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POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

**AGREEMENT FOR THE SALE OF  
RECHARGE NEW YORK POWER AND ENERGY**

(Customer Name)

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

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

**AGREEMENT FOR THE SALE OF  
RECHARGE NEW YORK POWER AND ENERGY**

The Power Authority of the State of New York (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 of Article 5 of the New York Public Authorities Law (“PAL”), with offices and principal place of business at 30 South Pearl Street, 10<sup>th</sup> Floor, Albany, New York 12207-3425 (“Authority”), hereby enters into this Agreement for the Sale of Recharge New York Power and Energy (“Agreement”) with Customer Name, with offices located at Customer Address (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties.”

**RECITALS**

WHEREAS, the Authority is authorized to make available to, contract with and sell to “eligible applicants” located in New York State “Recharge New York Power” (“RNY Power”) as provided for in PAL § 1005(13-a) and Economic Development Law (“EDL”) § 188-a;

WHEREAS, RNY Power is intended to play an important role in providing competitively priced power for sale to attract, retain and expand businesses and promote economic development in New York State;

WHEREAS, RNY Power consists of up to 910 megawatts (“MW”) of power and energy consisting of equal amounts of (i) hydropower generated by the Authority’s St. Lawrence Project and Niagara Project, and (ii) other power made available by the Authority from other sources;

WHEREAS, the Authority is authorized to make individual awards of RNY Power to eligible applicants based on, among other things, the criteria listed in the EDL § 188-a;

WHEREAS, the Authority’s Board of Trustees (“Trustees”) has made an award of RNY Power to the Customer (defined in Article 1 of this Agreement as the “Awarded Allocation”) consisting of equal amounts of “RNY Hydropower” and “RNY Market Power” as specified in Schedule A of this Agreement;

WHEREAS, pursuant to PAL § 1005(13-a)(c), the Customer has elected to purchase the RNY Hydropower and the RNY Market Power (if any) as specified in Schedule A of this Agreement (defined in Article 1 of this Agreement as the “Accepted Allocation”);

WHEREAS, the Trustees have authorized the Authority to, among other things, provide electric service to the Customer at the rates and on the terms and conditions provided for in this Agreement to enable the Customer to receive the Accepted Allocation; and

WHEREAS, the Authority supports the efficient use of energy, including the RNY Power sold pursuant to this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

“Agreement” means this Agreement as further described in the preamble, including all documents, schedules and other materials attached to and/or incorporated into the Agreement.

“Accepted Allocation” means that portion of the Awarded Allocation the Customer has elected to accept and purchase from the Authority as specified in Schedule A of this Agreement.<sup>1</sup>

“Awarded Allocation” means the amount of RNY Power awarded to the Customer as specified in Schedule A of this Agreement which consists of equal amounts of RNY Hydropower and RNY Market Power.

“Billing Period” has the meaning set forth in Service Tariff No. RNY-1.

“Contract Demand” has the meaning set forth in Service Tariff No. RNY-1.

“Electric Service” is Firm Power and Firm Energy associated with the Accepted Allocation and sold to the Customer in accordance with the provisions of this Agreement, Service Tariff No. RNY-1 and the Rules.

“Energy Efficiency Audit” means a physical inspection of a building in a manner approved by the Authority that should include the following elements: (1) an assessment of a building’s energy use, cost and efficiency which produces an energy utilization index for the building (such as an Energy Use Intensity or Energy Performance Indicator); (2) a comparison of the building’s index to indices for similar buildings; (3) an analysis of low-cost/no-cost measures for improving energy efficiency; (4) a listing of potential capital improvements for improving energy consumption; and (5) an initial assessment of potential costs and savings from such measures and improvements.

“Facility” means the Customer’s place of business specified in Schedule A to this Agreement that will receive or is receiving the Accepted Allocation.

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<sup>1</sup> For purposes of illustration, if the Customer has elected to purchase the RNY Market Power component of its Awarded Allocation from the Authority, the Accepted Allocation will equal the Awarded Allocation and consist of equal parts of RNY Hydropower and RNY Market Power. If the Customer has elected not to purchase the RNY Market Power component from the Authority, the Accepted Allocation will be equal to half of the amount of the Awarded Allocation and consist solely of RNY Hydropower.

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

“FERC License” means the license issued by FERC to the Authority for the continued operation and maintenance of the Niagara Power Project, pursuant to Section 15 of the Federal Power Act, which license became effective September 1, 2007 after expiration of the Project’s original license issued in 1957, and/or the license issued by FERC to the Authority for the continued operation and maintenance of the St. Lawrence-FDR Power Project, pursuant to Section 15 of the Federal Power Act, which became effective November 1, 2003 after expiration of the Project’s original license issued in 1953.

“Firm Energy” has the meaning set forth in Service Tariff No. RNY-1.

“Firm Power” has the meaning set forth in Service Tariff No. RNY-1.

“Hydro Projects” is a collective reference to the Authority’s Niagara Power Project, FERC Project No. 2216, and St. Lawrence-FDR Power Project, FERC Project No. 2000.

“International Joint Commission” (or “IJC”) refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Serving Entity” or “LSE” has the meaning established by the NYISO in NYISO Tariffs as may be modified from time to time.

“Niagara Project” means the Authority’s Niagara Power Project, FERC Project No. 2216.

“NYISO” means the New York Independent System Operator, Inc. or any successor organization.

“NYISO Charges” has the meaning set forth in the Service Tariff No. RNY-1.

“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Other NYPA Power” means power and energy, other than RNY Power, that NYPA allocates and sells to the Customer pursuant to statute and/or contract.

“Person” means any natural person, corporation, company, sole proprietorship, governmental entity, or other entity.

“PSC” means the Public Service Commission of the State of New York.

“Recharge New York Power” (or “RNY Power”) refers to Firm Power and Firm Energy the Authority is authorized to allocate and sell as provided for in PAL § 1005(13-a) and EDL § 188-a.

“RNY Hydropower” means “recharge New York hydropower” as defined in PAL § 1005(13-a)(b).

“RNY Market Power” means “recharge New York market power” as defined in PAL § 1005(13-a)(b).

“Rules” refers to the Authority's Rules and Regulations set forth in Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, as may be modified from time to time by the Authority.

“Service Tariff No. RNY-1” means the Authority’s Service Tariff No. RNY-1 issued March 27, 2012, as modified from time to time by the Authority, and which contains, among other things, the schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement. Service Tariff No. RNY-1 shall be applicable to Electric Service provided to the Customer under this Agreement beginning July 1, 2012 and thereafter until such time as another Authority tariff applies.

“Schedule A” refers to the Schedule A entitled “Recharge New York Power Allocations” which is attached to and made part of the Agreement.

“Schedule B” refers to the Schedule B entitled “Recharge New York Power Commitments” which, along with its attachments, is attached to and made part of the Agreement.

“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of the Agreement.

“St. Lawrence Project” means the St. Lawrence-FDR Power Project, FERC Project No. 2000.

“Substitute Energy” means energy the Authority procures and sells to the Customer to replace RNY Hydropower that would otherwise have been sold to the Customer but for a curtailment made in accordance with Service Tariff No. RNY-1.

“Supplemental Power” means default or supplemental power and associated energy that is required by the Customer because its Accepted Allocation and Other NYPA Power do not satisfy its full electric load.

“Takedown” has the meaning set forth in the Service Tariff No. RNY-1.

“Takedown Schedule” means a schedule pursuant to which the Accepted Allocation will be made available to the Customer.

“Taxes” have the meaning set forth in Service Tariff No. RNY-1.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by Load Serving Entities to serve electric load as defined by the NYISO Tariffs and NYISO rules, manuals and procedures.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC covering the delivery of RNY Power and the sale and delivery of Supplemental Power and RNY Market Power.

## **ARTICLE 2** **ELECTRIC SERVICE**

1. The Authority will provide Electric Service to enable the Customer to receive the Accepted Allocation in accordance with this Agreement, Service Tariff No. RNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service for any RNY Power unless such RNY Power is identified as an Accepted Allocation on Schedule A.

2. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Accepted Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for an Accepted Allocation, the Authority will provide, and the Customer shall pay for, Electric Service with respect to the Accepted Allocation in accordance with such Takedown Schedule.

3. The Contract Demand may not exceed the Accepted Allocation.

4. As part of its Electric Service to the Customer, the Authority will provide UCAP in amounts necessary to meet the Customer’s NYISO Unforced Capacity requirements associated with the Accepted Allocation in accordance with NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. RNY-1.

5. The Customer’s Facility must be metered by the Customer’s local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, “Metering Arrangement”). A Metering Arrangement that is not satisfactory to the Authority shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility’s Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not conformed to the Authority’s requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may suspend Electric Service on at least ten (10) days’ prior written notice to the Customer. The Authority may, in its sole discretion, waive any of the requirements provided for in this Section 2.5 in whole or in part where, in the Authority’s judgment, another mechanism

satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all charges that become due in accordance with this Agreement, Service Tariff No. RNY-1, and the Rules.

6. If the Customer has elected to purchase RNY Market Power from the Authority, the Customer may request cancellation of such election. A request for cancellation must be made in writing in a form deemed satisfactory by the Authority and may only be made for the full amount of RNY Market Power purchased from the Authority. If the Authority in its sole discretion accepts the request, the Authority will effectuate such cancellation as soon as practicable, taking into consideration any commitments the Authority has made under contracts entered into with third parties for the purpose of supporting RNY Market Power supply and delivery to the Customer and other RNY Power program customers. The Authority shall have the right to reject a request for cancellation to the extent the Authority determines that such cancellation would unreasonably increase the costs chargeable to other RNY Power program customers or cause the Authority to incur unrecoverable costs. If the Customer's election is cancelled pursuant to this provision, the Authority shall have no further obligation to sell RNY Market Power to the Customer for the remaining term of the corresponding Accepted Allocation.

7. The Customer acknowledges and agrees that Customer's local electric utility shall be responsible for delivering the Accepted Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering any Accepted Allocation to the Customer.

8. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of RNY Power to the Customer, the proper and efficient implementation of the RNY Power program, billing related to RNY Power, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents the Authority determines are necessary to effectuate such exchanges of information.

9. The Authority may modify or terminate Electric Service under this Agreement or modify the quantities of power and energy associated with any Accepted Allocation (i) if such modification or termination is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (ii) as otherwise provided in this Agreement, Service Tariff No. RNY-1, or in the Rules. Unless such notice is not practicable, the Authority will provide thirty (30) days prior written notice to the Customer before any such modification.

10. The Accepted Allocation may be modified by the Authority if the amount of power and energy available for sale as RNY Power from the Hydro Projects is modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction ("Regulatory Order"). Any such modification will be made on a *pro rata* basis to all of the Authority's RNY Power customers, as applicable, based on the terms of such ruling, order

or decision. Unless such notice is not practicable, the Authority will provide thirty (30) days prior written notice to the Customer before any such modification.

11. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of RNY Power on terms and conditions that are acceptable to the Authority.

12. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") the Authority determines is necessary for the provision of Electric Service, the delivery of RNY Power, billing related to the RNY Power Program, the effective and proper administration of the RNY Power program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

### **ARTICLE 3** **RATES FOR ELECTRIC SERVICE**

1. Unless otherwise specified in this Agreement or Service Tariff No. RNY-1, Electric Service shall be subject to the Billing Demand and Billing Energy rates and other charges as provided for in Service Tariff No. RNY-1.

2. No provision of this Agreement or Service Tariff No. RNY-1 shall be construed as a promise, representation or warranty of any nature whatsoever, express or implied, by the Authority that the provision of Electric Service will result in the Customer at any time (i) paying less for electricity than the amount it would have paid had the Customer not entered into this Agreement or procured electric service from another source, or (ii) receiving any other economic, reliability or other benefit except and to the extent expressly set forth in this Agreement or such tariff.

3. Notwithstanding any other provision of this Agreement, Service Tariff No. RNY-1, or the Rules, the demand and energy rates for Electric Service commencing on or after July 1, 2012 shall be subject to increase by the Authority at any time upon thirty (30) days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Hydro Projects and the Authority's competitive position with respect to other suppliers, the Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this Section 3.3. Any rate increase to the Customer under this Section 3.3 shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this Section 3.3. With



respect to any such increase, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in this Section 3.3.

#### **ARTICLE 4**

#### **BILLING; BILLING METHODOLOGY**

1. The amount of energy and demand that will be used by the Authority for Customer billing purposes shall be determined based on the methodology provided for in any agreements between the Authority and the Customer's local electric utility regarding the delivery of RNY Power. An alternative basis for billing may be used provided the Parties agree in writing and the Customer's local electric utility provides its consent if such consent is deemed necessary.

2. The Authority will render bills to the Customer for Electric Service relating to the Customer's Accepted Allocation on or before the fifteenth (15<sup>th</sup>) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing in accordance with this Agreement, Service Tariff No. RNY-1 and the Rules, and are subject to adjustment as provided for in this Agreement, Service Tariff No. RNY-1 and the Rules. As provided in Service Tariff No. RNY-1, bills will include, in addition to any other charges applicable pursuant to this Agreement, Service Tariff No. RNY-1 and the Rules, NYISO Charges and Taxes associated with the Accepted Allocation. NYISO Charges shall be subject to adjustment consistent with any subsequent NYISO re-billings to Authority.

3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.

4. Bills are due and payable by the Customer within twenty (20) days of the date on which the Authority renders the bill. Unless otherwise agreed to by the Authority in writing, bills are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority.

5. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.

6. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the

Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

7. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.

8. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

9. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

10. The rights and remedies provided to the Authority in this Article 4 are in addition to any and all other rights and remedies available to Authority at law or in equity.

## **ARTICLE 5**

### **TRANSMISSION AND DELIVERY**

1. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for RNY Power. Delivery of Accepted Allocations shall be subject to the Utility Tariff.

2. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Accepted Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.

3. The Customer shall be solely responsible for procuring and paying for the procurement, transmission and delivery of (i) all Supplemental Power required by the Customer, and (ii) all RNY Market Power the Customer has elected to purchase from a person other than the Authority. Should the Authority incur charges associated with the procurement, transmission, or delivery of such Supplemental Power or such RNY Market Power, the Customer shall reimburse the Authority for all such charges.

4. The Customer understands and acknowledges that delivery of the Accepted Allocation will be made over transmission facilities under the control of the NYISO. The Customer understands and agrees that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Accepted Allocation for services established in the NYISO Tariffs or any other applicable tariff as provided for in Service Tariff No. RNY-1.

5. The Authority will act as the Load Serving Entity for the Customer's Accepted Allocation (*i.e.*, RNY Hydropower, and RNY Market Power as long as it is purchased from the Authority), or the Authority may arrange for another entity to do so on its behalf. Except as provided for in Article 7 of this Agreement with regard to Substitute Energy, the Authority shall not act as the LSE or perform any LSE functions with respect to any (i) Supplemental Power required or consumed by Customer, or (ii) RNY Market Power purchased from a person other than the Authority.

## **ARTICLE 6**

### **SUPPLEMENTAL CUSTOMER COMMITMENTS**

1. The Customer acknowledges and agrees that its Accepted Allocation is partly in consideration of the Customer's agreement to meet the commitments provided for in Schedule B of this Agreement.

2. The Authority shall have the right to reduce the Accepted Allocation based on reductions to the Contract Demand made in accordance with Schedule B if the Customer fails to meet commitments associated with the Accepted Allocation.

3. Within a reasonable time after any reduction to the Accepted Allocation, the Authority will furnish the Customer with a revised Schedule A which reflects the reduced Accepted Allocation and, to the extent the Authority deems it appropriate, a revised Schedule B.

## **ARTICLE 7**

### **HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY**

1. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served from the Hydro Projects, the Authority shall curtail the amount of firm power and energy to which the Customer is entitled as RNY Hydropower under this Agreement in accordance with Service Tariff No. RNY-1. The provision of RNY Market Power, if any, sold to the Customer by the Authority is not subject to curtailment pursuant to this Article 7. The Authority shall provide Substitute Energy to the Customer and the Customer shall pay for such Substitute Energy in accordance with Service Tariff No. RNY-1.

2. The Authority may require the Customer to enter into a separate agreement relating to the provision and sale of Substitute Energy. The provisions of this Agreement will remain in effect notwithstanding the existence of any such separate agreement.

**ARTICLE 8**  
**CONFLICTS**

Service Tariff No. RNY-1 is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. RNY-1 and the Rules, the provisions of Service Tariff No. RNY-1 will govern. In the event of any inconsistencies, conflicts or differences between the Service Tariff No. RNY-1 and any other provisions of this Agreement, the provisions of this Agreement will govern. The Authority will provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Rules and Service Tariff No. RNY-1, but in no event will the Authority provide less notice than that required to be provided to similarly affected Authority customers within New York State.

**ARTICLE 9**  
**ADDITIONAL ALLOCATIONS**

1. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of RNY Power to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix A to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix A, within a reasonable time after commencement of Electric Service for any such additional allocation.

2. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

**ARTICLE 10**  
**NOTICES**

1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To Authority:

Manager, Business Power Allocations & Compliance  
New York Power Authority  
123 Main Street  
White Plains, New York 10601  
Telephone: (914) 681-6200  
Facsimile: (914) 390-8156

Electronic mail: recharge.newyork@nypa.gov

To Customer:

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

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

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

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

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Electronic mail: \_\_\_\_\_

2. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; (e) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt; or (f) if sent by electronic file or data transfer as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

#### **ARTICLE 11**

#### **SUCCESSORS AND ASSIGNS; TRANSFERS; RESALE**

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained.

2. The transfer of any portion of the Awarded Allocation or Accepted Allocation, or any benefits relating the Awarded Allocation or Accepted Allocation, by the Customer to any Person, to a different owner or operator of the Facility, or to a different facility, is prohibited unless (i) specifically approved by the Authority, and, (ii) all other legal requirements applicable to such a transfer are complied with. Any transfer that occurs without such approval and compliance shall be invalid and transfer may in the Authority's sole discretion subject the transferor to revocation or modification of the Awarded Allocation, Accepted Allocation and/or this Agreement.

3. The Customer may not resell any portion of the Awarded Allocation or Accepted Allocation to any Person. If such a sale occurs, the Authority may, in its sole discretion, terminate the Awarded Allocation, Accepted Allocation and/or this Agreement.

**ARTICLE 12**  
**EFFECTIVENESS; TERMINATION; EFFECT**

1. This Agreement shall become effective and legally binding on the Parties: (i) upon receipt of approval of this Agreement by the Authority's Board of Trustees; and (ii) upon execution of this Agreement by the Authority and the Customer.

2. Electric Service under this Agreement shall continue until the earliest of: (1) termination by the Customer with respect to all of the Accepted Allocation upon at least ninety (90) days prior written notice to the Authority; (2) termination by Authority in accordance with this Agreement, Service Tariff No. RNY-1 and/or the Rules; or (3) termination of the Accepted Allocation by its own terms as specified in Schedule A of this Agreement ("Allocation Expiration Date").

3. The Customer may exercise a partial termination of the Accepted Allocation upon at least ninety (90) days prior written notice to the Authority. Unless otherwise agreed to by the Parties in writing, the termination shall be effective commencing with the first Billing Period following the required notice. In the event of a partial termination, the Authority will furnish the Customer with a revised Schedule A which reflects the revised Accepted Allocation and a revised Schedule B to the extent the Authority deems it appropriate.

4. Unless otherwise provided in this Agreement or agreed to by the Authority in writing, a termination, reduction, or other modification in whole or in part of the Accepted Allocation shall apply equally to the RNY Hydropower component and RNY Market Power component (if any) of the Customer's Accepted Allocation.

5. Unless otherwise provided in this Agreement or agreed to by the Authority in writing, a termination, reduction, or other modification in whole or in part of an Accepted Allocation shall result in a corresponding termination, reduction, or modification of the Customer's Awarded Allocation, and shall apply equally to the RNY Hydropower and RNY Market Power components of the Customer's Awarded Allocation.

**ARTICLE 13**  
**MISCELLANEOUS**

1. Choice of Law

Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

Each Party consents to the exclusive jurisdiction and venue of any state court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

3. Previous Agreements, Communications and Representations

This Agreement, including its schedules, appendices and attachments shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Accepted Allocation and its other subject matter, and supersedes all previous communications between the Parties hereto, either oral or written, including price estimates, with reference to the sale of the Accepted Allocation. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

4. Waiver

Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

5. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

**ARTICLE 14**  
**EXECUTION**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file or other acceptable file format that appropriately captures the signature, shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

**[SIGNATURES FOLLOW ON NEXT PAGE]**

SAMPLE



AGREED:

**CUSTOMER**

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

Name (Print): \_\_\_\_\_

Title (Print): \_\_\_\_\_

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

AGREED:

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

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

Name: Michael J. Huvane

Title: Vice President, Marketing

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

SAMPLE

SCHEDULE A

RECHARGE NEW YORK POWER ALLOCATIONS

APPLICANT: Customer Name

CONSOLIDATED FUNDING APP. No: APP ID

**CUSTOMER: Check the appropriate box below to make your election, and confirm your election by signing next to the election made. You may only check one box. The Authority will acknowledge your election and the applicable Accepted Allocation when executing the Agreement.**

**Option 1**

Customer elects to purchase ALL of the RNY Market Power listed under Accepted Allocation from the Authority:

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

**Option 1 Allocation Information** (will apply if ALL of the RNY Market Power that is part of the Awarded Allocation is purchased from the Authority)

<b>Awarded Allocation</b>	<b>Accepted Allocation</b>	<b>Contract Demand</b>	<b>Term of Accepted Allocation</b>	<b>Trustee Award Date</b>	<b>Facility</b>
RNY Hydropower (kW): RNY Market Power (kW): Total (kW):	RNY Hydropower (kW): RNY Market Power (kW): Total (kW):	Contract Demand (kW)*	7 years (from the date of commencement of Electric Service)	Date	Customer City, NY

\*The value listed for the Contract Demand is subject to the Takedown Schedule, if any, attached to the Agreement as Schedule C.

**OR**

SCHEDULE A

APPLICANT: Customer Name

CONSOLIDATED FUNDING APP. No: APP ID

**Option 2**

Customer elects to purchase NONE of the RNY Market Power listed under Accepted Allocation from the Authority:

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

**Option 2 Allocation Information** (will apply if NONE of the RNY Market Power that is part of the Awarded Allocation is purchased from the Authority)

<b>Awarded Allocation</b>	<b>Accepted Allocation</b>	<b>Contract Demand</b>	<b>Term of Accepted Allocation</b>	<b>Trustee Award Date</b>	<b>Facility</b>
RNY Hydropower (kW): RNY Market Power (kW): Total (kW):	RNY Hydropower (kW): RNY Market Power (kW): 0 Total (kW):	Contract Demand (kW)*	7 years (from the date of commencement of Electric Service)	Date	Customer City, NY

\*The value listed for the Contract Demand is subject to the Takedown Schedule, if any, attached to the Agreement as Schedule C.

**FOR AUTHORITY USE ONLY:**

Authority Acknowledgement of Customer election: \_\_\_\_\_

Accepted Allocation: \_\_\_\_\_ kW

RNY Hydropower purchased from the Authority: \_\_\_\_\_ kW

RNY Market Power purchased from the Authority: \_\_\_\_\_ kW

## SCHEDULE B

### RECHARGE NEW YORK POWER COMMITMENTS

The provision of RNY Power to the Customer is in consideration of, among other things, the commitments made by the Customer as provided for in this Schedule B.

#### **ARTICLE 1** **CUSTOMER COMMITMENTS**

##### A. Employment

##### 1. Employment Levels

The Customer shall establish and/or maintain the employment level set forth in Appendix 1 to this Schedule B (the “Base Employment Level”). Unless otherwise provided for in Schedule B, such Base Employment Level shall be the total number of full-time positions held by: (1) individuals employed by the Customer at the Facility identified in Appendix 1 to this Schedule B; and (2) individuals who are contractors or are employed by contractors of the Customer and who are assigned to such Facility (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working at least 20 hours but not more than 35 hours per week shall be counted as one Base Level Employee.

The Customer shall not establish or maintain the Base Employment Level by transfers of employees from previously held positions with the Customer or its affiliates located within New York State, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency, or adoption of new technologies or for other appropriate reasons as determined by the Authority. The Authority shall have the sole discretion to make any such change.

##### 2. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on an annual basis for the period July 1 through June 30 (the “Reporting Period”) to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer’s Facility identified in Appendix 1 to this Schedule B, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall specify the number of individuals who are employed by the Customer, who are contractors, and who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of August immediately following the preceding Reporting Period.

## SCHEDULE B

### B. Capital Investment

#### 1. Capital Investment Levels

The Customer shall make the scheduled capital investments described in Appendix 2 to this Schedule B.

#### 2. Capital Investment Records

Unless otherwise specified in Appendix 2 to this Schedule B, the Customer shall maintain records of its capital investments for each Facility receiving an Accepted Allocation. The Customer shall provide copies and an explanation of such records to the Authority on an annual basis for the Reporting Period on or before the last day of August immediately following the preceding Reporting Period.

### C. Power Utilization Records

The Customer shall keep monthly records of the maximum demand utilized each month for each Facility receiving an Accepted Allocation and provide copies and an explanation of such records to the Authority on an annual basis for the Reporting Period on or before the last day of August immediately following the preceding Reporting Period.

### D. Energy Efficiency Audits; Information Requests

The Customer shall undergo an Energy Efficiency Audit of the Facility receiving an Accepted Allocation at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer shall provide the Authority with a copy of the results of the Energy Efficiency Audit or, at the Authority's option, a report describing the results of the Energy Efficiency Audit, as well as documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer shall cooperate to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

### E. Compliance Verification

In addition to any reports or other information required by this Agreement, the Authority or its designee shall have the right to examine and audit on reasonable advance written notice to the Customer all non-confidential written and electronic records and data in order to determine the Customer's compliance with the Customer Commitments provided for under this Article 1.

SCHEDULE B

**ARTICLE 2**  
**REDUCTIONS IN CONTRACT DEMAND**

The Contract Demand shall be subject to reduction as provided for in this Schedule B for the Customer's failure to meet commitments.

A. Employment Levels

If the annual monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B for the subject Reporting Period, the Authority may reduce the Contract Demand in accordance with Section 2.D of this Schedule B. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject Reporting Period divided by the Base Employment Level. The Authority will round any such reduction to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Capital Investment Levels

The Authority may reduce the Contract Demand as provided in Appendix 2 to this Schedule B.

C. Power Utilization Levels

If the average of the Customer's six (6) highest Billing Demands (as such term is defined in Service Tariff No. RNY-1) is less than 90% of the Customer's Contract Demand in a Reporting Period, the Authority may reduce the Contract Demand in accordance with Section 2.D of this Schedule B. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such Reporting Period divided by the Contract Demand. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule B, the Authority will provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce employment levels or electrical demand, as well as the business cycle.

SCHEDULE B

SCHEDULE B – APPENDIX 1

BASE EMPLOYMENT LEVEL

In accordance with Article 1 of Schedule B, the Customer agrees to a Base Employment Level at the Customer's Facility indicated below on or before the date(s) specified:

<b>Base Employment Level</b>	<b>Facility</b>	<b>Date(s)</b>	<b>Miscellaneous/Notes</b>
Jobs	Customer City, NY	The date of commencement of electric service	
New Jobs (if applicable)	Customer City, NY	3 years from the date of commencement of electric service	

SAMPLE

CONSOLIDATED FUNDING APP. No: APP ID

SCHEDULE B

SCHEDULE B – APPENDIX 2

CAPITAL INVESTMENT COMMITMENTS

In accordance with Article 1 of this Schedule B, the Customer agrees to make the following capital investments in the Facility (“Capital Investment Commitment”) between (1) the date of the Customer’s application for RNY Power, unless an earlier date was proposed in the Customer’s application for an ongoing capital investment in which case such earlier date shall apply, and (2) the end of the Capital Investment Period indicated:

Capital Investment Commitment: dollar amount

Capital Investment Period: 5 years from the commencement of electric service

If the amount of the Customer’s actual capital investment in the Facility as of the end of the Customer’s Capital Investment Period is less than 90% of its Capital Investment Commitment, the Contract Demand may be reduced by the Authority subject to Section 2.D of this Schedule B. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the actual capital investment made in the Facility divided by the Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

CONSOLIDATED FUNDING APP. No: APP ID



SCHEDULE C

TAKEDOWN SCHEDULE

SAMPLE

CONSOLIDATED FUNDING APP. No: APP ID