

Master Power Purchase & Sale Agreement

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

MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

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

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

Name: _____ (“**Seller**”)

All Notices:

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

All Notices:

Street: _____
City, State Zip: _____

Attn: Vice President, Power Resource Planning and
Acquisition (Jordan Brandeis)

Phone: (914) 681-6403
Facsimile: (914) 390-8156
Duns: 11-732-2536

Federal Tax ID Number: 13-1850882

Confirmations:

Attn: Confirmations – Accounting Dept (J. Brennan)

Phone: (914) 287-3133
Facsimile: (914) 287-3391

Attn: _____

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

Confirmations:

Attn: _____
Phone: _____
Facsimile: _____

Invoices:

Attn: Accounts Payable (Manna Yu)
Phone: (914) 287-3370
Facsimile: (914) 287-3391

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Scheduling:

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

Scheduling:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

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

Payments:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

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

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

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

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

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

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

Attn: _____
Phone: _____
Facsimile: _____

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

Buyer Tariff Tariff Not Applicable Dated _____ Docket Number _____

Seller Tariff Tariff _____ Dated _____ Docket Number _____

GENERAL TERMS AND CONDITIONS

ARTICLE ONE GENERAL DEFINITIONS

1.1 Terms Defined. As used in this Agreement, the following terms have the meanings set forth below:

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

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

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

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

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within sixty (60) days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

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

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

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

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

“Buyer” has the meaning set forth on page 1 of this Agreement.

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

“Buyer Performance Assurance Amount” has the meaning set forth in Section 8.4(a) and value as determined from time-to-time pursuant to Exhibit 2 (Procedures for Computation of Performance Assurance Amounts).

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

“Capacity” means unforced capacity for the New York Control Area Rest of State (“ROS”) market, certified on a Monthly basis by NYISO.

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

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

“Computations” has the meaning set forth in Exhibit 2 (Procedures for Computation of Performance Assurance Amounts).

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

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

“Contract Price” means, with respect to any Transaction, the price in U.S. Dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Confirmation for such Transaction.

“Contract Quantity” has the meaning set forth in the Subject Transaction Confirmation.

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

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

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

“Credit Support Document” means (i) with respect to Buyer, each Buyer Letter of Credit provided pursuant to this Agreement, and (ii) with respect to Seller, each Seller Letter of Credit provided pursuant to this Agreement and any undertaking of any Credit Support Provider.

“Credit Support Provider” means (i) with respect to Buyer, any issuer of any Buyer Letter of Credit, and (ii) with respect to Seller, any issuer of any Seller Letter of Credit or Person who commits to provide any Seller Letter of Credit.

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

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

“Defaulting Party” has the meaning set forth in Section 5.1.

“Delivery Period” means, with respect to any Transaction, the period of delivery for the Transaction, as specified in the Confirmation for such Transaction.

“Delivery Point” means, with respect to any Transaction, the point at which the Product will be delivered and received, as specified in the Confirmation for such Transaction.

“Early Termination Date” has the meaning set forth in Section 5.2.

“Eastern Prevailing Time” means Eastern Standard Time, or during the period when daylight savings time is in effect in New York State, Eastern Daylight Time.

“Effective Date” has the meaning set forth in the preamble hereof.

“Energy” means three-phase, 60-cycle alternating current, delivered at the Delivery Point specified in a Confirmation.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Event of Default” has the meaning set forth in Section 5.1.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Final Payment Date” means, as to a Party, the final date on which all outstanding payment obligations of such Party to the other Party, including but not limited to any payments due pursuant to Article Four, Termination Payment under Article Five, or payments due under Article Six, have been fully liquidated and satisfied in full. In the event any payment due under this Agreement becomes the subject of a dispute, the Final Payment Date with respect to the Party owing the disputed amount shall not occur until such dispute is finally resolved and the amount owed as determined upon resolution of such dispute, if any, is paid in full.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was entered, which is not reasonably within the control of, or the result of the negligence of or breach of contract by, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (y) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and

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

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

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

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

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

“kW” means kilowatt.

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

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

“Month” or “month” unless otherwise modified, means one (1) calendar month.

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

“MW” means megawatt.

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

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

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

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

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

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

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

“Option Buyer” means the Party specified in the Confirmation for a Transaction as the purchaser of an Option.

“Option Seller” means the Party specified in the Confirmation for a Transaction as the seller of an Option.

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

“Party” or “Parties” means one or both of the Buyer and Seller, together with any successor or permitted assign of either.

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

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

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

“Product” means Capacity, Energy or other product(s) related thereto as specified in the Confirmation for a Transaction or as otherwise specified by the Parties in the Confirmation for a Transaction.

“Qualified Issuer” means a commercial bank organized or otherwise lawfully qualified to do business under the laws of the United States or any state, having a Credit Rating

of A or higher by S&P, A2 or higher by Moody's, or an equivalent Credit Rating by any other nationally recognized rating agency.

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

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

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

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

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

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

“Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of

notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

“Seller” has the meaning set forth on page 1 of this Agreement.

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

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

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

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

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

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

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

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

“Subject Transaction Confirmation” means a confirmation of the Subject Transaction attached to this Agreement as Exhibit 3.

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

“Term Letter of Credit Amount” means: (a) with respect to a Subject Transaction involving Capacity, the amount determined from time-to-time as set forth in Section I of Exhibit 2 hereof; and/or (b) with respect to a Subject Transaction involving Energy, Ten Million Dollars (\$10 million) per 100 MW of Energy provided in the Subject Transaction.

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

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

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

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

“UCAP” means unforced capacity for NYISO Zone "ROS" (Rest of State), certified on a Monthly basis by NYISO.

ARTICLE TWO TRANSACTION TERMS AND CONDITIONS

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

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

2.3 Confirmation. The Subject Transaction is confirmed in writing between the Parties by the Subject Transaction Confirmation. Any proposed Other Transactions between the Parties governed by this Agreement shall be confirmed in writing by a Confirmation. Buyer shall prepare a confirmation for such Other Transaction substantially in the form of Exhibit 5 and forward two (2) original executed copies to Seller by certified mail, hand delivery, overnight courier or facsimile. Such confirmation shall be deemed to have been received by Seller two (2) Business Days after it was sent or such earlier time as such receipt is confirmed by Seller. If Seller objects to any term(s) of such confirmation it shall notify Buyer in writing of such objections within three (3) Business Days of Seller’s receipt thereof, otherwise Seller shall confirm a proposed Other Transaction by returning one (1) original fully-executed copy of the confirmation by certified mail, hand delivery, overnight courier or facsimile within three (3) Business Days after it receives the confirmation, failing which it shall be deemed to have accepted the terms as sent, and in either case if Seller does not so object to such confirmation, such proposed Other Transaction shall be an Other Transaction under this Agreement and such confirmation shall be a ‘Confirmation’ under this Agreement. If Buyer has failed to send a

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

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

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

ARTICLE THREE OBLIGATIONS AND DELIVERIES

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

Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “**Claiming Party**”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Subject Transaction Confirmation or other relevant Confirmation specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure, subject to the provisions of Section 6.3). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch and shall resume performance of its obligations as soon as practicable after the Force Majeure has ended. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

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

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

3.6 Buyer Termination Right in Event of Extended Force Majeure. In the event Seller is unable to provide Products required pursuant to any Transaction as a result of any event of Force Majeure, and such failure to provide Products is excused under the provisions of the

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

ARTICLE FOUR REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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

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

ARTICLE FIVE EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) either (i) the failure to perform any covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written

- notice, or (ii) any willful failure to deliver Products when required under this Agreement;
- (d) such Party becomes Bankrupt;
 - (e) the failure of such Party to satisfy its credit support requirements agreed to pursuant to Article Eight hereof;
 - (f) such Party or any Credit Support Provider of such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger, or transfer:
 - (i) the resulting, surviving, transferee or successor entity fails to assume all the obligations of such Party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party to this Agreement; or
 - (ii) the resulting, surviving, transferee or successor entity, if a Credit Support Provider, is not a Qualified Issuer; or
 - (iii) the benefits of any Credit Support Document fail to extend (without the consent of the other Party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement, if any;
 - (g) the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any Credit Support Provider for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than Twenty Five Million Dollars (\$25,000,000), which results in such indebtedness becoming immediately due and payable or (ii) a default by such Party or any Credit Support Provider for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than Twenty Five Million Dollars (\$25,000,000);
 - (h) with respect to such Party's Credit Support Provider, if any:
 - (i) any representation or warranty made by a Credit Support Provider in connection with this Agreement or any Credit Support Document is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Credit Support Provider to make any payment required or to perform any other covenant or obligation in any

Credit Support Document and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Credit Support Provider becomes Bankrupt;
- (iv) the failure of a Credit Support Document to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of the Party under the Subject Transaction to which such Credit Support Document shall relate without the written consent of the other Party; or
- (v) a Party or Credit Support Provider shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of this Agreement or any Credit Support Document to which it is a party;

provided, however, for the avoidance of doubt, any Credit Event, or other event or circumstance with respect to an issuer of a Buyer Letter of Credit or Seller Letter of Credit (other than the failure of such issuer to pay a requested draw on the respective letter of credit), shall not constitute an Event of Default unless the applicable Party fails to deliver a replacement Buyer Letter of Credit or Seller Letter of Credit, as applicable, to the other Party in accordance with Sections 8.4 and 8.5 within five (5) Business Days after receipt of written notice from such other Party of such circumstance as described in Section 5.1(h)(v), and provided, further, that the foregoing proviso shall not prevent any draws on Letters of Credit by the Parties permitted under Sections 8.4 and 8.5;

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

Notwithstanding the foregoing, the Event of Default described in Section 5.1(c)(i) shall not be deemed to occur with respect to any failure or inability of Seller to deliver Products to be provided from a specific designated facility if such facility is unavailable in whole or part for any reason, and Seller provides Buyer with equivalent Products from a different source at the

Delivery Point on the same terms and conditions as required hereunder until such specified facility is returned to service.

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

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

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

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

5.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

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

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

ARTICLE SIX PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in the Confirmation with respect to a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments, any payments pursuant to

Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each Month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder as of the conclusion of such Month.

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

6.3 Disputes and Adjustments of Invoices.

(a) A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within eighteen (18) Months of the date the invoice, or adjustment to an invoice, was rendered, or the date of any adjustment as provided by the NYISO. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within eighteen (18) Months after the invoice is rendered or any specific adjustment to the invoice is made, or the date of any adjustment as provided by the NYISO. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance of a Transaction occurred, the right to payment for such performance is waived.

(b) For the purposes of determining invoice amounts, the Parties may rely upon meter readings of the entity designated as the applicable metering authority by NYISO. The Parties will cooperate and make commercially reasonable efforts to assure that (i) the applicable metering authority shall furnish to each Party a copy of all technical specifications and accuracy calibrations for each meter, (ii) the meters shall be tested and calibrated at least once annually, using a qualified and independent third party inspector reasonably acceptable to both Parties, with all test and calibration results provided to each Party, (iii) each Party shall have a right of access to all meters at reasonable times and with reasonable prior notice for the purpose

of verifying readings and calibrations and shall be notified by the applicable metering authority and have the right to attend any testing or calibration of applicable meters that is performed in due course or at the request of the other Party. Neither Party shall object to the other Party's standing or right to attend such events. In the event any meter error in excess of one-half percent (0.5%) is detected which has any effect on any Party's rights or obligations or the amount due with respect to any prior invoice or true-up obligation, the Parties agree to correct invoices or true-up payments by making corresponding adjustments to the metered amounts of any Product for the period for which such meter error was detected, or if such period cannot be determined to the mutual satisfaction of the Parties, for one-half the period between the date of detection and the last previous test of the applicable meters showing the meters to be accurate within one-half percent (0.5%).

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

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

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

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

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

- (a) the Party obligated to deliver the greater amount of Products will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and

- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

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

ARTICLE SEVEN LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, EXCEPT AS OTHERWISE PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN THE CONFIRMATION WITH RESPECT TO A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Credit Protection. Financial Information. If requested by Buyer, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's

quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

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

8.2 Seller Credit Protection

(a) Financial Information. If requested by Seller, Buyer shall deliver (i) within 120 days following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within ninety (90) days after June 30th of each fiscal year, a copy of Buyer's unaudited financial statements for the period ending June 30th. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

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

8.3 [Intentionally deleted].

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

(a) Obligation to Maintain and Replace.

(i) Effective for the six (6) month period commencing on _____, 200_, and thereafter for each six (6) month period during the term of this Agreement commencing on January 1 or July 1 of each year through 20__ (each such six-month period a “**Semi-Annual Period**”), Seller shall have the right to request performance assurance from Buyer as provided below, and upon such request, Buyer shall deliver to Seller a Letter of Credit issued by a Qualified Issuer with a stated amount equal to the Buyer Performance Assurance Amount determined for such period as set forth in Exhibit 2 (Procedures for Computation of Performance Assurance Amounts) (each such Letter of Credit and any replacement or supplemental Letter of Credit therefor a “**Buyer Letter of Credit**”); provided, however that Buyer shall not be obligated to provide a Buyer Letter of Credit if at the time of determination of the Buyer Performance Assurance Amount for any applicable Semi-Annual Period, no Credit Event for Buyer is continuing. In the event Seller shall make any draw against a Buyer Letter of Credit in accordance with this Agreement during any period in which such Buyer Letter of Credit is required to be in effect, Buyer shall, within five (5) Business Days, cause the Buyer Letter of Credit to be reinstated in the full Buyer Performance Assurance Amount, or cause a replacement or supplemental Buyer Letter of Credit to be provided by a Qualified Issuer for the benefit of Seller, such that the total credit available shall at all times be not less than the Buyer Performance Assurance Amount. In any instance in which Seller has drawn against a Buyer Letter of Credit, but has not applied such cash against a payment obligation of Buyer then due, and is holding such cash in the manner provided in Section 8.4(c) hereof, the amount of such cash being held by Seller shall be deemed to satisfy a portion of Buyer’s obligation to maintain the Buyer Letter of Credit, and Buyer shall not be required to supplement, reinstate or replace the Buyer Letter of Credit as to such amount. No Buyer Letter of Credit shall be required to be delivered for any Semi-Annual Period if the Buyer Performance Assurance Amount for such Semi-Annual Period is less than One Hundred Thousand U.S. Dollars (\$100,000).

(ii) The term of each Buyer Letter of Credit shall commence on the first day of the applicable Semi-Annual Period and terminate on the last day thereof, provided, however, that the Buyer Letter of

Credit, if any, required for the second Semi-Annual Period in 20__, shall remain in effect or be replaced with a replacement Buyer Letter of Credit issued by a Qualified Issuer in the amount required under this Section remaining in effect until the ninety-eighth (98th) day following the Final Payment Date applicable to Buyer, notwithstanding the cessation of the Credit Event or other circumstances giving rise to Buyer's obligation to furnish the Buyer Letter of Credit at any time prior to such Final Payment Date. Each Buyer Letter of Credit shall be substantially in the form (other than amount) of the Term Letter of Credit, with such modifications as the Parties may agree.

- (iii) Notwithstanding the foregoing, upon the occurrence of a Credit Event with respect to Buyer following the commencement of any Semi-Annual Period, the Buyer Performance Assurance Amount for such Semi-Annual Period shall be determined immediately, and within five (5) Business Days following such determination, Buyer will be required to deliver to Seller a Buyer Letter of Credit in such Buyer Performance Assurance Amount, and will maintain such Buyer Letter of Credit in effect for the balance of such Semi-Annual Period.
- (iv) Buyer shall never be required to provide a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit.

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

- (i) immediately upon Buyer becoming Bankrupt as defined herein;
- (ii) upon the occurrence of an Event of Default with respect to Buyer regarding the Subject Transaction under this Agreement (whether or not Seller elects to exercise remedies under this Agreement in connection therewith); provided, however, that such draw shall be made only in the amount or amounts then due and owing by Buyer to Seller with respect to the Subject Transaction; provided, further, that if such Event of Default is continuing and additional amounts become due and owing by Buyer to Seller hereunder, Seller may make additional draws in regard to such amounts as they become due;
- (iii) at any time within thirty (30) days prior to the date of expiration of a Buyer Letter of Credit, if Buyer is required to provide a Buyer Letter of Credit for the immediately following Semi-Annual Period (or in the case of the last Semi-Annual Period in 20__, for the

period continuing until the ninety-eighth (98th) day after the Final Payment Date applicable to Buyer) and Seller has not received unqualified written confirmation from a Qualified Issuer that a renewal or replacement Buyer Letter of Credit issued by such Qualified Issuer will be delivered to Seller no later than three (3) Business Days prior to such date of expiration, in an amount equal to the applicable Buyer Performance Assurance Amount required pursuant to this Agreement and in the form required hereunder;

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

(c) Application of Proceeds of Draws. In the event that Seller at any time receives proceeds of any Buyer Letter of Credit, title in such proceeds shall vest in Seller. Seller shall utilize such proceeds to satisfy amounts owed by Buyer to Seller pursuant to the Subject Transaction after giving effect to any set-off rights under this Agreement regarding the Subject Transaction. For the purposes of this Section 8.4, amounts owed by Buyer to Seller, and the use of Buyer Letter of Credit proceeds therefor, shall not be affected by any rulings in any Bankruptcy proceeding or similar proceeding, including but not limited to any stay or discharge of Buyer's obligations to Seller under this Agreement, the intent of the Parties being that this Section shall operate as if no Bankruptcy had occurred, and Seller shall be entitled to draw and realize the proceeds of the Buyer Letter of Credit to satisfy such obligations, notwithstanding any stay or discharge of Buyer's obligations to Seller under this Agreement. In the event any draw or draws are made pursuant to Sections 8.4(b)(i), (iii), (iv) or (v) above, and such funds are not immediately applied to satisfy then-outstanding payment obligations of Buyer to Seller, Seller shall hold such funds separate and apart from all other funds of Seller in an interest-bearing account, and apply the same to any future payment obligations of Buyer to Seller; provided, however, if prior to the application of such funds for such purposes, Buyer is not in default of any obligation with respect to the Subject Transaction and no Buyer Letter of Credit is then required to be in effect, Seller shall promptly remit such funds to Buyer, with accrued interest. Following the satisfaction in full of all obligations of Buyer in respect of the Subject Transaction and after the ninety-eighth (98th) day following the Final Payment Date applicable to Buyer, and after giving effect to the exercise of any set-off rights, any surplus Buyer Letter of Credit proceeds held by Seller shall be transferred to Buyer, without interest, provided that if such amounts are not transferred to Buyer within five (5) Business Days after the foregoing due date,

such amount shall be returned with interest at the Interest Rate from the date of notice of such determination.

(d) Holding Proceeds of Draws. With respect to those amounts drawn pursuant to Section 8.4(b)(i) above that are not used to satisfy any amount owed by Buyer to Seller hereunder, notwithstanding the provisions of Section 8.4(c), Seller shall hold such amounts separate and apart from all other funds of Seller in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid with respect to Buyer's obligations to Seller prior to Buyer becoming Bankrupt are not subject to being recovered from Seller pursuant to Sections 544, 547, 549 or 550 of the Bankruptcy Code (or pursuant to any similar or successor provisions of law) in any proceeding instituted under the Bankruptcy Code, or any comparable provision of any applicable state bankruptcy or creditors' rights law, by or against Buyer. If such a final determination is made, Seller shall pay Buyer the funds drawn under the Buyer Letter of Credit pursuant to Section 8.4(b)(i) net of any amounts that have been applied in regard to amounts owed by Buyer to Seller with respect to the Subject Transaction, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Seller, Seller shall retain the funds drawn under the Buyer Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Buyer.

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

(a) Obligation to Maintain and Replace Term Letter of Credit. Seller shall deliver to Buyer within three (3) Business Days of the execution of this Agreement the initial Term Letter of Credit issued by a Qualified Issuer with a stated amount equal to the Term Letter of Credit Amount. In the case of the Subject Transaction providing for the purchase and sale of UCAP, the Term Letter of Credit Amount with respect to UCAP shall be determined, both initially and redetermined on an annual basis from time-to-time thereafter, in the manner set forth in Section I of Exhibit 2 hereof. The term of the Term Letter of Credit shall commence within three (3) Business Days of the execution of this Agreement and terminate on the Credit Support Termination Date, or such earlier time as specified in such Term Letter of Credit, provided that Seller provides Buyer with a replacement Term Letter of Credit issued by a Qualified Issuer in the amount required under this Section at least three (3) Business Days prior to the expiration of such Term Letter of Credit. In the event Buyer shall make any draw against the Term Letter of Credit in accordance with this Agreement during any period in which the Term Letter of Credit is required to be in effect, Seller shall, within five (5) Business Days, cause the Term Letter of Credit to be reinstated in the full Term Letter of Credit Amount, or cause a supplemental Term Letter of Credit to be provided by a Qualified Issuer for the benefit of Buyer, such that the total credit available shall at all times be not less than the Term Letter of Credit Amount. In any instance in which Buyer has drawn against a Term Letter of Credit, but has not applied such cash against a payment obligation of Seller then due, and is holding such cash in the manner provided in Section 8.5(d) hereof, the amount of such cash being held by Buyer shall be deemed to satisfy a portion of Seller's obligation to maintain the Term Letter of Credit, and Seller shall not be required to supplement, reinstate or replace the Term Letter of Credit as to such amount.

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

- (i) Effective for the Semi-Annual Period commencing on _____, 20__, and thereafter for each Semi-Annual Period, Seller shall deliver to Buyer a Semi-Annual Letter of Credit issued by a Qualified Issuer with a stated amount equal to the Seller Performance Assurance Amount determined for such Semi-Annual Period as set forth in Exhibit 2. On or within three (3) Business Days prior to the last Business Day prior to the commencement of each Semi-Annual Period thereafter, Seller shall deliver to Buyer a replacement Semi-Annual Letter of Credit, which shall be in effect for the immediately following Semi-Annual Period, with a stated amount equal to the Seller Performance Assurance Amount for such Semi-Annual Period. The term of each Semi-Annual Letter of Credit shall commence on the first day of the applicable Semi-Annual Period, and terminate on the last day of that Semi-Annual Period. The Semi-Annual Letter of Credit, if required, for the final Semi-Annual Period in 20__, shall expire on the Credit Support Termination Date, or such earlier time as specified in such Letter of Credit, provided that Seller provides Buyer with a replacement Semi-Annual Letter of Credit in the same amount at least five (5) Business Days prior to the expiration of such Semi-Annual Letter of Credit, it being understood and agreed that if a Semi-Annual Letter of Credit is required to be in effect as of December 31, 20__, such Semi-Annual Letter of Credit will be maintained until the Credit Support Termination Date. With respect to any Semi-Annual Period, no Semi-Annual Letter of Credit shall be required to be delivered for such Semi-Annual Period if the amount of such Semi-Annual Letter of Credit would be less than One Hundred Thousand U.S. Dollars (\$100,000).
- (ii) Following the occurrence of a Credit Event with respect to Seller, Seller shall deliver to Buyer no later than five (5) Business Days prior to the beginning of the next Bi-Monthly Period, and thereafter, no later than five (5) Business Days prior to the beginning of each subsequent Bi-Monthly Period, a Bi-Monthly Letter of Credit issued by a Qualified Issuer with a stated amount equal to the Seller Performance Assurance Amount, determined as set forth in Exhibit 2 for the applicable Bi-Monthly Period; provided, however, that Seller shall always have at least seven (7) Business Days following the relevant Credit Event before it is required to provide a Bi-Monthly Letter of Credit; provided, further, if for the applicable Bi-Monthly Period, a Semi-Annual Letter of Credit is outstanding, such Semi-Annual Letter of Credit will remain outstanding and (x) if the stated amount of the

outstanding Semi-Annual Letter of Credit is less than the Seller Performance Assurance Amount for such Bi-Monthly Period, the amount of the Bi-Monthly Letter of Credit that Seller is required to provide shall be equal to the Seller Performance Assurance Amount less the stated amount of the outstanding Semi-Annual Letter of Credit and (y) if the stated amount of the outstanding Semi-Annual Letter of Credit is equal to or greater than the Seller Performance Assurance Amount for such Bi-Monthly Period, no Bi-Monthly Letter of Credit need be provided for such Bi-Monthly Period. The term of each Bi-Monthly Letter of Credit shall commence on the first day of the applicable Bi-Monthly Period, and terminate on the last day of that Bi-Monthly Period. The Bi-Monthly Letter of Credit, if required, for the final Bi-Monthly Period in 20__ shall expire on the Credit Support Termination Date, or such earlier time as specified in such Bi-Monthly Letter of Credit, provided that Seller provides Buyer with a replacement Bi-Monthly Letter of Credit in the same amount at least five (5) Business Days prior to the expiration of such Bi-Monthly Letter of Credit, it being understood and agreed that if a Bi-Monthly Letter of Credit is required to be in effect as of December 31, 20__, such Bi-Monthly Letter of Credit will be maintained until the Credit Support Termination Date notwithstanding the cessation of the circumstances giving rise to Seller's obligation to furnish such Bi-Monthly Letter of Credit. Each Bi-Monthly Letter of Credit shall be substantially in the form (other than the stated amount) set forth in Exhibit 4 (Form of Term Letter of Credit). With respect to any Bi-Monthly Period, no Bi-Monthly Letter of Credit shall be required to be delivered for such Bi-Monthly Period if the Seller Performance Assurance Amount calculated with respect to such period is less than One Hundred Thousand U.S. Dollars (\$100,000).

- (iii) In the event Buyer shall make any draw against a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit in accordance with this Agreement during any period in which a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit is required to be in effect, Seller shall, within five (5) Business Days, cause the Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, as the case may be, to be reinstated in the full Seller Performance Assurance Amount, or cause a replacement or supplemental Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, as the case may be, to be provided by a Qualified Issuer for the benefit of Buyer, such that the total credit available shall at all times be not less than the Seller Performance Assurance Amount. In any instance in which Buyer has drawn against a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, but has not applied such cash against a payment obligation of Seller then due, and is holding such cash in the

manner provided in Section 8.5(d) hereof, the amount of such cash being held by Buyer shall be deemed to satisfy a portion of Seller's obligation to maintain a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, as the case may be, and Seller shall not be required to supplement, reinstate or replace such Letter of Credit as to such amount.

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

- (i) immediately upon Seller and/or the issuer of a Seller Letter of Credit becoming Bankrupt as defined herein;
- (ii) upon the occurrence of an Event of Default with respect to Seller regarding the Subject Transaction under this Agreement (whether or not Buyer elects to exercise remedies under the Agreement in connection therewith); provided that such draw shall be made only in the amount or amounts then due and owing by Seller to Buyer with respect to the Subject Transaction; provided, further, that if such Event of Default is continuing and additional amounts become due and owing by Seller to Buyer hereunder, Buyer may make additional draws in regard to such amounts as they become due;
- (iii) at any time within thirty (30) days prior to the date of expiration of a Seller Letter of Credit, if Seller is required to provide a Seller Letter of Credit for the date immediately following the expiration of the Seller Letter of Credit and Buyer has not received unqualified written confirmation from a Qualified Issuer that the required renewal or replacement Seller Letter of Credit issued by such Qualified Issuer will be delivered to Buyer no later than three (3) Business Days prior to such date of expiration, in an amount equal to the amount required pursuant to this Agreement and in the form required hereunder;
- (iv) if, notwithstanding the written confirmation referenced in clause (iii) above, the relevant Seller Letter of Credit is not renewed or a replacement Seller Letter of Credit in the form required hereunder and in the amount required by this Agreement is not delivered to Buyer prior to the third (3rd) Business Day prior to the date of expiration of the relevant then-current Seller Letter of Credit; or

- (v) a Credit Event has occurred with respect to the issuer of a Seller Letter of Credit and Seller has failed to deliver to Buyer a replacement Seller Letter of Credit issued by a Qualified Issuer in the form required hereunder within five (5) Business Days of such event.

(d) Application of Proceeds of Draws. In the event that Buyer at any time receives proceeds of any Seller Letter of Credit, title in such proceeds shall vest in Buyer. Buyer shall utilize such proceeds to satisfy amounts owed by Seller to Buyer pursuant to the Subject Transaction after giving effect to any set-off rights under this Agreement regarding the Subject Transaction. For the purposes of this Section 8.5, amounts owed by Seller to Buyer, and the use of any Seller Letter of Credit proceeds therefor, shall not be affected by any rulings in any Bankruptcy proceeding or similar proceeding, including but not limited to any stay or discharge of Seller's obligations to Buyer under this Agreement, the intent of the Parties being that this Section 8.5 shall operate as if no Bankruptcy had occurred, and Buyer shall be entitled to draw and realize the proceeds of the Seller Letter of Credit to satisfy such obligations without delay, notwithstanding any stay or discharge of Seller's obligations to Buyer under this Agreement. In the event any draw or draws are made pursuant to Sections 8.5(c)(i), (iii), (iv) or (v) above, and such funds are not immediately applied to satisfy then-outstanding payment obligations of Seller to Buyer, Buyer shall hold such funds separate and apart from all other funds of Buyer in an interest-bearing account, and apply the same to any future payment obligations of Seller to Buyer; provided, however, if prior to the application of such funds for such purposes, Seller is not in default of any obligation with respect to the Subject Transaction and has provided the appropriate replacement Seller Letter of Credit (or no Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit is then required to be in effect), Buyer shall promptly remit such funds to Seller, with accrued interest. Following the satisfaction in full of all obligations of Seller in respect of the Subject Transaction and after the Credit Support Termination Date, and after giving effect to the exercise of any set-off rights, any surplus Seller Letter of Credit proceeds held by Buyer shall be transferred to Seller, without interest, provided that if such amounts are not transferred to Seller within five (5) Business Days after the Credit Support Termination Date, such amount shall be returned with interest at the Interest Rate from such date.

(e) Holding Proceeds of Draws. With respect to those amounts drawn pursuant to Section 8.5(c)(i) above that are not used to satisfy any amounts owed by Seller to Buyer hereunder, notwithstanding the provisions of Section 8.5(d), Buyer shall hold such amounts separate and apart from all other funds of Buyer in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid by Seller or the issuer of the Seller Letter of Credit to Buyer prior to Seller becoming Bankrupt are not subject to being recovered from Buyer pursuant to Sections 544, 547, 549 or 550 of the Bankruptcy Code (or pursuant to any successor provisions of law) in any proceeding instituted under the Bankruptcy Code, or any comparable provision of any applicable state bankruptcy or creditors' rights law, by or against Seller or the issuer of the Seller Letter of Credit. If such a final determination is made, Buyer shall pay Seller (or, if applicable, the issuer of the Seller Letter of Credit) the funds drawn under the Seller Letter of Credit pursuant to Section 8.5(c)(i), net of any amounts that have been applied in regard to amounts owed by Seller to Buyer with respect to the Subject Transaction, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys

from Buyer, Buyer shall retain the funds drawn under the Seller Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Seller (or, if applicable, the issuer of the Seller Letter of Credit).

ARTICLE NINE GOVERNMENTAL CHARGES

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

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

ARTICLE TEN MISCELLANEOUS

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

10.2 Representations and Warranties.

(a) Notwithstanding any other provision of this Agreement, as of the Effective Date and as of the effective date of each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement and each Transaction

(including any Confirmation accepted in accordance with Section 2.3);

- (ix) it has entered into this Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Confirmation of a Transaction to which it is a Party;
- (x) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xi) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

(b) Buyer further represents and warrants to Seller continuing throughout the term of this Agreement, with respect to this Agreement and the Subject Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Agreement have or will be taken and performed as required under the Act and Buyer's bylaws or regulations, (ii) all persons making up Buyer's governing body are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Agreement by Buyer is authorized under the provisions of the Act, (iv) the term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant governing documents and applicable law, and (v) the obligations to make payments hereunder do not constitute any kind of indebtedness of Buyer or create any kind of lien on, or security interest in, any property or revenues of Buyer which, in either case, is proscribed by any provision of the Act or any other relevant governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

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

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

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

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

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

10.7 Notices. All notices, requests, statements or payments shall be made as specified on pages 1-2 of this Agreement, provided notices may not be provided by e-mail unless simultaneously confirmed by a document transmitted in the foregoing manner. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, ordinary United States mail, overnight United States mail or overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Notice by ordinary United States mail shall be effective on the third Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General.

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

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

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

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

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

(f) Any provision that (i) is declared, deemed, rendered or becomes unlawful or void, or (ii) otherwise becomes incapable of being performed in the manner originally contemplated in this Agreement, as a result of any order, judgment, action or process of an applicable court or regulatory agency, or as the result of a statutory or regulatory change (individually or collectively, any such events referred to as “**Regulatory Event**”) will not otherwise affect the remaining obligations that arise under this Agreement; provided, however, that if a Regulatory Event occurs, (y) the Parties shall promptly negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties to the greatest possible reasonable extent in the absence of the provisions affected by the Regulatory Event, and (z) if the nature of the Regulatory Event is such that the remaining unaffected portions of the Agreement cannot reasonably be reformed and continued in effect without depriving one or both Parties of a material aspect of their original bargain, the Agreement shall terminate as of the implementation date of the Regulatory Event without any further payment obligation by either Party other than settlement of payments or adjustments due with respect to all Transactions previously performed by the Parties in good faith; provided, however, that for the avoidance of doubt, (i) an event that increases the cost of performance for a Party but otherwise does not prevent such Party from performing shall not be a Regulatory Event, and (ii) upon any such termination, neither Party shall be obligated to pay or entitled to receive any payment for Gains or Losses or any transaction costs.

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

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

(i) In the event any index, reference input or other third party source required for any calculation under this Agreement shall no longer be available to the Parties due to cessation of publication thereof, substantive change in the basis or methodology for derivation thereof which makes such source inapplicable or unreliable for any purpose originally intended,

or for any other reason, the Parties agree to meet within ten (10) days of learning of such unavailability and negotiate in good faith the selection of a substitute reference input that will most closely simulate the reference input that is no longer available. In the event no adequate substitute reference input is available, the Parties will negotiate in good faith to revise the applicable calculation formula to produce a result approximating the original formula as closely as possible, utilizing such other variable input sources as may be practicably available.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party relating to performance or non-performance under this Agreement to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

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

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

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

10.13 Dispute Resolution

(a) If any dispute shall arise between the Parties in connection with or under this Agreement, the Parties shall first attempt in good faith to resolve such dispute between themselves in the following manner. If any such dispute shall arise, either Party may give a

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

(b) Either Buyer or Seller may, without prejudice to any negotiation or mediation procedures, proceed in the courts of the State of New York to obtain provisional judicial relief if, in such Party's sole discretion, such action is necessary to protect public safety, avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of any dispute resolution procedures employed by the Parties or pendency of any action at law or in equity. Except for temporary injunctive relief under this section, neither Buyer nor Seller shall bring any action at law or in equity to enforce, interpret, or remedy any breach or default of this Agreement without first complying with the provisions of this Section 10.13.

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

10.14 Regulatory Review.

(a) The Parties, for themselves and their respective successors and assigns, (i) agree that (absent the express, written agreement of all Parties to the proposed change) the standard of review for proposed changes to any section of this Agreement, or to any other

documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, that specifies the rate(s) or other economic terms and conditions agreed to by the Parties, whether proposed by a Party or by or before FERC acting *sua sponte*, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). To the extent permitted by applicable law, the Parties, for themselves and their respective successors and assigns, hereby expressly and irrevocably waive any rights they may have to the application of any other standard of review, including the “ordinary just and reasonable standard under Sections 205 and/or 206 of the FPA.” Morgan Stanley Capital Group Inc. v. P.U.D. No. 1 of Snohomish County, R-70 (2007-08), Docket No. 06-1457, at p.6 (Slip op. June 26, 2008) (“Morgan Stanley”). The Parties, for themselves and their respective successors and assigns, agree that for purposes of any proceeding or review by FERC, any reviewing court, arbitrator, or other tribunal acting in connection with or relating in any way to this Agreement, shall be subject to the “public interest” standard and not in any case the “ordinary just and reasonable standard,” as such terms have been construed in Morgan Stanley.

(b) Notwithstanding Section 10.14(a), to the fullest extent permitted by applicable law, each Party, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, unilaterally to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate(s) or other material economic terms and conditions agreed to by the Parties. The Parties agree that, to the fullest extent permitted by applicable law, the “sanctity of contract” principles acknowledged by FERC in its Notice of Proposed Policy Statement (issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail and neither Party shall unilaterally seek to obtain from FERC any relief changing the rate(s) and other material economic terms and conditions of their agreement(s), as set forth in this Agreement, notwithstanding any changes in applicable law or markets that may occur. To the extent that any non-party seeks such relief, or FERC acts *sua sponte* to consider such changes, the Parties further covenant and agree to use commercially reasonable efforts (which efforts may include the costs and expense of appearing before FERC or in connection with any appeals of FERC orders but shall not otherwise require the payment of money by a Party), to cooperate to jointly oppose the entry of an order by FERC providing any such changes. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this paragraph shall not apply, provided that, consistent with Section 10.14(a), neither Party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in Sections 10.14(a). Nothing in this Section 10.14(b) shall prevent Seller from making compliance, tariff or other filings as are required by the regulations and orders of the FERC..

(c) To the extent FERC adopts in a final or subsequent policy statement the use of specific language to accomplish the objective described in Sections 10.14 (a) and (b) which specific language varies from that set out in Section 10.14(a), then the Parties shall amend Section 10.14(a) to reflect such specific language, provided that to the extent that the objective

behind the specific language adopted in any such final or subsequent policy statement is in any way inconsistent with the mutual intent of the Parties in this regard as currently set forth in Sections 10.14 (a) and (b), then the Parties shall meet to attempt to negotiate in good faith an amendment to this section to address such inconsistencies, provided, further, that neither Party shall be obligated in any way to agree to any such amendment.

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

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

Power Authority of the State of New York
Buyer

Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

List of Exhibits and Schedules

Exhibit	Title
1	Calculation of Gains or Losses
2	Procedures for Computation of Term Letter of Credit and Performance Assurance Amounts
3	Form of Confirmation – To Be Supplied by Bidder
4	Form of Term Letter of Credit
5	Form of Confirmation Letter
6	Buyer Opinions
7	Seller Opinions
Appendix	Items to be addressed by Bidders offering Products from facilities to be developed after contracting

Exhibit 1 to MPPSA**Calculation of Gains or Losses**

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

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

- (i) quotations (either firm or indicative) for replacement transactions of a similar nature (considering quantity, length of term and applicable Product, and any other relevant considerations) supplied by one or more third parties that may take into account the creditworthiness of the calculating Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the calculating Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market for transactions of a similar nature (considering quantity, length of term and applicable Product, and any other relevant considerations) supplied by one or more third parties including, without limitation, relevant rates, prices, volatilities, spreads, correlations or other relevant market data in the relevant market if that information is of the same type used by the calculating Party in the regular course of its business for the valuation of transactions of a similar nature (considering quantity, length of term and applicable Product, and any other relevant considerations) for financial reporting purposes; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the calculating Party's Affiliates) if that information is of the same type used by the calculating Party in the regular course of its business for the valuation of transactions of a similar nature (considering quantity, length of term and applicable Product, and any other relevant considerations) for financial reporting purposes.

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

Exhibit 2 to MPPSA**Procedure for Computation of Term Letter of Credit
and Performance Assurance Amounts****I. Seller Term Letter of Credit Requirement for Subject Transactions****A. UCAP Transactions**

In the case of a Subject Transaction involving UCAP, the Term Letter of Credit Amount with respect to such Products shall be provided as set forth in this Section I.

In the case of a Subject Transaction for UCAP for a single year duration only, the Term Letter of Credit Amount for UCAP shall be calculated for the annual period, and shall be seventy-five percent (75%) of the difference between (i) the weighted average UCAP price of the Rest of State ICAP demand curve at a 100% ICAP requirement level for the applicable annual period and (ii) the weighted average UCAP price as provided in the Subject Transaction Confirmation. For example, if the weighted average UCAP price from the demand curve is \$7/kW-month and the weighted average of the Subject Transaction Confirmation price is \$3.50/kW-month for 100 MWs of UCAP, then the Term Letter of Credit Amount for such annual period would be as follows:

$$(\$7 - \$3.50 \text{ kW-month}) * (0.75) * (1000\text{kW}/1 \text{ MW}) * 100 \text{ MW} * 12 \text{ months/year} = \$3,150,000/\text{year} \text{ or } \$31,500/\text{MW per year}$$

A similar calculation will be effective for a UCAP Subject Transaction involving multiple years. The first year calculation will be the same as above and the Term Letter of Credit Amount shall be that value plus the sum of net present values of the amounts for all applicable years remaining under the Subject Transaction, with each remaining annual value determined by expanding the first year amount in accordance with the CPI (as defined below) for the most recently completed 12-month period, and with the net present value calculated in accordance with the discount rate set forth in Section V below.

The “CPI” is a constant escalator based upon the consumer price index for All Urban Consumers known as CPI-U published by the United States Department of Labor: Bureau of Labor Statistics. The CPI is available at the U.S. Department of Labor, Bureau of Labor Statistics website under Economic News Release: Current Consumer Price Index [www.bls.gov/news.release/pdf/cpi.pdf] in the monthly news release. Within the news release refer to Table A. Percent changes in CPI for Urban Consumers (CPI-U): Unadjusted 12 month ended month, year, all items value. This value shall be the escalator for the UCAP electricity prices.

For multiple year UCAP transactions, the Term Letter of Credit Amount will be calculated upon execution of the Agreement, with Seller to provide the required Term Letter of Credit covering such Term Letter of Credit Amount then determined. For example, for a Subject Transaction Confirmation providing for UCAP executed in June 2009 for delivery of UCAP in the period

2010-2014, the Term Letter of Credit Amount shall be based on an annual amount estimated for 2010, and then that estimated 2010 annual amount shall be escalated over the 2011-2014 period, using the CPI. The sum of net present values of all annual values for 2010-2014 will be determined using the applicable discount rate, with the resulting figure being the initial Term Letter of Credit Amount. Thereafter, on an annual basis (either on a calendar-year basis or contract year basis, as agreed by the Parties), the Term Letter of Credit Amount will be recalculated for the remaining term of the Subject Transaction on the basis of then-applicable values, and Seller shall provide a replacement Term Letter of Credit in the recalculated amount at the commencement of the next annual period.

The Term Letter of Credit for UCAP, and each annual replacement or supplemental Term Letter of Credit therefor, shall be provided in manner and time for which Section 8.5 of the Agreement provides. Each Term Letter of Credit required for UCAP pursuant to this Section I shall be issued, renewed and maintained as set forth in Section 8.5 of the Agreement, and shall be subject to the provisions thereof, including the requirement for reinstatement in full following any draw by Buyer.

B. Energy Transactions

In the case of a Subject Transaction involving Energy, Seller shall provide a Term Letter of Credit in an amount equal to Term Letter of Credit Amount for a Subject Transaction involving Energy.

C. General Provisions

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

II. Performance Assurance Letter of Credit Requirement for Energy Transactions - Background:

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

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

The general methodology in establishing the Forward Energy Prices is based on quotes from published third party information, specifically the “Platts M2M Power” 20-year forward peak and off-peak benchmarks for NYISO Zone G, derived from historical data. The peak period covers hour-beginning 7:00 A.M. through hour-ending 11:00 P.M. during non-holiday weekdays. Off-peak hours cover the entire set of hours within the month that are not classified as peak. Holidays are defined based on the rules for "additional off-peak hours" specified by the North American Electric Reliability Council (NERC). The time-weighted average of the corresponding zonal peak and off-peak published Platts forward price benchmarks, weighted by the number of hours in each of those two respective monthly price blocks, will be used to establish the Forward Energy Prices for a particular month.

In the absence of the Platts M2M Power 20-year forward peak and off-peak benchmarks, the Parties agree to use the weighted average of the peak and off-peak NYISO Zone G forward prices published by the New York Mercantile Exchange (“NYMEX”) and/or NYMEX Clearport to establish Forward Energy Prices. Where such prices are not available for the duration of the Subject Transaction, the Parties will mutually agree on the methodology and thresholds to be employed, using the best available forward price data then available in the marketplace, to estimate the NYISO Zone G forward price values relating to the specified pricing block, for the remainder of the designated time horizon. In the absence of both the Platts M2M Power 20-year forward peak and off-peak benchmarks and the prices published by NYMEX and NYMEX Clearport, the Parties will agree to use an equivalent price benchmark for these Computations.

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

III. Forward Energy Price Calculation Periods:

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

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

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

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

IV. Determining Forward Energy Prices:

Five (5) Business Days prior to each Computation date, the Parties will communicate and will jointly determine the Forward Energy Prices following the procedure set forth in Section II above.

V. Discount Rate

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

Table E

Mark-To-Market Values/Valuation

For each month common to Table A and Table D subtract the Table A values from the Table D values and arrive at a Mark-To-Market (MTM) Difference for such month. The values arrived at shall be multiplied by the appropriate number of megawatt hours in the month, and net present value of the resulting figures shall be calculated utilizing the discount rate specified in Section V hereof, and the sum of such net present values shall be determined.

Year/Month	MTM Difference	Megawatt Hours	MTM Difference Amount
Sum of MTM Difference Amounts>>>			>>
NPV of MTM Difference Amounts>>>			>>

If the above sum is positive, it shall constitute the Seller Performance Assurance Amount; if negative, it shall constitute the Buyer Performance Assurance Amount. A negative sum shall not release the Seller from its obligation to maintain a Term Letter of Credit.

Seller shall be the calculation agent for initially calculating each proposed Buyer Performance Assurance Amount required under the Agreement, and Buyer shall be the calculating agent for initially calculating each proposed Seller Performance Assurance Amount required under the Agreement. Following such initial calculations, the calculating agent shall present the other Party with its proposed amount and details as to how its calculation was prepared, not later than fifteen (15) Business Days prior to the date that the applicable Letter of Credit is due. If following such presentation the Parties fail to reach agreement on the determination of the Seller

Performance Assurance Amount or Buyer Performance Assurance Amount, as applicable (each a “**Mark to Market Amount**”), then the non-calculating Party shall provide the calculating Party with a detailed computation of its estimate of the applicable Mark to Market Amount to no later than ten (10) Business Days prior to the date that the applicable Letter of Credit is due to be delivered. In all such cases, the Parties shall promptly consult with each other after delivery of the estimates discussed above and make a good faith effort to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the third Business Day prior to the required delivery date of the applicable Letter of Credit, then the applicable Mark to Market amount shall be (i) in the case of a Seller Performance Assurance Amount, the Mark to Market Amount determined by Buyer, such determination to be made in good faith and in accordance with this Exhibit 2, and (ii) in the case of the Buyer Performance Assurance Amount, the Mark to Market Amount determined by Seller, such determination to be made in good faith and in accordance with this Exhibit 2. Following the delivery of such Letter of Credit, the Parties shall resolve the dispute in accordance with Section 10.13 of the Agreement. The applicable Letter of Credit shall thereupon be provided, returned, or reduced, if necessary, on the next Business Day in accordance with the results of such recalculation.

Exhibit 3 to MPPSA

Form of Confirmation
[To Be Supplied by Bidder]

Exhibit 4 to MPPSA

Form of Term Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

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

Date of Issuance: _____

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

1) A Beneficiary’s signed certificate stating:

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

2) A Beneficiary’s signed certificate stating:

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

3) A Beneficiary’s signed certificate stating:

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

4) A Beneficiary’s signed certificate stating:

_____ (“Seller”) has failed to provide within thirty (30) days prior to expiry of this letter of credit or another letter of credit provided by Seller to Beneficiary pursuant to the Master Power Purchase & Sale Agreement by and between Beneficiary and Seller dated _____, as the same may have been amended (the “Agreement”), either (i) written confirmation that such letter of credit will be renewed, or (ii) written confirmation from a Qualified Issuer, as defined in the Agreement, that a replacement letter of credit issued in the form required under the Agreement will be delivered to Beneficiary no later than three (3) local business days prior to expiry of this letter of credit.

5) A Beneficiary’s signed certificate stating:

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

Special Conditions:

- Multiple partial drawings permitted, not to exceed the maximum credit available hereunder in the aggregate.
- Documents must be presented at our servicer’s counter located at _____, New York no later than _____, 20___. [**expiry date**]
- Documents may be presented by overnight courier delivery in lieu of presentation in person by Beneficiary’s representative.

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

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

Exhibit 5 to MPPSA

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

[Other Transactions]

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

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter

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Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

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

[Buyer]

[Seller]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

Exhibit 6 to MPPSA

BUYER OPINIONS

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

Exhibit 7 to MPPSA

SELLER OPINIONS

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

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