NEW YORK STATE OF OPPORTUNITY. | NY Power Authority

Memorandum

**Date:** **December 17, 2015**

**To:** **THE TRUSTEES**

**From:** **THE PRESIDENT and CHIEF EXECUTIVE OFFICER**

**Subject:** **Proposed Preservation Power Contract with Alcoa, Inc. and Contract amongst the Authority, Empire State Development and Alcoa – Notice of Public Hearing**

SUMMARY

The Trustees are requested to approve the execution of the attached agreement (Exhibit "A") amongst the New York Power Authority ("Authority"), Empire State Development ("ESD") and Alcoa, Inc. ("Alcoa" or "Company") ("Framework Agreement"), which commits the Authority to enter into a new contract for the sale of 245 megawatts ("MW") of firm Preservation Power ("Contract") to Alcoa, and the accompanying Electric Service Tariff for Alcoa Inc., Firm Hydroelectric Power Service, Service Tariff No. AL – 1 ("Tariff"). The Contract and Tariff are attached as Exhibit "B." The Trustees are also requested to authorize a public hearing, pursuant to Section 1009 of the Public Authorities Law, for the Contract and the accompanying Tariff.

BACKGROUND

On November 2, 2015, Alcoa publicly announced that it would curtail smelting operations at its Massena West plant, with the resulting loss of at least 487 jobs. Following Alcoa's November 2, 2015 announcement, the Authority began negotiations with Alcoa and ESD to preserve 600 jobs in the North Country.

DISCUSSION

**Framework Agreement**

The Framework Agreement sets forth the terms pursuant to which Alcoa will continue smelting operations at its West Plant in exchange for operating and capital support totaling $43.6 million provided by ESD and for electric power and energy supply provided by the Authority at rates lower than currently provided to Alcoa. The term of the Framework Agreement will be effective from October 1, 2015 through March 31, 2019. The Contract for the sale of 245 MW to Alcoa is incorporated into, and made a part of the Framework Agreement. Both agreements provide for up to $40 million in liquidated damages should Alcoa default on its agreement to maintain smelting operations at the West Plant and a Base Employment Level of 600 full-time employees during the term of the Framework Agreement and the Contract. The amount of the damages would gradually decline to $4 million by the end of the term.

**Proposed Preservation Power Contract**

The allocation of Preservation Power is in consideration of Alcoa's agreement to maintain smelting operations at the West Plant and retain 600 full-time employees at the facility. The other key elements of the Contract are as follows:

**1. Power Allocation Quantity**

The current Preservation Power allocation of 245 MW of firm hydropower provided to Alcoa under the 2014 Agreement will continue. The firm service will be equivalent to that provided to other Authority firm hydropower customers and subject to pro-rata curtailment when there is insufficient generation at the Niagara and St. Lawrence/FDR facilities to meet the energy requirements of the Authority's firm hydropower customers. In the event of a pro-rata curtailment of all firm hydropower customers, the Authority will provide energy to Alcoa to replace the hydroelectricity that would otherwise have been supplied, and Alcoa shall pay the Authority directly the market cost of such energy and all other costs the Authority incurs in connection with the provision of such energy.

**2. Pricing**

In accordance with the Tariff, firm hydroelectric power and energy associated with the allocation will be sold to Alcoa at base rates tied directly to market aluminum prices on the London Metals Exchange and Midwest aluminum premium prices. The monthly base rates include both hydroelectric commodity and NYPA's transmission service charges ("TSC"). Furthermore, the commodity component of the base rates shall be no lower than the overall Rural/Domestic rates charged by the Authority to its qualifying customers. Should the overall Rural/Domestic Rate change, the base rates included in the Tariff will be adjusted for the difference.

Consistent with other tariffs, in addition to the base rate charges, Alcoa will pay all New York Independent System Operator ("NYISO") charges imposed on the Authority by the NYISO with respect to the load serving entity services provided to Alcoa. All taxes, assessments and other charges or costs imposed by third parties, as well as transmission charges will be passed through to Alcoa for payment, including incremental amounts above the TSC charge embedded in the base rates.

In addition to general tariff provisions, Service Tariff AL - 1 includes specific provisions to ensure the Authority's costs are recovered during the term of the Contract.

**3. Term**

Service under the Contract is effective October 1, 2015 and continues through March 31, 2019, unless service is ended prior to that date pursuant to default or other termination provisions as defined in the Framework Agreement and the Contract.

FISCAL INFORMATION

The revised rates under the proposed Service Tariff No AL - 1 produce approximately $12.0 million per year less in Authority revenues than under the existing tariff. Under higher base rates, resulting from higher Aluminum Prices, the annual revenue to the Authority decrease compared to current rates would be approximately $8.3 million and $4.6 million, respectively. In addition, there would be an estimated $5 million credit for a retroactive bill adjustment to October 1, 2015, to the anticipated date of the new base rates effective March 1, 2016.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer recommends that the Trustees approve the execution of the Framework Agreement; approve the allocation of 245 MW firm

Preservation Power to Alcoa under the Contract; and authorize a public hearing on the proposed Contract under Public Authorities Law section 1009.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

# **R E S O L U T I O N**

RESOLVED, That the Framework Agreement and the allocation of 245 MW of Preservation Power to Alcoa, Inc., as described in the foregoing memorandum of the President and Executive Officer and Exhibits “A” and “B” be, and hereby is, approved; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law (“PAL”) §1009 on the terms of the proposed Agreement For the Sale of Firm Hydroelectric Power and Energy From the St. Lawrence-FDR Power Project to Alcoa, Inc. (the “Contract”), together with the annexed Service Tariff No. AL - 1; and be it further

RESOLVED, That in connection with the proposed Contract, the Corporate Secretary be, and hereby is, authorized to arrange for the publication of a notice of public hearing in six newspapers throughout the State, in accordance with the provisions of PAL §1009; and be it further

RESOLVED, That the Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, including the Framework Agreement, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

H&K Draft
14 December 2015

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

**EMPIRE STATE DEVELOPMENT**

# FRAMEWORK AGREEMENT

**AMONGST**

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

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

**AND**

**ALCOA INC.**

**[DATE]**

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**POWER AUTHORITY OF THE STATE OF NEW YORK**
30 South Pearl Street, 10th Floor
Albany, New York 12207-3425

**THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION**
**d/b/a EMPIRE STATE DEVELOPMENT**
633 Third Avenue
New York, NY 10017

**ALCOA INC.**
390 Park Avenue
New York, NY 10022-4608

# FRAMEWORK AGREEMENT AMONGST POWER AUTHORITY OF THE STATE OF NEW YORK, EMPIRE STATE DEVELOPMENT AND ALCOA INC.

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

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

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

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

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

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

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

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

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

## I. (A). Definitions

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

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

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

[1] Alcoa Comment for ESD: The current draft ESD Grant Agreement does not address capital support

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

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

“Agreement” means the Power Supply Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Full-Time Employee” means a full-time, permanent, private-sector employee on Alcoa’s payroll, working at the West Plant for a minimum of thirty-five hours per week who is entitled to receive the usual and customary fringe benefits extended by Alcoa to other employees with comparable rank and duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"West Plant" has the meaning ascribed to it in the Recitals.

**(B). Rules of Construction**

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

## II. Term

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

This Framework Agreement will become effective upon execution by each of the Parties (the "Effective Date").

## III. Alcoa Covenants[2]

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

B. Alcoa Employee Separation:

1. Voluntary Separation. Alcoa expects that approximately eighty (80) to one hundred (100) employees will receive severance or early retirement benefits ("Employee Separation") at the West Plant and Alcoa agrees to implement this Employee Separation by first offering a voluntary

[2] H&K Note: This section subject to further comment and review to ensure consistency with Power Supply Agreement and ESD Grant Agreement.

separation package to all employees, pursuant to the plan attached hereto as Appendix A ("Voluntary Separation Package").

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

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

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

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

E. Curtailed Locations. The Parties acknowledge that, on November 2, 2015, Alcoa announced that it would curtail its Intalco and Wenatchee primary aluminum smelters in Washington State and would partially curtail alumina refining capacity at its Pt. Comfort, Texas facility (the "Curtailed Locations"). Alcoa agrees that the Separation Packages to be offered to employees of the West Plant will be no less favorable to the employees than the voluntary and involuntary separation packages to be offered by Alcoa to employees of the Curtailed Locations. From the Effective Date of this Framework Agreement until ninety (90) days after the Base Employment Level is attained, should Alcoa offer voluntary or involuntary separation packages to employees of any of the Curtailed Locations which are more favorable to the employees than the Separation Packages described in Appendix A, Alcoa will amend the Separation Packages offered to the West Plant employees so that the resulting Separation Packages are equivalent to the separation packages offered to the employees of such Curtailed Locations.

F. Re-Training and Job Placement Services: Alcoa agrees to work with the New York State Department of Labor to ensure that all re-employment and training services and

programs available through New York State and/or through New York State-sponsored programs will be provided to Alcoa employees affected by the Employee Separation. Such services will include job referral and career counseling services and résumé preparation as well as any job re-training programs which may be made available through New York State or the federal government.

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

## IV. [ESD Covenants

ESD shall provide Alcoa a working capital grant of twenty million six hundred thousand dollars ($20,600,000) in accordance with the ESD Grant Agreement. In addition, ESD shall provide Alcoa another grant of twenty-three million dollars ($23,000,000) to fund capital upgrades to the West Plant (the "Additional Grant" and together with the ESD Grant Agreement, the "ESD Grants") provided such funds are made available to ESD in the New York State 2016-2017 budget. In the event ESD is unable to provide Alcoa the Additional Grant in accordance with the terms contained in the Term Sheet by [DATE?], Alcoa shall have the right to terminate all Operative Documents and no Party shall have any obligations or rights as against the other Parties as a result of such termination.][3]

## V. Authority Covenants: Firm Power and Energy

During the Term of this Framework Agreement, and subject to the Section 1009 Approval, the Authority will sell and deliver to Alcoa Firm Power and Energy from the Project pursuant to the Power Supply Agreement and the Service Tariff, which are incorporated herein by reference. The Rules and the Service Tariff are hereby incorporated into this Framework Agreement with the same force and effect as if herein set forth at length. Except as may be provided in this Framework Agreement, the Authority shall provide at least thirty (30)[4] days' prior written notice to Alcoa of any proposed change in the Rules or Service Tariff, but in no event shall the Authority provide less notice than that provided to similarly affected customers within New York State.

The Parties acknowledge that the Power Supply Agreement shall not become effective and binding upon the Authority and Alcoa until completion of all processes and procedures required for effectiveness pursuant to Section 1009 of the PAL and the subsequent execution of the Power Supply Agreement by the chairman and secretary of the Authority (the "Section 1009 Approval"). In the event the Power Supply Agreement does not receive the Section 1009 Approval by [June 30, 2016][5], each Party shall have the right, upon written notice to the other

[3] Alcoa Note: We have some real concerns with the absence of a commitment for the capital grants as this was a material part of the Term Sheet.
[4] NYPA Comment: This change has been made to be consistent with Tariff.
[5] NYPA Comment: While NYPA is endeavoring to finalize this transaction prior to June 30, 2016, pursuant to Section 1009, the following timeline is anticipated: 1) NYPA will present Power Supply Agreement for its

Party(ies), to terminate all Operative Documents and no Party shall have any obligations or rights as against the other Parties as a result of such termination.

## VI. Events of Default

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

1. if Alcoa commits a material breach of any covenant contained in Section III (A) – Section III (E) above or contained in Section VIII below;

2. if a Party commits a material breach under this Framework Agreement or any of the Operative Documents (except for the matters covered in Section VI (A) (1) above);

3. if any representation or warranty made by a Party herein or in any of the Operative Documents shall have been false or misleading in any material respect as of the date the representation or warranty was made;

4. if a Party attempts to assign its rights under this Framework Agreement or any of the Operative Documents or any interest herein or therein in contravention of this Framework Agreement or any of the Operative Documents, as the case may be;

5. if a Party fails to make payments pursuant to this Framework Agreement when due; or

6. if a receiver, liquidator or trustee shall be appointed for Alcoa, or Alcoa shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Alcoa or if any proceeding for the dissolution or liquidation of Alcoa shall be instituted.

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

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Trustees' approval on December 17; 2) Public notice to be published the following week thereafter; 3) a Public hearing will be held at end of January; 4) The NYPA Trustees will meet in March 2016 (or potentially during a February special meeting) to consider public comments to the Power Supply Agreement and order transmittal of the Agreement to the Governor for approval; and 5) By statute, the Governor has 60 days to approve the Agreement and authorize NYPA to execute it.

defaulting Party(ies), by mutual agreement in its/their sole discretion, may extend such thirty (30) day period for such time as is reasonably necessary for the defaulting Party(ies) in the exercise of due diligence to cure such default.

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

## VII. [Termination; Liquidated Damages

Liquidated Damages Upon Breach: In the event that (i) the Authority and ESD terminate this Framework Agreement as a result of the Events of Default set forth in Section VI(A)(1) above or (ii) Alcoa terminates this Framework Agreement for reasons other than Force Majeure or material breach by the Authority or ESD, then Alcoa shall pay, promptly upon demand, Liquidated Damages as set forth in Part I of Appendix B ("Liquidated Damages") as full and final compensation to the Authority and ESD and no other payment or charge, including demand charges, shall be payable by Alcoa as a result of such termination, whether under this Framework Agreement or the other Operative Documents. For avoidance of doubt, (i) the Liquidated Damages remedies provided in this Framework Agreement are intended to include similar recoveries the Power Supply Agreement and ESD Grant Agreement provide, and the Authority and ESD collectively shall be entitled to recover such damages in full together only once under the Operative Documents and shall not be entitled to any duplicative recoveries; and (ii) such Liquidated Damages are not in lieu of any outstanding payables or charges due under either the Power Supply Agreement or, in the event the Power Supply Agreement terminates for any reason, for market rate charges for any electric capacity and energy otherwise provided by the Power Authority, which shall separately remain due and payable .

The Authority shall invoice Alcoa for any Liquidated Damages amount(s) due in the manner set forth in this Section VII within ten (10) Business Days following the end of the calendar month in which such Liquidated Damages become due, and Alcoa will promptly pay such Liquidated Damages to the Authority. The Authority shall forward on to ESD such portion of Liquidated Damages paid by Alcoa as agreed between the Authority and ESD. ][6]

## VIII. Communications

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

[6] Under NYPA/ESD review, including Alcoa comment re harmonization of Liquidated Damages provisions across all three Operative Documents.

Alcoa will use its best efforts to maintain the confidentiality of any action it takes with respect to any planned curtailment or employment reduction at the West Plant prior to December 31, 2018 (the "Confidential Curtailment Information") and will not disclose to any person such Confidential Curtailment Information except (a) as reasonably required in planning for the orderly and prudent operation, curtailment or closure of the West Plant following the Term hereof, provided that any communications made to third parties shall be subject to a confidentiality agreement between Alcoa and such third party; (b) as required by any applicable law, governmental regulations, subpoena or other written demand made in accordance with applicable law or as required in connection with any legal proceedings arising from or in connection with this Framework Agreement; or (c) to any legal advisor, accountant or auditor (but labelled "CONFIDENTIAL" if appropriate with any applicable claim of exemption from public disclosure pursuant to the New York Freedom of Information Law).

## IX. Limitations on Damages

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

## X. Notice

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

To: The Authority

Vice President -- Marketing

New York Power Authority
123 Main Street
White Plains, NY 10601

To: ESD

Attention: Regional President
317 Washington Avenue, 2nd Floor
Watertown, New York 13601

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

To: Alcoa

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

With a copy to:

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

## XI. [Force Majeure][7]

A. Events of Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Operative Documents and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Parties as soon as practicable, then, the Claiming Party shall be excused from the performance of its obligations with respect to the Operative Documents (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Parties shall not be required to perform or resume performance of their obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. Failure to perform in whole or in part because of the occurrence of an event of Force Majeure shall not constitute a default hereunder or subject a Party to liability for any resulting loss or damage. The Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so, it being understood that no Party shall be required to make any concession or grant any demand or request in order to bring

[7] This Section XI subject to further NYPA / ESD review.

to an end any strike, lockout or other industrial disturbance where such course is deemed inadvisable in its sole discretion. Upon the occurrence of an event of Force Majeure, the Claiming Party shall promptly notify the other non-Claiming Parties hereto of such events and shall specify in reasonable detail the facts constituting such events of Force Majeure.

B. "Force Majeure" Definition. "Force Majeure" means strikes or other labor troubles; shortage of labor, transportation, raw materials, energy sources, or failure of usual means of supply; fire; flood; war, declared or undeclared; insurrection; riots, acts of God or the public enemy; accidents to or breakdown or mechanical failure of machinery or equipment caused by an event of Force Majeure; "uncontrollable forces" as defined in Section 454.3(c) of the Rules; or any other cause whatsoever whether or not of any nature of character mentioned above which is beyond the reasonable control of the affected Party and which affects the performance by the affected Party of the whole or part of its obligations under this Framework Agreement. For the avoidance of doubt, Force Majeure shall not include (i) increase costs of performance or decline in revenues, including price disruption in or loss of Alcoa's supply or sale markets; (ii) Alcoa's inability economically to use the Electric Service; (iii) the loss or failure of Alcoa's supply due to Force Majeure; (iv) defaults or non-performance by contractors or suppliers unless caused by Force Majeure; or (v) disruption of financial markets or unavailability of financing. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by NYISO unless such curtailment is due to Force Majeure; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of an event of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that an event of Force Majeure as defined in the first sentence hereof has occurred.

C. Force Majeure Remedy. In the event Alcoa is required to interrupt, suspend or limit production at the West Plant as a result of Force Majeure, the Authority may suspend or reduce scheduled Electric Service, as appropriate. If Alcoa, as the result of Force Majeure, temporarily reduces Full Time Employees at the West Plant below the Base Employment Level, then for each month during which Alcoa is not meeting the Base Employment Level as a result of such Force Majeure event, Alcoa will repay to the Authority and ESD, as an equitable recoupment and not as damages, the amount of $[•] multiplied by the number of Full-Time Employees by which Alcoa is below the Base Employment Level.[8]

## XII. Miscellaneous

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

[8] H&K Comment to NYPA / ESD: To be discussed as a method of allocating risk of Force Majeure lay-offs.

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

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

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

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

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

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

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

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

In witness whereof, the Parties hereto have executed this Framework Agreement as of the date set forth on the first page above.

AGREED:

ALCOA INC.

BY:_____

Title:_____

Date:_____

(Seal)
Attest by:_____

AGREED:

NEW YORK POWER AUTHORITY

BY:_____

Title:_____

Date:_____

(Seal)
Attest by:_____

AGREED:

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

BY:_____

Title:_____

Date:_____

(Seal)
Attest by:_____

APPENDIX A
Separation Packages

**Hourly Voluntary Separation Package (Pending USW Approval):**
Hourly employees who, if eligible, elect to retire from Alcoa will receive an Enhanced Pension Benefit

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

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

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

**Hourly Involuntary Separation Package:**
Hourly employees who are laid off are eligible for the following benefits.

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

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

**Salaried Involuntary Separation Package:**
Salaried employees who are involuntarily separated from Alcoa will receive

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

APPENDIX B

I. Liquidated Damages pursuant to Section VII.

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

II. Liquidated Damages per month resulting from a Base Employment Level Breach.[9]

| Year | $ (m) per employee short |
|---|---|
| 2016 | .067 |
| | .062 |
| | .057 |
| | .052 |
| 2017 | .047 |
| | .042 |
| | .037 |
| | .032 |
| 2018 | .027 |
| | .022 |
| | .017 |
| | .012 |
| 2019 | .007 |

[9] Liquidated Damages provisions under NYPA / ESD review.

SCHEDULE 1

Form of Power Supply Agreement

SCHEDULE 2

Form of ESD Grant Disbursement Agreement

POWER AUTHORITY OF THE STATE OF NEW YORK

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

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

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

[DATE]

POWER AUTHORITY OF THE STATE OF NEW YORK

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

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

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

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

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

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

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

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

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

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

follows: **I. Definitions**

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

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

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

**D.** **Agreement** means this Agreement also known as the Power Supply Agreement, which attaches and incorporates Service Tariff No. AL - 1.

**E.** **Allocation** means the allocation of Firm Power and Energy to Customer on the terms set forth herein.

**F.** **Authority** is the Power Authority of the State of New York, doing business as New York Power Authority.

**G.** **Contract Demand** will be the amount set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

**H.** **Customer** is Alcoa.

**I.** **Electric Service** is Firm Power and Energy sold to Customer in accordance with this Agreement and applicable Service Tariffs and Rules.

**J.** **Firm Power and Energy** is power and associated energy from the Project as provided in Service Tariff No. AL - 1, and allocated by Authority for business use as Preservation Power pursuant to Section 1005 (13) of the New York Public Authorities Law ("PAL").

**K.** **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

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

**M.** **Hydro Projects** is a collective reference to the Project (defined below) and Authority's Niagara Project, FERC Project No. 2216.

**N.** **NYISO** means the New York Independent System Operator or any successor organization responsible for the transmission and the reliable supply of electricity in the State of New York.

**O.** **Project** means Authority's St. Lawrence-FDR Project, FERC Project No. 2000.

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

**N.** **Service Tariff** is a schedule or tariff of Authority establishing rates and other conditions for sale of Electric Service to Customer, including Service Tariff No. AL – 1 attached hereto as Schedule B, which may be modified from time to time.

**O.** **TSC** is the “NYPA Transmission Service Charge”, authorized under the NYISO Open Access Transmission Tariff and applicable to deliveries of Electric Service to Customer.

**P.** **Unforced Capacity** shall have the same meaning as set forth in the NYISO Market Services Tariff, as it may be modified from time to time.

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

## II. Electric Service to be Provided

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

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

As part of the Allocation, Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation of Firm Power and Energy in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services (as defined in the rules and tariffs of the NYISO), nor "green" attributes or renewable energy credits (collectively referred to herein as "RECs," as may be hereinafter defined and as modified from time to time by the New York State Public Service Commission or other agency having jurisdiction over such matters) are included in such Allocation. Authority retains for its own use and benefit any such RECs associated with that portion of the Project that supports the Allocation; provided, however, that: (1) should Customer be required by federal or state law, rule or

regulation to secure RECs in connection with the operation of the West Plant; and (2) such RECs are deemed transferable under applicable federal or state law, rule or regulation, then Authority shall make available such RECs to Customer on a basis consistent with the policies adopted by Authority's Trustees for all similarly situated customers.

A. Delivery Points. At 115,000 Volts at the points of interconnection of Customer's transmission lines to the Barnhart Island Switchyard of Authority at the West Plant, Massena, New York, or at such other points and voltages as agreed between Customer and Authority.

B. Reduction of Contract Demand. The foregoing Contract Demand may be reduced by Authority if the amount of Firm Power and Energy available for sale from the Project is reduced as required to comply with any unstayed ruling, order or decision of any regulatory or judicial body of competent jurisdiction. Any such reduction in the Contract Demand made by Authority under this subparagraph shall be in proportion to the overall reduction in the aggregate contract demands of hydroelectric customers sold by Authority from the Project.

C. Authority and Customer shall cooperate in any relocation or installation of transformers or other related facilities servicing Customer's plant that either Party reasonably deems necessary or desirable. The costs of any such relocation or installation shall be the responsibility of Customer, except in cases where Authority seeks the relocation or installation; provided however, that Authority will, if requested by Customer, consider in good faith whether its other customers receive any substantial benefit from such relocation or installation. If NYPA determines that such substantial benefits exist, it shall negotiate in good faith with Customer regarding an alternative funding arrangement. In any event, NYPA shall not be obligated to agree upon an alternative funding arrangement.

## III. Employment and Other Commitments; Liquidated Damages

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

## IV. Rules, Regulations and Service Tariff

The Rules and the Service Tariff are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariff and the Rules, the provisions of the Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern. Except as

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

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

A. Base Rates: Firm Power and Energy associated with the Allocation shall be sold to Customer hereunder at rates for base commodity and TSC determined in accordance with ST AL - 1 attached hereto.

B. Customer agrees to compensate Authority for all transmission costs incurred as set forth in ST AL – 1. Such charges or costs shall be in addition to the charges recovered through the base rates in ST AL – 1 for base commodity and TSC. Customer understands that delivery of the Allocation will be made over transmission facilities under the control of the NYISO, including those owned by Customer. Unless Customer provides Authority sixty (60) days written notice otherwise, Authority will act as the Load Serving Entity ("LSE") with respect to the NYISO, or arrange for another entity to do so on its behalf. Customer agrees and understands that it shall be responsible to Authority for all costs incurred by Authority with respect to the Allocation for the services established in the NYISO's applicable tariffs, as set forth in ST AL - 1, whether or not such charges are transmission-related. Such charges or costs shall be in addition to the charges recovered through the base rates in ST AL – 1 for base commodity and TSC.

C. To the extent Authority incurs any taxes, assessments or other charges imposed by third parties associated with or attributable to the Allocation, Customer agrees to compensate Authority for all such costs incurred as set forth in ST AL - 1. Such charges or costs shall be in addition to the charges recovered through the base rates in ST AL – 1 for base commodity and TSC.

D. Notwithstanding any provision of this Agreement to the contrary, the power and energy charges shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase,

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

## VI. Hydropower Curtailments and Substitute Energy

A. Firm Power and Energy. If hydraulic or hydrological conditions affecting the Hydro Projects require Authority to curtail the amount of Firm Power and Energy provided to Customer under this Agreement to an amount below such normal level, reductions shall be applied to all the firm power customers served from the Hydro Projects, including Customer, in proportion to their relative allocations of Firm Power and Energy from the Hydro Projects. Reductions as a percentage of the otherwise required Power and Energy deliveries will be the same for all firm Authority hydropower customers served from the Hydro Projects.

B. Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied.

1. Billing for Substitute Energy. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer shall pay the Authority directly for: (a) the market cost of the Substitute Energy; and (b) all costs, including but not limited to any NYISO Charges and Taxes, the Authority incurs in connection with the provision of Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of Section 454.6 of the Rules and shall apply directly to the Substitute Energy service supplied to the Customer.

2. Substitute Energy Provision Effect on Contract. All other provisions of the Agreement shall continue in effect with Substitute Energy being delivered in the same manner as would have otherwise been the case.

## VII. Billing

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

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

A. Service under the Agreement shall commence on October 1, 2015 and continue until the earliest of (a) termination by Authority pursuant to Part 454 of the Rules

upon required notice, (b) termination by Authority pursuant to default provisions as described in Schedule A, or (c) March 31, 2019. Authority may cancel service hereunder or modify the quantities of power and energy associated with the Allocation only (a) if such cancellation or modification is required to comply with any unstayed ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise expressly provided herein or in the Rules.

B. Customer may, for any reason, reduce or terminate service at any time on written notice given to Authority no less than sixty days (60) in advance, subject to the payment of liquidated damages to Authority in accordance with Schedule A of this Agreement unless such reduction or termination is the result of uncontrollable forces, as defined in section 454.3 of the Rules, or breach of this Agreement by Authority.

## IX. Notification

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

To: Authority

Vice President – Marketing
POWER AUTHORITY OF THE STATE OF
NEW YORK
123 Main Street
White Plains, NY 10601

To: Customer

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

With a copy to:

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

## X. Applicable Law

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

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

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

## XII. Supplementary Provision

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

## XIII. Previous Agreements and Communications

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

Framework Agreement executed by each of the Parties and dated as of _____, the provisions of this Agreement shall control.

## XIV. Severability and Voidability

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

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

## XV. Counterparts

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

## XVI. Effectiveness of Agreement

This Agreement shall become effective upon execution by both Parties.

AGREED:

**ALCOA INC. (CUSTOMER)**

BY: _____

Title: _____

Date: _____

(Seal)

Attest by: _____

AGREED:

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

BY: _____

Title: _____

Date: _____

(Seal)
Attest by: _____

## SCHEDULE A

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

**Section I. Customer Commitments**

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

B. Customer Employee Separation:

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

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

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

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

D. Maintenance of Base Employment Level. In the event that Customer employment at the West Plant falls below the Base Employment Level at any time due to termination of employees for cause, Customer promptly, and in any event in not more than thirty (30) Business Days, will fill such Full-Time Employee vacancies with

qualified persons following Customer's usual practice, by new hires, recall of previous employees who were involuntarily separated subject to recall rights or transfers of employees (provided such transfers are not from facilities located in New York State) having wages and benefits equivalent to existing workers at the West Plant of equivalent seniority.

E. Curtailed Locations. The Parties acknowledge that, on November 2, 2015, Customer announced that it would curtail its Intalco and Wenatchee primary aluminum smelters in Washington State and would partially curtail alumina refining capacity at its Pt. Comfort, Texas facility (the "Curtailed Locations"). Customer agrees that the Separation Packages to be offered to employees of the West Plant will be no less favorable to the employees than the voluntary and involuntary separation packages to be offered by Customer to employees of the Curtailed Locations. From the effective date of this Agreement until ninety (90) days after the Base Employment Level is attained, should Customer offer voluntary or involuntary separation packages to employees of any of the Curtailed Locations which are more favorable to the employees than the Separation Packages described in Appendix 1 of this Schedule A, Customer will amend the Separation Packages offered to the West Plant employees so that the resulting Separation Packages are equivalent to the separation packages offered to the employees of such Curtailed Locations.

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

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

H. Employment Records and Reports: A record shall be kept monthly by the Customer, and provided on monthly basis to Authority, of the total number of Full-Time Employees at Customer's facilities located at Massena, NY, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by Authority and the Customer). Such report shall be certified to be correct by the plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to Authority on or before the 15th day of the month following the end of the most recent quarter. Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to,

personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

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

**Section II. Liquidated Damages**

In the event that (i) the Authority terminates this Agreement as a result of Customer's material breach of one or more of the covenants set forth in Section I (A), (B), (C), (D), (E) or (I) of this Schedule A and fails to cure such breach within thirty (30) days following receipt of written notice thereof from Authority or (ii) Customer terminates this Agreement for reasons other than uncontrollable forces, as defined in section 454.3 of the Rules or material breach by the Authority, then Customer shall pay to Authority, promptly upon demand, Liquidated Damages on a sliding scale as set forth in Appendix 2 of this Schedule A. Such Liquidated Damages paid by Customer shall constitute full and final compensation to the Authority [and ESD] and no other payment or charge shall be payable by Customer as a result of such termination, whether under this Agreement [the Framework Agreement dated X or the ESD Grant Agreement dated Y]. Notwithstanding the foregoing, Liquidated Damages are not in lieu of any outstanding payables or charges due under either the Power Supply Agreement or, in the event the Power Supply Agreement terminates for any reason, for market rate charges for any electric capacity and energy otherwise provided by the Authority, which shall separately remain due and payable.

## APPENDIX 1 of SCHEDULE A

## Separation Packages

**Hourly Voluntary Separation Package (Pending USW Approval):**
Hourly employees who, if eligible, elect to retire from Customer will receive an Enhanced Pension Benefit

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

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

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

**Hourly Involuntary Separation Package:**
Hourly employees who are laid off are eligible for the following benefits.

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

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

**Salaried Involuntary Separation Package:**

Salaried employees who are involuntarily separated from Customer will receive

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

## APPENDIX 2 of SCHEDULE A

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

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

## Schedule B

## Service Tariff No. AL – 1

POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

# Electric Service Tariff for Alcoa Inc.
# Firm Hydroelectric Power Service

**Service Tariff No. AL – 1**

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# Schedule of Rates for Firm Hydroelectric Power Service

## I. Applicability

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

## II. Frequently Used Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Midwest Aluminum Premium or MWP:** Premium price, converted to $/metric ton, in addition to LME aluminum price, used to derive Aluminum Prices within this Service Tariff. Specifically, the MWP component used in calculating the Aluminum Price for a particular month (M) shall be the average MWP for the month prior (M-1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Unless otherwise indicated, all other capitalized terms and abbreviations used but not defined in this Service Tariff shall have the meaning as set forth in the Agreement.

## III. Base Rates and Related Matters

### A. Base Rates

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

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

The starting base rate of $12.25/MWh, as set forth above, includes a monthly base rate for commodity, and a base Transmission Service Charge valued at $1.75/MWh at a nighty eight (98) percent load factor, both of which are subject to monthly billing adjustments for full cost recovery at the Customer Native System Load Factor, as per Sections III.E and III. C of this Service Tariff.

### B. NYISO Transmission and Related Charges ("NYISO Charges")

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

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

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

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

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

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

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

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

**D. Other Charges**

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

**1.** Minimum Monthly Capacity Charge

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

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

**2.** Taxes

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

**3.** Curtailments and Substitute Energy

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

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

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

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

**F. New Charges**

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

**G. Billing and Billing Methodology**

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

**1.** Billing Energy

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

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

**2.** Scheduling and Settlements of Load

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

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

**3.** Market Purchases

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

**4.** Estimated Billing

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

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

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

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

## H. Adjustments to Charges

**1.** Billing Adjustments

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

**2.** Power Factor

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

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

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

**3.** Adjustment for Transformer Losses

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

## I. Adjustment of Rates

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

## IV. General Provisions

### A. Character of Service

Alternating current; 60 hertz, three-phase.

### B. Firm Power Service

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

### C. Availability of Energy

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

### D. Delivery

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

### E. Electrical Fluctuations

The power and energy taken hereunder shall not be used in such a manner as to cause unusual fluctuations or disturbances on Authority's system. Customer shall provide, at its expense, suitable apparatus which will reasonably limit such fluctuations. In the event that unreasonable

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

**F. Rendition and Payment of Bills**

1. The Authority will render bills to the Customer for Electric Service on or before the tenth ($10^{th}$) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in this Agreement, Service Tariff No. AL-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer by the first day of the following month of the date the Authority renders the bill. Payment of bills by the Customer shall be paid through the means as directed on the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1.5%) of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of a bill rendered by Authority, the Customer shall pay such bill in the time provided for by this Agreement, and adjustments, if necessary, will be made thereafter.
5. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money 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 will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

**G. Conflicts**

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