Full-Time Employee" means a full-time, permanent, private-sector employee on Grantee's payroll, working at the West Plant for a minimum of thirty-five hours per week for not less than four consecutive weeks who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties. The requirement that a Full-Time Employee shall be employed for not less than four consecutive weeks shall not be required in order to be considered a Full-Time Employee, provided the employee was hired to fill a Full-Time Employee vacancy resulting from a termination for cause.

The ESD acknowledges that following the Separation, all Upstream Company and Value-Add Company employees located at any Grantee facility in Massena, New York will continue to be counted toward the Base Employment Level commitment of Grantee set forth in this Agreement.

D. Maintenance of Base Employment Level. In the event that Grantee employment at the West Plant falls below the Base Employment Level at any time due to termination of employees for cause, Grantee promptly, and in any event in not more than thirty (30) Business Days, (i) shall notify ESD of the employment shortfall, and 2) will fill such Full-Time Employee vacancies with qualified persons following Grantee's usual practice, by recall of previous employees who were involuntarily separated subject to recall rights, by new hires or by transfers of employees (provided such transfers are not from facilities located in New York State) having wages and benefits equivalent to existing workers at the West Plant of equivalent seniority.

E. Curtailed Locations. The Parties acknowledge that, on November 2, 2015, Grantee announced that

it would curtail its Intalco and Wenatchee primary aluminum smelters in Washington State and would partially curtail alumina refining capacity at its Pt. Comfort, Texas facility (the "Curtailed Locations"). Grantee agrees that the Separation Packages to be offered to employees of the West Plant will be no less favorable to the employees than the voluntary and involuntary separation packages to be offered by Grantee to employees of the Curtailed Locations. From the effective date of this Agreement until March 31, 2016, should Grantee offer voluntary or involuntary separation packages to employees of any of the Curtailed Locations which are more favorable to the employees than the Separation Packages described in Appendix 1 of this Exhibit C, Grantee will amend the Separation Packages offered to the West Plant employees so that the resulting Separation Packages are equivalent to the separation packages offered to the employees of such Curtailed Locations.

- F. Re-Training and Job Placement Services: Grantee agrees to work with the New York State Department of Labor to ensure that all re-employment and training services and programs available through New York State and/or through New York State-sponsored programs will be provided to Grantee employees affected by the Employee Separation. Such services will include job referral and career counseling services and résumé preparation as well as any job re-training programs which may be made available through New York State or the federal government.
- G. Enhanced Voluntary Separation Benefit for Hourly Employees: Grantee agrees that the Voluntary Separation Package to be offered to hourly employees of the West Plant will contain enhanced financial benefits and broader retirement eligibility when compared to the standard benefits to which the hourly employees of the West Plant would otherwise be entitled to had Grantee not offered the Voluntary Separation Package.
- H. Employment Records and Reports: Grantee shall provide annual reports on employment in accordance with Exhibit H of this Agreement. Such report shall be certified to be correct by the plant manager or such other person authorized by the Grantee to prepare and file such report.. ESD shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Grantee and its affiliates relating to employment in New York State.
- I. Communications: The Parties agree to coordinate the timing and content of any public communications regarding this Agreement and the transactions contemplated hereby and Grantee agrees that, prior to December 31, 2018, it will not make any announcements or other communications to the public, investors, or employees regarding any planned curtailment or employment reduction at the West Plant (except the Employee Separations described in Section I (C) above). Grantee will use its best efforts to maintain the confidentiality of any action it takes with respect to any planned curtailment or employment reduction at the West Plant prior to December 31, 2018 (the "Confidential Curtailment Information") and will not disclose to any person such Confidential Curtailment Information except (a) as reasonably required in planning for the orderly and prudent operation, curtailment or closure of the West Plant following the Term hereof, (b) as required by any applicable law, governmental regulations, subpoena or other written demand made in accordance with applicable law or as required in connection with any legal proceedings arising from or in connection with this Agreement; or (c) to any legal advisor, accountant or auditor.

## **Section II. Liquidated Damages**

In the event that (i) the ESD terminates this Agreement as a result of Grantee's material breach of one or more of the covenants set forth in Section I (A), (B), (C), (D), (E) or (I) of this Exhibit C and failure to cure such breach within thirty (30) days following receipt of written notice thereof from

ESD or (ii) Grantee terminates this Agreement for reasons other than Force Majeure or material breach by the ESD, then Grantee shall pay to ESD or New York Power Authority, promptly upon demand, Liquidated Damages on a sliding scale as set forth in Appendix 2 of this Exhibit C as full and final compensation to the ESD and New York Power Authority and no other payment or charge, including demand charges, shall be payable by Grantee as a result of such termination, whether under this Agreement, the Framework Agreement dated December 18, 2015, or the Power Supply Agreement applicable for the period October 1, 2015 – March 31, 2019.

## APPENDIX 1 of EXHIBIT C

### Separation Packages

#### Hourly Voluntary Separation Package (Pending USW Approval):

Hourly employees who, if eligible, elect to retire from Grantee will receive an Enhanced Pension Benefit

- A provision that opens the pension window to increase the number of employees eligible for retirement
- A \$400 per month addition to the employees' pension payment until age 62
- Lump sum payment equal to \$10,000 plus \$400 per year of service

Hourly employees who elect to leave Grantee but are not immediately eligible to retire will receive a lump sum payment equal to \$10,000 plus \$400 per year of service.

Hourly employees who accept a transfer to another Grantee location are eligible for relocation benefits.

#### Hourly Involuntary Separation Package:

Hourly employees who are laid off are eligible for the following benefits.

- Supplemental Unemployment Benefit (SUB-pay) which equates to 28 hours of weekly pay (net of unemployment pay for 26 weeks) to employees for a time period based on their seniority, subject to labor agreement terms:
  - at least 2 years but less than 10 years of seniority - 52 weeks maximum
  - at least 10 years but less than 20 years of seniority - 78 weeks maximum
  - 20 or greater years of seniority - 104 weeks maximum
- Recall rights
- Health care benefits for a time period depending on seniority
  - at least 2 years but less than 10 years of seniority - 1 year
  - 20 or greater years of seniority — 2 years
- Career services will be offered

#### Salaried Voluntary Separation Package:

Salaried employees who elect to retire or leave Grantee will receive a lump sum payment equal to 4 weeks of base pay plus 2 weeks of pay for every year of service, up to a total maximum payout of 56 weeks. Salaried employees who accept a transfer to another Grantee location are eligible for relocation benefits.

#### Salaried Involuntary Separation Package:

Salaried employees who are involuntarily separated from Grantee will receive

- A lump sum payment equal to 4 weeks of base pay plus 2 weeks of pay for every year of service, up to a total maximum payout of 56 weeks
- Health care benefits for one year
- Career counseling services

APPENDIX 2 of EXHIBIT C

Liquidated Damages for Material Breach Pursuant to Section II of this Exhibit C ("Default")

Termination in Quarter and Year:		Damages Owed: (\$MM)
2016	Q1	40
	Q2	37
	Q3	34
	Q4	31
2017	Q1	28
	Q2	25
	Q3	22
	Q4	19
2018	Q1	16
	Q2	13
	Q3	10
	Q4	7
2019	Q1	4

## EXHIBIT D: OPINION OF COUNSEL

[Alcoa Letterhead]

[Date]

Empire State Development  
Washington Street, 2<sup>nd</sup> Floor  
Watertown, New York 13601

Attn: John Vandelloo

Re: ALCOA Massena Working Capital, Project #AA364

Ladies and Gentlemen:

I have served as in-house counsel to Alcoa Inc. a corporation, in connection with the execution and delivery of the Grant Disbursement Agreement dated December 18, 2015 (the "Agreement") between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee.

This opinion letter is being furnished to you pursuant to Section 3(a) of the Agreement. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

In issuing this letter, I have examined originals, or copies certified or otherwise identified to my satisfaction, of such documents, corporate records and other instruments as I have deemed necessary or appropriate for the purposes of this opinion letter, including (a) the Agreement, (b) the certificate of incorporation of the Grantee and (c) the by-laws of the Grantee. I have also examined and relied upon such other matters of law, documents, certificates of public officials and representations of officers and other representatives of the Grantee as I have deemed relevant, appropriate or necessary to the rendering of this opinion letter.

In issuing this letter, I have assumed the legal capacity of all natural persons signing documents and that the signatures of persons signing all documents in connection with which this opinion letter is rendered are genuine, all documents submitted to me as originals or duplicate originals are authentic and all documents submitted to me as copies, whether certified or not, conform to authentic original documents. Additionally, I have assumed and relied upon the accuracy and completeness of all certificates and other statements, documents, records, financial statements and papers reviewed by me, and the accuracy and completeness of all representations, warranties, confirmations, schedules and exhibits contained in the Agreement, with respect to the factual matters set forth therein.

As to any facts material to the opinions expressed herein that I did not independently establish or verify, I have relied upon written statements and representations of officers

and other representatives of the Grantee and of certain public officials. I have also assumed and relied upon the accuracy and completeness of all certificates and other statements, representations, documents, records, financial statements and papers reviewed by me, and the accuracy and completeness of all representations, warranties and exhibits contained in the Agreement with respect to the factual matters set forth therein.

Based upon the foregoing and subject to the assumptions, qualifications and other matters set forth herein, I am of the opinion that the representations, warranties and covenants made by the Grantee pursuant to Section 8(a), Section 8(b) and Section 8(c) of this Agreement are true and correct as of the date hereof.

I am admitted to practice in the Commonwealth of Pennsylvania and express no opinion as to any matters governed by any laws other than the laws of the Commonwealth of Pennsylvania. The opinions expressed herein that are based on the laws of the Commonwealth of Pennsylvania are limited to the laws generally applicable in transactions of the type covered by the Agreement.

This opinion letter is for the benefit solely of ESD and not for the benefit of any other person. I am opining herein only as of the date hereof and undertake no, and disclaim any, obligation to advise you of any changes in any matter set forth herein, regardless of whether changes in such matters come to my attention after the date hereof. No attorney-client relationship exists or has existed with ESD by reason of our preparation, execution and delivery of this opinion letter. By providing this opinion letter and permitting reliance hereon by you, I am not acting as your counsel and have not assumed any responsibility to advise you with respect to the adequacy of this opinion letter for your purposes. This opinion letter may not be relied upon by any other person or for any other purpose or used, quoted or otherwise referred to for any other purpose.

Very truly yours,

## EXHIBIT E: DISBURSEMENT TERMS

### Disbursement

Subject to the terms and conditions of this Agreement, ESD shall disburse the Grant upon submission of the documentation set forth below:

#### I. Initial Disbursement

An Initial Disbursement of an amount equal to \$1,800,000 will be disbursed to the Grantee upon documentation of \$1,800,000 of payroll and other working capital expenses incurred in the Fourth Quarter of 2015, and the employment of the required number of Full-Time Employees at the Project location in accordance with Schedule C, provided the Grantee is otherwise in compliance with the terms and conditions of this Agreement. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and Exhibit H and their attachments. Expenses must be incurred on or after October 1, 2015 to be considered eligible 2015 project costs for purposes of the Initial Disbursement.

#### II. 2016 Disbursements

2016 Disbursements of an amount equal to \$7,000,000 will be disbursed to the Grantee in two equal installments occurring in the second and fourth quarter of 2016 upon documentation of payroll and other working capital expenses equal to or greater than the requested disbursement incurred in 2016, and the employment of the required number of Full-Time Employees at the Project location in accordance with Schedule C, provided the Grantee is otherwise in compliance with the terms and conditions of this Agreement. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and Exhibit H and their attachments. Expenses must be incurred on or after January 1, 2016 to be considered eligible 2016 project costs for purposes of 2016 Disbursements.

#### III. 2017 Disbursements

2017 Disbursements of an amount equal to \$6,000,000 will be disbursed to the Grantee in two equal installments occurring in the second and fourth quarter of 2017 upon documentation of payroll and other working capital expenses equal to or greater than the requested disbursement incurred in 2017, and the employment of the required number of Full-Time Employees at the Project location in accordance with Schedule C, provided the Grantee is otherwise in compliance with the terms and conditions of this Agreement. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and Exhibit H and its attachments. Expenses must be incurred on or after January 1, 2017 to be considered eligible project costs for purposes of 2017 Disbursements.

IV. 2018 Disbursements

2018 Disbursements of an amount equal \$4,000,000 will be disbursed to the Grantee in two equal installments occurring in the second and fourth quarter of 2018 upon documentation of payroll and other working capital expenses equal to or greater than the requested disbursement incurred in 2018, and the employment of the required number of Full-Time Employees at the Project location in accordance with Schedule C, provided the Grantee is otherwise in compliance with the terms and conditions of this Agreement. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and Exhibit H and their attachments. Expenses must be incurred on or after January 1, 2018 to be considered eligible project costs for purposes of 2018 Disbursements.

V. 2019 Disbursements

2019 Disbursements of an amount equal to \$1,800,000 will be disbursed to the Grantee in the First Quarter of 2019 upon documentation of \$1,800,000 of payroll and other working capital expenses incurred in 2019, provided the Grantee is otherwise in compliance with the terms and conditions of this Agreement. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and Exhibit H and their attachments. Expenses must be incurred on or after January 1, 2019 to be considered eligible project costs for purposes of 2019 Disbursements.

Notwithstanding the Expiration Date set forth on the first page of this Agreement, Grantee must request and submit all documentation for the final disbursement of the Grant by no later than July 15, 2019.

**Wire Transfer Information:**

Grantee's wire transfer information for the receipt of Grant funds is set forth below:

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

ABA #: \_\_\_\_\_

Acct. Name: \_\_\_\_\_

Acct. #: \_\_\_\_\_

## EXHIBIT F: WORKING CAPITAL GRANT PAYMENT REQUISITION FORM

ALCOA Massena Working Capital, Project #AA364 Disbursement Request Amount: \$ \_\_\_\_\_

ESD funds may be applied by Grantee in payment or reimbursement of the following costs:

Minimum Expense Incurred (per Exhibit E)	See Exhibit E				
Eligible Expenses	A: Actual Costs Incurred (this request)	B: ESD Share (this request)	C: Cumulative Amount Previously Received from ESD	D: Grant Amount (Cumulative if multi-year grant)	E: (D-C-B) Grant Balance Remaining
Working Capital				\$1,800,000	
Working Capital				7,000,000	
Working Capital				6,000,000	
Working Capital				4,000,000	
Working Capital				1,800,000	
TOTAL				\$20,600,000	

### CERTIFICATION

I hereby warrant and represent to Empire State Development ("ESD") that:

- 1) To the best of my knowledge, information and belief, the expenditures for which ALCOA Inc. is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and ALCOA, Inc., and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source.
- 2) I have the authority to submit this invoice on behalf of ALCOA, Inc.
- 3) I hereby attach the following documents for ESD approval, in support of this requisition (note N/A if note applicable for this request):
  - Exhibit F-1: Financial Condition Affidavit
  - Exhibit F-2: Project Cost Affidavit
  - Exhibit H: Report of Employment & NYS-45 form including cover page and NYS-45-ATT attachment (with social security numbers blocked out and location indicated as necessary) or equivalent documentation of employees, location, status, and payroll information
- 4) The Grantee is in compliance with the terms and conditions of Section 7 of the Agreement.
- 5) Representations, Warranties and Covenants made in Section 8 of the Agreement are still true, complete and accurate.

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

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

At any point in the course of your project, ESD would appreciate feedback regarding this ESD program. Please comment on the application, project approval, and/or payment reimbursement process or any other interactions with ESD related to the project. You may submit your feedback under separate cover to Edwin Lee, VP – Loans and Grants, 633 Third Avenue, NY, NY 10017. Please include your Project Number and Project Name which are listed at the top of this exhibit on your submission.  
Thank you.





## EXHIBIT G

### I. General Provisions

- A. Empire State Development (ESD) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Recipient of the subject Grant Disbursement Agreement (the "Recipient" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with the ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Recipient's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

### II. Contract Goals

- A. Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned businesses (MWBEs) in the performance of ESD projects. For purposes of this project, however, goals will not be established due to the unavailability of certified MWBEs for performance of this Contract.

### III. Equal Employment Opportunity (EEO)

- A. Recipient agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Recipient shall comply with the following provisions of Article 15-A:
  - 1. Recipient and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment,

promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Recipient shall submit an EEO policy statement to the ESD with the executed Contract.
3. If Recipient or subcontractor does not have an existing EEO policy statement, the ESD may provide the Recipient or subcontractor a model statement (see EXHIBIT G-1: M/WBE Participation/Equal Employment Opportunity Policy Statement).
4. The Recipient's EEO policy statement shall include the following language:
  - a. The Recipient will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Recipient shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Recipient shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Recipient's obligations herein.
  - d. The Recipient will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "e" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
  - e. Recipient shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Recipient and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.



**Exhibit G-1**

**M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

I, \_\_\_\_\_ (CONTRACTOR OR GRANT REPRESENTATIVE),

the \_\_\_\_\_ (GRANTEE/COMPANY NAME)

agree to adopt the following policies with respect to the project being developed or services rendered at

**NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (c) At the request of the ESD, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) The organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this contract.

**MWBE PARTICIPATION (MWBE)**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.



**Exhibit G-1**

**M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

- (2) Request a list of State-certified M/WBEs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at OCSD@ESD.NY.GOV.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.  
Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

Agreed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

By: \_\_\_\_\_  
(SIGNATURE)

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

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

**Minority & Women Business Enterprise-Equal Employment Opportunity Liaison**

\_\_\_\_\_ (name of designated contractor/grantee liaison) is designated as the Minority and Women Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

N/A % Minority Business Enterprise Participation

N/A % Women's Business Enterprise Participation

N/A % TOTAL/OVERALL M/WBE Participation Goal

**EEO Contract Goals**

NOT APPLICABLE % Minority Labor Force Participation

NOT APPLICABLE % Female Labor Force Participation

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(Signature of Contractor's Authorized Representative)

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

**\*Company:** \_\_\_\_\_

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

**\*Phone:** \_\_\_\_\_

**\*Fax:** \_\_\_\_\_

**\*Address:** \_\_\_\_\_

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d\b\ a EMPIRE STATE DEVELOPMENT  
ALCOA Massena Working Capital, Project Number AA364

**EXHIBIT H: REPORT OF EMPLOYMENT (WITH NYS FORM 45 ATTACHED)**

Complete EITHER Table A (as Annual Report\*) OR Table B (with every Payment Request)

Attach NYS-45 form including cover page and NYS-45-ATT (with blocked out social security numbers and location indicated as necessary. If the reported employment figures on Exhibit H vary materially from those reported to the New York State Department of Labor on NYS-45, please attach an explanation identifying reasons for any difference.

Annual Report: Sent to Portfolio Management; Empire State Development; 633 Third Avenue; New York, NY 10017

**FULL-TIME PERMANENT EMPLOYEES**

For purposes of this Agreement, a **Full-time Permanent Employee shall mean** a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties. The requirement that a Full-Time Employee shall be employed for not less than four consecutive weeks shall not be required in order to be considered a Full-Time Employee, provided the employee was hired to fill a Full-Time Employee vacancy resulting from a termination for cause.

**Table A: Annual Report due every February 1 for prior calendar year**

FULL-TIME PERMANENT EMPLOYEES	As of Grantee's last payroll date on or prior to the end of the designated quarter				ANNUAL AVERAGE (Based on the four quarterly numbers)
	March 31, 20__	June 30, 20__	Sept. 30, 20__	Dec. 31, 20__	
At Project Location					
At Other New York Locations (if applicable)					

**Table B: With every Payment Request**

FULL-TIME PERMANENT EMPLOYEES	as of ____/____/____ (date of request)
At Project Location	
At Other New York Locations (if applicable)	

The information included herein is correct to the best of my knowledge and belief.

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

Print Name and Title: \_\_\_\_\_

*Any false statement herein may cause the borrower or grantee to be in default under its grant disbursement agreement with ESD.*