

**SCHEDULE
TO THE ISDA 2002 MASTER AGREEMENT**

dated as of _____, 20__

between

[INSERT NAME]

a _____ organized under the laws of the State of _____

(“Party A”)

and

POWER AUTHORITY OF THE STATE OF NEW YORK

a corporate municipal instrumentality and political subdivision of the State of New York

(“Party B”)

This Schedule shall amend and supplement the ISDA Master Agreement (2002 Form) dated as of _____ (such Schedule and the ISDA Master Agreement, collectively, the **“Master Agreement”**).

This Schedule shall apply only to the Transaction (the **“Subject Transaction”**) described in the Confirmation, attached hereto as Appendix 1. Any other “Specified Transaction” hereafter entered into between one party to the Master Agreement and the other party to the Master Agreement shall be effected under an amendment or supplement to this Schedule or under such other document as the parties may agree.

All references herein to the Master Agreement shall mean the Master Agreement as supplemented and modified by this Schedule. All references to Sections shall be, unless otherwise noted, to Sections of the Master Agreement.

Part 1 Event of Default and Termination Provisions

(a) **“Specified Entity”** means in relation to Party A for the purpose of—

Section 5(a)(v), None.

Section 5(a)(vi), None.

Section 5(a)(vii), None.

Section 5(b)(v), None.

and in relation to Party B for the purpose of—

Section 5(a)(v), None.

Section 5(a)(vi), None.

Section 5(a)(vii), None.

Section 5(b)(v), None.

- (b) **“Specified Transaction”** means, in lieu of the meaning specified in Section 14, any contract or transaction, including an agreement with respect thereto (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between one party to the Master Agreement and the other party to the Master Agreement. Specified Transactions shall include any Transactions effected pursuant to the Master Agreement.
- (c) **“Cross Default”** applies to Party A and Party B.
- (d) **“Threshold Amount”** means with respect to Party A: \$25 million, and with respect to Party B: \$25 million.
- (e) **“Specified Indebtedness”** means any obligation (whether present, future, contingent or otherwise, as principal, surety or otherwise) in respect of borrowed money or relating to the payment or delivery of funds, securities or other property (including without limitation collateral).
- (f) **“Credit Event Upon Merger”** applies to Party A and Party B. Section 5(b)(v) is hereby amended by adding Subsection (4) as an additional **“Designated Event,”** as follows:

“(4) or without limiting the foregoing, if X is Party B, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, X generally.”
- (g) The **“Automatic Early Termination”** provisions of Section 6(a) will not apply to Party A and will not apply to Party B, provided, however, where the Event of Default is specified in Section 5(a)(vii) (1), (3), (5), (6) or, to the extent analogous thereto, (8), and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of the Master Agreement, then the Automatic Early Termination provisions of Section 6(a) will apply to Party A and Party B.

If an Early Termination Date occurs under Section 6(a) as a result of Automatic Early Termination, the Defaulting Party shall fully indemnify the Non-defaulting

Party on demand against all expense, loss, damage or liability that the Non-defaulting Party may incur in respect of the Master Agreement and the Subject Transaction as a consequence of movements in commodity, exchange or other relevant prices between the Early Termination Date and the Local Business Day on which the Non-defaulting Party first becomes aware that the Early Termination Date has occurred under Section 6(a).

(h) **“Termination Currency”** means United States Dollars.

(i) **Additional Termination Events:**

Additional Termination Event will apply. The following will constitute an Additional Termination Event:

With respect to any party, which shall be the Affected Party, the failure of the Affected Party to deliver to the remaining party, which will be the Non-affected Party, any Letters of Credit required by Sections (i) and (j) of Part 5 of this Schedule within the time periods specified therein.

(j) Notwithstanding anything in the Master Agreement to the contrary, (1) the Non-defaulting Party shall not be obligated to pay an Early Termination Amount to the Defaulting Party in the case of an Early Termination Date resulting from an Event of Default; (2) the Non-affected Party shall not be obligated to pay an Early Termination Amount to the Affected Party in the case of an Early Termination Date resulting from the event described in Part 1, Section (i) of this Schedule; (3) in the case of a Tax Event Upon Merger where Party B is the Burdened Party, in no event will Party B be required to pay to Party A an Early Termination Amount resulting from an Early Termination Date; and (4) neither party shall be required to pay an Early Termination Amount in the case of an Early Termination Date resulting from an Illegality, Force Majeure Event, or Tax Event, provided, however, that in the case of all such Early Termination Dates discussed in clauses (1)-(4) above, the parties shall be obligated to make payment for unpaid payment obligations of the parties that arose prior to the effective date of the event date of the event causing the termination.

(k) Notwithstanding anything else in the Master Agreement to the contrary, if (i) the NYISO Price for any Product, as defined in the Subject Transaction Confirmation, is no longer developed by the New York Independent System Operator (“**NYISO**”) or other applicable market authority as defined in the Subject Transaction Confirmation, or (ii) the methodology by which the NYISO Price is developed by the NYISO or such other applicable market authority is modified in any material respect (hereinafter the relevant event shall be referred to as the “**Change Event**”), then, at the option of either party, the parties shall promptly negotiate in good faith to reform the Master Agreement and Subject Transaction in order to give effect to the original intention of the parties to the greatest possible reasonable extent, and, if the nature of the Change Event is such that the Master Agreement and Subject Transaction cannot reasonably be reformed

and continued in effect without depriving one or both parties of a material aspect of their original bargain, the Master Agreement shall terminate as of the effective date of the Change Event, provided, however, that for the avoidance of doubt, upon any such termination, neither party shall be obligated to pay or shall be entitled to receive any Close-out Amount payment or Unpaid Costs, but the parties shall be obligated to make payment for unpaid payment obligations of the parties that arose prior to the effective date of the Change Event causing the termination.

Part 2 Tax Representations

- (a) **Party A and Party B Payer Tax Representations.** For the purpose of Section 3(e), each of Party A and Party B makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than, as may be required by applicable law, interest under Section 9(h)) to be made by it to the other party under the Master Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f); (ii) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii); and (iii) the satisfaction of the agreement of the other party contained in Section 4(d), except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) **Payee Tax Representations**

- (i) For the purpose of Section 3(f), Party A makes the following representation:

It is a U.S. _____ duly organized and incorporated under the laws of the State of _____ and is an exempt recipient under Treasury Regulation Section 1.6049-4(c)(1)(ii).

- (ii) For the purpose of Section 3(f), Party B makes the following representation:

It is a political subdivision of the State of New York duly formed under the laws of the State of New York.

Part 3 Agreement to Deliver Documents

For the purpose of Sections 4(a)(i) and 4(a)(ii), each party agrees to deliver the following documents, as applicable:

Proposals for Energy Supplies for Village of Solvay Electric Department – Sep 15, 2009

(a) Tax forms, documents or certificates to be delivered are: None (other than any documents requested in accordance with Section (b) below).

(b) Other documents to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be Delivered	Covered by Section 3(d) Representations
Party A and Party B	A secretary's certificate as to the incumbency of officers executing the Master Agreement and each Confirmation reasonably satisfactory in form and substance to the other party.	Upon execution of the Master Agreement and as deemed necessary for any further documentation.	Yes
Party A and Party B	Audited financial statements for each fiscal year of such party and any Credit Support Provider with respect to such party, certified by independent certified public accountants and prepared in accordance with U.S. generally accepted accounting principles.	As soon as practicable after the execution of the Master Agreement and also within 120 days (or as soon as practicable after becoming publicly available) after the end of each of its fiscal years while there are any obligations outstanding under the Master Agreement unless such report is freely available over the internet from sources such as www.sec.gov/edgar.shtml or the party's website.	Yes
Party A	A duly executed Term Letter of Credit.	Upon execution of the Master Agreement and from time to time as required under the Master Agreement.	No
Party A and Party B	Legal opinion covering the Master Agreement reasonably satisfactory to the other party.	Within 90 days of the execution of the Master Agreement.	No
Party A and Party B	Certified copies of the resolutions adopted by Party A and Party B authorizing the execution of the Master Agreement.	Within two (2) Local Business Days following execution of the Master Agreement and as deemed necessary	Yes

		for further documentation.	
Party A and Party B	Such other documents as the other party may reasonably request.	Upon request.	No

Part 4 Miscellaneous

(a) **Addresses for Notices.** For the purpose of Section 12(a) of the Master Agreement:

(i) Address for notices or communications to Party A:

Attention:

Facsimile No.:

Telephone No.:

(ii) Address for notices or communications to Party B:

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

Attention: Senior Vice President ERM

Facsimile No.: 914-287-3890

Attention: Vice President Power Resource Planning
& Acquisition

Facsimile No.: 914-390-8156

In addition, for purposes of notices sent pursuant to Part 5:

Attention: Vice President –Energy Risk
Assessment and Control

Facsimile No.: 914-287-3081

and,

Attention: Treasurer

Facsimile No.: 914- 681-6995

- (iii) Section 12(a) is amended by deleting clause (ii) of such section.
- (b) **Process Agent.** For the purposes of Section 13(c) of the Master Agreement:

Party A does not appoint a Process Agent but designates as a place where service may be made upon it: its offices at _____.

Party B does not appoint a Process Agent but designates as a place where service may be made upon it: its offices at 123 Main Street, White Plains, NY 10601.
- (c) **Offices.** The provisions of Section 10(a) will apply to the Master Agreement.
- (d) **Multibranch.** For the purposes of Section 10(b) of the Master Agreement:

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.
- (e) **Calculation Agent** is Party A.
- (f) **Credit Support Document.** Details of any Credit Support Document:
 - (i) With respect to Party A: Each Party A Letter of Credit delivered by Party A in connection with the Master Agreement.
 - (ii) With respect to Party B: Each NYPA Letter of Credit provided by Party B pursuant to this Schedule.
- (g) **“Credit Support Provider”** means in relation to Party A: Any issuer of any Party A Letter of Credit provided by Party A as a Credit Support Document pursuant to the Master Agreement.

“Credit Support Provider” means in relation to Party B: Any issuer of any NYPA Letter of Credit provided by Party B as a Credit Support Document pursuant to the Master Agreement.

For the avoidance of doubt, any event or circumstance with respect to an issuer of a Letter of Credit shall not constitute an Event of Default or Additional Termination Event unless the applicable party fails to deliver a replacement Letter of Credit in accordance with Section (i) or (j) of Part 5 of this Schedule, as applicable.
- (h) **Governing Law; Jurisdiction.** The Master Agreement will be governed by and construed in accordance with the laws of the State of New York, without reference to its choice of law doctrine. Section 13(b) is amended to read in its entirety as follows:

“Each party 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 suit, claim, action or other proceeding at law or in equity relating to this Agreement, or to any transaction contemplated hereby. Each party accepts, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waives any objection as to venue, and any defense of forum non conveniens. Each party waives any right it may have to a trial by jury in respect of any litigation based on, 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.”

- (i) **Netting of Payments.** Multiple Transaction Payment Netting will apply for the purpose of Section 2(c) of the Master Agreement to all Transactions and to all other transactions previously entered into between Party A and Party B including any transactions entered into between Party A and Party B subsequent to the date of this Master Agreement. The Calculation Agent shall notify the parties of the amounts of any such netted payments (which notice may be made by telephone). Notwithstanding the foregoing provisions of this subparagraph and the netting of payments pursuant hereto, each party shall provide the other party with separate invoices and documentation covering each Transaction or transaction, as the case may be, in such detail and form as a party reasonably requests.
- (j) **“Affiliate”** will have the meaning specified in Section 14.
- (k) **Absence of Litigation.** For the purpose of Section 3(c):
“Specified Entity” means in relation to Party A, none.
“Specified Entity” means in relation to Party B, none.
- (l) **No Agency.** The provisions of Section 3(g) will apply to the Master Agreement.
- (m) **Additional Representation** will apply. For the purpose of Section 3 of the Master Agreement, the following will constitute an Additional Representation:
 - (i) **Relationship Between the Parties.** Each party represents to the other party the following:
 - (1) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into the Subject Transaction and as to whether the Subject Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any

communication (written or oral) of the other party as investment advice or as a recommendation to enter into the Subject Transaction, it being understood that information and explanations related to the terms and conditions of the Subject Transaction will not be considered investment advice or a recommendation to enter into the Subject Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of the Subject Transaction.

- (2) *Assessment and Understanding.* It is capable of assessing the merits and of understanding on its own behalf or through independent professional advice the Subject Transaction, and understands and accepts the terms, conditions and risks of the Subject Transaction. It is also capable of assuming, and assumes, the risks of the Subject Transaction.
 - (3) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of the Subject Transaction.
- (n) ***Recording of Conversations.*** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with the Master Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any proceedings.

Part 5 Other Provisions

- (a) ***Deferral of Payments and Deliveries in Connection with Illegality; Interest on Deferred Payments.*** Section 2(a)(iii) of the Master Agreement is hereby amended to read in its entirety as follows:
- “(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Illegality or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the Subject Transaction has occurred or been effectively designated and (3) each other condition specified in the Master Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).”
- (b) ***Representations.***
- (i) The introductory clause of Section 3 of the Master Agreement is hereby amended to read in its entirety as follows:
“Each party makes the representations set forth below to the other party

(which, in the case of the representations in Section 3(a), will be deemed to be repeated at all times until the termination of the Master Agreement). If any “**Additional Representation**” is specified in the Schedule or the Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.”

(ii) Section 3(a)(ii) is hereby amended to read in its entirety as follows:

“(ii) **Powers and Actions.** It has the power to execute the Master Agreement and any other documentation relating to the Master Agreement to which it is a party, to deliver the Master Agreement and any other documentation relating to the Master Agreement that it is required by the Master Agreement to deliver and to perform its obligations under the Master Agreement and has taken all necessary action and has made all necessary determinations and findings to authorize such execution, delivery and performance; the individual(s) executing and delivering the Master Agreement and any other documentation (including any Credit Support Document) relating to the Master Agreement to which it is a party or that is required to deliver are duly empowered and authorized to do so; and it has duly executed and delivered the Master Agreement.”

(iii) The following shall be added, immediately following Section 3(a)(v):

“(vi) It is an “eligible contract participant” under, and as defined in, Section 1a(12) of the Commodity Exchange Act, as amended (7 U.S.C. § 1a(12)).

(vii) It has entered into the Master Agreement (including the Subject Transaction) in conjunction with its line of business or the financing of its business.

(viii) It is entering into the Master Agreement, the Subject Transaction and any other documentation relating to the Master Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise).

(ix) The parties intend that the Master Agreement shall be a “master agreement” for purposes of 11 U.S.C. § 101(53B) and 12 U.S.C. § 1821(e)(8)(d)(vii) or any successor provisions.”

(iv) Section 3(b) of the Master Agreement is hereby amended to read in its entirety as follows:

“(b) **Absence of Certain Events.** No Event of Default, Potential Event of Default or, to its knowledge, Termination Event 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 the

Master Agreement.”

- (c) **Bankruptcy.** Clause (6) of Section 5(a)(vii) of the Master Agreement is hereby amended to read in its entirety as follows:
- “(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;”
- (d) **Merger Without Assumption.** Section 5(a)(viii) of the Master Agreement is hereby amended to read in its entirety as follows:
- “(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such party is Party B, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, such party) and, at the time of such consolidation, amalgamation, merger, transfer, or succession:
- (1) the resulting, surviving, transferee or successor entity fails to assume all the obligations of such party or such Credit Support Provider under the Master 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 the Master Agreement; or
 - (2) 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 the Master Agreement.”
- (e) **Termination of Specified Transactions.** The occurrence or designation of an Early Termination Date on account of an Event of Default with respect to a party hereto (“Y”) shall constitute a material breach and event of default (howsoever described) under all Specified Transactions to which Y is a party, whereupon the Non-defaulting Party (“X”) shall have the right to terminate, liquidate and otherwise close out any such Specified Transactions (and Y shall be liable for any damages suffered by X as a result thereof).
- (f) **Definitions.** The Master Agreement and the Subject Transaction are subject to the 2000 ISDA Definitions and its Annex (the “**2000 Definitions**”), and the 2005 ISDA Commodity Definitions (the “**2005 Definitions**”) (collectively, the “**Definitions**”) as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), and will be governed in all respects by the Definitions, but without regard to any further amendments, supplements, updates or restatements made to the Definitions after the effective date of the Master

Agreement unless specifically agreed to in writing by the parties (except that any references to “**Swap Transactions**” in the Definitions will be deemed to be references to the “**Subject Transaction**”). The Definitions are incorporated by reference in, and made part of, the Master Agreement and the Confirmation as if set forth in full in the Master Agreement and the Confirmation. In the event of any inconsistency between the 2005 Definitions and the 2000 Definitions, the 2005 Definitions will govern. In the event of any inconsistency between the provisions of the Master Agreement and the Definitions, the Master Agreement will prevail. In the event of any inconsistency between the provisions of the Confirmation and the Master Agreement or the Definitions, the Confirmation will prevail.

- (g) **Disruption Fallbacks.** Section 7.5(c) of the 2005 Definitions is hereby amended by adding at the end thereof the following new section:

“(iii) “**Dealer Fallback**” means that, promptly upon becoming aware of the Market Disruption Event or Additional Market Disruption Event, the parties shall expeditiously and jointly agree upon three independent leading dealers in the relevant underlying commodity market selected in good faith (A) from among dealers of good credit standing which satisfy all the criteria that the parties apply generally at the time in deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to the Subject Transaction that is affected by the Market Disruption Event or Additional Market Disruption Event, and (B) to the extent practicable, from among dealers having an office in the same city. Such dealers shall be appointed to make a determination of the Relevant Price taking into consideration the latest available quotation for the relevant Commodity Reference Price and any other information that in good faith it deems relevant. The Relevant Price shall be the arithmetic mean of the three amounts determined to be the Relevant Price by such dealers, in which case such calculation shall be binding and conclusive absent manifest error. If the parties have not agreed upon the appointment of the dealers on or before the sixth Local Business Day following the first Pricing Date on which the Market Disruption Event or Additional Market Disruption Event occurred or existed, or if a determination of the Relevant Price cannot be obtained from at least three dealers, the next applicable Disruption Fallback shall apply to the Subject Transaction.

The following Disruption Fallbacks shall apply to the Subject Transaction in the following order: Negotiated Fallback; with the next applicable Disruption Fallback to be Dealer Fallback; with the next applicable Disruption Fallback to be Fallback Reference Price; and with the next applicable Disruption Fallback to be No Fault Termination.”

- (h) **Additional Definitions.** Section 14 is modified as follows:

“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 the Letter of Credit to be provided by Party A pursuant to Part 5, Section (i), of this Schedule for each Bi-Monthly Period.

“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__.

“Confirmation” means, with respect to the Subject Transaction, the Confirmation, dated _____, 20__, between Party A and Party B.

“Credit Rating” means (i) with respect to any entity other than Party B, 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, Fitch or any other rating agency agreed by the parties as set forth in this Agreement and (ii) with respect to Party B, the rating then assigned to any NYPA Bonds by S&P, Moody's, or any other nationally recognized credit ratings agency.

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

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

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

“Default Rate” as defined in Section 14 is hereby amended to read in its entirety:

“Default 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 on the date of determination (or if not published on such day, the most recent preceding day on which published) plus 2%.

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

downgrade of such entity's Credit Rating below A by S&P, A2 by Moody's or an equivalent rating by any other nationally recognized rating 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 under this Agreement 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.

“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%).

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

“Moody's” means Moody's Investor Services, Inc.

“NYPA Bonds” means the bonds issued by Party B 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.

“NYPA Letter of Credit” means the Letter of Credit to be provided by Party B pursuant to Part 5, Section (j), of this Schedule.

“NYPA Performance Assurance Amount” means the amount of the NYPA Letter of Credit to be provided by Party B, calculated pursuant to Exhibit 1.

“Party A Letter of Credit” means the Bi-Monthly Letter of Credit or the Semi-Annual Letter of Credit.

“Party A Performance Assurance Amount” means the amount of the Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit to be provided by Party A, calculated pursuant to Exhibit 1.

“Product” means either or both of (i) unforced capacity as defined in applicable NYISO manuals, or (ii) electric energy, as applicable pursuant to Attachment 2 of the Subject Transaction Confirmation.

“Qualified Issuer” means a commercial bank organized under the laws of the United States or any state, having an issuer unsecured senior long-

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

“S&P” means Standard & Poor's Ratings Group, a division of the McGraw-Hill, Inc.

“Semi-Annual Letter of Credit” means the letter of credit to be provided by Party A pursuant to Part 5, Section (i), of this Schedule for each Semi-Annual Period.

“Semi-Annual Period” means each six-month period beginning January 1 and July 1 of each year, commencing January 20__ and ending _____.

“Term Letter of Credit” means the Letter of Credit to be provided by Party A pursuant to Part 5, Section (i), of this Schedule.

“Term Letter of Credit Amount” means \$_____. [requirement is \$10 million per 100 MW energy supplied and \$1,000 per MW-month of unforced rest-of-state capacity supplied.]

(i) ***Credit Support to be Provided by Party A.***

- (i) Obligation to Maintain and Replace Term Letter of Credit. Party A shall deliver to Party B within three (3) Local Business Days of the execution of the Master Agreement the initial Term Letter of Credit with a stated amount equal to the Term Letter of Credit Amount. The term of the Term Letter of Credit shall commence within three (3) Local Business Days of the execution of the Master Agreement and terminate on the Credit Support Termination Date, or such earlier time as specified in such Term Letter of Credit, provided that if the Term Letter of Credit specifies an earlier termination than the Credit Support Termination Date, Party A shall provide Party B with a replacement Term Letter of Credit in the Term Letter of Credit Amount at least three (3) Local Business Days prior to the expiration of such Term Letter of Credit. In the event Party B shall make any draw against the Term Letter of Credit in accordance with Subsection (i)(iii) of this Part 5 during any period in which the Term Letter of Credit is required to be in effect, Party A shall, within five (5) Local 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 for the benefit of Party B, such that the total credit available shall at all times be not less than the Term Letter of Credit Amount. In any instance in which Party B has drawn against a Term Letter of Credit, but has not applied such cash against a payment obligation of Party A then due, and is holding such cash in the manner provided in Subsection (i)(iv) of this Part 5, the amount of such cash being held by Party B shall be deemed to satisfy a portion of Party A's obligation to maintain the Term

Letter of Credit, and Party A shall not be required to supplement, reinstate or replace the Term Letter of Credit as to such amount.

(ii) Obligation to Maintain and Replace Semi-Annual and Bi-Monthly Letters of Credit.

(1) Effective for the Semi-Annual Period commencing on _____, 20__, and thereafter for each Semi-Annual Period, Party A shall deliver to Party B a Semi-Annual Letter of Credit issued with a stated amount equal to the Party A Performance Assurance Amount determined for such Semi-Annual Period as set forth in Section II of Exhibit 1. At least three (3) Local Business Days prior to the last Local Business Day prior to the commencement of each Semi-Annual Period thereafter, Party A shall deliver to Party B a replacement Semi-Annual Letter of Credit, which shall be in effect for the immediately following Semi-Annual Period, with a stated amount equal to the Party A Performance Assurance Amount for such Semi-Annual Period. The term of each Semi-Annual Letter of Credit shall commence on the first day of the applicable Semi-Annual Period, and terminate on the last day of that Semi-Annual Period. The Semi-Annual Letter of Credit, if required, for the final Semi-Annual Period in 20__, shall expire on the Credit Support Termination Date, or such earlier time as specified in such Letter of Credit, provided that Party A provides Party B with a replacement Semi-Annual Letter of Credit in the same amount at least five (5) Local 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. Each Semi-Annual Letter of Credit shall be substantially in the form (other than the stated amount) set forth in Exhibit 2 (Form of Letter of Credit). 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).

(2) Following the occurrence of a Downgrade Event with respect to Party A, Party A shall deliver to Party B no later than five (5) Local Business Days prior to the beginning of the next Bi-Monthly Period, and thereafter, no later than five (5) Local Business Days prior to the beginning of each subsequent Bi-Monthly Period, a Bi-Monthly Letter of Credit with a stated amount equal to the Party A Performance Assurance Amount, determined as set forth in Exhibit 1 for the applicable Bi-Monthly Period; provided, however, that Party A shall always have at least seven (7) Local Business Days following the relevant Downgrade Event before it is required to

provide a Bi-Monthly Letter of Credit; provided further, if for the applicable Bi-Monthly Period, a Semi-Annual Letter of Credit is outstanding, such Semi-Annual Letter of Credit will remain outstanding and (x) if the stated amount of the outstanding Semi-Annual Letter of Credit is less than the Party A Performance Assurance Amount for such Bi-Monthly Period, the amount of the Bi-Monthly Letter of Credit that Party A shall be required to provide shall be equal to the Party A Performance Assurance Amount less the stated amount of the outstanding Semi-Annual Letter of Credit and (y) if the stated amount of the outstanding Semi-Annual Letter of Credit is equal to or greater than the Party A 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 if it expires earlier than the Credit Support Termination Date, Party A shall provide Party B with a replacement Bi-Monthly Letter of Credit in the same amount at least five (5) Local Business Days prior to the expiration of such Bi-Monthly Letter of Credit, it being understood and agreed that if a Bi-Monthly Letter of Credit is required to be in effect as of December 31, 20__, such Bi-Monthly Letter of Credit will be maintained until the Credit Support Termination Date notwithstanding the cessation of the circumstances giving rise to Party A'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 2 (Form of Letter of Credit). With respect to any Bi-Monthly Period, no Bi-Monthly Letter of Credit shall be required to be delivered for such Bi-Monthly Period if the Party A Performance Assurance Amount calculated with respect to such period is less than One Hundred Thousand U.S. Dollars (\$100,000).

- (3) In the event Party B shall make any draw against a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit in accordance with Subsection (i)(iii) of this Part 5 during any period in which a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit is required to be in effect, Party A shall, within five (5) Local Business Days, cause the Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, as the case may be, to be reinstated in the full Party A 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 for the benefit of Party B, such that the total credit available shall at all times be not less than the Party A Performance Assurance Amount. In any instance

in which Party B has drawn against a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, but has not applied such cash against a payment obligation of Party A then due, and is holding such cash in the manner provided in Subsection (iv) hereof, the amount of such cash being held by Party B shall be deemed to satisfy a portion of Party A's obligation to maintain a Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit, as the case may be, and Party A shall not be required to supplement, reinstate or replace such Letter of Credit as to such amount.

- (iii) Draws. Party B shall be entitled to make a draw or draws upon a Party A Letter of Credit upon the occurrence of any of the following events (regardless of whether the event described below relates only to one such Party A Letter of Credit), and, where applicable, at the following times, for a portion of or for the full face amount of such Party A Letter of Credit as Party B shall determine in its sole discretion:
- (1) immediately upon Party A and/or the issuer of a Party A Letter of Credit becoming Bankrupt as defined herein;
 - (2) upon the occurrence of an Event of Default with respect to Party A regarding the Subject Transaction (whether or not Party B elects to exercise remedies under the Master Agreement in connection therewith); provided that such draw shall be made only in the amount or amounts then due and owing by Party A to Party B with respect to the Subject Transaction; provided further that if such Event of Default is continuing and additional amounts become due and owing by Party A to Party B hereunder, Party B may make additional draws in regard to such amounts as they become due;
 - (3) at any time within thirty (30) days prior to the date of expiration of a Party A Letter of Credit, if Party A is required to provide a Party A Letter of Credit for the date immediately following the expiration of the Party A Letter of Credit and Party B has not received unqualified written confirmation from a Qualified Issuer that the required renewal or replacement Party A Letter of Credit issued by such Qualified Issuer will be delivered to Party B no later than three (3) Local Business Days prior to such date of expiration, in an amount equal to the amount required pursuant to this Schedule and in the form required hereunder;
 - (4) if, notwithstanding the written confirmation referenced in clause (3) above, the relevant Party A Letter of Credit is not renewed or a replacement Party A Letter of Credit in the form required hereunder and in the amount required by this Schedule is not delivered to Party B prior to the third (3rd) Local Business Day prior to the date of expiration of the relevant then-current Party A Letter of Credit; or

- (5) a Downgrade Event has occurred with respect to the issuer of the Party A Letter of Credit and Party A has failed to deliver to Party B a replacement Party A Letter of Credit in the form required hereunder within five (5) Local Business Days of such event.
- (iv) Application of Proceeds of Draws. In the event that Party B at any time receives proceeds of any Party A Letter of Credit, title in such proceeds shall vest in Party B. Party B shall utilize such proceeds to satisfy amounts owed by Party A to Party B pursuant to the Subject Transaction after giving effect to any set-off rights under the Master Agreement regarding the Subject Transaction. For the purposes of this Part 5(i), amounts owed by Party A to Party B, and the use of any Party A Letter of Credit proceeds therefor, shall not be affected by any rulings in any bankruptcy proceeding or similar proceeding, including but not limited to any stay or discharge of Party A's obligations to Party B under the Master Agreement, the intent of the parties being that this Part 5(i) shall operate as if no bankruptcy had occurred, and Party B shall be entitled to draw and realize the proceeds of the Party A Letter of Credit to satisfy such obligations without delay, notwithstanding any stay or discharge of Party A's obligations to Party B under the Master Agreement. In the event any draw or draws are made pursuant to Subsections (iii)(l), (3), (4) or (5) above, and such funds are not immediately applied to satisfy then-outstanding payment obligations of Party A to Party B, Party B shall hold such funds separate and apart from all other funds of Party B in an interest-bearing account, and apply the same to any future payment obligations of Party A to Party B; provided, however, if prior to the application of such funds for such purposes, Party A is not in default of any obligation with respect to the Subject Transaction and has provided the appropriate replacement Party A Letter of Credit (or no Semi-Annual Letter of Credit or Bi-Monthly Letter of Credit is then required to be in effect), Party B shall promptly remit such funds to Party A, with accrued interest. Following the satisfaction in full of all obligations of Party A in respect of the Subject Transaction and after the Credit Support Termination Date, and after giving effect to the exercise of any set-off rights, any surplus Party A Letter of Credit proceeds held by Party B shall be transferred to Party A, without interest, provided that if such amounts are not transferred to Party A within five (5) Local Business Days after the Credit Support Termination Date, such amount shall be returned with interest at the Interest Rate from such date.
- (v) Holding Proceeds of Draws. With respect to those amounts drawn pursuant to Subsection (iii)(l) above that are not used to satisfy any amounts owed by Party A to Party B hereunder, Party B shall hold such amounts separate and apart from all other funds of Party B in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid by Party A or the issuer of the Party A Letter of Credit to Party B prior to Party A becoming Bankrupt

are not subject to being recovered from Party B pursuant to Sections 544, 547, 549 or 550 of the Bankruptcy Code (or pursuant to any successor provisions of law) in any proceeding instituted under the Bankruptcy Code, or any comparable provision of any applicable state bankruptcy or creditors' rights law, by or against Party A or the issuer of the Party A Letter of Credit. If such a final determination is made, Party B shall pay Party A (or, if applicable, the issuer of the Party A Letter of Credit) the funds drawn under the Party A Letter of Credit pursuant to Subsection (iii)(I), net of any amounts that have been applied in regard to amounts owed by Party A to Party B with respect to the Subject Transaction, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Party B, Party B shall retain the funds drawn under the Party A Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Party A (or, if applicable, the issuer of the Party A Letter of Credit).

(j) ***Credit Support to be Provided by Party B.***

(i) Obligation to Maintain and Replace.

- (1) For each Semi-Annual Period, Party A shall have the right to request performance assurance from Party B as provided below, and upon such request, Party B shall deliver to Party A a Letter of Credit with a stated amount equal to the NYPA Performance Assurance Amount determined for such period as set forth in Exhibit 1 (Procedure for Computation of Performance Assurance Amounts) (each such Letter of Credit and any replacement or supplemental Letter of Credit therefor a **“NYPA Letter of Credit”**); provided, however, that Party B shall not be obligated to provide a NYPA Letter of Credit if at the time of determination of the NYPA Performance Assurance Amount for any applicable Semi-Annual Period, a Downgrade Event for NYPA has not occurred or, if it has occurred, is no longer continuing at the time of determination. In the event Party A shall make any draw against a NYPA Letter of Credit in accordance with Subsection (j)(ii) of this Part 5 during any period in which such NYPA Letter of Credit is required to be in effect, Party B shall, within five (5) Local Business Days, cause the NYPA Letter of Credit to be reinstated in the full NYPA Performance Assurance Amount, or cause a replacement or supplemental NYPA Letter of Credit for the benefit of Party A, such that the total credit available shall at all times be not less than the NYPA Performance Assurance Amount. In any instance in which Party A has drawn against a NYPA Letter of Credit, but has not applied such cash against a payment obligation of Party B then due, and is holding such cash in the manner provided in Subsection (j)(iii) of this Part 5, the amount of such cash being held by Party A

shall be deemed to satisfy a portion of Party B's obligation to maintain the NYPA Letter of Credit, and Party B shall not be required to supplement, reinstate or replace the NYPA Letter of Credit as to such amount. No NYPA Letter of Credit shall be required to be delivered for any Semi-Annual Period if the NYPA Performance Assurance Amount for such Semi-Annual Period is less than One Hundred Thousand U.S. Dollars (\$100,000).

- (2) The term of each NYPA Letter of Credit shall commence on the first day of the applicable Semi-Annual Period and terminate on the last day thereof, provided, however, that the NYPA Letter of Credit, if any, required for the second Semi-Annual Period in 20__, shall remain in effect or be replaced with a replacement NYPA Letter of Credit, in the amount required under this Section remaining in effect until the Credit Support Termination Date applicable to Party B, notwithstanding the cessation of the Downgrade Event or other circumstances giving rise to Party B's obligation to furnish the NYPA Letter of Credit at any time prior to the Final Payment Date. Each NYPA Letter of Credit shall be substantially in the form (other than amount) of the Term Letter of Credit, with such modifications as the parties may agree.
 - (3) Notwithstanding the foregoing, upon the occurrence of a Downgrade Event with respect to Party B following the commencement of any Semi-Annual Period, the NYPA Performance Assurance Amount for such Semi-Annual Period shall be determined, and within five (5) Local Business Days following such determination, Party B will be required to deliver to Party A a NYPA Letter of Credit in such NYPA Performance Assurance Amount, and will maintain such NYPA Letter of Credit in effect for the balance of such Semi-Annual Period.
- (ii) Draws. Party A shall be entitled to make a draw or draws upon a NYPA Letter of Credit upon the occurrence of any of the following events, and where applicable, at the following times, for a portion of or for the full face amount of such NYPA Letter of Credit as Party A shall determine in its sole discretion:
- (1) immediately upon Party B becoming Bankrupt as defined herein;
 - (2) upon the occurrence of an Event of Default with respect to Party B under the Master Agreement (whether or not Party A elects to exercise remedies under the Master Agreement in connection therewith); provided, however, that such draw shall be made only in the amount or amounts then due and owing by Party B to Party A with respect to the Subject Transaction; provided further that if such Event of Default is continuing and additional amounts become due

and owing by Party B to Party A hereunder, Party A may make additional draws in regard to such amounts as they become due;

- (3) at any time within thirty (30) days prior to the date of expiration of a NYPA Letter of Credit, if Party B is required to provide a NYPA Letter of Credit for the immediately following Semi-Annual Period (or in the case of the last Semi-Annual Period in 20__, for the period continuing until the Credit Support Termination Date applicable to Party B) and Party A has not received unqualified written confirmation from a Qualified Issuer that a renewal or replacement NYPA Letter of Credit issued by such Qualified Issuer will be delivered to Party A no later than three (3) Local Business Days prior to such date of expiration, in an amount equal to the applicable NYPA Performance Assurance Amount required pursuant to this Schedule and in the form required hereunder;
 - (4) if, notwithstanding the written confirmation referenced in clause (3) above, a NYPA Letter of Credit is not renewed or a replacement NYPA Letter of Credit in the form required hereunder in an amount equal to the applicable NYPA Performance Assurance Amount is not delivered to Party A prior to the third (3rd) Local Business Day prior to the date of expiration of the then-current NYPA Letter of Credit; or
 - (5) a Downgrade Event has occurred with respect to the issuer of a NYPA Letter of Credit and Party B has failed to deliver to Party A a replacement NYPA Letter of Credit and in the form required hereunder within five (5) Local Business Days of such event.
- (iii) Application of Proceeds of Draws. In the event that Party A at any time receives proceeds of any NYPA Letter of Credit, title in such proceeds shall vest in Party A. Party A shall utilize such proceeds to satisfy amounts owed by Party B to Party A pursuant to the Subject Transaction after giving effect to any set-off rights under the Master Agreement regarding the Subject Transaction. For the purposes of this Subsection (j), amounts owed by Party B to Party A, and the use of NYPA Letter of Credit proceeds therefor, shall not be affected by any rulings in any bankruptcy proceeding or similar proceeding, including but not limited to any stay or discharge of Party B's obligations to Party A under the Master Agreement, the intent of the parties being that this Subsection (j) shall operate as if no bankruptcy had occurred, and Party A shall be entitled to draw and realize the proceeds of the NYPA Letter of Credit to satisfy such obligations, notwithstanding any stay or discharge of Party B's obligations to Party A under the Master Agreement. In the event any draw or draws are made pursuant to Subsections (ii)(l), (3), (4) or (5) above, and such funds are not immediately applied to satisfy then-outstanding payment obligations of Party B to Party A, Party A shall hold such funds separate

and apart from all other funds of Party A in an interest-bearing account, and apply the same to any future payment obligations of Party B to Party A; provided, however, if prior to the application of such funds for such purposes, Party B is not in default of any obligation with respect to the Subject Transaction and no NYPA Letter of Credit is then required to be in effect. Party A shall promptly remit such funds to Party B, with accrued interest. Following the satisfaction in full of all obligations of Party B in respect of the Subject Transaction and after the Credit Support Termination Date applicable to Party B, and after giving effect to the exercise of any set-off rights, any surplus NYPA Letter of Credit proceeds held by Party A shall be transferred to Party B, without interest, provided that if such amounts are not transferred to Party B within five (5) Local Business Days after the foregoing due date, such amount shall be returned with interest at the Default Rate from the date of notice of such determination.

- (iv) Holding Proceeds of Draws. With respect to those amounts drawn pursuant to Subsection (ii)(l) above that are not used to satisfy any amount owed by Party B to Party A hereunder, Party A shall hold such amounts separate and apart from all other funds of Party A in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid with respect to Party B's obligations to Party A prior to Party B becoming Bankrupt are not subject to being recovered from Party A pursuant to Sections 544, 547, 549 or 550 of the Bankruptcy Code (or pursuant to any successor provisions of law) in any proceeding instituted under the Bankruptcy Code, or any comparable provision of any applicable state bankruptcy or creditors' rights law, by or against Party B. If such a final determination is made, Party A shall pay Party B the funds drawn under the NYPA Letter of Credit pursuant to Subsection (ii)(l) net of any amounts that have been applied in regard to amounts owed by Party B to Party A with respect to the Subject Transaction, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Party A, Party A shall retain the funds drawn under the NYPA Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Party B.
- (k) ***Dispute Resolution for Performance Assurance.*** If the parties fail to reach agreement on the determination of the Party A Performance Assurance Amount, or NYPA Performance Assurance Amount, as applicable, and as determined in Exhibit 1 hereto, then each party shall provide the other party with a detailed computation of its estimate of the applicable amount to no later than ten (10) Local Business Days prior to the date that the Letters of Credit are due to be delivered. In all such cases, the parties shall promptly consult with each other after delivery of the estimates discussed above in order to reconcile the two conflicting amounts. If the parties have not been able to resolve their dispute on

or before the third Local Business Day prior to the due date of the Letters of Credit, then Letters of Credit shall be provided by the responsible party to or for the benefit of the other party in an amount equal (i) in the case of a Party A Performance Assurance Amount, the amount determined by Party B, such determination to be made in good faith and in accordance with Exhibit 1 hereto, and (ii) in the case of the NYPA Performance Assurance Amount, the amount determined by Party A, such determination to be made in good faith and in accordance with Exhibit 1 hereto. Following the delivery of such Letters of Credit, the parties shall resolve the dispute as follows: [to be negotiated]. Letters of Credit shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

- (l) **Contractual Currency.** All payments under the Master Agreement shall be in United States Dollars.
- (m) **Court/Regulatory Action.** Any provision declared or rendered unlawful by any applicable court of law or regulatory authority shall be deemed an Illegality under Section 5(b)(i).
- (n) **Counterparts and Confirmation.** Section 9(e)(ii) is hereby replaced with the following:

The Confirmation with its Attachment, attached hereto as Appendix 1, forms a part of this Master Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Schedule to the ISDA Master Agreement by their duly authorized officers as of the date hereof.

PARTY A

By: _____
Name:
Title:
Date:

POWER AUTHORITY OF THE
STATE OF NEW YORK

By: _____
Name:
Title:
Date:

List of Exhibits and Appendices

<u>Exhibit</u>	<u>Title</u>
1.	Procedure for Computation of Performance Assurance Amounts
2.	Form of Letter of Credit

<u>Appendix</u>	<u>Title</u>
1.	Subject Transaction Confirmation

Exhibit 1

Procedure for Computation of Performance Assurance Amounts

I. Performance Assurance Requirements 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 Party A Performance Assurance Amount and Party B Performance Assurance Amount periodically under the ISDA Master Agreement (the “**Master 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 Master 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 IV below. If such sum of net present values is a positive number, then that positive number will be used to develop the Party A Performance Assurance Amount. If such sum of net present values is negative, such amount will be the Party B Performance Assurance Amount.

II. Forward Energy Price Calculation Periods:

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

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

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

III. 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.

IV. 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.

V. REFERENCE SHEETS: Process Steps

Table A

Fixed Price(s)(per the Agreement)

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

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 IV 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 Party A Performance Assurance Amount; if negative, it shall constitute the Party B Performance Assurance Amount. A negative sum shall not release Party A from its obligation to maintain a Term Letter of Credit.

Party A shall be the calculation agent for initially calculating each proposed Party B Performance Assurance Amount required under the Agreement, and Party B shall be the calculating agent for initially calculating each proposed Party A 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 Party A Performance Assurance Amount or Party B 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 Party A Performance Assurance Amount, the Mark to Market Amount determined by Party B, such determination to be made in good faith and in accordance with this Exhibit 1, and (ii) in the case of the Party B Performance Assurance Amount, the Mark to Market Amount determined by Party A, such determination to be made in good faith and in accordance with this Exhibit 1. Following the delivery of such Letter of Credit, the parties shall resolve the dispute in accordance with Part 5, Section (k) of the Master 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.

Form of 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:

("Party A"), the issuer of this letter of credit, and/or the issuer of another letter of credit provided by Party A to Beneficiary pursuant to the ISDA Master Agreement by and between Beneficiary and Party A 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 ISDA Master Agreement by and between Beneficiary and _____ ("**Party A**") dated _____, as the same may have been amended (the "**Agreement**"), has occurred with respect to Party A and is still continuing. Party A 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 Party A to Beneficiary.

3) A Beneficiary's signed certificate stating:

This letter of credit will expire in accordance with its terms within three (3) Local Business Days following the date hereof and _____ ("**Party A**") has failed to provide a replacement letter of credit to Beneficiary in the form required under the ISDA Master Agreement by and between Beneficiary and Party A dated _____, as the same may have been amended.

4) A Beneficiary's signed certificate stating:

("Party A") has failed to provide within thirty (30) days prior to expiry of this letter of credit, either (i) written confirmation that this letter of credit will be renewed, or (ii) written confirmation from a Qualified Issuer, as defined in the ISDA Master Agreement by and between Beneficiary and Party A dated _____, as the same may have been amended (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 has been downgraded below A by Standard & Poor's or A2 by Moody's and _____ ("Party A") has failed to deliver to Beneficiary a replacement letter of credit issued by a Qualified Issuer as defined in the ISDA Master Agreement by and between Beneficiary and Party A dated _____, as the same may have been amended (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, Attention Standby Unit, 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 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.

Appendix 1

SUBJECT TRANSACTION CONFIRMATION

[Bidder should provide a Subject Transaction Confirmation for UCAP and if a swap for Associated Energy is also offered, as separate Subject Transaction Confirmation for such Associated Energy.]

_____, 20__

[Name and Address]

Attention:

Ladies and Gentlemen:

The purpose of this letter agreement (the “**Confirmation**”) is to confirm the terms and conditions of the Transaction entered into between [Name of Counterparty] (“**Party A**”) and the Power Authority of the State of New York (the “**Authority**”) on the date hereof specified below (the “**Subject Transaction**”). This Confirmation constitutes a “**Confirmation**” as referred to in the ISDA Master Agreement specified below.

This Confirmation supplements, forms part of, and is subject to the ISDA Master Agreement dated as of _____, 20__, as amended and supplemented by a Schedule dated the date hereof (the “**Schedule**”) (collectively, as amended or supplemented from time-to-time, the “**Agreement**”) between the Authority and Party A. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

I. TERM

This Confirmation is effective as of _____, 20__. The obligations set forth in Section III shall commence at 12:00 a.m. on _____ (the “**Effective Time**”) and end at 11:59:59 p.m. on _____ (the “**Term**”).

II. DEFINITIONS; INTERPRETATION

The times set forth in this Confirmation are by reference to eastern prevailing time. This Confirmation shall be governed by the terms defined in Section 14 of the Agreement, the Schedule to the Agreement, and the following:

Authority Payment has the meaning set forth in Section III.A.1 of this Confirmation.

Contract Price means \$_____ [state price per kW/month].

Contract Quantity means _____ [state quantity in MWh for applicable period].

Interval means each _____.

Market Payment has the meaning set forth in Section III.A.2 of this Confirmation.

Notice has the meaning set forth in Section III.B of this Confirmation.

NYISO means the New York Independent System Operator or any successor thereto including, but not limited to, any independent system operator, transmission company or regional transmission organization approved by the Federal Energy Regulatory Commission.

NYISO Price means: [Define NYISO price for the applicable Product; if for Associated Energy: the Day Ahead Market Locational Based Marginal Price (DAM LBMP) NYISO Zone G final corrected values as posted by the NYISO or if such price is not applicable, any day ahead energy price applicable to Zone G

Product means [specify UCAP or Associated Energy]

Settlement Date means the last day of each calendar month during the Term of this Confirmation.

Settlement Period means a calendar month. The first Settlement Period commences at the Effective Time and continues to 11:59:59 p.m. of the last day of the calendar month. Subsequent Settlement Periods begin at 12:00 a.m. on the first day of the calendar month and continue to 11:59:59 p.m. of the last day of the calendar month.

III. PAYMENT OBLIGATIONS

The obligations incurred pursuant to this Confirmation shall require cash payments and shall in no event be interpreted to require performance in the form of the purchase or sale of electric capacity, electricity or ancillary services.

A. **Settlement Date:** During the Term and subject to Section III.D of this Confirmation, on each Settlement Date one party shall be obligated to the other party on a net basis pursuant to Section 2(c) of the Agreement:

1. The Authority shall be obligated to Party A for the accrued and unpaid Authority Payment for the Settlement Period. The Authority Energy Payment shall be the sum in the Settlement Period of the Products for each Interval of (i) the applicable Contract Quantity, and (ii) the associated Contract Price applicable to such Contract Quantity.
2. Party A shall be obligated to the Authority for the accrued and unpaid Market Payment for the Settlement Period. The Market Payment shall be the sum in the Settlement Period of the Products for each Interval of (i) the applicable Contract

Quantity and (ii) the associated NYISO Price for such Contract Quantity.

B. **Payment Notice.** After calculating the payments owing pursuant to Section III.A above, the Calculation Agent shall provide the Authority with notice (each, a “**Notice**”) of any net payment obligation resulting therefrom on or before the fifth Local Business Day of the first calendar month following the Settlement Date.

C. **Payment Date.** A party shall pay the amount owed pursuant to a Notice within five (5) Local Business Days after the date the Notice was issued (“**Payment Date**”). Section 2(e) of the Agreement shall apply to late payments. All payments shall be made by wire transfer to the following accounts:

1. If payment is to the Authority:

New York Power Authority

Operating Fund

_____ [Bank]

ABA No.: _____

Account No.: _____

2. If payment is to Party A:

Bank:

D. **Payment Dispute Mechanism.** If a party, in good faith, disputes any part of a net payment obligation under a Notice, such party shall provide a written explanation of the basis of such dispute and the undisputed portion of the net payment obligations set forth in such Notice shall be paid by the party obligated to pay such amounts no later than the applicable Payment Date. Any underpayment or overpayment under this Section III.D shall bear interest at the Default Rate set forth in the Agreement. If the parties are unable to resolve a payment dispute within thirty (30) days, such dispute shall be settled by an independent nationally recognized public accounting firm mutually selected by the parties, whose determination shall be final and binding on the parties hereto and whose fees and expenses shall be borne by the party found to be at substantial fault by such independent accounting firm. No Notice (or payment obligation thereunder) shall be subject to this Section III.D unless a notice of dispute is given with respect thereto within one year after the Payment Date applicable to such notice. For the avoidance of doubt, disputes to be resolved pursuant to this section shall be limited to actual calculations of amounts owed, and not the applicable NYISO Price or any applicable successor Commodity Reference Price.

- E. **Market Disruption Events.** The following Market Disruption Events shall apply: Price Source Disruption; Trading Suspension; Disappearance of Commodity Reference Price; Material Change in Formula; and Material Change in Content.
- F. **Commodity Reference Price.** The Commodity Reference Price shall be the NYISO Price.
- G. **Trade Date.** _____, 20__.
- H. **Rounding.** Four decimal places.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Sincerely,

POWER AUTHORITY OF THE
STATE OF NEW YORK

By: _____
Name:
Title:

Confirmed as of the date first written above:

[_____]

By: _____
Name:

Title: # 4844718_v10