

Master Power Purchase & Sale Agreement

THIS AGREEMENT GOVERNS BOTH THE SUBJECT TRANSACTION – THE PURCHASE OF CAPACITY AND/OR CAPACITY AND ASSOCIATED ENERGY BY NYPA FROM PARTY B DESCRIBED IN THE ATTACHED SUBJECT TRANSACTION CONFIRMATION – AS WELL AS OTHER SUBSEQUENT TRANSACTIONS THAT MAY BE ENTERED INTO BETWEEN NYPA AND PARTY B.

MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

This Agreement is made as of the ___ day of _____, 20__ (the “**Effective Date**”). This Agreement and the exhibits, schedules and any written supplements hereto, including Exhibits 1 through 7 inclusive hereof, the Party B Tariff, and all Transactions (including the Subject Transaction Confirmation and any other Confirmations accepted in accordance with Section 2.3 hereto), are collectively referred to as the “**Agreement.**” The Parties to this Agreement are the following:

Name: Power Authority of the State of New York
 (“**NYPA**” or “**Party A**”)

Name: _____ (“**Party B**”)

All Notices:

Street: 123 Main Street
City, State Zip: White Plains, NY 10601

All Notices:

Street: _____
City, State Zip: _____

Attn: Energy Resource Management (W. Nadeau)
Phone: (914) 681-6488
Facsimile: (914) 287-3890
Duns: 11-732-2536
Federal Tax ID Number: 13-1850882

Attn: _____
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Confirmations:

Attn: Confirmations – Accounting Dept (J. Brennan)
Phone: (914) 287-3133
Facsimile: (914) 287-3391

Confirmations:

Attn: _____
Phone: _____
Facsimile: _____

Invoices:

Attn: Accounts Payable (Manna Yu)
Phone: (914) 287-3370
Facsimile: (914) 287-3392

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Scheduling:

Attn: Energy Resource Management (Paul Rougeux)
Phone: (914) 681-6873
Facsimile: (914) 681-6872

Scheduling:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Attn: Accounts Receivable (Deborah Vaccaro)
Phone: (914) 287-3366
Facsimile: (914) 287-3391

Payments:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK: JPMorgan Chase Manhattan Bank
ABA: 021-000021
ACCT: 573804206

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: Credit Manager (Steve Lockfort)
Phone: (914) 681-6868
Facsimile: (914) 287-3845

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Treasurer (Brian McElroy)
Phone: (914)287-3955
Facsimile: (914)681-6995

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____
Phone: _____
Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff Not Applicable Dated _____ Docket Number _____
Party B Tariff Tariff _____ Dated _____ Docket Number _____

GENERAL TERMS AND CONDITIONS

ARTICLE ONE GENERAL DEFINITIONS

1.1 “Act” means Sections 1000-1017 of the New York Public Authorities Law.

1.2 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 “Agreement” has the meaning set forth in the preamble hereof.

1.4 “Bankrupt” means with respect to a Party or any Credit Support Provider of such Party, such Person:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within sixty (60) days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6)(A) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or (B) in the case of Party A (I) there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or (II) there shall be declared by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events

specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

1.5 “Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor statute.

1.6 “Bi-Monthly Computation” has the meaning set forth in Exhibit 2 (Procedures for Semi-Annual and Bi-Monthly Computation).

1.7 “Bi-Monthly Letter of Credit” means a Letter of Credit substantially in the form (other than the stated amount) of the Term Letter of Credit, in effect for a Bi-Monthly Period (or such longer period as provided for in this Agreement) with a face amount equal to the Party B Performance Assurance Amount, as described in Section 8.5.

1.8 “Bi-Monthly Period” means a two (2)-month period commencing on January 1, March 1, May 1, July 1, September 1 or November 1 of each year commencing in 20__ through 20__.

1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.10 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.11 "Capacity" or "UCAP" means unforced capacity for New York City (Zone "J") certified on a Monthly basis by NYISO.

1.12 “Claiming Party” has the meaning set forth in Section 3.3.

1.13 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.14 “Commercial Operation” has the meaning set forth in Section 3.6(a).

1.15 “Computation” has the meaning set forth in Exhibit 2 (Procedures for Semi-Annual and Bi-Monthly Computation).

1.16 “Confirmation” has the meaning set forth in Section 2.3, and unless expressly limited, "Confirmation" or "Confirmations" includes both the Subject Transaction Confirmation and each Confirmation, if any, for Other Transactions.

1.17 “Consents” has the meaning set forth in Section 3.6(b).

1.18 “Construction Milestone” has the meaning set forth in Section 3.6(b).

1.19 “Contract for Differences” means an agreement utilizing the International Swaps and Derivatives Association Master Agreement (2000, 2002 or other Form subsequently approved by NYPA) in which NYPA is the fixed price payer.

1.20 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.21 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.22 “Credit Event” means (i) with respect to Party A, the suspension or withdrawal of the Credit Rating on the NYPA Bonds by S&P or Moody’s, or the downgrade of the Credit Rating on the NYPA Bonds below BBB by S&P, Baa2 by Moody’s or an equivalent Credit Rating by any other nationally recognized rating agency, (ii) with respect to Party B, the suspension or withdrawal of Party B’s Credit Rating by S&P or Moody’s, or downgrade of Party B’s Credit Rating below BBB by S&P, Baa2 by Moody’s or an equivalent Credit Rating by any other nationally recognized rating agency, and (iii) with respect to any Qualified Issuer, the suspension or withdrawal of such Person’s Credit Rating by S&P or Moody’s, or the downgrade of such Person’s Credit Rating below A by S&P, A2 by Moody’s or an equivalent rating by any other nationally recognized rating agency.

1.23 “Credit Rating” means (i) with respect to any Person other than Party A, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in this Agreement and (ii) with respect to Party A, the rating then assigned to any NYPA Bonds by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in this Agreement.

1.24 “Credit Support Document” means (i) with respect to Party A, each NYPA Letter of Credit provided pursuant to this Agreement, and (ii) with respect to Party B, each Party B Letter of Credit provided pursuant to this Agreement and any undertaking of any Credit Support Provider.

1.25 “Credit Support Provider” means (i) with respect to Party A, any issuer of any NYPA Letter of Credit, and (ii) with respect to Party B, any issuer of any Party B Letter of Credit or Person who commits to provide any Party B Letter of Credit.

1.26 “Credit Support Termination Date” means the ninety-eighth (98th) day following the Final Payment Date applicable to Party B.

1.27 “Day” or “day” unless otherwise modified, means one (1) calendar day.

- 1.28 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.29 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.
- 1.30 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.
- 1.31 “Design” has the meaning set forth in Section 3.6(a).
- 1.32 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.33 “Eastern Prevailing Time” means Eastern Standard Time, or during the period when daylight savings time is in effect in New York State, Eastern Daylight Time.
- 1.34 “Effective Date” has the meaning set forth in the preamble hereof.
- 1.35 “Energy” means three-phase, 60-cycle alternating current.
- 1.36 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.37 “Event of Default” has the meaning set forth in Section 5.1.
- 1.38 “Excused Delay” has the meaning set forth in Section 3.6(c).
- 1.39 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.40 “Final Payment Date” means, as to a Party, the final date on which all outstanding payment obligations of such Party to the other Party, including but not limited to any payments due pursuant to Article Four, Termination Payment under Article Five, or payments due under Article Six, have been fully liquidated and satisfied in full. In the event any payment due under this Agreement becomes the subject of a dispute, the Final Payment Date with respect to the Party owing the disputed amount shall not occur until such dispute is finally resolved and the amount owed as determined upon resolution of such dispute, if any, is paid in full.
- 1.41 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was entered, which is not reasonably within the control of, or the result of the negligence of or breach of contract by, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (y) such Party has contracted for firm transmission with a

Transmission Provider for the Product to be delivered to or received at the Delivery Point and (z) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of this Agreement, the Subject Transaction Confirmation or other relevant Confirmation and the Products and Related Definitions contained in Schedule A.

1.42 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in good faith and using commercially reasonable procedures. Gains shall be calculated in accordance with Exhibit 1 (Calculation of Gains and Losses).

1.43 “Governmental Charges” has the meaning set forth in Section 9.2.

1.44 “Imaged Agreement” has the meaning set forth in Section 10.12.

1.45 “Interest Rate” means the lesser of (i) the highest rate allowed by law or (ii) a rate per annum equal to the prime rate as listed in the Money Rates section of the *Wall Street Journal* under “Money Rates” on the date of determination (or if not published on such day the most recent preceding day on which published) plus two percent (2%); provided, that where Party A is the Party owing interest, and such interest is subject to the provisions of Section 2880 of the New York Public Authorities Law (or any successor thereto) then in such case, and only with respect to Party A, “Interest Rate” shall mean the rate allowed pursuant to Section 2880.

1.46 “kW” means kilowatt.

1.47 “Letter(s) of Credit” means an irrevocable, transferable, multiple-draw standby letter of credit issued by a Qualified Issuer, the costs of which shall be borne by the applicant therefor.

1.48 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in good faith and using commercially reasonable procedures. Losses shall be calculated in accordance with Exhibit 1 (Calculation of Gains and Losses).

1.49 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.50 “MW” means megawatt.

1.51 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless

otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.52 “New Facilities” has the meaning set forth in Section 3.6(a).

1.53 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.54 “Notice to Proceed” has the meaning set forth in Section 3.6(b).

1.55 “NYISO” means the New York Independent System Operator, or any successor organization(s) thereof.

1.56 “NYPA Bonds” means the bonds issued by NYPA under the General Resolution Authorizing Revenue Obligations, adopted February 24, 1998, as amended and supplemented, but excluding those bonds which are covered by a municipal bond insurance policy.

1.57 “NYPA Letter of Credit” has the meaning set forth in Section 8.4(a).

1.58 “NYPA Performance Assurance Amount” has the meaning set forth in Section 8.4(a) and value as determined from time-to-time pursuant to Exhibit 2 (Procedures for Semi-Annual and Bi-Monthly Computation).

1.59 “Offsetting Transactions” mean any two (2) or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.60 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.61 “Option Buyer” means the Party specified in a Transaction as the purchaser of an Option, as defined in Schedule A.

1.62 “Option Seller” means the Party specified in a Transaction as the seller of an Option, as defined in Schedule A.

1.63 “Other Transactions” means all Transactions between the Parties other than the Subject Transaction.

1.64 “Party A” has the meaning set forth on page 1 of this Agreement.

1.65 “Party A Tariff” means the tariff, if any, specified on page 2 of this Agreement.

1.66 “Party B” has the meaning set forth on page 1 of this Agreement.

1.67 “Party B Letter of Credit” means each Term Letter of Credit, Semi-Annual Letter of Credit and Bi-Monthly Letter of Credit.

1.68 “Party B Performance Assurance Amount” has the meaning set forth in Section 8.5(b) and value as determined from time-to-time pursuant to Exhibit 2 (Procedures for Computation of Performance Assurance Amounts).

1.69 “Party B Tariff” means the tariff, if any, specified on page 2 of this Agreement.

1.70 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Party entitled to receive such security.

1.71 “Person” means any person, firm or business association or other entity of any nature whatsoever, including but not limited to a Party or Credit Support Provider.

1.72 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.73 “Product” means Capacity, Energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule A hereto or as otherwise specified by the Parties in the Transaction.

1.74 “Qualified Issuer” means a commercial bank organized or otherwise lawfully qualified to do business under the laws of the United States or any state, having a Credit Rating of A or higher by S&P, A2 or higher by Moody’s, or an equivalent Credit Rating by any other nationally recognized rating agency.

1.75 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.76 “Recording” has the meaning set forth in Section 2.5.

1.77 “Regulatory Event” has the meaning set forth in Section 10.8.

1.78 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point (or other point mutually agreed by the Parties) a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability; provided, further, however, that if a Contract for Differences is in effect to provide cover, the Replacement Price shall be the fixed price for which the Contract for Differences provides. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one (1) or more arrangements (including Contracts for Differences) in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.79 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.80 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into a Contract for Differences or one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.81 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.82 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.83 “Semi-Annual Computation” has the meaning set forth in Exhibit 1 (Procedures for Semi-Annual and Bi-Monthly Computation).

1.84 “Semi-Annual Letter of Credit” means a Letter of Credit substantially in the form (other than the stated amount) of the Term Letter of Credit, in effect for a Semi-Annual Period (or such longer period as provided for in this Agreement) with a face amount equal to the Party B Performance Assurance Amount, as described in Section 8.5.

1.85 “Semi-Annual Period” has the meaning set forth in Section 8.4(a).

1.86 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.87 “Site” has the meaning set forth in Section 3.6(a).

1.88 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.89 “Subject Transaction” means each Transaction that is the subject of a Subject Transaction Confirmation attached as Exhibit 3A and 3B of this Agreement.

1.90 “Subject Transaction Confirmation” means a confirmation of the Subject Transaction attached to this Agreement as Exhibit 3A (Subject Transaction Confirmation – Capacity or Capacity Plus Transmission) and/or Exhibit 3B (Subject Transaction Confirmation – Energy).

1.91 “Target Commercial Operation Date” has the meaning set forth in Section 3.6(a).

1.92 “Target Consents Application Date” has the meaning set forth in Section 3.6(b).

1.93 “Target Notice to Proceed Date” has the meaning set forth in Section 3.6(b).

1.94 “Term Letter of Credit” means a Letter of Credit with a face amount equal to the Term Letter of Credit Amount, issued within three (3) Business Days of the execution of this Agreement, substantially in the form set out in Exhibit 4 (Form of Term Letter of Credit), and each replacement or supplemental Letter of Credit therefor substantially in the same form.

1.95 “Term Letter of Credit Amount” means: (a) with respect to a Subject Transaction involving Capacity or Capacity plus Transmission Products, the amount determined from time-to-time as set forth in Section I of Exhibit 2 hereof; and (b) with respect to a Subject Transaction involving Energy, _____ Dollars (\$____) [*See proposed Credit Terms, attached to Exhibit 2 for NYPA's credit support required amounts.*]

1.96 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.97 “Termination Payment” has the meaning set forth in Section 5.3.

1.98 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Agreement, and, without limitation to the foregoing, includes the Subject Transaction and the Other Transactions.

1.99 “Transmission” means the provision of UCAP deliverability rights utilizing electrical transmission lines, substations, interconnections and other applicable facilities owned or controlled by Party B, rated at 138kV or greater, from a specified point of origin to Party A at a specified Delivery Point, in accordance with applicable rules of the NYISO.

1.100 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

1.101 “UCAP” means unforced capacity for New York City (Zone “J”) certified on a Monthly basis with the NYISO.

ARTICLE TWO TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties in writing by means of a Confirmation. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Agreement (a) based on any law requiring agreements to be signed by the parties, or (b) based on

any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction. This Agreement shall govern all Transactions between the Parties entered into on or after the Effective Date of this Agreement, provided, however, that (a) Sections 8.4 and 8.5 of this Agreement shall only apply to the Subject Transaction and (b) Sections 8.1(b) and 8.2(b) shall apply only to Other Transactions and not apply to the Subject Transaction. Furthermore, out of Schedule A, only the definitions of “Energy” [and “Unit Firm” if applicable] and the first sentence of Schedule A shall apply to the Subject Transaction.

2.3 Confirmation. The Subject Transaction is confirmed in writing between the Parties by the Subject Transaction Confirmation. Any proposed Other Transactions between the Parties governed by this Agreement shall be confirmed in writing by a Confirmation. Buyer shall prepare a confirmation for such Other Transaction substantially in the form of Exhibit 5 and forward two (2) original executed copies to Seller by certified mail, hand delivery, overnight courier or facsimile. Such confirmation shall be deemed to have been received by Seller two (2) Business Days after it was sent or such earlier time as such receipt is confirmed by Seller. If Seller objects to any term(s) of such confirmation it shall notify Buyer in writing of such objections within three (3) Business Days of Seller’s receipt thereof, otherwise Seller shall confirm a proposed Other Transaction by returning one (1) original fully-executed copy of the confirmation by certified mail, hand delivery, overnight courier or facsimile within three (3) Business Days after it receives the confirmation, failing which it shall be deemed to have accepted the terms as sent, and in either case if Seller does not so object to such confirmation, such proposed Other Transaction shall be an Other Transaction under this Agreement and such confirmation shall be a “Confirmation” under this Agreement. If Buyer has failed to send a confirmation within four (4) Business Days after any Other Transaction has been agreed upon orally, then Seller may prepare a confirmation for such Other Transaction substantially in the form of Exhibit 5 and forward two (2) original executed copies to Buyer by certified mail, hand delivery, overnight courier or facsimile. Such confirmation shall be deemed to have been received by Buyer two (2) Business Days after it was sent or such earlier time as such receipt is confirmed by Buyer. If Buyer objects to any term(s) of such confirmation it shall notify Seller in writing of such objections within three (3) Business Days of Buyer’s receipt thereof, otherwise Buyer shall confirm a proposed Other Transaction by returning one (1) original fully-executed copy of the confirmation by certified mail, hand delivery, overnight courier or facsimile within three (3) Business Days after it receives the confirmation, failing which it shall be deemed to have accepted the terms as sent, and in either case if Buyer does not so object to such confirmation, such proposed Other Transaction shall be an Other Transaction under this Agreement and such confirmation shall be a “Confirmation” under this Agreement. In the event any proposed Other Transaction is agreed upon orally but neither Party sends a confirmation in

the manner or within the time provided herein, or if such confirmation is sent but the receiving Party objects to such confirmation and such objection is not overcome, such proposed Other Transaction shall be null and void, and not be binding upon either Party.

2.4 Additional Confirmation Terms. When a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Each Party (a) consents to the creation of a tape or electronic recording (“**Recording**”) of all telephone conversations between the Parties to this Agreement, and (b) agrees that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be evidence of the Parties’ agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Agreement.

ARTICLE THREE OBLIGATIONS AND DELIVERIES

3.1 Seller’s and Buyer’s Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the

“**Claiming Party**”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Subject Transaction Confirmation or other relevant Confirmation or of the Product and Related Definitions in Schedule A specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure, subject to the provisions of Section 6.3). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. 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.

3.4 Closing Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, (a) NYPA shall provide Party B hereto (i) a certified copy of the resolution evidencing the necessary authorizations with respect to the execution, delivery and performance by NYPA of this Agreement and (ii) the written opinions set forth on Exhibit 6 (NYPA Opinions), in form and substance reasonably acceptable to Party B, issued by legal counsel acceptable to Party B (which with respect to opinion No. 3, shall include NYPA’s in-house counsel) and (b) Party B shall provide NYPA with (i) a certified copy of the resolution evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Agreement and (ii) the written opinions set forth on Exhibit 7 (Party B Opinions), in form and substance reasonably acceptable to NYPA, issued by legal counsel acceptable to NYPA.

3.5 No Immunity Claim. NYPA warrants and covenants that, to the fullest extent permitted by applicable law, with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

3.6 Party B Facility Development Obligations [if Applicable]New Facility Development. Party B will provide the Products for the Subject Transaction from new _____ facilities to be developed by Party B or its Affiliates and contractors (“**New Facilities**”). The New Facilities will be constructed at _____, on a site described more fully in Exhibit 8A (the “**Site**”), in accordance with the design set forth in Exhibit 8B (“**Design**”). Party B will not make or permit any material change in the Site or Design without prior consent of NYPA, which shall not be unreasonably withheld, delayed or conditioned. The New Facilities will be in service, with all required interconnections, arrangements and authorizations necessary to commence providing the Products required under the Subject Transaction Confirmation (such status “**Commercial Operation**”) by _____ (the “**Target Commercial Operation Date**”). Party B represents and warrants that it has (i) all necessary rights to real property necessary for development of the New Facilities, (ii) all other necessary consents, authorizations and arrangements, other than those Consents set forth in Exhibit 8C, and (iii) has the financial capability to proceed and complete the development of the New Facilities.

(b) Construction Schedule and Milestones. Party B will develop the New Facility in accordance with the following timetable (each timetable date a "Construction Milestone"):

- (i) Party B expects to complete its submission of application for all remaining authorizations, permits, consents, authorizations, interconnections and land use rights set forth in Exhibit 8C ("Consents") needed to construct and operate the New Facilities by _____, 20__ (the "**Target Consents Application Date**").
- (ii) Party B expects to complete firm equipment orders and authorize its general contractor to mobilize for construction at the site for the New Facility (such events "**Notice to Proceed**") by _____ (the "**Target Notice to Proceed Date**").
- (iii) Party B expects to achieve Commercial Operation on the Target Commercial Operation Date.

(c) Delay, Liquidated Damages and NYPA Early Termination Rights

- (i) Party B will meet all Construction Milestones unless delayed or prevented by Force Majeure or any other cause beyond Party B's control with the use of commercially reasonable efforts, including any delay on the part of any governmental authority or transmission system operator in the issuance of any Consents (any such cause an "**Excused Delay**"), provided, delay, price increases or non-performance by Party B's equipment vendors, contractors or subcontractors shall not constitute Excused Delay. Each Construction Milestone will be extended Day-for-Day with respect to the effects of any Excused Delay, and provided further, in the event an Excused Delay does not or is not reasonably expected to cause a Day-for-Day delay in subsequent Construction Milestones, and to the extent any such Excused Delay can be reduced by commercially reasonable efforts of Party B, the extension of such subsequent Construction Milestones shall be a reasonable amount based upon applicable circumstances.
- (ii) In the event Party B fails to complete its submission of applications for all Consents by the Target Consents Application Date, Party B will pay NYPA liquidated damages in the amount of Ten Thousand Dollars (\$10,000) per Day or portion thereof, commencing with the Day immediately following the Target Consents Application Date and continuing until and including the Day on which Party B has completed submission of all applications for the Consents, provided, however, the maximum

liquidated damages paid under this subparagraph shall be Nine Hundred Thousand Dollars (\$900,000).

- (iii) In the event Party B fails to achieve Notice to Proceed by the Target Notice to Proceed Date, Party B will pay NYPA liquidated damages in the amount of _____ Dollars (\$_____) per Day or portion thereof [such amount to be \$50,000 per Day per 100 MW of Capacity/Associated Energy], commencing with the Day immediately following the Target Notice to Proceed Date and continuing until and including the Day on which Notice to Proceed occurs, provided, however, the maximum liquidated damages paid under this subparagraph shall be _____ Dollars (\$_____) [amount to be 150x the foregoing per diem amount, e.g., \$7.5M per 100 MW].
- (iv) In the event Party B fails to achieve Commercial Operation by the Target Commercial Operation Date, Party B will pay NYPA liquidated damages in the amount of _____ Dollars (\$_____) per Day or portion thereof [\$25,000 per Day per 100 MW of Capacity/Associated Energy], commencing with the Day immediately following the Target Commercial Operation Date and continuing until and including the Day on which Commercial Operation occurs, provided, however, the maximum liquidated damages paid under this subparagraph shall be _____ Dollars (\$_____) [amount to be 225x the foregoing per diem amount, e.g., \$5.625M per 100 MW].
- (v) The Parties agree that if Party B fails to meet Construction Milestones, other than as the result of an Excused Delay, NYPA will suffer damages that will be difficult to quantify. Accordingly they have agreed that in such event Party B will pay the foregoing liquidated damages amounts, as damages and not as a penalty. Party B shall provide and maintain a standby letter of credit in the form set forth in Exhibit 4 in the amount of \$_____ [\$7.5M per 100 MW of Capacity/Associated Energy] to secure payment of liquidated damages amounts. **[See Attachment to Exhibit 2 for NYPA guidelines on liquidated damages letter of credit amount.]**
- (vi) NYPA will hold all liquidated damages paid under this subsection with respect to Party B's failure to meet the Target Consents Application Date or Target Notice to Proceed Date in escrow, with interest to accrue for NYPA's account. In the event Party B is able to achieve Commercial Operation by the Target Commercial Operation Date notwithstanding such prior unexcused delays, NYPA will refund all previously-paid liquidated damages amounts, without interest. In the event Party B is able to achieve Commercial Operation within forty-five (45) Days following the

Target Commercial Operation Date, Party B's total liability to NYPA for liquidated damages shall not exceed the maximum amount set forth in subparagraph (c)(iv) above, and NYPA will refund to Party B any liquidated damages amount in escrow over and above such maximum. In all other events, liquidated damages shall remain with NYPA without repayment or credit to Party B's account for any purpose.

- (vii) If Party B does not achieve Commercial Operation of the New Facility by the date one hundred eighty (180) Days following the Target Commercial Operation Date, as such may be extended by Excused Delays, NYPA may, in its sole discretion, upon notice to Party B, terminate the Subject Transaction and such failure shall constitute an event of default under Section 5.1(c)(iii) with respect to the Subject Transaction.
- (viii) If Party B does not obtain all Consents by _____, 20__, or achieve Commercial Operation of the New Facility by _____, 20__, and such failure is the result of Excused Delays, NYPA may, in its sole discretion, upon notice to Party B, terminate the Subject Transaction upon notice to Party B, provided, however, that such circumstances shall not constitute an Event of Default and no Party shall be required to make any Termination Payment.

3.7 Buyer Termination Right in Event of Extended Force Majeure. In the event Party B is unable to provide Products required pursuant to any Transaction as a result of any event of Force Majeure, NYPA's payment obligation for any month during the continuation of such Force Majeure shall extend only to quantities of such Products actually delivered (subject to Section 6.3) and for which the NYISO will allow NYPA credit. In the event Party B's deliveries of such Products continues to be substantially interrupted for any period of twelve (12) consecutive months, Buyer may terminate the affected Transaction, upon notice to Party B in NYPA's sole discretion, provided, however, that such circumstances shall not constitute an Event of Default and no Party shall be required to make any Termination Payment.

ARTICLE FOUR REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to Schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Subject Transaction Confirmation or other relevant Confirmation or of the Product and Related Definitions in Schedule A or by Buyer's failure to perform, then notwithstanding any provisions of this Agreement to the contrary, Seller shall pay Buyer, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to (i) any penalty or other charge assessed to Buyer by NYISO directly or indirectly as a result of Seller's failure, plus (ii) the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price with the result multiplied by the deficiency in quantity of Product actually Scheduled or delivered by

the Seller. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 **Buyer Failure.** If Buyer fails to Schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Subject Transaction Confirmation or other relevant Confirmation or of the Product and Related Definitions in Schedule A or by Seller’s failure to perform, then Buyer shall pay Seller, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price with the result multiplied by the deficiency in quantity of Product actually Scheduled or received by the Buyer. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE EVENTS OF DEFAULT; REMEDIES

5.1 **Events of Default.** An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) either (i) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice, (ii) any willful failure to deliver Product when required under this Agreement, or (iii) [if applicable] failure of Party B to achieve Commercial Operation by the date One Hundred Eighty (180) Days following the Target Commercial Operation Date, as extended by any Excused Delay;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party or any Credit Support Provider of such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such Party is Party A, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, such Party) and, at the time of such consolidation, amalgamation, merger, transfer, or succession:

- (i) the resulting, surviving, transferee or successor entity fails to assume all the obligations of such Party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party to this Agreement; or
 - (ii) the resulting, surviving, transferee or successor entity, if a Credit Support Provider, is not a Qualified Issuer; or
 - (iii) the benefits of any Credit Support Document fail to extend (without the consent of the other Party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement, if any;
- (g) the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any Credit Support Provider for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than _____ Million Dollars (\$__,000,000), which results in such indebtedness becoming immediately due and payable or (ii) a default by such Party or any Credit Support Provider for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than _____ Million Dollars (\$__,000,000);
- (h) with respect to such Party’s Credit Support Provider, if any:
- (i) any representation or warranty made by a Credit Support Provider in connection with this Agreement or any Credit Support Document is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Credit Support Provider to make any payment required or to perform any other material covenant or obligation in any Credit Support Document and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a Credit Support Provider becomes Bankrupt;
 - (iv) the failure of a Credit Support Document to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under the Subject Transaction to which such Credit Support Document shall relate without the written consent of the other Party; or

- (v) a Party or Credit Support Provider shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of this Agreement or any Credit Support Document;

provided, however, for the avoidance of doubt, any Credit Event, or other event or circumstance with respect to an issuer of a NYPA Letter of Credit or Party B Letter of Credit, shall not constitute an Event of Default unless the applicable Party fails to deliver a replacement NYPA Letter of Credit or Party B Letter of Credit, as applicable, to the other Party in accordance with Sections 8.4 and 8.5 within five (5) Business Days after receipt of written notice from such other Party of such circumstance as described in this sub-Section, and provided, further, that the foregoing proviso shall not prevent any draws on Letters of Credit by the Parties permitted under Sections 8.4 and 8.5;

- (i) solely with respect to the Subject Transaction, the failure of such Party to deliver to the remaining Party any Credit Support Document required by Section 8.4 or Section 8.5 within the time periods specified therein; or
- (j) solely with respect to the Subject Transaction, the drawing by a Party against any Credit Support Document required by Section 8.4 or Section 8.5 when or to an extent not authorized under the terms of this Agreement, or the failure of a Party having drawn against any Credit Support Document not to repay any excess amount drawn as required under the terms of this Agreement; provided, however, that such events shall not constitute an Event of Default unless the Party drawing or holding such funds fails to repay the same within five (5) Business Days after notice from the other Party that such payment is due.

Notwithstanding the foregoing, the Event of Default described in Subsection 5.1(c)(i) shall not be deemed to occur with respect to any failure or inability of Party B to deliver Products to be provided from a specific designated facility if such facility is unavailable in whole or part for any reason, and Party B provides Party A with equivalent Products from a different source at the Delivery Point on the same terms and conditions as required hereunder until such specified facility is returned to service.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “**Non-Defaulting Party**”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“**Early Termination Date**”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “**Terminated Transaction**”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated

Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to draws on Letters of Credit under this Agreement, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party provided as Performance Assurance pursuant to Article Eight, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. For the avoidance of doubt, notwithstanding any provision of this Agreement that may be interpreted to the contrary, the Defaulting Party shall not be entitled to recover any Losses upon termination pursuant to Section 5.2.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within five (5) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article Five until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed; provided, however, the period for obtaining such confirmation shall not extend more than sixty (60) days after the date the Defaulting Party’s payment is due.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and

the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

5.8 Matters Not Affecting Certain Transactions. Notwithstanding any other provision of this Agreement to the contrary, any termination effected by any Party pursuant to this Article Five with respect to the Subject Transaction shall not have the effect of terminating this Agreement with respect to any Other Transaction or Other Transactions, and any termination effected by any Party pursuant to this Article Five with respect to any Other Transaction or Other Transactions shall not have the effect of terminating this Agreement with respect to the Subject Transaction, it being understood and agreed that the Parties shall treat the Subject Transaction and Other Transactions independently with respect to the matters for which Article Five provides, and take any permitted termination actions hereunder separately with respect to the Subject Transaction, on the one hand, and Other Transactions on the other hand. The provisions of Section 5.3 shall be applied independently as to the Subject Transaction on the one hand, and the Other Transactions on the other hand, and there shall be no netting out of Settlement Amounts as between the Subject Transaction and any Other Transactions.

ARTICLE SIX PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments, any payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twenty-eighth (28th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full, and the Party owing such overdue obligation shall be further obligated to pay the

Party owed such obligations for such Party's costs of collection reasonably incurred, including reasonable attorneys' fees.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered, or the date of any adjustment as provided by the NYISO. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made, or the date of any adjustment as provided by the NYISO. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived. For the purposes of determining invoice amounts, the parties may rely upon meter readings of the entity designated as the applicable metering authority by NYISO, provided, (i) Party A shall be notified and have the right to attend any testing or calibration of applicable meters (and Party B shall not object to Party A's standing or right to attend such events), and (ii) in the event any meter error is detected, the Parties agree to correct invoices to reflect changes in metered amounts of any Product for the period for which such meter error was detected, or if such period is not known, for one-half the period between the date of detection and the last previous test of the applicable meters.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Products will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, EXCEPT AS OTHERWISE PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL 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 DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. [Not Applicable to Subject Transaction]

(a) Financial Information. If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances. Solely with respect to Other Transactions, if Party A has reasonable grounds to believe that Party B’s creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Agreement.

8.2 Party B Credit Protection. [Not Applicable to Subject Transaction]

(a) Financial Information. If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within ninety (90) days after June 30th of each fiscal year, a copy of Party A’s unaudited financial statements for the period ending June 30th. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles;

provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances. Solely with respect to Other Transactions, if Party B has reasonable grounds to believe that Party A’s creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B; provided, however, that prepayment of one month’s estimated payment obligations pursuant to the Other Transactions by Party A each month, calculated on the basis of the average of the most recent twelve (12) months’ payments made by Party A pursuant to the Other Transactions (or in the event such notice is given during the initial twelve months of any Other Transaction, then with respect to such Other Transaction, the average of all prior monthly payments pursuant to the Other Transaction) shall be deemed to be adequate Performance Assurance. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Agreement.

8.3 [Intentionally deleted].

8.4 Credit Support to be Provided by Party A. The provisions of this Section 8.4 shall apply with respect to the Subject Transaction but shall not apply to any Other Transactions:

(a) Obligation to Maintain and Replace.

(i) Effective for the six (6) month period commencing on _____, 200_, and thereafter for each six (6) month period during the term of this Agreement commencing on January 1 or July 1 of each year through 20__ (each such six-month period a “**Semi-Annual Period**”), Party B shall have the right to request performance assurance from Party A as provided below, and upon such request, Party A shall deliver to Party B a Letter of Credit issued by a Qualified Issuer with a stated amount equal to the NYPA Performance Assurance Amount determined for such period as set forth in Exhibit 1 (Procedures for Semi-Annual Computation) (each such Letter of Credit and any replacement or supplemental Letter of Credit therefor a “**NYPA Letter of Credit**”); provided, however that Party A shall not be obligated to provide a NYPA Letter of Credit if at the time of determination of the NYPA Performance Assurance Amount for any applicable Semi-Annual Period, no Credit Event for NYPA is continuing. In the event Party B shall make any draw against a NYPA Letter of Credit in accordance with this Agreement during any period in which such NYPA Letter of Credit is required to be in effect, Party A shall,

within five (5) Business Days, cause the NYPA Letter of Credit to be reinstated in the full NYPA Performance Assurance Amount, or cause a replacement or supplemental NYPA Letter of Credit to be provided by a Qualified Issuer for the benefit of Party B, such that the total credit available shall at all times be not less than the NYPA Performance Assurance Amount. In any instance in which Party B has drawn against a NYPA Letter of Credit, but has not applied such cash against a payment obligation of Party A then due, and is holding such cash in the manner provided in Subparagraph(c) hereof, the amount of such cash being held by Party B shall be deemed to satisfy a portion of Party A's obligation to maintain the NYPA Letter of Credit, and Party A shall not be required to supplement, reinstate or replace the NYPA Letter of Credit as to such amount. No NYPA Letter of Credit shall be required to be delivered for any Semi-Annual Period if the NYPA Performance Assurance Amount for such Semi-Annual Period is less than One Hundred Thousand U.S. Dollars (\$100,000).

- (ii) The term of each NYPA Letter of Credit shall commence on the first day of the applicable Semi-Annual Period and terminate on the last day thereof, provided, however, that the NYPA Letter of Credit, if any, required for the second Semi-Annual Period in 20__, shall remain in effect or be replaced with a replacement NYPA Letter of Credit issued by a Qualified Issuer in the amount required under this Section remaining in effect until the ninety-eighth(98th) day following the Final Payment Date applicable to Party A, notwithstanding the cessation of the Credit Event or other circumstances giving rise to Party A's obligation to furnish the NYPA Letter of Credit at any time prior to such Final Payment Date. Each NYPA Letter of Credit shall be substantially in the form (other than amount) of the Term Letter of Credit, with such modifications as the Parties may agree.
- (iii) Notwithstanding the foregoing, upon the occurrence of a Credit Event with respect to Party A following the commencement of any Semi-Annual Period, the NYPA Performance Assurance Amount for such Semi-Annual Period shall be determined immediately, and within five (5) Business Days following such determination, Party A will be required to deliver to Party B a NYPA Letter of Credit in such NYPA Performance Assurance Amount, and will maintain such NYPA Letter of Credit in effect for the balance of such Semi-Annual Period.

(b) Draws. Party B shall be entitled to make a draw or draws upon a NYPA Letter of Credit upon the occurrence of any of the following events, and where applicable, at the following times, for a portion of or for the full face amount of such NYPA Letters of Credit as Party B shall determine in its sole discretion:

- (i) immediately upon Party A becoming Bankrupt as defined herein;
- (ii) upon the occurrence of an Event of Default with respect to Party A regarding the Subject Transaction under this Agreement (whether or not Party B elects to exercise remedies under this Agreement in connection therewith); provided, however, that such draw shall be made only in the amount or amounts then due and owing by Party A to Party B with respect to the Subject Transaction; provided, further, that if such Event of Default is continuing and additional amounts become due and owing by Party A to Party B hereunder, Party B may make additional draws in regard to such amounts as they become due;
- (iii) at any time within thirty (30) days prior to the date of expiration of a NYPA Letter of Credit, if Party A is required to provide a NYPA Letter of Credit for the immediately following Semi-Annual Period (or in the case of the last Semi-Annual Period in 20__, for the period continuing until the ninety-eighth (98th) day after the Final Payment Date applicable to Party A) and Party B has not received unqualified written confirmation from a Qualified Issuer that a renewal or replacement NYPA Letter of Credit issued by such Qualified Issuer will be delivered to Party B no later than three (3) Business Days prior to such date of expiration, in an amount equal to the applicable NYPA Performance Assurance Amount required pursuant to this Agreement and in the form required hereunder;
- (iv) if, notwithstanding the written confirmation referenced in clause (iii) above, a NYPA Letter of Credit is not renewed or a replacement NYPA Letter of Credit in the form required hereunder in an amount equal to the applicable NYPA Performance Assurance Amount is not delivered to Party B prior to the third (3rd) Business Day prior to the date of expiration of the then-current NYPA Letter of Credit; or
- (v) a Credit Event has occurred with respect to the issuer of a NYPA Letter of Credit and Party A has failed to deliver to Party B a replacement NYPA Letter of Credit issued by a Qualified Issuer and in the form required hereunder within five (5) Business Days of such event.

(c) Application of Proceeds of Draws. In the event that Party B at any time receives proceeds of any NYPA Letter of Credit, title in such proceeds shall vest in Party B. Party B shall utilize such proceeds to satisfy amounts owed by Party A to Party B pursuant to the Subject Transaction after giving effect to any set-off rights under this Agreement regarding the Subject Transaction. For the purposes of this Section 8.4, amounts owed by Party A to Party B, and the use of NYPA Letter of Credit proceeds therefor, shall not be affected by any rulings in any Bankruptcy proceeding or similar proceeding, including but not limited to any stay or

discharge of Party A’s obligations to Party B under this Agreement, the intent of the Parties being that this Section shall operate as if no Bankruptcy had occurred, and Party B shall be entitled to draw and realize the proceeds of the NYPA Letter of Credit to satisfy such obligations, notwithstanding any stay or discharge of Party A’s obligations to Party B under this Agreement. In the event any draw or draws are made pursuant to Subparagraphs (b)(i), (iii), (iv) or (v) above, and such funds are not immediately applied to satisfy then-outstanding payment obligations of Party A to Party B, Party B shall hold such funds separate and apart from all other funds of Party B in an interest-bearing account, and apply the same to any future payment obligations of Party A to Party B; provided, however, if prior to the application of such funds for such purposes, Party A is not in default of any obligation with respect to the Subject Transaction and no NYPA Letter of Credit is then required to be in effect, Party B shall promptly remit such funds to Party A, with accrued interest. Following the satisfaction in full of all obligations of Party A in respect of the Subject Transaction and after the ninety-eighth (98th) day following the Final Payment Date applicable to Party A, and after giving effect to the exercise of any set-off rights, any surplus NYPA Letter of Credit proceeds held by Party B shall be transferred to Party A, without interest, provided that if such amounts are not transferred to Party A within five (5) Business Days after the foregoing due date, such amount shall be returned with interest at the Interest Rate from the date of notice of such determination.

(d) Holding Proceeds of Draws. With respect to those amounts drawn pursuant to Subparagraph (b)(i) above that are not used to satisfy any amount owed by Party A to Party B hereunder, Party B shall hold such amounts separate and apart from all other funds of Party B in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid with respect to Party A’s obligations to Party B prior to Party A becoming Bankrupt are not subject to being recovered from Party B pursuant to Sections 544, 547, 549 or 550 of the Bankruptcy Code (or pursuant to any successor provisions of law) in any proceeding instituted under the Bankruptcy Code, or any comparable provision of any applicable state bankruptcy or creditors’ rights law, by or against Party A. If such a final determination is made, Party B shall pay Party A the funds drawn under the NYPA Letter of Credit pursuant to Subparagraph (b)(i) net of any amounts that have been applied in regard to amounts owed by Party A to Party B with respect to the Subject Transaction, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Party B, Party B shall retain the funds drawn under the NYPA Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Party A.

8.5 Credit Support to be Provided by Party B. The provisions of this Section 8.5 shall apply with respect to the Subject Transaction but shall not apply to Other Transactions:

(a) Obligation to Maintain and Replace Term Letter of Credit. Party B shall deliver to Party A within three (3) Business Days of the execution of this Agreement the initial Term Letter of Credit issued by a Qualified Issuer with a stated amount equal to the Term Letter of Credit Amount. In the case of the Subject Transaction providing for the purchase and sale of UCAP or UCAP plus Transmission Products, the Term Letter of Credit Amount shall be determined, both initially and redetermined on an annual basis from time-to-time thereafter, in the manner set forth in Section I of Exhibit 2 hereof. The term of the Term Letter of Credit shall commence within three (3) Business Days of the execution of this Agreement and terminate on

the Credit Support Termination Date, or such earlier time as specified in such Term Letter of Credit, provided that Party B provides Party A with a replacement Term Letter of Credit issued by a Qualified Issuer in the amount required under this Section at least three (3) Business Days prior to the expiration of such Term Letter of Credit. In the event Party A shall make any draw against the Term Letter of Credit in accordance with this Agreement during any period in which the Term Letter of Credit is required to be in effect, Party B shall, within five (5) Business Days, cause the Term Letter of Credit to be reinstated in the full Term Letter of Credit Amount, or cause a supplemental Term Letter of Credit to be provided by a Qualified Issuer for the benefit of Party A, such that the total credit available shall at all times be not less than the Term Letter of Credit Amount. In any instance in which Party A has drawn against a Term Letter of Credit, but has not applied such cash against a payment obligation of Party B then due, and is holding such cash in the manner provided in Subparagraph (d) hereof, the amount of such cash being held by Party A shall be deemed to satisfy a portion of Party B's obligation to maintain the Term Letter of Credit, and Party B shall not be required to supplement, reinstate or replace the Term Letter of Credit as to such amount.

(b) Obligation to Maintain and Replace Semi-Annual and Bi-Monthly Letters of Credit. The provisions of this Subsection 8.5(b) shall apply with respect to a Subject Transaction for the purchase and sale of Unit Firm Energy, but shall not apply to any other Transactions:

- (i) Effective for the Semi-Annual Period commencing on _____, 20__, and thereafter for each Semi-Annual Period, Party B shall deliver to Party A a Semi-Annual Letter of Credit issued by a Qualified Issuer with a stated amount equal to the Party B Performance Assurance Amount determined for such Semi-Annual Period as set forth in Exhibit 2. On or within three (3) Business Days prior to the last Business Day prior to the commencement of each Semi-Annual Period thereafter, Party B shall deliver to Party A a replacement Semi-Annual Letter of Credit, which shall be in effect for the immediately following Semi-Annual Period, with a stated amount equal to the Party B Performance Assurance Amount for such Semi-Annual Period. The term of each Semi-Annual Letter of Credit shall commence on the first day of the applicable Semi-Annual Period, and terminate on the last day of that Semi-Annual Period. The Semi-Annual Letter of Credit, if required, for the final Semi-Annual Period in 20__, shall expire on the Credit Support Termination Date, or such earlier time as specified in such Letter of Credit, provided that Party B provides Party A with a replacement Semi-Annual Letter of Credit in the same amount at least five (5) Business Days prior to the expiration of such Semi-Annual Letter of Credit, it being understood and agreed that if a Semi-Annual Letter of Credit is required to be in effect as of December 31, 20__, such Semi-Annual Letter of Credit will be maintained until the Credit Support Termination Date. With respect to any Semi-Annual Period, no Semi-Annual Letter of Credit shall be required to be delivered for such Semi-Annual

Period if the amount of such Semi-Annual Letter of Credit would be less than One Hundred Thousand U.S. Dollars (\$100,000).

- (ii) Following the occurrence of a Credit Event with respect to Party B, Party B shall deliver to Party A no later than five (5) Business Days prior to the beginning of the next Bi-Monthly Period, and thereafter, no later than five (5) Business Days prior to the beginning of each subsequent Bi-Monthly Period, a Bi-Monthly Letter of Credit issued by a Qualified Issuer with a stated amount equal to the Party B Performance Assurance Amount, determined as set forth in Exhibit 2 for the applicable Bi-Monthly Period; provided, however, that Party B shall always have at least seven (7) Business Days following the relevant Credit Event before it is required to provide a Bi-Monthly Letter of Credit; provided, further, if for the applicable Bi-Monthly Period, a Semi-Annual Letter of Credit is outstanding, such Semi-Annual Letter of Credit will remain outstanding and (x) if the stated amount of the outstanding Semi-Annual Letter of Credit is less than the Party B Performance Assurance Amount for such Bi-Monthly Period, the amount of the Bi-Monthly Letter of Credit that Party B is required to provide shall be equal to the Party B Performance Assurance Amount less the stated amount of the outstanding Semi-Annual Letter of Credit and (y) if the stated amount of the outstanding Semi-Annual Letter of Credit is equal to or greater than the Party B Performance Assurance Amount for such Bi-Monthly Period, no Bi-Monthly Letter of Credit need be provided for such Bi-Monthly Period. The term of each Bi-Monthly Letter of Credit shall commence on the first day of the applicable Bi-Monthly Period, and terminate on the last day of that Bi-Monthly Period. The Bi-Monthly Letter of Credit, if required, for the final Bi-Monthly Period in 20__ shall expire on the Credit Support Termination Date, or such earlier time as specified in such Bi-Monthly Letter of Credit, provided that Party B provides Party A with a replacement Bi-Monthly Letter of Credit in the same amount at least five (5) Business Days prior to the expiration of such Bi-Monthly Letter of Credit, it being understood and agreed that if a Bi-Monthly Letter of Credit is required to be in effect as of December 31, 20__, such Bi-Monthly Letter of Credit will be maintained until the Credit Support Termination Date notwithstanding the cessation of the circumstances giving rise to Party B's obligation to furnish such Bi-Monthly Letter of Credit. Each Bi-Monthly Letter of Credit shall be substantially in the form (other than the stated amount) set forth in Exhibit 4 (Form of Term Letter of Credit). With respect to any Bi-Monthly Period, no Bi-Monthly Letter of Credit shall be required to be delivered for such Bi-Monthly Period if the Party B Performance Assurance Amount calculated with respect to such

period is less than One Hundred Thousand U.S. Dollars (\$100,000).

- (iii) In the event Party A shall make any draw against a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit in accordance with this Agreement during any period in which a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit is required to be in effect, Party B shall, within five (5) Business Days, cause the Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, as the case may be, to be reinstated in the full Party B Performance Assurance Amount, or cause a replacement or supplemental Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, as the case may be, to be provided by a Qualified Issuer for the benefit of Party A, such that the total credit available shall at all times be not less than the Party B Performance Assurance Amount. In any instance in which Party A has drawn against a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, but has not applied such cash against a payment obligation of Party B then due, and is holding such cash in the manner provided in Subparagraph (d) hereof, the amount of such cash being held by Party A shall be deemed to satisfy a portion of Party B's obligation to maintain a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, as the case may be, and Party B shall not be required to supplement, reinstate or replace such Letter of Credit as to such amount.

(c) Draws. Party A shall be entitled to make a draw or draws upon a Party B Letter of Credit upon the occurrence of any of the following events (regardless of whether the event described below relates to only one such Party B Letter of Credit), and, where applicable, at the following times, for a portion of or for the full face amount of such Party B Letter of Credit as Party A shall determine in its sole discretion:

- (i) immediately upon Party B and/or the issuer of a Party B Letter of Credit becoming Bankrupt as defined herein;
- (ii) upon the occurrence of an Event of Default with respect to Party B regarding the Subject Transaction under this Agreement (whether or not Party A elects to exercise remedies under the Agreement in connection therewith); provided that such draw shall be made only in the amount or amounts then due and owing by Party B to Party A with respect to the Subject Transaction; provided, further, that if such Event of Default is continuing and additional amounts become due and owing by Party B to Party A hereunder, Party A may make additional draws in regard to such amounts as they become due;
- (iii) at any time within thirty (30) days prior to the date of expiration of a Party B Letter of Credit, if Party B is required to provide a

Party B Letter of Credit for the date immediately following the expiration of the Party B Letter of Credit and Party A has not received unqualified written confirmation from a Qualified Issuer that the required renewal or replacement Party B Letter of Credit issued by such Qualified Issuer will be delivered to Party A no later than three (3) Business Days prior to such date of expiration, in an amount equal to the amount required pursuant to this Agreement and in the form required hereunder;

- (iv) if, notwithstanding the written confirmation referenced in clause (iii) above, the relevant Party B Letter of Credit is not renewed or a replacement Party B Letter of Credit in the form required hereunder and in the amount required by this Agreement is not delivered to Party A prior to the third (3rd) Business Day prior to the date of expiration of the relevant then-current Party B Letter of Credit; or
- (v) a Credit Event has occurred with respect to the issuer of the Party B Letter of Credit and Party B has failed to deliver to Party A a replacement Party B Letter of Credit issued by a Qualified Issuer in the form required hereunder within five (5) Business Days of such event.

(d) Application of Proceeds of Draws. In the event that Party A at any time receives proceeds of any Party B Letter of Credit, title in such proceeds shall vest in Party A. Party A shall utilize such proceeds to satisfy amounts owed by Party B to Party A pursuant to the Subject Transaction after giving effect to any set-off rights under this Agreement regarding the Subject Transaction. For the purposes of this Section 8.5, amounts owed by Party B to Party A, and the use of any Party B Letter of Credit proceeds therefor, shall not be affected by any rulings in any Bankruptcy proceeding or similar proceeding, including but not limited to any stay or discharge of Party B's obligations to Party A under this Agreement, the intent of the Parties being that this Section 8.5 shall operate as if no Bankruptcy had occurred, and Party A shall be entitled to draw and realize the proceeds of the Party B Letter of Credit to satisfy such obligations without delay, notwithstanding any stay or discharge of Party B's obligations to Party A under this Agreement. In the event any draw or draws are made pursuant to Subparagraphs c)(i), (iii), (iv) or (v) above, and such funds are not immediately applied to satisfy then-outstanding payment obligations of Party B to Party A, Party A shall hold such funds separate and apart from all other funds of Party A in an interest-bearing account, and apply the same to any future payment obligations of Party B to Party A; provided, however, if prior to the application of such funds for such purposes, Party B is not in default of any obligation with respect to the Subject Transaction and has provided the appropriate replacement Party B Letter of Credit (or no Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit is then required to be in effect), Party A shall promptly remit such funds to Party B, with accrued interest. Following the satisfaction in full of all obligations of Party B in respect of the Subject Transaction and after the Credit Support Termination Date, and after giving effect to the exercise of any set-off rights, any surplus Party B Letter of Credit proceeds held by Party A shall be transferred to Party B, without interest, provided that if such amounts are not transferred to

Party B within five (5) Business Days after the Credit Support Termination Date, such amount shall be returned with interest at the Interest Rate from such date.

(e) Holding Proceeds of Draws. With respect to those amounts drawn pursuant to Subparagraph (c)(i) above that are not used to satisfy any amounts owed by Party B to Party A hereunder, Party A shall hold such amounts separate and apart from all other funds of Party A in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid by Party B or the issuer of the Party B Letter of Credit to Party A prior to Party B becoming Bankrupt are not subject to being recovered from Party A pursuant to Sections 544, 547, 549 or 550 of the Bankruptcy Code (or pursuant to any successor provisions of law) in any proceeding instituted under the Bankruptcy Code, or any comparable provision of any applicable state bankruptcy or creditors' rights law, by or against Party B or the issuer of the Party B Letter of Credit. If such a final determination is made, Party A shall pay Party B (or, if applicable, the issuer of the Party B Letter of Credit) the funds drawn under the Party B Letter of Credit pursuant to Subparagraph (c)(i), net of any amounts that have been applied in regard to amounts owed by Party B to Party A with respect to the Subject Transaction, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Party A, Party A shall retain the funds drawn under the Party B Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Party B (or, if applicable, the issuer of the Party B Letter of Credit).

ARTICLE NINE GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes, fees or other charges of whatever kind or nature whatsoever imposed by any government authority (“**Governmental Charges**”) on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article Six of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. Either Party, upon written request of the other, shall provide reasonably satisfactory evidence of exemption if either Party is exempt from taxes.

ARTICLE TEN MISCELLANEOUS

10.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall remain in effect until _____, 20___, unless previously terminated by either Party upon (thirty) 30 days’ prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and, provided, further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. Notwithstanding any other provision of this Agreement, as of the Effective Date and as of the effective date of each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) [intentionally deleted];
- (x) it has entered into this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

NYPA further represents and warrants to Party B continuing throughout the term of this Agreement, with respect to this Agreement and the Subject Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Agreement have or will be taken and performed as required under the Act and NYPA’s bylaws or regulations, (ii) all persons making up the governing body of NYPA are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Agreement by NYPA is authorized under the provisions of the Act, (iv) the term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant governing documents and applicable law, and (v) the obligations to make payments hereunder do not constitute any kind of indebtedness of

NYPA or create any kind of lien on, or security interest in, any property or revenues of NYPA which, in either case, is proscribed by any provision of the Act or any other relevant governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

Notwithstanding any other provision of this Agreement, as of the Effective Date and continuing until termination of this Agreement, including those Transactions entered into on or before the effective date of termination, the Buyer represents, warrants and covenants to the Seller that all Energy received by the Buyer pursuant to this Agreement shall be purchased by the Buyer for resale, and the Buyer shall resell all such Energy to a third party or parties and shall not use or consume any such Energy itself.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned, provided that (i) a Party may withhold such consent in its sole discretion if the effect of the assignment would cause the non-assigning Party to be in violation of or non-compliance with any applicable law, regulation, rule or order of any court, arbitrator or governmental entity, or otherwise have a material adverse effect upon the non-assigning Party); and (ii) subject to the provisions of the immediately preceding subparagraph (i), a Party may, without the consent of the other Party (and without relieving itself from liability hereunder), but with prior notice to the other Party, transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements. Any purported assignment of this Agreement made in violation of the preceding sentence shall be void and of no effect.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

10.7 Notices. All notices, requests, statements or payments shall be made as specified on pages 1-2 of this Agreement, provided notices may not be provided by e-mail unless simultaneously confirmed by a document transmitted in the foregoing manner. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by

facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General.

(a) This Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

(b) Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

(c) Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

(d) This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

(e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

(f) Any provision that (i) is declared, deemed, rendered or becomes unlawful or void, or (ii) otherwise becomes incapable of being performed in the manner originally contemplated in this Agreement, as a result of any order, judgment, action or process of an applicable court or regulatory agency, or as the result of a statutory or regulatory change (individually or collectively, any such events referred to as “**Regulatory Event**”) will not otherwise affect the remaining obligations that arise under this Agreement; provided, however, that if a Regulatory Event occurs, (y) the Parties shall promptly negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties to the greatest possible reasonable extent in the absence of the provisions affected by the Regulatory Event, and (z) if the nature of the Regulatory Event is such that the remaining unaffected portions of the Agreement cannot reasonably be reformed and continued in effect without depriving one or both Parties of a material aspect of their original bargain, the Agreement shall terminate as of the implementation date of the Regulatory Event without any further payment obligation by either Party other than settlement of payments or adjustments due with respect to all Transactions previously performed by the Parties in good faith; provided, however, that for the avoidance of

doubt, (i) an event that increases the cost of performance for a Party but otherwise does not prevent such Party from performing shall not be a Regulatory Event, and (ii) upon any such termination, neither Party shall be obligated to pay or entitled to receive any payment for Gains or Losses or any transaction costs.

(g) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

(h) All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

(i) In the event any index, reference input or other third party source required for any calculation under this Agreement shall no longer be available to the Parties due to cessation of publication thereof, substantive change in the basis or methodology for derivation thereof which makes such source inapplicable or unreliable for any purpose originally intended, or for any other reason, the Parties agree to meet within ten (10) days of learning of such unavailability and negotiate in good faith the selection of a substitute reference input that will most closely simulate the reference input that is no longer available. In the event no adequate substitute reference input is available, the parties will negotiate in good faith to revise the applicable calculation formula to produce a result approximating the original formula as closely as possible, utilizing such other variable input sources as may be practicably available.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party relating to performance or non-performance under this Agreement to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. Neither Party shall disclose the terms or conditions of a Transaction under this Agreement to a third party (other than the Party’s employees, trustees, lenders, counsel, accountants and advisors, and in the case of Party A, its governmental customers in southeastern New York and their advisors, who have a need to know such information and have agreed to keep such terms confidential subject to any disclosure required by applicable law or regulation) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court

or regulatory proceedings. The Parties shall be entitled to all remedies available at law or in equity enforce, or seek relief in connection with, this confidentiality obligation

10.12 Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “**Imaged Agreement**”). The Imaged Agreement, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

10.13 Dispute Resolution

(a) If any dispute shall arise between the Parties in connection with or under this Agreement, the Parties shall first attempt in good faith to resolve such dispute between themselves in the following manner. If any such dispute shall arise, either Party may give a notice of dispute to the other Party. Within ten (10) Business Days after the receipt of such notice, the Parties shall meet at the working level to discuss the dispute. If following such discussion the Parties have not resolved such dispute, then within ten (10) Business Days after the conclusion of such meeting at the working level, members of the senior management of the Parties shall meet in person or by telephone to discuss the dispute. If following such discussion the Parties have not resolved such dispute, then either Party may bring such action at law or in equity as it deems necessary or desirable. Party A and Party B each consents to the exclusive jurisdiction and venue of any state or federal court within or for the City of New York, New York County, New York for adjudication of any such suit, claim, action or other proceeding in law or equity relating to this Agreement or to any other transaction contemplated hereby. Party A and Party B each accept, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waive any objection as to venue and any defense of forum non conveniens. Each of Party A and Party B irrevocably consents to the service of process from any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the addresses set forth herein for the purpose of giving notices. EACH OF PARTY A AND PARTY B HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION WITH SUCH AGREEMENTS.

(b) Either Party A or Party B may, without prejudice to any negotiation or mediation procedures, proceed in the courts of the State of New York to obtain provisional

judicial relief if, in such party's sole discretion, such action is necessary to protect public safety, avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of any dispute resolution procedures employed by the parties or pendency of any action at law or in equity. Except for temporary injunctive relief under this section, neither Party A nor Party B shall bring any action at law or in equity to enforce, interpret, or remedy any breach or default of this Agreement without first complying with the provisions of this Section 10.13.

(c) All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the procedures specified in this Section 10.13 are pending. The parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Section 10.13, a party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Despite such action, the parties will continue to participate in good faith in the procedures specified in this Section 10.13.

10.14 Regulatory Review.

(a) The Parties, for themselves and their respective successors and assigns, (i) agree that (absent the agreement of all Parties to the proposed change) the standard of review for proposed changes to any section of this Agreement, or to any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, that specifies the rate(s) or other material economic terms and conditions agreed to by the Parties, whether proposed by a Party or FERC acting *sua sponte*, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). To the extent permitted by applicable law, the Parties, for themselves and their respective successors and assigns, hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.

(b) Notwithstanding the foregoing subsection(a), to the fullest extent permitted by applicable law, each Party, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate(s) or other material economic terms and conditions agreed to by the Parties. The Parties agree that, to the fullest extent permitted by applicable law, the “sanctity of contract” principles acknowledged by FERC in its Notice of Proposed Policy Statement (issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail and neither Party shall unilaterally seek to obtain from FERC any relief changing the rate(s) and other material economic terms and conditions of their agreement(s), as set forth in this Agreement, notwithstanding any changes in applicable law or markets that may occur. To the extent that any non-party seeks such relief, or FERC acts *sua sponte* to consider such changes, the Parties further covenant and agree to use commercially reasonable efforts (which efforts may include the costs and expense of appearing before FERC or

in connection with any appeals of FERC orders but shall not otherwise require the payment of money by a Party), to cooperate to jointly oppose the entry of an order by FERC providing any such changes. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this paragraph shall not apply, provided that, consistent with subsection(a) above, neither Party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in subsections (a) above.

(c) To the extent FERC adopts in a final or subsequent policy statement the use of specific language to accomplish the objective described in subsections (a) and (b) above which specific language varies from that set out in subsection (a) above, then the Parties shall amend subsection (a) above to reflect such specific language, provided that to the extent that the objective behind the specific language adopted in any such final or subsequent policy statement is in any way inconsistent with the mutual intent of the Parties in this regard as currently set forth in subsections (a) and (b) above, then the Parties shall meet to attempt to negotiate in good faith an amendment to this section to address such inconsistencies, provided, further, that neither Party shall be obligated in any way to agree to any such amendment.

10.15 Counterparts. This Agreement may be executed by the Parties in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement. This Agreement may be executed in any number of multiple originals, each of which shall be deemed an original instrument. Any electronic facsimile transmission by a Party of any signature of that Party to the other Party shall be deemed an original and shall bind such Party sending such transmission.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

Power Authority of the State of New York
Party A

Party B

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

List of Exhibits and Schedules

Exhibit	Title
1	Calculation of Gains and Losses
2	Procedures for Computation of Performance Assurance Amounts
3A	Subject Transaction Confirmation – Energy
3B	Subject Transaction Confirmation – Capacity or Transmission
4	Form of Term Letter of Credit
5	Form of Confirmation Letter
6	NYPA Opinions
7	Party B Opinions
8A	Site [if applicable]
8B	Design [if applicable]
8C	Consents Needed [if applicable]
Schedule A	Products and Related Definitions
Appendix	Items to be addressed by Bidders offering Products from facilities to be developed after contracting

Exhibit 1 to PPA

Calculation of Gains or Losses

Gains or Losses will be determined by the calculating Party, acting in good faith and using commercially reasonable procedures. The Gains or Losses will be determined as of the Early Termination Date, if applicable.

In determining the Gains or Losses, the calculating Party may consider any relevant information, including, without limitation, one or more of the following types of information:

(i) quotations (either firm or indicative) for replacement transactions of a similar nature (considering quantity, length of term and applicable Product, and any other relevant considerations) supplied by one or more third parties that may take into account the creditworthiness of the calculating Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the calculating Party and the third party providing the quotation;

(ii) information consisting of relevant market data in the relevant market for transactions of a similar nature (considering quantity, length of term and applicable Product, and any other relevant considerations) supplied by one or more third parties including, without limitation, relevant rates, prices, volatilities, spreads, correlations or other relevant market data in the relevant market if that information is of the same type used by the calculating Party in the regular course of its business for the valuation of transactions of a similar nature (considering quantity, length of term and applicable Product, and any other relevant considerations) for financial reporting purposes; or

(iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the calculating Party's Affiliates) if that information is of the same type used by the calculating Party in the regular course of its business for the valuation of transactions of a similar nature (considering quantity, length of term and applicable Product, and any other relevant considerations) for financial reporting purposes.

The calculating Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the calculating Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would not satisfy those standards. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information. Such data and quotes (firm, indicative or otherwise) supplied by third parties must be submitted and documented in writing on the letterhead (or some other identifiable means) of the relevant submitting source.

When the calculating party is a Non-Defaulting Party (and the other Party is a Defaulting Party), then in lieu of the foregoing, the calculating party can calculate Gains and Losses pursuant to the procedure set forth in Exhibit 2 hereof.

Exhibit 2 to PPA

Procedure for Computation of Performance Assurance Amounts

I. Party B Letter of Credit Requirement for Subject Transactions for UCAP or UCAP plus Transmission

In the case of a Subject Transaction involving either UCAP or UCAP plus Transmission Products, the Term Letter of Credit Amount with respect to such Products shall be provided as set forth in this Section I. *(The Term Letter of Credit Amount with respect to any Subject Transaction for Energy shall be provided as set forth in Sections II-VI below.)*

A. UCAP Term Letter of Credit Amount Calculations:

In the case of a Subject Transaction for UCAP, the Term Letter of Credit Amount for UCAP shall be calculated separately for each annual period, and shall be twenty-five percent (25%) of the difference between (i) the weighted average UCAP price for which the Subject Transaction Confirmation provides for such annual period and (ii) the weighted average UCAP price at eighty percent (80%) reserve margin from the NYISO NY city zone UCAP demand curve for the applicable annual period. For example, if the weighted average UCAP price from the demand curve at the 80% reserve margin point on the UCAP demand curve is \$12/kW-month and the weighted average of the Subject Transaction Confirmation price is \$8/kW-month for 100 MWs of UCAP, then the Term Letter of Credit Amount for such annual period would be, for such annual period, as follows:

$$(\$12-\$8 \text{ kW-month}) * (0.25) * (1000\text{kW}/1 \text{ MW}) * 100 \text{ MW} * 12 \text{ months/year} = \$1,200,000/\text{year} \text{ or } \$12,000/\text{MW per year}$$

For a UCAP Subject Transaction involving multiple years, the Term Letter of Credit Amount shall be the sum of net present values of the foregoing amounts for all applicable years remaining under the Subject Transaction, with each annual value determined by expanding the foregoing amount in accordance with the CPI, as defined in Section II below, for the most recently completed 12-month period, and with net present value calculated in accordance with the discount rate set forth in Section V below. For such multiple year UCAP transactions, the Term Letter of Credit Amount will be calculated upon execution of the Agreement, with Party B to provide the required Term Letter of Credit covering such Term Letter of Credit Amount then determined. For example, for a Subject transaction Confirmation providing for UCAP executed in January 2008 for delivery of UCAP in the period 2011-2031, the Term Letter of Credit Amount shall be based on annual amount estimated for 2011, which shall be deemed to be equal to the annual amount value derived from 2008 values (i.e., held constant, not escalated on the basis of the CPI), and then that estimated 2011 annual amount shall be escalated over the 2012-2031 period, using the CPI for 2008, and the sum of net present values of all annual values for 2011-2031 will be determined using the applicable discount rate, with the resulting figure being the initial Term Letter of Credit Amount. Thereafter, on an annual basis (either on a calendar-year basis or contract year basis, as agreed by the Parties), the Term Letter of Credit Amount will be recalculated for the remaining term of the Subject Transaction on the basis of then-applicable

values, and Party B shall provide a replacement Term Letter of Credit in the recalculated amount at the commencement of the next annual period.

The Term Letter of Credit for UCAP, and each annual replacement or supplemental Term Letter of Credit therefor, shall be provided in manner and time for which Section 8.5(a) of the Agreement provides.

B. Transmission Term Letter of Credit Amount Calculations:

For a Subject Transaction for Transmission, the Term Letter of Credit Amount required for purposes of Section 8.5(a) for Transmission shall be determined on an annual basis using historical NYISO posting for day-ahead-market (“**DAM**”) prices for Energy, congestion and losses as posted by the NYISO for the previous annual period. Subject Transactions for transmission shall be valued by estimating congestion value between the NYISO receipt and delivery zone locations of the transmission line, respectively. For example, assume NYISO average DAM Energy clearing price postings for zone G and A are \$50/MW hour and \$30/MW hour respectively, the sum of congestion and losses between such zones would be \$20/MW hour. If the NYISO estimates losses on the flow path between these two NYISO zones for such period, as posted on their website, at \$6/MW hour, then the resultant value of congestion for such line for such annual period would be \$14/MW hour.

To determine the Term Letter of Credit Amount for an applicable annual period for the purposes of Transmission transactions covered by the Subject Transaction Confirmation, the congestion value for such annual period determined by following the above steps shall be subtracted from the transmission rate for such period set forth in the relevant Subject Transaction Confirmation. The resulting value shall be held constant and multiplied by the quantity for such annual period (in MW) set forth in the Subject Transaction Confirmation. The value arrived from such multiplication shall be further multiplied by twenty-five percent (25%) and the resulting product shall be the Term Letter of Credit Amount for Transmission Products for such annual period.

[Example to developed]

For a Subject Transaction covering Transmission involving multiple years, the Term Letter of Credit Amount shall be the sum the net present values of the foregoing amounts for all applicable years remaining under the Subject Transaction, with each annual value determined by expanding the foregoing amount in accordance with the CPI, as defined in Section I above, for the most recently completed 12-month period, and with net present value calculated in accordance with the discount rate set forth in Section V below. For such multiple-year Transmission transactions, the Term Letter of Credit Amount will be calculated upon execution of the Agreement, with Party B to provide the required Term Letter of Credit covering such Term Letter of Credit Amount then determined. For example, for a Subject Transaction Confirmation providing for Transmission executed in January 2008 for delivery of Transmission Products in the period 2011-2031, the Term Letter of Credit Amount shall be based on annual amount estimated for 2011, which shall be deemed to be equal to the annual amount derived from 2008 values (i.e., held constant, not escalated on the basis of the CPI), and then that estimated 2011 annual amount shall be escalated over the 2012-2031 period, using the CPI for 2008, and the sum

of net present value of all annual values for 2011-2031 will be determined using the applicable discount rate, with the resulting figure being the initial Term Letter of Credit Amount. Thereafter, on an annual basis (either on a calendar-year basis or contract year basis, as agreed by the parties), the Term Letter of Credit Amount will be recalculated for the remaining term of the Subject Transaction on the basis of then-applicable values, and Party B shall provide a replacement Term Letter of Credit in the recalculated amount at the commencement of the next annual period.

The Term Letter of Credit for Transmission, and each annual replacement or supplemental Term Letter of Credit therefor, shall be provided in manner and time for which Section 8.5(a) of the Agreement provides.

C. General Provisions:

Each Term Letter of Credit required for UCAP and Transmission Products pursuant to this Section I shall be issued, renewed and maintained as set forth in Section 8.5(a) of the Agreement, and shall be subject to the provisions thereof, including the requirement for reinstatement in full following any draw by Party A.

In any instance in which the Subject Transaction Confirmation provides for transactions involving two or more Products, the Term Letter of Credit requirements of Section 8.5(a) shall be cumulative, and Party B shall provide a separate Term Letter of Credit for each Product in the amounts set forth in the Agreement and as required hereunder. In any instance where the Products include both Energy and UCAP and/or Transmission Products, the provisions of Sections II-VI of this Exhibit shall apply to Energy Products Transactions and the provisions of Section VI of this Exhibit 2 shall apply to UCAP and/or Transmission Products.

II. Letter of Credit requirement for Energy Transactions - Background:

During the term of the Subject Transaction, forward energy prices for various future periods are required to be calculated for use in semi-annually or bi-monthly computations (“**Computations**”), as applicable, to determine the NYPA Performance Assurance Amounts and Party B Performance Assurance Amounts under the Master Power Purchase and Sale Agreement (the “**Agreement**”). These prices hereinafter will be referred to as the ‘**Forward Energy Prices.**’

This Exhibit establishes a methodology to determine the Forward Energy Prices.

The general methodology in establishing the Forward Energy Prices is based on three components: (1) quotes from published third party information (such as Platt’s Megawatt Daily) for the longest term available, (2) quotes off the New York Mercantile Exchange (“**NYMEX**”), and (3) projected gas prices based on NYMEX data and heat rates derived from historical data. Specifically, published information for future periods (“**Published Forward Energy Prices**”) will be averaged with electricity prices, for forward time periods, derived by using NYMEX-posted natural gas quotes (with a correction for basis location) adjusted for heat rates (“**Gas Forward Energy Prices**”). For those future time periods for which NYMEX quotes or published price data are not available, the most recent known NYMEX prices will be projected into the future using a constant escalator based upon the consumer price index for All Urban Consumers known as CPI-U published by the United States Department of Labor: Bureau of Labor Statistics (the “**CPI**”). The CPI is available at the U.S. Department of Labor, Bureau of Labor Statistics website under Economic News Release: Current Consumer Price Index [www.bls.gov/news.release/pdf/cpi.pdf] in the monthly news release. Within the news release refer to Table A. Percent changes in CPI for Urban Consumers (CPI-U): Unadjusted 12 month ended month, year value. This value shall be the escalator for electricity prices to be applied to estimate electricity prices beyond the quoted date range of the natural gas prices on the NYMEX.

Once the Forward Energy Price for a particular month is determined, it will be compared with the fixed price for Energy (the “**Fixed Price**”) under the Agreement applicable for that month, and the difference calculated (the “**MTM Difference**”). The MTM Difference will be multiplied by the applicable amount of megawatt hours in such month (the result hereinafter referred to as the “**MTM Difference Amount**”). The sum of the net present values of the of MTM Difference Amounts will then be calculated in accordance with Generally Accepted Accounting Principles, consistently applied, using the discount rate set forth in Section V below. If such sum of net present values is a positive number, then that positive number will be used to develop the Party B Performance Assurance Amount. If such sum of net present values is negative, such amount will be the NYPA Performance Assurance Amount.

III. Forward Energy Price Calculation Periods:

Set forth below in Table 1 are the periods for which Forward Energy Prices shall be calculated for the purpose of performing the Computations.

Table 1 Semi-Annual Computations	Peak Contracts	Off-Peak Contracts
On or within five (5) Business Days preceding [insert applicable calculation date – which shall be Nov. 17 for a Semi-Annual Period commencing the following January 1, and May 17 for a Semi-Annual Period commencing the following July 1]	[insert applicable time periods]	[insert applicable time periods]
On or within five (5) Business Days preceding [insert applicable calculation date – which shall be Nov. 17 for a Semi-Annual Period commencing the following January 1, and May 17 for a Semi-Annual Period commencing the following July 1]	[insert applicable time periods]	[insert applicable time periods]
On or within five (5) Business Days preceding [insert applicable calculation date – which shall be Nov. 17 for a Semi-Annual Period commencing the following January 1, and May 17 for a Semi-Annual Period commencing the following July 1]	[insert applicable time periods]	[insert applicable time periods]

[Table to be expanded to cover all relevant calculation dates and time periods.]

IV. Determining Forward Energy Prices:

Three (3) Business Days prior to each Computation date, the Parties will meet and will jointly determine the Forward Energy Prices following the procedure set forth below.

1. Market Survey of Available Published Forward Energy Prices from Published Third Parties Sources

The Authority will obtain forward pricing information from published sources, *e.g.*, Platt’s *Energy Trader*, to determine the Published Forward Energy Prices for future time periods in which energy deliveries will occur in relevant NYISO zones.

2. Determination of Gas Forward Energy Prices Using NYMEX Data

a. The Gas Forward Energy Price will be based on the forward delivered gas price for a particular month. The forward delivered gas price will be equal to the sum of (1) the forward NYMEX Henry Hub settlement price for such month (obtained the same Business Day as the market survey described in paragraph (1) above) and (2) the NYMEX ClearPort Transco Zone 6, NY City gate basis.

i. NYPA will record the forward Zone 6 basis as quoted on the NYMEX ClearPort.

ii. For those months for which there is no Zone 6 NYMEX Clear Port basis pricing information available, then the Zone 6 basis shall be determined based on the latest historical information that corresponds to the month under consideration. For example, if forward Zone 6 basis is required but not available from NYMEX ClearPort for July in a future year, then the actual Zone 6 basis for the most recent July is to be used. Historical Zone 6 basis will be computed as the average of the difference (computed daily) between the price for Transco Zone 6, NY City gate, and the price for Henry Hub published by Platt’s *Gas Daily*.

b. The forward delivered gas price shall be used to develop the Gas Forward Energy Price by use of heat rates (“**Heat Rates**”) through the following formula:

Gas Forward Energy Price for a particular month = (Forward delivered gas price for that month) x (Heat Rate for that month)

The Heat Rate shall be derived in accordance with Section V hereof.

c. For periods when no NYMEX data is available, the forward delivered gas price for a particular month shall be equal to latest NYMEX forward delivered gas price for such month (the “**Latest Gas Price**”) escalated by the average CPI for the 12 months prior to the date of the Computation applied to each 12-month period between the month of the Latest Gas Price and the month in question. For example, if a forward delivered gas price is needed for August 2012, and the calculation date is January 2008, the latest August NYMEX quote available shall be escalated at the average of the CPI for the months January 2007 through December 2007.

3. Determination of Forward Energy Prices

The Forward Energy Price for a particular month shall be the average of the Published Forward Energy Price and the Gas Forward Energy Price for that month.

In cases where there is no Published Forward Energy Price, the Forward Energy Price will be equal to the Gas Forward Energy Price.

V. Discount Rate

The Parties agree that the discount rate to be used in the net present value computation described in Sections II through VI hereof shall be determined as of 10:00 AM New York Time on the day of calculation [see Table 1 above] by reference to the yields of those United States Treasury Strip securities which have maturity dates most closely following the period for which the applicable Forward Energy Prices are to be determined. The price or yield of such strips will be taken from Bloomberg page PXS (or if not available, any other similar page to which the Parties mutually agree) based upon the average of the bid and offered price or yield of the securities.

VI. REFERENCE SHEETS: Process Steps

Table A

Fixed Price(s)(per the Agreement

Year/Month	Peak	Off-Peak	7x24 Price/Full Time Period

* For those time periods for which NYMEX quotes are not posted, the last available NYMEX gas price for the month in question shall be escalated (as described in Section III(2)(c) hereof) at the average of the CPI for the 12 months prior to the computation date to arrive at a NYMEX price for each subsequent year until NYMEX prices have been established for each remaining year of the term of the contract.

** Heat rates for the most recent twelve (12) months prior to the date of the Computation shall be developed (see Heat Rate Table below). These heat rates shall be developed by averaging the Transco Zone 6 NYC gas prices, for each month, as published in Gas Daily, to develop a monthly index gas value. This index gas value will be the denominator in a fraction, which will have as its numerator the average of the settled LBMP prices (7x24) posted by the NYISO for the relevant zone. The resulting value will be the heat rate. This process will be followed to establish a heat rate for each month of the most recent prior twelve (12) months.

***The Gas Forward Energy Price shall be determined by multiplying the Delivered Price for a month (Gas) by the Heat Rate for that month.

Table C.1

Heat Rate Table

Month, year	NYISO settled LBMP price (7x24)	Monthly Gas Index: Transco-Zone 6- NYC-- Gas Daily	Heat Rate--Derived
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

ATTACHMENT TO EXHIBIT 2 – NYPA CREDIT SUPPORT REQUIREMENTS FOR PROJECTS INVOLVING NEW FACILITIES CONSTRUCTION

[Note – this information is provided for Bidder information only, and will not be included in any Agreement in this form.]

<i>Bidder's Proposed New Facilities & Projects</i>	<i>Credit Support Required Per section 3.6(c)(v) within Three (3) Days of Contract Execution</i>	<i>Unexcused Delays in Meeting Target Consents Application Date or Target Notice to Proceed Date</i>	<i>Unexcused Delays in Meeting the Target Commercial Operation Date</i>
Build New Generation (BNG) + Transmission (T) {New generation at location of new transmission facilities}	\$ 5 MM / 100 MW	\$100,000 / 100 MW { \$30 MM maximum; 60 days }	\$50,000 / 100 MW { \$15 MM maximum; 60 days }
BNG+ T+point-to-point (PtP) transmission rights from BNG location to T interconnect	\$ 7.5 MM / 100 MW	\$100,000 / 100 MW { \$30 MM maximum; 60 days }	\$50,000 / 100 MW { \$15 MM maximum; 60 days }
T+PtP+ Existing Generation to Provide UCAP or UCAP plus Associated Energy {Existing Generation NOT at location of new T interconnect}	\$750,000 / 100 MW	\$40,000 / 100 MW { \$12MN maximum; 60 days }	\$40,000 / 100 MW { \$12MN maximum; 60 days }

Exhibit 3A to PPA

**SUBJECT TRANSACTION CONFIRMATION –
CAPACITY OR CAPACITY PLUS TRANSMISSION**

Date: _____, 200_
To: Joseph Brennan (914) 287-3133
Attention: New York Power Authority Confirmation Department
Fax No.: (914) 287-3391
From: _____
Attention: _____

The purpose of this Confirmation is to confirm the terms and conditions of the transaction (the “**Subject Transaction**”) agreed upon by Buyer and Seller (both as defined herein) as of the Trade Date specified below. This Subject Transaction Confirmation incorporates by reference and is subject to the provisions of the Master Power Purchase and Sale Agreement entered by and between Buyer and Seller on _____, 20__ (“Agreement”). It is further agreed between Buyer and Seller that the Agreement shall be modified or applied in the manner expressly described herein.

Notwithstanding any contrary provisions in the Agreement, any conflict between this Subject Transaction Confirmation and the Agreement shall be resolved in favor of this Subject Transaction Confirmation. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

Buyer and Seller confirm the following terms of our Transaction:

Buyer: New York Power Authority (the “**Authority**”)
Seller: _____
Trade Date: _____, 200_
Term: _____, 200_ through _____, 200_
Price: \$_____ per kW-month (_____ U.S. Dollars)

Billing and Payment: Seller shall provide an invoice to the Authority attention Ms. Manna Yu, Manager – Accounts Payable (office: (914) 287-3370 or fax: (914) 287-3392) each month in accordance with the Agreement for the Monthly Payment Amount below. The Monthly Payment Amount of each such invoice shall be \$_____ determined as the product of the Price above and the Quantity below. The Authority shall pay this Monthly Payment Amount by wire transfer to the account of _____ with Credit to Buyer in accordance with the Agreement.

Commodity: NYISO Unforced Capacity (“UCAP”) for New York City (Zone “J”) and certified on a monthly basis with the NYISO. [For Transmission: UCAP deliverability rights utilizing Seller's ___ kV _____ facilities, from _____ to the Delivery Point, in accordance with applicable rules of the NYISO.]

Quantity: _____ MW per month (_____ kW per month) for each month of the above Term. [For Transmission: _____ kW of UCAP deliverability rights on a continuous basis, or [specify any availability variances].]

Delivery Point: The UCAP is made available by Seller from Seller's [describe applicable facilities] and delivered to the Authority at the bus identified by the NYISO nomenclature as _____. [For Transmission: From _____ to the bus identified by the NYISO nomenclature as _____.]

Scheduling: For Seller (____) ____-____. For Buyer (914) 681-6853.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Subject Transaction Confirmation and returning it to us via the above-referenced facsimile number.

SELLER:

NEW YORK POWER AUTHORITY:

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

Exhibit 3B to PPA

**MASTER POWER PURCHASE AND SALE AGREEMENT
SUBJECT TRANSACTION CONFIRMATION - ENERGY**

[Note: This is an indicative Subject Transaction Confirmation for a “Unit Firm” Offer for Associated Energy from a Generator Also Providing UCAP – Energy may not be offered without a UCAP Confirmation.]

This Subject Transaction Confirmation shall confirm the Subject Transaction agreed to on the ___ day of _____, 200_, between Power Authority of the State of New York ("Party A") and _____ ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____ (Party B)

Buyer: Power Authority of the State of New York (Party A)

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No *Force Majeure*)

System Firm

(Specify System: _____)

Unit Firm

Specified Unit(s): _____

Other _____

Transmission Contingency (If not marked, no transmission contingency)

<input type="checkbox"/>	FT-Contract Path Contingency	<input type="checkbox"/>
Seller	<input type="checkbox"/>	Buyer

<input type="checkbox"/>	FT-Delivery Point Contingency	<input type="checkbox"/>
Seller	<input type="checkbox"/>	Buyer

<input type="checkbox"/>	Transmission Contingent	<input type="checkbox"/>	Seller
<input type="checkbox"/>	Buyer		

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____

Delivery Period: Hour Ending (“**HE**”) 0100 Eastern Prevailing Time (“**EPT**”) _____, through HE 2400 EPT _____.

Option Buyer: Not applicable.

Option Seller: Not applicable.

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This Subject Transaction Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the “**Agreement**”) between Party A and Party B, and constitutes part of and is subject to the terms and provisions of the Agreement as defined therein. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

Party A

Party B

Power Authority of the State of New York

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

Exhibit 4 to PPA

Form of Term Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

Beneficiary: Power Authority of the State of New York
123 Main Street
White Plains, NY 10601

Date of Issuance: _____

We hereby establish our Irrevocable Standby Letter of Credit number _____ in favor of the Power Authority of the State of New York (“**Beneficiary**”) on behalf of _____ (“**Seller**”) available by draft(s) at sight for a maximum of US \$ _____ (_____ United States Dollars) against any one or more documents presented in the following form:

1) A Beneficiary’s signed certificate stating:

_____ (“**Seller**”), the issuer of this letter of credit, and/or the issuer of another letter of credit provided by Seller to Beneficiary pursuant to the Master Power Purchase & Sale Agreement by and between Beneficiary and Seller dated _____, as the same may have been amended (the “**Agreement**”) has become Bankrupt as defined in such Agreement.

2) A Beneficiary’s signed certificate stating:

An Event of Default as defined in the Master Power Purchase & Sale Agreement by and between Beneficiary and _____ (“**Seller**”) dated _____, as the same may have been amended (the “**Agreement**”), has occurred with respect to Seller and is still continuing. Seller has failed to pay Beneficiary in accordance with the terms and provisions of the Agreement, and the amount drawn represents an amount due and owing by Seller to Beneficiary.

3) A Beneficiary’s signed certificate stating:

This letter of credit will expire or another letter of credit provided by _____ (“**Seller**”) to Beneficiary pursuant to the Master Power Purchase & Sale Agreement by and between Beneficiary and Seller dated _____, as the same may have been amended (the “**Agreement**”) in accordance with its terms within three (3) local business days following the date hereof Seller has failed to provide a replacement letter of credit to Beneficiary in the form required under the Agreement

4) A Beneficiary’s signed certificate stating:

_____ (“**Seller**”) has failed to provide within thirty (30) days prior to expiry of this letter of credit or another letter of credit provided by Seller to Beneficiary

pursuant to the Master Power Purchase & Sale Agreement by and between Beneficiary and Seller dated _____, as the same may have been amended (the “Agreement”), either (i) written confirmation that such letter of credit will be renewed, or (ii) written confirmation from a Qualified Issuer, as defined in the Agreement, that a replacement letter of credit issued in the form required under the Agreement will be delivered to Beneficiary no later than three (3) local business days prior to expiry of this letter of credit.

5) A Beneficiary’s signed certificate stating:

The credit rating of the issuer of this letter of credit or another letter of credit provided by _____ (“Seller”) to Beneficiary pursuant to the Master Power Purchase & Sale Agreement by and between Beneficiary and Seller dated _____, as the same may have been amended (the “Agreement”) has been downgraded below A by Standard & Poor’s or A2 by Moody’s and Seller has failed to deliver to Beneficiary a replacement letter of credit issued by a Qualified Issuer as defined in the Agreement, in the form required under the Agreement, within five (5) local business days of notification of such event.

Special Conditions:

- Multiple partial drawings permitted, not to exceed the maximum credit available hereunder in the aggregate.
- Documents must be presented at our servicer’s counter located at _____, no later than _____, 200_.
- Documents may be presented by overnight courier delivery in lieu of presentation in person by Beneficiary’s representative.

We hereby engage with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored if drawn and presented for payment on or before the expiry date of this credit.

Except as otherwise expressly stated herein, this credit is subject to the International Standby Practices 1998, International Chamber of Commerce No. 590, (“ISP98”) and as to matters not addressed by the ISP98 shall be governed and construed in accordance with the laws of the State of New York, without regard to any applicable conflicts of laws principles thereof, and applicable U.S. Federal law. Notwithstanding Section 3.12(a) of the ISP98, we agree that a lost original credit shall be replaced by us with a new original credit upon your presentation of an affidavit of lost original and execution of a form of indemnification satisfactory to us.

Exhibit 5 to PPA

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

[Other Transactions]

This confirmation letter shall confirm the Transaction agreed to on _____, _____ between _____ (“Party A”) and _____ (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

Seller FT-Contract Path Contingency Buyer

Seller FT-Delivery Point Contingency Buyer

Transmission Contingent Seller
 Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter
Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the “Master Agreement”) between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

Exhibit 6 to PPA

NYPA OPINIONS

1. NYPA is duly organized, validly existing and in good standing under the laws of the State of New York.
2. NYPA has all regulatory authorizations necessary for it to legally perform its obligations under the Agreement.
3. The execution, delivery and performance by NYPA of the Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.
4. The Agreement and each other document executed and delivered by NYPA in accordance with the Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms.

Exhibit 7 to PPA

PARTY B OPINIONS

1. Party B is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation.
2. Party B has all regulatory authorizations necessary for it to legally perform its obligations under the Agreement.
3. The execution, delivery and performance by Party B of the Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.
4. The Agreement and each other document executed and delivered by Party B in accordance with the Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms.

Exhibit 8A to PPA [if Applicable]

SITE DESCRIPTION

Exhibit 8B to PPA [if Applicable]

DESIGN

Exhibit 8C to PPA [if Applicable]

CONSENTS

Schedule A to PPA

SCHEDULE A: PRODUCTS AND RELATED DEFINITIONS

To the extent there is a conflict between the New York Independent System Operator (“NYISO”) tariff and Schedule A, the NYISO tariff shall prevail.

“**Ancillary Services**” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“**Capacity**” has the meaning specified in the Transaction.

“**Energy**” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“**Firm (LD)**” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“**Firm Transmission Contingent - Contract Path**” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in the Agreement to the contrary.

“**Firm Transmission Contingent - Delivery Point**” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in the

Agreement to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“**Firm (No Force Majeure)**” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “**Receiving Transmission Provider**”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“**Interface**”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. Eastern Prevailing Time on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“**Firm Transmission**”) from the Designated Interface, a “**Timely Request for Transmission**” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “**ADI**”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “**Available Transmission**”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by

such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer’s Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider’s notice of rejection (“**Buyer’s Rejection Notice**”). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer’s own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer’s purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer’s own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer’s purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller’s inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer’s Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller’s delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer’s Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer’s Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated

Interface. In such circumstances, if Seller’s delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller’s Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller’s scheduled delivery to Buyer is interrupted as a result of Buyer’s attempted transmission of the Product beyond the Receiving Transmission Provider’s system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer’s Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller’s rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An “Into” Product shall be subject to the “Force Majeure” provisions in the Agreement.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers (“**Other Sellers**”), the first of which Other Sellers shall be causing the Product to be generated from a source (“**Source Seller**”) and/or (2) Buyer may be selling the Product to a succession of other buyers (“**Other Buyers**”), the last of which Other Buyers shall be using the Product to serve its energy needs (“**Sink Buyer**”). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“**Native Load**” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“**Non-Firm**” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“**System Firm**” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“**Transmission Contingent**” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for

such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in the Agreement to the contrary.

“**Unit Firm**” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

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