

APPENDICES C AND D REDACTED

NYC ENERGY LLC

220 EAST 65th STREET
NEW YORK, NY 10065
PHONE (212) 688-0180
FAX (212) 758-6118
dgbronn@gmail.com

May 20, 2013

Via Hand Delivery

Attention: Mr. Len Walker
Manager of Special Projects
New York Power Authority
123 Main Street
White Plains, New York 10601

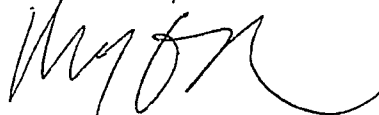
Re: RFQ No. Q13-5441LW

Dear Mr. Walker:

NYC ENERGY, LLC is pleased to submit the enclosed Proposal to build, install and operate the NISA Floating Power Plant (FPP), a new 79.9 MW combined-cycle generating plant. The FPP will be interconnected to The Consolidated Edison Company of New York, Inc.'s (Con Edison) 138 kV system at Con Edison's Hudson Avenue Substation in Brooklyn and will qualify as UCAP in the New York Independent System Operator System. The pricing proposed in the Proposal is firm through December 31, 2013.

Respectfully submitted,

NYC ENERGY, LLC



Donald G. Bronn
Member

Enclosures

NYC ENERGY LLC
PROPOSAL TO SUPPLY 79.9 MW OF
NEW CAPACITY TO NYPA

New York Power Authority
RFQ No. Q13-5441LW

May 20, 2013

Submitted by:

NYC ENERGY LLC
c/o SEF INDUSTRIES INC.
220 East 65TH Street
New York, NY 10065
Telephone: (212) 688-0180
Facsimile: (212) 758-6118

NYC ENERGY LLC
PROPOSAL – New York Power Authority
RFQ No. Q13-5441LW

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Appendix E – Master Power Purchase and Sale Agreement redlined with NYC
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NYC ENERGY LLC
PROPOSAL TO SUPPLY 79.9 MW OF NEW CAPACITY TO NYPA
RFQ No. Q13-5441LW

8.1 Cover Letter

Included.

8.2 Executive Summary

NYC ENERGY proposes to install a 79.9 MW generating facility in Brooklyn to be interconnected to the 138 kV system. The proposed project is fully-permitted and the developer has site control. The Project will also serve a distinct purpose as a portable, waterborne, emergency generator designed to avoid or mitigate the impact of catastrophic power system failures on critical electric loads.

8.3 Description of Project

The NISA Floating Power Plant (FPP) is a 79.9 MW electric generating facility employing modern, gas-fired, combined cycle technology. The new state of the art natural gas fueled power plant will increase the reliability of the New York City electric grid and improve New York City's air quality by displacing electricity produced by older, dirtier and less efficient generating capacity. The FPP will run on clean natural gas and sell capacity, energy and ancillary services directly into the 138 kV load pocket in Zone J of the New York Transmission System pursuant to New York Independent System Operator (NYISO) procedures. The FPP is designed and permitted to operate on either natural gas or low sulfur oil. Natural gas will be transported to the FPP via the New York Facilities gas pipeline operated by KeySpan Corporation. The FPP is permitted to operate for an unlimited time on natural gas and for up to 905 hours per year on low

sulfur oil. Power will be generated by a 60 MW generator driven by two Pratt & Whitney FT-8 combustion turbines and a 25 MW generator driven by a heat recovery steam turbine.

Although the FPP will not operate as a base-load resource, its heat rate and fuel type will result in it being dispatched a significant number of hours annually, estimated to be approximately 1,500. That fact, and its location and interconnection to the 138 kV system, will result in reduced transmission congestion, reduced transmission losses and reduced air emissions.

All environmental and regulatory permits have been secured. Except for those real property interests that may be required for the electric and natural gas interconnections, all property interests needed for construction of the FPP have been acquired.

The FPP's unique feature is its ability to move under its own propulsion from its home mooring, which will be in the Wallabout Channel adjacent to the Brooklyn Navy Yard in Brooklyn, to selected critical loads that will be provided with pre-installed electrical conduits and feeders to receive electric power directly from the FPP during emergencies that impair The Consolidated Edison Company of New York, Inc.'s (Con Edison) transmission or distribution system. The FPP's developer, NYC ENERGY LLC, is currently in discussions with critical load operators who have expressed interest in incorporating the FPP into their plans for minimizing the impacts of events similar to those experienced during Superstorm Sandy.

In addition to supplying a new, clean source of power located in-City, by incorporating additional features into its present design, in the event of a catastrophic loss of power in New York City's electric grid resulting from natural disaster, terrorist attack, or mechanical failure, the FPP, under the direction of State or City emergency response officials, can be moved in less than three hours under its own propulsion from its base at the Brooklyn Navy Yard to a critical load location within the New York Harbor and provide 100% of the location's normal electrical power requirements for as long as it takes Con Edison to restore full power from the grid. The FPP's hull will be designed to hold a three day fuel oil supply (assuming full load operation) and can be refueled by oil delivery barges, enabling the FPP to run continuously. A very significant benefit of the FPP is its ability to service areas where street access is unavailable in a disaster zone. Land-based trailer-mounted generators are unreliable in disaster situations since they depend upon clear streets and regular refueling by truck delivery every 6-8 hours. Because the FPP is located on the water, the condition of the streets will not interfere with its operation, nor will emergency managers have to address the problems of closed streets, physical barriers, or other obstacles that have historically made it difficult to deploy and refuel portable generators.

8.4 Proposer Experience

NYC ENERGY's most relevant experience is in the development, design and engineering of the Proposed Project. NYC ENERGY has secured all the required permits and real property required for the installation and operation of the FPP, with the

exception of the easements and/or consents required for the electrical and natural gas interconnections. Permits secured include:

- New York State Department of Environmental Conservation: Air State Facility Permit and Acid Rain Permit.
- New York City Department of Environmental Protection: Work permit pursuant to Air Pollution Control Code.
- New York State Public Service Commission: Certificate of Public Convenience and Necessity.
- United States Department of Army: Permit to conduct work in and permanently moor FPP in Wallabout Channel.

Real estate secured includes a lease of bulkhead and related upland from the Brooklyn Navy Yard Development Corporation and the lease of submerged lands from the New York State Office of General Services.

NYC ENERGY has developed the required engineering and design work for both the power generation and maritime aspects of the FPP and the required utility interconnections. Working with Pratt & Whitney, regarding the power generation equipment; Waller Marine, regarding the hull and floating platform fabrication and equipment arrangement and moorings; and RCM Technologies/BGA LLC, regarding the electrical interconnection, NYC ENERGY has developed plans for the FPP's construction and installation.

The successful design and construction of the unique NYC ENERGY project will require a team with proven expertise in marine architecture, civil and utility infrastructure, and power plant construction. Although an EPC contractor has not been selected, NYC Energy is in discussions with Halmar International LLP, in association with

Parsons Environment and Infrastructure, Waller Marine, Inc., and RCM Technologies to bring such a team to this project.

Halmar International LLP

Halmar International (Halmar) has been an integral part of the New York Metro Area construction landscape for the past 50 years. Halmar has unparalleled experience working with all public agencies in New York State in heavy civil construction. Halmar has an extensive resume of completed projects, successfully completing NYS DOT's first design build bridge project, mobilizing quickly to restore Metro North Railroad's Port Jervis line after Hurricane Irene, rebuilding Tower Two foundation and superstructure of the World Trade Center and today, hardening facilities for the Port Authority of NYNJ post Superstorm Sandy.

Parsons Environment & Infrastructure

Parsons was founded in 1944 and has developed into one of the largest full-service program management/construction management organizations in the world. Parsons is a financially strong company that has reported more than \$1 billion in revenue annually since 1990 and \$3 billion in 2012. Company resources include more than 11,500 employees located in 250 offices worldwide. Parsons is a recognized leader in many diverse markets such as environmental, energy, nuclear technologies, communications, infrastructure, commercial, education, healthcare, vehicle emissions, water/wastewater, transportation, manufacturing, and life sciences. Parsons provides professional engineering, design, construction, and environmental services that

encompass the entire range of activities required to place electric transmission, substation, and distribution systems in commercial operation.

Waller Marine, Inc.

Waller Marine, Inc.'s (WMI) experience in the design, construction and operation of floating power barges began in the late 1980s. Since this early experience, WMI has acted in the capacity of co-developer, consultant and engineer to a number of projects worldwide. The list of successful projects below provides an indication of the company's breadth of involvement in the design and development of power barges and associated projects.

Of particular note in this list are projects that covered a full range of responsibilities for the company:

- The design, construction and installation of the world's largest floating power plant (342 MW), consisting two (2), 171 MW simple cycle power barges under an EPC contract with Citgo USA, using GE Frame 7FA, dual fuel industrial turbines, for installation in Tacoa, Venezuela.
- The conceptual and detailed design of the world's largest combined cycle power barge, a 220 MW combined cycle power plant, using four (4) LM6000 aero derivative gas turbines, each with heat recovery, chilled inlet air and a 55 MW steam plant. The barge was constructed by Hyundai and delivered to Mangalore, India.
- The design, construction and installation of two (2), 30 MW power barges under an EPC contract with Enron, using GE Frame 6B, industrial turbines, for installation in Nigeria.

RCM Technologies/BGA LLP

RCM Technologies/BGA LLC (RCM) is a full service consulting engineering firm with extensive experience in the design of electrical transmission and distribution systems. RCM has experience performing engineering services for Con Edison and other regional utility companies. RCM will be responsible for the design of the electrical interconnection of the FPP to Con Edison/s 138 kV grid in Brooklyn. In addition RCM will work with the emergency services groups to design the interfaces between the FPP and the critical loads in the event of a loss of power in the New York City's grid.

Previous experience of NYC ENERGY personnel includes the development of wind farms in Southern California in the mid -1980's and the development of designs for combined heat and power installations in hospitals and housing complexes in New York City that culminated in a negotiated power purchase agreement "buyout" with Con Edison when the market pricing shifted in 1998.

Although not an NYISO market participant, NYC ENERGY will become a participant prior to commencing sales of energy and capacity from the FPP. NYC ENERGY is familiar with NYISO's interconnection study procedures and will apply for interconnection approval once this Proposal has been accepted.

8.5 Project Information

Name: NYC ENERGY LLC c/o SEF INDUSTRIES INC.
Contact: Donald G. Bronn, M.D. Ph.D.
220 East 65th Street
New York, New York 10065
Telephone: (212) 688-0180
Email: dgbronn@gmail.com

Legal Status: NYC ENERGY LLC is a Delaware limited liability company, formed in 1998.

Ownership Status: NYC ENERGY's sole managing member is Donald G. Bronn, M.D., Ph.D.

DUNS Number: 077448293 (SEF INDUSTRIES INC.) (DUNS Number Information attached as **Appendix N.**)

8.6 Disclosure Statement

Neither NYC ENERGY, its officers nor its affiliates have anything to disclose related to this section.

8.7 Financial Capacity to Complete and Operate the Proposed Project

All-in construction costs, covering equipment purchases, engineering, fabrication, testing and commissioning of the Floating Power Plant (FPP) itself, including its self-propulsion and related seaworthy attributes, the interconnection to the New York State Transmission System and utility connections, for gas and water as well as costs incurred in permitting the FPP, securing necessary real estate interests and developer's fee are estimated to be \$249.5 million.

SEF INDUSTRIES will finance those costs with 70% senior debt and 30% equity contributions from one or more private equity funds.

Revenues sufficient to cover debt service, fixed costs and equity returns will come from two long-term contracts: the contract-for-differences resulting from this

RFP, and the Emergency Preparedness and Response Agreement (EPRA) NYC ENERGY will execute with one or more critical load customers with whom it is currently in discussions. The revenues received from any EPRA agreement will be credited to NYPA to reduce the ICAP payment due NYC ENERGY. Variable operating costs will be covered by revenues received from sales made in the energy and ancillary products markets administered by the New York Independent System Operator and, during emergency service, from sales of energy made to critical load customers.

8.8 Environmental Benefits

The FPP will displace energy generated from up to 79.9 MW of less efficient, higher polluting capacity located in Zone J. NYC ENERGY estimates that the FPP will be dispatched to generate about 120,000 MWhr of energy annually.

8.9 Proposed Development Plan and Schedule, Permit Status and Permit Compliance.

Permitting

The FPP is fully-permitted. A condition of the Department of the Army permit requires that a study be conducted to understand the impacts on marine life, if any, of "shading" created by the FPP. Prior to mooring the FPP at the Wallabout Channel, the pre-installation phase of this study must be conducted pursuant to a protocol already accepted by the Army Corps of Engineers. NYC ENERGY's air permit requires continuous emissions monitoring and provides the following emission limits: NO_x 47,200 lbs./yr.; CO 98,305 lbs./yr.; and hourly limits of: NO_x 4.8 lbs. (gas) 9.5 lbs. (oil), CO 11.2 lbs.

Construction

Major construction activities will take place in a shipyard rather than on-site. On-site construction will be limited to extending utility lines to the FPP site from existing utility lines, installing the electric interconnection facilities and improving the existing bulkhead and installing piles for the mooring of the FPP.

Assuming that the Proposal is accepted in September 2013 and a NYPA PPA is executed on or about December 31, 2013, the following milestones will be met on or about the specified dates:

Apply for interconnection to NYISO:	October 1, 2013
Execute NYISO-Con Edison Interconnection System Reliability Impact Study Agreement	January 2, 2015
Close on construction financing:	January 31, 2014
Award EPC Contract:	January 31, 2014
Apply for gas transportation service:	January 31, 2014
Construction start (New York City):	February 2, 2015
Construction start (off site shipyard):	April 30, 2014
Accept NYISO Class Year Designation:	March 1, 2014
Accept NYISO Class Year Facilities Study Cost Allocation:	January 31, 2015
Complete Construction (NYC):	September 30, 2015
Complete FPP:	July 31, 2015
FPP arrives at NYC site:	August 31, 2015
Complete utility hookups:	September 30, 2015
Testing:	October 30, 2015
Commercial Operation Start:	November 1, 2015

Attached as **Appendix A** is the Project Development Schedule in 2010 GANTT chart format.

Interconnection

NYC ENERGY originally held position #19 in the NYISO Interconnection Queue and was originally included in the Class Year 2002., however it was later removed from the queue due to inactivity. NYC ENERGY will promptly recommence the interconnection process upon being notified that the Proposal has been accepted. NYC ENERGY has discussed options for interconnection with Con Edison. Attached as **Appendix B** is a letter from Con Edison indicating the general acceptability of interconnecting to the Hudson Avenue Substation.

8.10 Environmental Review

The FPP is fully-permitted as discussed in Section 8.9.

8.11 Pricing

The completed Pricing Sheets are attached to the Proposal as **Appendix C**. NYC ENERGY is also submitting an alternative pricing proposal using a Tolling structure in lieu of the contract for differences format of the Base Bid. This alternative proposal is attached as **Appendix D**.

8.12 Contract Exceptions

A copy of the Master Power Purchase and Sale Agreement redlined with NYC ENERGY's proposed changes is attached as **Appendix E**.

8.13 Halting costs

In the event of a Halting Order, the maximum Development Cost which NYPA shall reimburse NYC ENERGY would be limited to the following amounts:

January 1, 2014	\$15.8 million
January 1, 2015	\$131.0 million
January 1, 2016	\$249.5 million

Because the FPP will serve dual purposes, NYC ENERGY will have the option to continue development as provided in Section 3.8(e) of the Master Power Purchase and Sale Agreement.

8.14 Other Requirements

Required Easements and Rights-of-Way:

The only right-of-way requirements will be those needed for the electrical and natural gas interconnections, which will be in City streets and secured through the City of New York revocable consent process.

Economic Benefits:

Construction jobs:	The construction of the NYC Project will create approximately 415 temporary high paid, skilled construction jobs.
Permanent Jobs:	14

RFP Appendices

NYC ENERGY has reviewed the RFP Appendices and addresses each as follows.

Non-Collusive Proposal Certification:	The completed and signed Certification is included with the proposal as <u>Appendix F</u> .
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RFP Appendix B:	NYC ENERGY has reviewed the Authority's Prompt Payment Policy and is attached as <u>Appendix G</u> .
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RFP Appendix C:	NYC ENERGY has reviewed the Authority's M/WBE Participation Goal Requirement and acknowledges the Contractor's Responsibilities. Because NYC ENERGY has not yet selected the EPC contractor it is unable to submit at this time a Preliminary Subcontracting Plan Form. NYC ENERGY will ensure that the EPC contractor, once
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selected, agrees to comply with the Authority's M/WBE policy in selecting subcontractors.

RFP Appendix E:

NYC ENERGY has reviewed the Omnibus Procurement Act of 1992 requirements. Because the EPC contractor has not been selected NYC ENERGY is only able to complete Attachment 1 to Appendix E, the Geographic Origin Form, with respect to the Pratt & Whitney turbines and generator and the Heat Recovery Steam Generator (HRSG) attached hereto as **Appendix H**. The entire FPP will be assembled by an EPC contractor in a shipyard. NYC ENERGY has identified all New York State shipyards that are potentially capable of fabricating the FPP and will solicit proposals from all of them as well as shipyards located in the Gulf region of the United States.

RFP Appendix G:

NYC ENERGY has reviewed the Equal Employment Opportunities Requirements and states that it will comply with, and require its EPC contractor to comply with, the EEO requirements applicable to contracts valued over \$25,000.00. Because an EPC contractor has not been selected, NYC ENERGY is unable, at this time, to submit an EEO Policy Statement and Staffing Plan for the Proposal. Preparation of both will be a requirement of the EPC contractor awarded the EPC contract.

RFP Appendix H:

NYC ENERGY has reviewed the Tax Law Requirements and Form ST-220-CA. NYC ENERGY has not and does not currently make sales into New York State. Prior to the execution of a contract to sell power to NYPA, NYC ENERGY will submit completed forms ST-220-CA and ST-220-TD.

RFP Appendix J:

Completed Forms J-1, J-2, J-3 and J-4 are attached as **Appendix I, J, K, and L**, respectively.

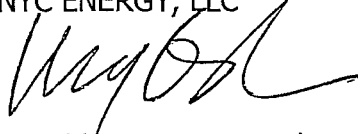
8.15 Compliance Statement

NYC ENERGY will at all times operate in compliance with all legal and regulatory requirements.

Dated: May 20, 2013

Respectfully submitted,


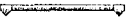





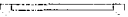




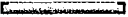



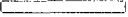



NYC ENERGY, LLC

A handwritten signature in black ink, appearing to read 'D. Bronn', written over the company name.

Donald G. Bronn, Member
NYC ENERGY LLC
c/o SEF INDUSTRIES INC.
220 East 65TH Street
New York, NY 10065
Telephone: (212) 688-0180
Facsimile: (212) 758-6118
Email: dgbronn@gmail.com

APPENDIX A

ID	Task Mode	Task Name	Duration	Start	Finish	2nd Quarter			3rd Quarter			4th Quarter			1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
						Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
32	✱	Apply NYISO-Con Edison Interconnection			Mon 9/30/13																																	
33	✱	System Reliability Impact Study	109 days	Tue 10/1/13	Fri 2/28/14																																	
34	✱	Accept NYISO Class Year Designation			Fri 2/28/14																																	
35	✱	NYISO Facilities Study	152 days	Mon 3/3/14	Tue 9/30/14																																	
36	✱	Accept NYISO Class Year Facilities Study Cost Allocation			Mon 2/2/15																																	
37	✱	Install Interconnect Facilities	130 days	Mon 2/2/15	Fri 7/31/15																																	
38	✱	Interconnection Complete			Fri 5/29/15																																	
39	✱	Gas Pipeline Application Submitted			Fri 1/31/14																																	
40	✱	Procure Equipment	86 days	Fri 1/31/14	Fri 5/30/14																																	
41	✱	Gas Pipeline Construction	110 days	Wed 4/30/14	Tue 9/30/14																																	
42	✱	Pipeline Complete			Fri 10/31/14																																	
43	✱	Permits Received			Fri 2/28/14																																	
44	✱	Water & Sewer Installation	66 days	Fri 2/27/15	Fri 5/29/15																																	
45	✱	Water & Sewer Complete			Fri 5/29/15																																	
46	✱	Site Preparation / BNY	88 days	Wed 4/1/15	Fri 7/31/15																																	
47	✱	Install Barge Moorings	45 days	Mon 6/1/15	Fri 7/31/15																																	
48	✱	Moor Barge	22 days	Tue 9/1/15	Wed 9/30/15																																	
49	✱	Complete Utility Interconnects	22 days	Tue 9/1/15	Wed 9/30/15																																	
50	✱	Testing	22 days	Thu 10/1/15	Fri 10/30/15																																	
51	✱	Commercial Operation			Mon 11/2/15																																	

Project: Project schedule for 8.9 o Date: Thu 5/16/13	Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
	Split		External Tasks		Inactive Summary		Manual Summary		Progress	
	Milestone		External Milestone		Manual Task		Start-only		Finish-only	
	Summary		Inactive Task		Duration-only		Duration-only		Duration-only	

APPENDIX B



Law Department

Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York NY 10003-0987
www.conEd.com

August 3, 2009

John Dax, Esq.
The Dax Law Firm, P.C.
54 State Street
Albany NY 12207

Re: NYC Energy Interconnection

Dear John,

In response to your letter dated July 14, 2009, Con Edison has performed a very preliminary analysis of having the proposed NYC Energy generating facility interconnect at the Hudson Avenue East substation. It appears that there may be an available position for the interconnection at that substation. A feasibility analysis would be required to determine the location and dimensions of the proposed interconnection. In addition, a bus flow analysis would be required to determine if there are any potential thermal problems associated with the existing bus configuration and associated equipment. It appears that interconnecting to the Hudson Avenue East substation would also be less expensive than interconnecting to Feeder 31231 and 31232 between Vernon and Greenwood Substation. A change in the interconnection point would require NYISO approval.

Let us know if NYC Energy desires to pursue a Hudson Avenue interconnection further.

Sincerely

Paul Savage

REDACTED

APPENDIX C

REDACTED

APPENDIX D

APPENDIX E

NYC ENERGY LLC Exceptions/additions

Master Power Purchase & Sale Agreement

MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

This Agreement is made as of the ___ day of ___, 20__ (the "Effective Date"). This Agreement and the exhibits, schedules, appendices and any written supplements hereto, including Exhibits 1 through ___ inclusive hereof, the TO/LSE Tariff, and the Confirmation, 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")

All Notices:

Street: 123 Main Street

City, State Zip: White Plains, NY 10601

Attn: _____

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Confirmations:

Attn: Confirmations – Accounting Dept (J. Brennan)

Phone: (914) 287-3133

Facsimile: (914) 287-3391

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: Credit Manager

Phone: _____

Facsimile: _____

Name: NYC ENERGY LLC ("Seller")

All Notices:

Street: _____

City, State Zip: _____

Attn: Donald G. Bronn

Phone: 248 770 3201

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Confirmations:

Attn: _____

Phone: _____

Facsimile: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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:

TO/LSE Tariff Tariff _____ Dated _____ Docket Number _____

GENERAL TERMS AND CONDITIONS

ARTICLE ONE GENERAL DEFINITIONS

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

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

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

1.4 “Ancillary Services” means any and all services defined in the NYISO Ancillary Services Manual at any time which the Facility is capable of providing.

1.5 “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 not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within sixty (60) Days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6)(A) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or (B) in the case of NYPA (I) there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or (II) there shall be declared by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case

within fifteen (15) Days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

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

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

1.8 “Capacity” or “UCAP” means unforced capacity from the Facility for delivery to NYISO pricing zone “[]” in accordance with NYISO Rules.

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

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

1.14 “COD Notice” has the meaning set forth in Section 3.6(c) of this Agreement.

1.15 “Commercial Operation” has the meaning set forth in Section 3.6(b).

1.16 “Commercial Operation Date” has the meaning set forth in Section 3.6(c).

1.17 “Confirmation” means the confirmation of the Transaction attached to this Agreement as Exhibit 2.

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

1.19 “Construction Milestone” has the meaning set forth in Section 3.6(d).

1.20 “Contract Year” means each twelve (12) month period of the Delivery Term defined in the Confirmation commencing with the month in which the Commercial Operation Date occurs.

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

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

1.23 “Credit Rating” means with respect to any Person, 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.

1.24 “Credit Support Document” means each Seller Letter of Credit provided pursuant to this Agreement and any undertaking of any Credit Support Provider.

1.28 “Credit Support Provider” means any issuer of any Seller Letter of Credit or Person who commits to provide any Seller Letter of Credit.

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

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

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

1.32 “Delay Termination Date” has the meaning set forth in Section 3.6(d).

1.33 “Delivery Period” means the period of delivery for the Transaction, as specified in the Confirmation.

1.34 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Confirmation.

1.35 “Delivery Term” has the meaning set forth in the Confirmation.

1.36 “Design” has the meaning set forth in Section 3.6(a).

1.37 “Development Costs” has the meaning set forth in Section 3.8.

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

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

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

1.41 “Energy” means three-phase alternating current electricity delivered in accordance with NYISO Rules.

1.42 “EPC Contract” means the primary engineering, procurement and construction contract for the development of the Facility.

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

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

1.45 “Excused Delay” has the meaning set forth in Section 3.6(f).

1.46 “Facility” means the _____ nominal megawatt block of an electric generating project to be located at _____ in _____, [STATE] consisting of _____, and which electric generating project is sufficient to provide and deliver the Products referenced in the Confirmation.

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

1.47 “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 Articles Three and/or Four, Termination Payment under Article Five, or payments due under Article Six, have been fully liquidated and satisfied in full. In the event any payment due under this Agreement becomes the subject of a dispute, the Final Payment Date with respect to the Party owing the disputed amount shall not occur until such dispute is finally resolved and the amount owed as determined upon resolution of such dispute, if any, is paid in full.

1.48 “Financing” has the meaning set forth in Section 3.6(d).

1.49 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Transaction, 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 NYPA’s markets; (ii) the loss or failure of Seller’s supply, including any mechanical breakdown or failure of the Facility unless due to an event which would otherwise constitute Force Majeure; (iii) failure or delay of any supplier, contractor or subcontractor to perform, unless such failure or delay results from an event that would constitute Force Majeure with respect to such supplier, contractor or subcontractor in accordance with the foregoing definition, (iv) Seller’s ability to sell the Product at a price greater than the UCAP Strike Price or any other amount payable under the Confirmation or (v) any delay in Commercial Operation. For the purposes of exception (iii) in the preceding sentence, a mechanical breakdown or failure of the Facility in whole or part will not be deemed a Force Majeure event unless caused by (a) storm, lightning, ice, flood, seismic

activity; extreme weather conditions or other similar natural occurrence; (b) act or intervention of any third party other than Seller's employees, suppliers, contractors, subcontractors or agents; or (c) any casualty not caused directly or indirectly by any act or omission of Seller or its suppliers, contractors, subcontractors or agents, the consequences of which natural occurrences, intervention or casualty described in (a), (b) and (c) above Seller could not reasonably have prevented; and breakdowns or failures arising from operator or contractor error, defects in equipment or systems, design flaws or unknown causes are not Force Majeure events notwithstanding the facts that they may be unanticipated and that Seller cannot reasonably prevent them. A general strike or other general labor action shall be considered a Force Majeure event, but neither a strike or labor action affecting only the Facility nor any lockout shall be a Force Majeure event. Seller may not raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (y) Seller 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 Confirmation.

1.50 "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 the Transaction, determined in good faith and using commercially reasonable procedures. Gains shall be calculated in accordance with Exhibit 1 (Calculation of Gains and Losses).

1.51 "Good Utility Practice" means any of the practices, methods, or acts engaged in, or approved by, a significant portion of the electric utility industry in North America during the relevant time period, or any of the practices, methods, or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region.

1.52 "Governmental Charges" has the meaning set forth in Section 9.2.

1.53 "Halting Order" has the meaning set forth in Section 3.8.

1.54 "Imaged Agreement" has the meaning set forth in Section 10.10.

1.55 "Interest During Construction" means the dollar amount of interest charged to Seller on funds used or expended by Seller on the Project beginning on the Effective Date through and ending thirty (30) Days after the date of a Halting Order.

1.56 "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 NYPA 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) concerning late payments of proper invoices then in such case, and only with respect to NYPA, “Interest Rate” shall mean the rate allowed pursuant to Section 2880.

1.57 “kW” means kilowatt.

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

1.59 “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 the Transaction, determined in good faith and using commercially reasonable procedures. Losses shall be calculated in accordance with Exhibit 1 (Calculation of Gains and Losses).

1.60 “Measured Value” has the meaning set forth in the Confirmation.

1.61 “Meter Readings” has the meaning set forth in Section 6.3.

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

1.63 “MW” means megawatt.

1.64 “MWh” means megawatt hour(s) of Energy.

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

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

1.67 “NYISO” means the New York Independent System Operator, or any successor entity performing similar functions.

1.68 “NYISO Rules” means the NYISO Open Access Transmission Tariff, the NYISO Market Services Tariff and all NYISO manuals, technical bulletins, rules, procedures, agreements or other documents relating to the operation of, reliability and purchase and sale of Products as such govern the participation of market participants with respect thereto in the markets administered by NYISO as in effect from time-to-time (provided that in the event of a conflict between FERC filed tariffs and other documents referred to in this definition, the provisions of FERC filed tariffs shall prevail).

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

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

1.71 "Performance Assurance Amount" means (a) prior to and on the Commercial Operation Date, _____ Dollars (\$_____) and (b) after the Commercial Operation Date _____ Dollars (\$_____).

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

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

1.74 "Products" means Capacity, Energy and Ancillary Services.

1.75 "PSC" means the Public Service Commission of the State of New York, or any successor thereof.

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

1.77 "Regulatory Event" has the meaning set forth in Section 10.7.

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

1.79 "Schedule" or "Scheduling" means the actions of Seller and/or its designated representatives, including its Transmission Provider(s), if applicable, of notifying, requesting and confirming the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.80 "Seller" has the meaning set forth on page 1 of this Agreement.

1.81 "Seller Letter of Credit" means a Letter of Credit with a face amount equal to the Seller Letter of Credit Amount, issued within ten (10) Business Days of the execution of this Agreement, substantially in the form set out in Exhibit 3 (Form of Seller Letter of Credit), and each replacement or supplemental Letter of Credit therefor substantially in the same form.

1.82 "Seller Letter of Credit Amount" means the Performance Assurance Amount.

1.83 "Settlement Amount" means, with respect to the 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 and termination of the Transaction pursuant to Section 5.2.

1.84 "Site" has the meaning set forth in Section 3.6(a).

1.85 "Target Commercial Operation Date" has the meaning set forth in Section 3.6(b).

1.86 "Target Consents Application Date" has the meaning set forth in Section 3.6(d).

1.87 “Target Financing Date” has the meaning set forth in Section 3.6(d).

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

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

1.90 “TO/LSE Tariff” means the PSC-approved tariff rider of each applicable transmission operator or load-serving entity providing for a charge on retail customer bills to cover the costs incurred by NYPA associated with the Transaction.

1.91 “Transaction” means the transaction that is the subject of the Confirmation attached as Exhibit 2 of this Agreement.

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

1.93 “UCAP” has the meaning set forth in Section 1.8.

1.94 “UCAP Strike Price” has the meaning set forth in the Confirmation.

ARTICLE TWO TRANSACTION TERMS AND CONDITIONS

2.1 Transaction. The Transaction shall be entered into upon agreement of the Parties in writing by means of the Confirmation.

2.2 Governing Terms. The Transaction shall be governed by this Agreement. This Agreement (including all exhibits, schedules and any written supplements hereto), the TO/LSE Tariff, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and the Confirmation shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and any terms of the Confirmation shall be resolved in favor of the terms of the Confirmation.

ARTICLE THREE OBLIGATIONS AND DELIVERIES

3.1 Seller’s and NYPA’s Obligations. As provided in the Confirmation, Seller shall sell and deliver, or cause to be delivered, the Product at the Delivery Point, and the Parties shall pay each other monthly settlements. Seller and NYPA shall perform its other obligations in the Confirmation. 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.

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

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 the Claiming Party shall be excused from the performance of its obligations with respect to the Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure, subject to the provisions of Section 6.3). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

3.4 Closing Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, (a) NYPA shall provide Seller hereto (i) a certified copy of the resolution evidencing the necessary authorizations with respect to the execution, delivery and performance by NYPA of this Agreement and (ii) the written opinions set forth on Exhibit 4 (NYPA 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 NYPA’s in-house counsel) and (b) Seller shall provide NYPA 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 5 (Seller Opinions), in form and substance reasonably acceptable to NYPA, issued by legal counsel acceptable to NYPA.

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

3.6 Seller Facility Development Obligations.

(a) Seller will provide the Products for the Transaction from the Facility. The Facility will be constructed at _____, on a site described more fully in Exhibit 6A (the “**Site**”), in accordance with the design set forth in Exhibit 6B (“**Design**”). Seller will not make or permit any material change in the Site or Design after the Effective Date without prior consent of NYPA, which shall not be unreasonably withheld, delayed or conditioned. Seller shall keep NYPA reasonably apprised of Seller’s progress toward completion of the Facility and qualification with the NYISO for the delivery of Products. Seller shall furnish NYPA with copies of monthly progress reports provided by Seller’s principal contractor for construction of the Facility, or summaries thereof in a mutually-agreed format, and will keep NYPA apprised of the probable date for commencement of Commercial Operation.

(b) The Facility will be in service, with all required interconnections, arrangements and authorizations necessary to commence providing the Products required under the Confirmation (such status “**Commercial Operation**”) by June 1, 2016 (the “**Target Commercial Operation Date**”). Seller represents and warrants that it has or will obtain by the Target Commercial Operation Date (i) all necessary rights to real property necessary for

development and operation of the Facility, (ii) all other necessary consents, permits, approvals, certificates, authorizations and arrangements, required from all governmental or regulatory agencies or authorities or the NYISO necessary for development, interconnection and operation of the Facility ("**Consents**"), and (iii) has the financial capability to proceed and complete the development of the Facility.

(c) For purposes of this Agreement, the date on which the Facility commences Commercial Operation (the "**Commercial Operation Date**") shall be the first day of the Month following the date on which Seller provides to NYPA documentation (the "**COD Notice**") confirming that the Facility is: (i) completed and commercially operational in accordance with the Design (including, as applicable, fuel delivery facilities and interconnections), (ii) interconnected (including electrically interconnected) at the Delivery Point, (iii) in compliance with all applicable laws, regulations, Consents or other governmental requirements, excluding only such non-material non-compliance as would not result, either at the Commercial Operation Date or thereafter with the passage of time, in any impairment of Seller's ability to perform its obligations under the Transaction, (iv) in compliance with all applicable provisions under this Agreement, excluding only such non-material non-compliance as would not result, either at the Commercial Operation Date or thereafter with the passage of time, in any impairment of Seller's ability to perform its obligations under the Transaction, and (v) capable in normal operations and qualified with NYISO to provide and deliver not less than ____ kW of Capacity and related Energy (such status "**Commercial Operation**"). Seller shall deliver the COD Notice to NYPA within fifteen (15) days following the purported satisfaction of the foregoing requirements of Section 3.6(c)(i) through (c)(v). NYPA must accept the COD Notice if the stated requirements for Commercial Operation are met. If the COD Notice is delivered less than fifteen (15) Days prior to the first Day of the following Month, then at NYPA's option, by notice to Seller given within five (5) Days following NYPA's receipt of the COD Notice, the Commercial Operation Date will be deferred until the first Day of the second Month commencing after the COD Notice.

(d) Construction Schedule and Milestones. Seller will develop the Facility in accordance with the following timetable (each timetable date a "**Construction Milestone**"):

(i) Seller expects to complete its submission of applications for all remaining authorizations, permits, Consents, authorizations, interconnections and land use rights set forth in Exhibit 6C needed to construct and operate the Facility by Jan 31, _____, 2014 (the "**Target Consents Application Date**").

(ii) Seller expects to complete and close the financing for all funds required to construct the Facility (such events the "**Financing**") by Jan 31, _____, 2014 (the "**Target Financing Date**").

(iii) Seller expects to complete firm equipment orders and authorize its general contractor to mobilize for construction at the site for the Facility (such events "**Notice to Proceed**") by Jan 31, _____, 2014 (the "**Target Notice to Proceed Date**").

(iv) Seller expects the Commercial Operation Date to occur on or before the Target Commercial Operation Date.

Notwithstanding that each Construction Milestone is described as the date on which Seller "expects" to complete or achieve a defined task, and that each such Construction Milestone is expressed as a "target" date, Seller shall be responsible for accomplishing the defined tasks in each Construction Milestone by the date thereof unless such date is extended by reason of an Excused Delay, and if Seller fails to complete the relevant task associated with a Construction Milestone date, including a Construction Milestone date, if applicable, extended pursuant to Section 3.6(f), Seller shall pay liquidated damages to NYPA as set forth in Section 3.6(f).

(e) Seller shall provide NYPA with at least fifteen (15) Business Days prior notice before entering into the EPC Contract or issuing the Notice to Proceed. Seller shall not enter into the EPC Contract or issue the Notice to Proceed without the prior written consent of NYPA; provided, however, that if a Halting Order is not issued within fifteen (15) Business Days of NYPA's receipt of notice from Seller of Seller's intent to enter into the EPC Contract or issue the Notice to Proceed, NYPA shall be deemed to have consented to such action. As soon as practicable (but in any event no later than least fifteen (15) Business Days prior to entering into the EPC Contract), Seller shall provide NYPA with a schedule of financial commitments under the EPC Contract and any other contract related to the development of the Facility requiring material expenditures, and will promptly notify NYPA of any changes to such schedule.

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

(i) Seller will meet all Construction Milestones unless delayed or prevented by Force Majeure or by NYPA's failure to comply with the provisions of this Agreement (any such cause an "**Excused Delay**"), provided, delay, price increases or non-performance by Seller's equipment vendors, contractors or subcontractors shall not constitute Excused Delay. Each Construction Milestone will be extended Day-for-Day with respect to the effects of any Excused Delay, provided, in the event an Excused Delay does not or is not reasonably expected to cause a Day-for-Day delay in subsequent Construction Milestones, and to the extent any such Excused Delay can be reduced by commercially reasonable efforts of Seller, the extension of such subsequent Construction Milestones shall be a reasonable amount based upon applicable circumstances.

(ii) In the event Seller fails to complete its submission of applications for all Consents by the Target Consents Application Date, Seller will pay NYPA liquidated damages in the amount of _____ Dollars (\$_____) per Day or portion thereof, commencing with the Day immediately following the Target Consents Application Date and continuing until and including the Day on which Seller has completed submission of all applications for the Consents, provided, however, the maximum liquidated damages paid under this Section 3.6(f)(ii) shall be _____ Dollars (\$_____).

(iii) In the event Seller fails to achieve Financing by the Target Financing Date, Seller will pay NYPA liquidated damages in the amount of _____ Dollars (\$_____) per Day or portion thereof, commencing with the Day immediately following the Target Financing Date and continuing until and including the

Day on which Financing occurs, provided, however, the maximum liquidated damages paid under this Section 3.6(f)(iii) shall be _____ Dollars (\$_____).

(iv) In the event Seller fails to achieve Notice to Proceed by the Target Notice to Proceed Date, Seller will pay NYPA liquidated damages in the amount of _____ Dollars (\$_____) per Day or portion thereof, commencing with the Day immediately following the Target Notice to Proceed Date and continuing until and including the Day on which Notice to Proceed occurs, provided, however, the maximum liquidated damages paid under this Section 3.6(f)(iv) shall be _____ Dollars (\$_____).

(v) In the event the Commercial Operation Date fails to occur by the Target Commercial Operation Date, Seller will pay liquidated damages in the amount of _____ Dollars (\$_____) per Day or portion thereof, commencing with the Day immediately following the Target Commercial Operation Date and continuing until and including the Day on which Commercial Operation occurs, provided, however, the maximum liquidated damages paid under this Section 3.6(f)(v) shall be _____ Dollars (\$_____).

(vi) The Parties agree that if Seller fails to meet Construction Milestones, other than as the result of an Excused Delay, NYPA will suffer damages that will be difficult to quantify. Accordingly they have agreed that in such event Seller will pay the foregoing liquidated damages amounts, as damages and not as a penalty. Seller shall provide and maintain the Seller Letter of Credit to secure payment of liquidated damages amounts.

(vii) NYPA will hold all liquidated damages paid under this Section 3.6(f) with respect to Seller's failure to meet the Target Consents Application Date, Target Financing Date or Target Notice to Proceed Date in escrow, with interest to accrue for NYPA's account. In the event the Commercial Operation Date occurs by the Target Commercial Operation Date notwithstanding any prior unexcused delays, NYPA will refund all previously-paid liquidated damages amounts, without interest. In all other events, liquidated damages shall remain with NYPA without repayment or credit to Seller's account for any purpose.

(viii) If Seller does not achieve Commercial Operation of the Facility by the date _____ () Days following the Target Commercial Operation Date, as such may be extended by Excused Delays, NYPA may, in its sole discretion, upon notice to Seller, terminate the Transaction and such failure shall constitute an Event of Default under Section 5.1(c)(iii) with respect to the Transaction.

(ix) If Seller does not obtain all Consents by _____, 20__, or achieve Commercial Operation of the Facility by _____, 20__, and such failure is the result of Excused Delays, NYPA may, in its sole discretion, upon notice to Seller, terminate the Transaction, provided, however, that such circumstances shall not constitute an Event of Default and no Party shall be required to make any Termination Payment.

(g) Operation of Facility. Upon and after achieving Commercial Operation, Seller shall operate the Facility, and offer, sell and deliver all Products at the Delivery Point set forth in the Confirmation for the Delivery Term. Seller shall at all times operate the Facility in accordance with all applicable laws, regulations, Good Utility Practice, NYISO Rules and equipment manufacturers' warranty requirements. Seller will offer all Products into applicable NYISO Markets, as set forth in the Confirmation, and will participate in the NYISO voltage support service program. Seller shall operate the Facility for its own account and benefit, and shall be entitled to all revenues and settlements from sale and disposition of Products, and shall be solely responsible for all Facility costs of whatsoever nature, including capital costs, fixed and variable operating and overhead costs including but not limited to wages and benefits of employees, Facility maintenance, repair, fuel, insurance, Site leasing and occupancy costs, taxes on Products sales and deliveries, Site tax and any tax or assessments of any nature whatsoever, and environmental allowances required by the Consents. NYPA Termination Right in Event of Extended Force Majeure. If a Force Majeure arises, the Claiming Party will notify the other Party promptly, and within ten (10) Business Days will notify the other Party of the Claiming Party's intentions and provide a Force Majeure remediation plan, if such a plan is feasible. If a Force Majeure occurs, and (i) Seller advises NYPA that it will be unable to achieve the Commercial Operation of the Facility, (ii) Seller is the Claiming Party and does not provide a Force Majeure remediation plan within thirty (30) Days, or (iii) notwithstanding commercially reasonable efforts of Seller, Seller is unable to achieve Commercial Operation within [] Months following the original Target Commercial Operation Date of June 1, 2016, NYPA may terminate the Transaction and this Agreement, upon notice to Seller in NYPA's sole discretion, provided, however, that such circumstances shall not constitute an Event of Default and no Party shall be required to make any Termination Payment.

3.8 Halting Mechanism.

(a) Notice and Order. Except as authorized by Section 3.8(e), Facility development shall be subject to halting at any time up to and including the Commercial Operation Date, upon the issuance of a PSC order or notice from NYPA directing that further development of the Facility cease ("**Halting Order**").

(b) Seller Notice of Intent. Upon the issuance of a Halting Order, except as authorized by Section 3.8(e), Seller will promptly take all steps temporarily to halt all work on the Facility and demobilize all contractors and suppliers, and otherwise to limit and mitigate Seller's costs and obligations. Seller will make a determination, in Seller's sole discretion, whether to terminate the development of the Facility, or to continue to develop the Facility for operation without a power purchase or other contractual arrangement with NYPA. Seller will provide NYPA with written notice of Seller's decision on continuation of development within _____ () Days following Seller's receipt of a Halting Order. If Seller does not provide NYPA with written notice of Seller's decision on whether to continue development of the Facility within _____ () Days following Seller's receipt of a Halting Order, Seller shall be deemed, for purposes of this Section 3.8, to have elected to continue development of the Facility and Section 3.8(e) shall apply.

(c) NYPA Review of Facility and Related Records. Upon the issuance of a Halting Order, unless Seller has elected to continue development pursuant to Section 3.8(e), on

NYPA's request Seller shall (i) shall provide NYPA with full access to the Facility and the Site, and permit it and its designees to inspect and conduct tests at such locations as NYPA deems appropriate, including but not limited to Phase 1 and Phase 2 environmental tests and assessments and (ii) permit NYPA to inspect, examine and make copies of all books, records and contracts relating to the Facility or the Site (including the EPC Contract and any other contract related to the construction of the Facility) and the Development Costs.

(d) NYPA Development Cost Reimbursement upon Termination of Development. The Parties will proceed as follows following a notice by Seller of termination of development of the Facility, with Seller to mitigate costs and NYPA to reimburse costs, subject to the following provisions and limitations:

(i) Seller Mitigation Obligations. Seller shall implement and continue all commercially reasonable steps to terminate all work on the Facility and demobilize all contractors and suppliers, and otherwise to limit and mitigate Seller's costs and obligations. Seller must mitigate costs by prompt reduction in work force and overhead, disposition of the Site and Site occupancy rights and all respective easements and other real property rights and costs, modification, cancellation and liquidation of contracts, salvage sale of equipment already delivered or manufactured in whole or part, and taking all other reasonable and necessary steps to mitigate net costs. Seller shall confer with NYPA promptly following the issuance of a Halting Order concerning its plan to mitigate costs, and shall provide NYPA with a written mitigation plan setting forth proposed disposition of all project assets and settlement of all amounts due to third parties, which shall be subject to prior approval by NYPA before implementation, which approval shall not be unreasonably withheld, conditioned or delayed. NYPA will indemnify Seller for the reasonable and prudent net costs incurred by Seller with respect to its compliance with the Halting Order. To the extent Seller anticipates that corporate, manufacturer or other approvals will be required by Seller to undertake any mitigation activities required pursuant to this Agreement, Seller shall promptly use commercially reasonable efforts to seek such approvals when appropriate on a contingent basis.

(ii) Third Party Contracts. Seller shall use commercially reasonable efforts to (y) sell or assign, negotiate or (where appropriate), issue change orders under contracts with vendors to minimize costs associated with cancellation and (z) cause Seller's mitigated costs for any piece of equipment not to exceed the manufacturer's then-applicable cancellation charge relating thereto, if any. Seller shall use commercially reasonable efforts to ensure that all third party contracts related to the development of the Facility (and in particular, the EPC Contract) include provisions (including halting provisions) that correspond to and are consistent with the provisions of this Section 3.8.

(iii) No Fees. Seller and its affiliates shall not charge NYPA any fee or other charge in connection with its obligations under this Section 3.8, but NYPA shall be required to pay any reasonable out-of-pocket costs incurred by Seller in connection with the mitigation required hereunder.

(iv) Reuse of Equipment. In the event of any Halting Order, Seller shall use commercially reasonable efforts to reuse or transfer any unused project

equipment and services on order to an Affiliate of Seller or another project affiliated with Seller, if available. Adjustments to Development Costs shall be equal to the cost related to such project equipment or services on order that is actually so reused or transferred that would otherwise be reimbursable by Seller, less (y) costs of demobilization and reuse and (z) associated carrying costs.

(v) Development Cost Calculation. Seller will calculate its total actual, reasonable and verifiable Facility development costs incurred on or after the Effective Date as set forth in this Section 3.8 (without adding any profit margin or similar mark-up), including Site occupancy, engineering and development costs, permits and regulatory process, design, EPC and equipment orders, Interest During Construction, plus general overhead accrued in developing the Facility, calculated and mitigated in the manner set forth herein ("**Development Costs**"). Development Costs shall include the reasonable mitigation expenses of Seller incurred pursuant to this Agreement. The final Development Costs shall be in accordance with Seller's mitigation plan previously approved by NYPA, subject to NYPA approval of any material deviations from such plan, such approval not to be unreasonably withheld, conditioned or delayed.

(vi) Accounting and Invoice. Seller shall submit an accounting of its Development Costs within ____ () days of the issuance of a Halting Order for a determination by PSC or NYPA as the amount of Development Costs that are reasonable and prudent. Within ____ () days of (x) a final and non-appealable PSC order determining said amount, if applicable, or (y) a final review and determination by NYPA of said amount, in each case subject to audit rights as set forth in this Section 3.8, Seller will submit its invoice to NYPA, and NYPA shall reimburse Seller the amount of Development Costs found reasonable, verifiable and prudent by the PSC or NYPA, as applicable (which reimbursement may be paid in several installments over a twelve month period).

(vii) Audit and Challenge. Each Party, through its authorized representatives, shall have the right, on or after ____ () Business Days following notice to the other Party, to inspect the books or records of the other Party relating to the Development Costs invoiced pursuant to Section 3.8(d). Reimbursements paid under this Section 3.8 shall not prejudice the right of a Party to protest or challenge the correctness of amounts previously billed, except that all costs and expenses charged shall conclusively be presumed to be true and correct twelve (12) months after billing, unless a Party has notified the other Party of detailed exceptions prior to the expiration of such period.

(viii) Conveyance to NYPA. In the event that Seller decides to terminate the development of the Facility and seek reimbursement of the Development Costs from NYPA, at NYPA's request and option (which can be exercised as to individual items, in NYPA's sole discretion), (a) Seller shall transfer to NYPA or NYPA's designee the equipment, site and contracts associated with the Facility and such Development Costs or (b) Seller shall cause the owner of the equity interests of Seller (or if different, the entity developing the Facility) to transfer such equity interests to NYPA or NYPA's designee.

(ix) Development Cost Caps. Seller agrees that in the event a Halting Order is issued on or before each of the following dates, the maximum Development Cost which NYPA shall be responsible to reimburse Seller will be limited to the following amounts:

January 1, 2014 \$[] million

January 1, 2015 \$[] million

January 1, 2016 \$[] million

In the event any such cap applies, NYPA's obligation to reimburse Development Costs shall be limited to the lesser of Seller's actual Development Costs, determined as set forth in this Section 3.8, or the applicable cap.

(x) Payment of Development Costs, Termination of Agreement; Exclusivity of Remedy. Upon payment to Seller of the Development Costs determined in Section 3.8(d)(vii), subject to any applicable cap set forth in Section 3.8(d)(ix), and the conveyance to NYPA of the assets required by Section 3.8(d)(viii), this Agreement shall terminate with no Termination Payment or other costs, settlements or other payments or remedies due from any Party to the other.

(e) Completion and Operation of Facility following a Halting Order. In the event Seller elects to continue development of the Facility, this Agreement shall terminate with no Termination Payment, reimbursement of Development Costs or other costs, settlements or other payments or remedies due from any Party to the other.

3.9 NYPA Termination Right Related to Cost Recovery. It is anticipated that NYPA will be reimbursed for all of its expenditures under this Agreement pursuant to TO/LSE Tariffs with each applicable transmission operator. If, however, at any time prior to by _____, 201_, ~~there is no~~ cost recovery arrangement ~~has not been adopted in effect~~ that would reimburse NYPA for all liabilities of NYPA under this Agreement (such arrangement being in form and substance satisfactory to NYPA in its sole discretion), NYPA, in its sole discretion, may terminate this Agreement and the Transaction at such time upon notice to Seller. Any such termination shall not constitute an Event of Default, and no Party shall be required to make any Termination Payment with respect to any such termination. The termination of this Agreement pursuant to this Section 3.9 shall not obligate NYPA to pay any Development Costs. This early termination right is in addition to the halting mechanism referenced in Section 3.8.

ARTICLE FOUR REMEDIES FOR FAILURE TO DELIVER

4.1 Seller Failure. If Seller fails to Schedule and/or deliver all or part of the Product to the NYISO pursuant to the Confirmation, and such failure is not excused under the terms of this Agreement or the Confirmation or by NYPA's failure to perform this Agreement, then notwithstanding any provisions of this Agreement to the contrary, Seller shall pay NYPA, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to any penalty or other charge assessed to NYPA by NYISO directly or indirectly as a result of Seller's failure.

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

ARTICLE FIVE EVENTS OF DEFAULT; REMEDIES

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

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) either (i) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice, (ii) any willful failure to deliver Product when required under this Agreement, or (iii) failure of Seller to achieve Commercial Operation by the date _____ () Days following the Target Commercial Operation Date, as extended by any Excused Delay;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

(f) such Party or any Credit Support Provider of such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such Party is NYPA, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, Seller) and, at the time of such consolidation, amalgamation, merger, transfer, or succession:

(i) the resulting, surviving, transferee or successor entity fails to assume all the obligations of such Party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a Seller by operation of law or pursuant to an agreement reasonably satisfactory to the other Party to this Agreement; or

(ii) the resulting, surviving, transferee or successor entity, if a Credit Support Provider, is not a Qualified Issuer; or

(iii) the benefits of any Credit Support Document fail to extend (without the consent of the other Party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement, if any;

(g) the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any Credit Support Provider for such Party

under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than _____ Million Dollars (\$_____,000,000), which results in such indebtedness becoming immediately due and payable or (ii) a default by such Party or any Credit Support Provider for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than _____ Million Dollars (\$_____,000,000);

(h) with respect to such Party's Credit Support Provider, if any of the following occurs:

(i) any representation or warranty made by a Credit Support Provider in connection with this Agreement or any Credit Support Document is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Credit Support Provider to make any payment required or to perform any other material covenant or obligation in any Credit Support Document and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Credit Support Provider becomes Bankrupt;

(iv) the failure of a Credit Support Document to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under the Transaction without the written consent of the other Party; or

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

provided, however, that any Credit Event, or other event or circumstance with respect to an issuer of a Seller Letter of Credit, shall not constitute an Event of Default unless Seller fails to deliver a replacement Letter of Credit in accordance with Section 8.1 within five (5) Business Days after receipt of written notice from NYPA of such circumstance as described in this Section 5.1(h), and provided, further, that the foregoing proviso shall not prevent any draws on any Seller Letter of Credit by NYPA permitted under Section 8.1;

(i) the failure of such Party to deliver to the other Party any Credit Support Document required by Section 8.1 within the time periods specified therein; or

(j) the drawing by NYPA against any Credit Support Document required by Section 8.1 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.

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 to (i) 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 the Transaction (the “**Terminated Transaction**”), (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 the Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party the Terminated Transaction is 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 the 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 Seller, and Seller is the Defaulting Party, Seller shall first transfer Performance Assurance to the NYPA 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 Transaction is 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 Specific Performance. The Parties agree that irreparable damage will result if this Agreement is not performed in accordance with its terms, and the Parties agree that any damages available at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the Parties hereunder shall be enforceable in a court of equity, or other tribunal with jurisdiction, by a decree of specific performance, and appropriate preliminary, interim or permanent injunctive relief may be applied for and granted in connection therewith. Such remedies and all other remedies provided for in this Agreement shall, however, be cumulative and shall be in addition to any other remedies that a Party may have under this Agreement.

5.8 Liquidated Damages. The Parties agree that if Seller fails in any material manner to satisfy its obligations under Section 3.6(a), Section 3.6(g) or the Confirmation, including failure to deliver products into applicable NYISO markets as set forth in the Confirmation during the Delivery Term, other than as the result of an Excused Delay, NYPA will suffer damages that will be difficult to quantify. Accordingly the Parties have agreed that upon the occurrence of an Event of Default in which Seller is the Defaulting Party, Seller will pay to NYPA liquidated damages in the amount of _____ Dollars (\$_____), as damages and not as a penalty. Seller shall provide and maintain the Seller Letter of Credit to secure payment of such liquidated damages amounts. The liquidated damages provided for in this Section 5.8 are in addition to any liquidated damages payable pursuant to Section 3.6.

5.9 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 the Transaction; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to the 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.

ARTICLE SIX PAYMENT AND NETTING

6.1 Billing Period. 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). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

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

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

metered amounts of any Product for the period for which such meter error was detected, or if such period is not known, for one-half the period between the date of detection and the last previous test of the applicable meters.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party 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 NYPA Payment Obligations. The obligations of NYPA to make payments hereunder do not constitute any kind of indebtedness of NYPA or create a lien on, or security interest in, any property or revenues of NYPA. This Agreement and the Facility shall constitute a Separately Financed Project within the meaning of NYPA's 1998 General Resolution Authorizing Revenue Obligations, as supplemented and amended. Payments under this Agreement will be payable solely from the revenues derived from the TO/LSE Tariff. NYPA will remain the contracting party and primary obligor with respect to this Agreement.**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, 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 Credit Support to be Provided by Seller.

(a) Obligation to Maintain and Replace Seller Letter of Credit. Seller shall deliver to NYPA ~~by the later of Financing or~~ within ten (10) Business Days following the execution of this Agreement, the initial Seller Letter of Credit issued by a Qualified Issuer with a stated amount equal to the Seller Letter of Credit Amount. The Seller Letter of Credit Amount shall automatically change on the Commercial Operation Date. The term of the Seller Letter of Credit shall commence within ten (10) Business Days of its delivery to NYPA ~~the execution of this Agreement~~ and terminate on the Credit Support Termination Date, or such earlier time as specified in such Seller Letter of Credit, provided that Seller provides NYPA with a replacement Seller 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 Seller Letter of Credit. In the event NYPA shall make any draw against the Seller Letter of Credit in accordance with this Agreement, Seller shall, within five (5) Business Days, cause the Seller Letter of Credit to be reinstated in the full Seller Letter of Credit Amount, or cause a supplemental Seller Letter of Credit to be provided by a Qualified Issuer for the benefit of NYPA, such that the total credit available shall at all times be not less than the Seller Letter of Credit Amount. In any instance in which NYPA has drawn against a Seller 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 8.1(c) hereof, the amount of such cash being held by NYPA shall be deemed to satisfy a portion of Seller's obligation to maintain the Seller Letter of Credit, and Seller shall not be required to supplement, reinstate or replace the Seller Letter of Credit as to such amount.

(b) Draws. NYPA shall be entitled to make a draw or draws upon the Seller 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 the Seller Letter of Credit as NYPA shall determine in its sole discretion:

(i) immediately upon Seller and/or the issuer of the Seller Letter of Credit becoming Bankrupt as defined herein;

(ii) upon the occurrence of an Event of Default with respect to Seller (whether or not NYPA elects to exercise remedies under the Agreement in connection therewith); provided, that if such Event of Default is continuing and additional amounts become due and owing by Seller to NYPA hereunder, NYPA 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 the Seller Letter of Credit, Seller is required to provide a Seller Letter of Credit for the date immediately following the expiration of the Seller Letter of Credit and NYPA 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 NYPA 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 Section 8.1(b)(iii) above, the 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 NYPA prior to the third (3rd) Business Day prior to the date of expiration of the relevant then-current Seller Letter of Credit; or

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

(c) Application of Proceeds of Draws. In the event that NYPA at any time receives proceeds of the Seller Letter of Credit, title in such proceeds shall vest in NYPA. NYPA shall utilize such proceeds to satisfy amounts owed by Seller to NYPA pursuant to this Agreement and the Transaction. For the purposes of this Section 8.1, amounts owed by Seller to NYPA, and the use of the Seller Letter of Credit proceeds therefor, shall not be affected by any rulings in any bankruptcy or similar proceeding, including but not limited to any stay or discharge of Seller's obligations to NYPA under this Agreement, the intent of the Parties being that this Section 8.1 shall operate as if no bankruptcy had occurred, and NYPA 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 NYPA under this Agreement. In the event any draw or draws are made pursuant to Section 8.1(b)(i), (iii), (iv) or (v) above, and such funds are not immediately applied to satisfy then-outstanding payment obligations of Seller to NYPA, NYPA shall hold such funds separate and apart from all other funds of NYPA in an interest-bearing account, and apply the same to any future payment obligations of Seller to NYPA; provided, however, if prior to the application of such funds for such purposes, Seller is not in default of any obligation with respect to this Agreement and the Transaction and has provided the appropriate replacement Seller Letter of Credit, NYPA shall promptly remit such funds to Seller, with accrued interest. Following the satisfaction in full of all obligations of Seller in respect of this Agreement and the 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 NYPA 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.

(d) Holding Proceeds of Draws. With respect to those amounts drawn pursuant to Section 8.1(b)(i) above that are not used to satisfy any amounts owed by Seller to NYPA hereunder, NYPA shall hold such amounts separate and apart from all other funds of NYPA 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 NYPA prior to Seller becoming Bankrupt are not subject to being recovered from NYPA 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, NYPA 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 8.1(b)(i), net of any amounts that have been applied in regard to amounts owed by Seller to NYPA with respect to this Agreement and the Transaction, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from NYPA, NYPA 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 the Transaction arising prior to the Delivery Point. If NYPA is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, NYPA 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 the fifteenth (15th) anniversary of the Commercial Operation Date, unless previously terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and, provided, further, that this Agreement and any other documents executed and

delivered hereunder shall remain in effect with respect to the Transaction until both Parties have fulfilled all of their obligations with respect to the Transaction.

10.2 Representations and Warranties. Notwithstanding any other provision of this Agreement, as of the Effective Date and as of the effective date of the 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 the Transaction (including the Confirmation);

(iii) the execution, delivery and performance of this Agreement and the Transaction (including the Confirmation) 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, the Transaction (including the Confirmation), 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 term, 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 the Transaction (including the Confirmation);

(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 the Transaction (including the Confirmation);

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and the Transaction (including the Confirmation) and as to whether this Agreement and the Transaction (including the Confirmation) 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 the Transaction (including the Confirmation);

(ix) [intentionally deleted];

(x) it has entered into this Agreement and the Transaction (including the Confirmation) in connection with the conduct of its business and it has the capacity or ability to make delivery of all Products referred to in the Transaction; and

(xi) it is a producer, processor, commercial user or merchant handling the Product that is the subject of the Transaction, and it is entering into the Transaction for purposes related to its business as such.

10.3 Risk of Loss. NYPA shall have no liability or risk of loss with respect to or related to the Product.

10.4 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, 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.

10.5 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.

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

10.7 General.

(a) This Agreement (including the exhibits, schedules, appendices and any written supplements hereto), the TO/LSE Tariff, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and the Transaction (including the Confirmation) 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 the Transaction 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) If (i) any provision of this Agreement is declared, deemed, rendered or becomes unlawful or void, or 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, regulatory agency, governmental entity or NYISO, or as the result of a statutory or regulatory change (individually or collectively, any such event referred to as a “Regulatory Event”) or (ii) as the result of a Regulatory Event, a Party is not capable of receiving a material portion of the originally intended bargain, such 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, or the transactions herein cannot be undertaken 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 the Transaction previously performed by the Parties in good faith; provided, however, that (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.

10.8 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 matters referenced in the Confirmation (including the Product delivered at the Delivery Point). If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.9 Confidentiality.

(a) Neither Party shall disclose the terms or conditions of the Transaction or this Agreement to a third party (other than the Party's employees, trustees, lenders, counsel, accountants, advisors and Affiliates, and in the case of NYPA, the PSC, the New York State Department of Public Service, Transmission Providers and their employees, trustees, lenders, counsel, accountants and 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, regulation, legislative or administrative proceeding) 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 and their Affiliates shall be entitled to all remedies available at law or in equity enforce, or seek relief in connection with, this confidentiality obligation.

(b) Seller hereby expressly acknowledges that NYPA is subject to the requirements of the New York Freedom of Information Law ("FOIL") and must comply therewith. If NYPA is requested by a third party to disclose information that it has received from Seller and it reasonably believes is confidential in nature ("Confidential Information"), NYPA will (i) notify Seller of the request, (ii) provide Seller with the opportunity to provide information regarding the need for confidential treatment, (iii) evaluate the third party's request for disclosure and Seller's request for confidential treatment, and (iv) determine if the Confidential Information is subject to disclosure under FOIL. If NYPA reasonably determines the Confidential Information is not covered by any exception to the disclosure obligation and is required to be

disclosed by NYPA under FOIL, NYPA will provide prompt written notice of such determination to Seller so that Seller may seek a protective order or other appropriate remedy. If Seller does not obtain a protective order or no formal proceeding has been initiated by Seller, in each case within a reasonable period of time (but not less than ten (10) Business Days) after NYPA provides notice to Seller of its intent to make public the Confidential Information, then the Purchaser may disclose such information with no liability or further obligation to Seller; provided that any disclosure by NYPA is limited only to the specific Confidential Information being requested.

10.10 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, 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 Confirmation or the Imaged Agreement (or photocopies of 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.

10.11 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. NYPA 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. NYPA 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 NYPA 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 NYPA 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 NYPA 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 NYPA 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 10.11.

(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 10.11 are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Section 10.11, 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 10.11.

10.12 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 material 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 can or 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, 128 S. Ct. 2733 (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 10.12(a), to the fullest extent permitted by applicable law, each Party, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to unilaterally 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 10.12(a), neither Party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in Section 10.12(a). Nothing in this Section 10.12(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 Section 10.12(a) and (b) above which specific language varies from that set out in Section 10.12(a), then the Parties shall amend Section 10.12(a) above to reflect such specific language, provided that to the extent that the objective behind the specific language adopted in any such final or subsequent policy statement is in any way inconsistent with the mutual intent of the Parties in this regard as currently set forth in Section 10.12(a) and (b), then the Parties shall meet to attempt to negotiate in good faith an amendment to this Section 10.12 to address such inconsistencies, provided, further, that neither Party shall be obligated in any way to agree to any such amendment.

10.13 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.

NYPA:

SELLER:

Power Authority of the State of New York

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

List of Exhibits

Exhibit	Title
1	Calculation of Gains and Losses
2	Confirmation
3	Form of Seller Letter of Credit
4	NYPA Opinions
5	Seller Opinions
6A	Site
6B	Design
6C	Consents Needed

Exhibit 1 to Master Agreement

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 Master Agreement

Exhibit

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

This Transaction Confirmation ("Confirmation") shall confirm the Transaction agreed upon the ____ day of _____, 2013, between Power Authority of the State of New York ("NYPA") and _____ ("Seller") regarding the transactions set forth in this Confirmation under the terms and conditions set forth herein:

This Transaction Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____, 2013 (the "**Master Agreement**") between NYPA and Seller, and constitutes part of and is subject to the terms and provisions of the Master Agreement as defined therein. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Parties:

Seller: _____ ("Seller").

NYPA: Power Authority of the State of New York.

Delivery Term: Commencing with the Month in which the Commercial Operation Date of the Facility occurs and continuing through the Month ending the day before the fifteenth (15th) anniversary of the Commercial Operation Date (the "Delivery Term").

Delivery Point: _____, _____ New York, PTID# _____.

Products: In consideration of the Master Agreement, Seller agrees to offer, deliver and sell all Products available from the Facility into the NYISO Markets at the Delivery Point during the Delivery Term.

Generation Source: Seller's Facility located at _____, [STATE] _____.

Settlement Period: Monthly, in arrears, invoiced as set forth in the Master Agreement.

Calculating Party: Seller will calculate the differences in each of the Capacity Contract for Differences and Energy Settlements set forth in this Confirmation, provided that following any Event of Default by Seller, NYPA shall assume the role of calculating party. Seller shall obtain, calculate and forward to NYPA all information for determining payment of the net amount due from the paying Party for each Settlement Period, including all NYISO settlements, as soon as commercially practicable following the end of each Settlement Period.

Contract for Differences and Settlements: For each Settlement Period, the Parties will owe and pay, and will settle net differences for such period as follows:

(A) Capacity Contract for Differences ("Capacity CFD"):

During each Settlement Period: (i) NYPA will pay to Seller the UCAP Strike Price multiplied by Actual UCAP during such Settlement Period, and (ii) Seller will pay to NYPA the UCAP Revenue Share for such Settlement Period.

1. Capacity Bidding Requirements: For each Settlement Period, Seller shall have full discretion to determine whether, to what extent and at what bid price it may decide to bid all or a portion of the Facility's Actual UCAP into the ICAP Strip Auction ("Strip Auction"), ICAP Monthly Auction ("Monthly Auction") or, except as provided below, the ICAP Demand Curve Spot Market Auction ("Spot Auction") administered by the NYISO for the same Settlement Period pursuant to Section 5.14(3) of the NYISO ICAP Manual (or its successor), provided, however, that Seller must either bid or certify the entirety of the Facility's Actual UCAP into the Spot Auction. For example, if Seller sells 100 MW in the Strip Auction and 50 MW into the Monthly Auction for a given month, it must certify that 150 MW into the Spot Auction and must bid the remainder of the Facility's Actual UCAP into the Spot Auction for such month. The bid price to be submitted by Seller in the Spot Auction shall be no greater than (i) the Facility's marginal going forward costs, recognizing the Capacity revenues anticipated to be received under the Master Agreement and this Confirmation, or (ii) if the Capacity is subject to mitigation pursuant to an order or rule of FERC or any other regulatory authority or the NYISO, the lowest offering price permitted under such mitigation rule.

2. Capacity Quantity Adjustment: In the event Seller has sold a quantity of UCAP (into the Strip Auction or Monthly Auction and settled such sale transaction with the NYISO during a Settlement Period, and the quantity sold covers more than one Month, the UCAP Revenue for such Settlement Period will be deemed to include only the portion of the revenue which the NYISO has committed to Seller for UCAP provided in such Settlement Period and revenue actually realized by Seller from such transaction that corresponds to the UCAP actually provided during such Settlement Period, with the total revenue committed to and realized by Seller from such multi-month UCAP sale to be allocated evenly to all months covered by such sale. To illustrate: (i) If Seller offers and sells UCAP into the Strip Auction and during such Settlement Period Seller realizes revenues from NYISO for six (6) months, then for purposes of determining the UCAP Revenue for each Settlement Period in such six-month period covered by such sale, the portion of such sale revenue included will be one-sixth ($1/6$) of the total revenue from such transaction. (ii) If Seller offers and sells UCAP into the Monthly Auction for the balance of a period, and NYISO purchases and settles with Seller for UCAP in the 2nd and 4th months of such period only, then the revenue from such sale would be deemed applicable in equal parts to each of the two actual Settlement Periods for which the NYISO purchased such UCAP.

(B) Energy Settlement ("Energy Settlement"):

During each Settlement Period, (i) Seller will obtain and realize for Seller's account all Energy Market Revenues, and (ii) for each Hour in such Settlement Period in which the LBMP exceeds the Energy Strike Price, Seller will pay to NYPA the difference between the LBMP and the Energy Strike Price, multiplied by the Contract Energy Amount. For avoidance of doubt, if the LBMP is lower than the Energy Strike Price in any Hour, the Parties will make no payment to each other with respect to such Hour.

1. Energy Bidding Requirements: Seller shall bid its available Energy in accordance with NYISO Rules for Installed Capacity Suppliers.

2. Hours: For purposes of the Energy Settlement calculations, all Hours in a Settlement Period are included except for (i) Scheduled Maintenance Hours, (ii) whole or prorated partial Additional Maintenance Hours not to exceed the annual allowance set forth in the definitions, and (iii) whole or prorated partial Hours in which the Facility was unable to deliver Energy due to Force Majeure or unavailability of the interconnecting transmission facilities. For avoidance of doubt, Hours or prorated partial Hours affected by any Forced Outage are not deducted from "Hours" for this calculation.

(C) Ancillary Services Revenue: Seller will obtain and realize all revenue earned from sale of Ancillary Services during each Settlement Period.

Special Conditions

(1) Seller's Performance Rights and Obligations.

(a) Consideration: For avoidance of doubt, Seller and NYPA agree to perform the foregoing Capacity CFD and Energy Settlement as an inducement to Seller (i) to build and maintain the Facility, and (ii) to deliver Products into NYISO Capacity, Energy and Ancillary Services Markets at the Delivery Point for Seller's own account, which is deemed a benefit to NYPA. Seller shall maintain NYISO membership, and eligibility to sell all Products from the Facility into the foregoing NYISO Markets, and shall sell such Products into such NYISO Markets and be entitled to retain all revenues from such sales, subject to net settlement payments to NYPA as set forth in this Confirmation. Seller will participate in the NYISO Voltage Support Service program, which requires installation of an automatic voltage regulator at the Facility, and participate in NYISO-required testing associated with such program. The transactions set forth in this Confirmation shall not be subject to any adjustment or set-off by reason of any gains, profits, losses or costs of Seller or its Affiliates from operation of the Facility during the Delivery Term or from any hedging of Product sales.

(b) Seller agrees to operate and maintain the Facility in accordance with Good Utility Practices, applicable Laws and the requirements of applicable Consents and Permits. Seller shall comply in all material respects with all NYISO Rules necessary for all Products to be sold, delivered, made available and received, including, without limitation, all product certification and testing requirements under NYISO Rules. Except as and to the extent otherwise expressly set forth in this Confirmation, Seller shall pay all costs of ownership, operation, maintenance, repair and spare parts of and for the Facility, including but not limited to capital costs, financing principal and interest, depreciation, applicable salaries and benefits of personnel, real and personal property rent, lease payments, taxes and financing costs, all costs of insurance, utilities, costs of all lubricants and other consumable substances, gas and fuel oil commodity, delivery and storage costs for all fuel purchased, delivered or consumed for any purpose, all hedging costs,

settlements or losses, costs of obtaining, maintaining and compliance with all Consents, Permits, all Capacity, Energy and Ancillary Services transaction costs with the NYISO, any NYISO adjustments or penalties, including any imbalance or basepoint tolerance penalties, and cost of waste removal and Site restoration and remediation. For avoidance of doubt, (i) Seller will pay for utility and station service Energy used at the Facility provided by [] or any other local service utility, and (ii) Seller will not engage in any wholesale netting arrangements with regard to internal-load Energy consumed by the Facility during operation.

(c) Seller shall provide to NYPA Seller's proposed schedule of expected maintenance outage periods at the Facility during each annual period, and provide NYPA with a reasonable opportunity to consult with Seller on such schedule prior to submission to the NYISO. Subject to any requirements of the NYISO, the interconnection utility, Transmission Providers or any transmission system owner or any applicable regulatory authority, Seller will use commercially reasonable efforts to minimize the duration of, and schedule expected maintenance outages during the shoulder months of March-May and September-December, and will not schedule any Scheduled Maintenance Outages during the Summer Capability Period peak months of June, July or August. Each such Hour during a NYISO-approved maintenance outage (a "Scheduled Maintenance Outage") at the Facility shall be a "Scheduled Maintenance Hour." Scheduled Maintenance Hours shall include only those scheduled outage periods set forth in the annual maintenance schedule submitted to and approved by the NYISO, or any alternate dates for such outages later reasonably proposed by Seller and approved by the NYISO. Any other subsequently-proposed additional maintenance outages for any purposes, whether or not scheduled, submitted to or approved by the NYISO and whether or not reasonably necessary, shall not be deemed Scheduled Maintenance Hours.

(d) Electric metering, Meter Readings and meters will conform to NYISO standards or the equivalent. Seller shall provide reasonable notice to NYPA with respect to all gas and electric meter tests, and NYPA shall be entitled to have a representative attend, provided NYPA and its representative agree to observe Seller's rules for persons entering Seller's premises. In the event any inaccuracy exceeding one-half percent (+/- 0.50%) is determined in any test, the Parties will correct data from such meter used for any purpose under the Master Agreement for all periods between the date of such test and the date which is midway between such test date and the date of the last test in which the meter was found to be accurate or recalibrated to be accurate, with such data correction as appropriate to rectify the inaccuracy detected in the most recent test. Seller will make available to NYPA and, at NYPA's request, utilities participating in the applicable TO/LSE Tariff ("Affected TOs") all gas and electric metering data, including electronic real-time readings, and NYISO settlement data in such manner as Seller and NYPA may agree in the communications protocol to be agreed by the Parties as provided in Special Condition 1.

(e) Seller will provide reasonable notice to NYPA at each Affected TO of each NYISO DMNC test of the Facility, and each NYISO voltage support test in accordance with the NYISO Voltage Support Service Program, or any other significant test of the Facility's output, and NYPA may designate a representative, and may designate representatives of the Affected TOs, to

attend such test and inspect results, at NYPA's cost, provided such representatives agree to observe Seller's rules for persons entering Seller's premises.

(f) Seller shall maintain general liability insurance coverages for the Facility with underwriters with an A.M. Best rating of not less than "A" in such amounts and with such deductibles as are customarily maintained by companies in the same business and similarly situated to Seller with each such policy naming NYPA and the Affected TOs as an additional insured with waiver of subrogation. Seller shall provide NYPA and the Affected TOs with documentation on an annual basis demonstrating Seller's insurance coverages, including information as to the names of underwriters, types of policies, policy limits and deductibles, and shall furnish Seller with copies of all policies upon request.

(g) Within five (5) Business Days after the occurrence of any Forced Outage, Seller shall notify NYPA of the cause of such outage and provide NYPA any additional information as NYPA may reasonably request concerning the Forced Outage

(2) **Access to Facility and Data.** Appropriate representatives of NYPA and representatives of the Affected TOs shall at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Facility to read meters, attend tests and to perform all inspections, maintenance, service, and operational reviews as may be necessary to facilitate the performance of NYPA's obligations under the Master Agreement. While at the Facility, such representatives shall observe such reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation or maintenance of the Facility. Seller shall provide NYPA and the Affected TOs with access to all operational data and records required for any calculation for which this Confirmation or the Master Agreement provides, and upon reasonable request, to any other data relating to the operation of Facility.

(3) **Escalation Rate Process.** Commencing on the first anniversary date of the Commercial Operation Date and with the first Settlement Period of each following Contract Year thereafter (each, an "**Escalation Date**"), Variable O&M and Fuel Price Adders (the "**Escalated Items**") shall be escalated in accordance with the following process (the "**Escalation Rate Process**"):

(a) The following terms shall have the following meanings for purposes of the Escalation Rate Process:

"**GDPDEF**" means the Gross Domestic Product Implicit Price Deflator calculated and published by the US Department of Commerce Bureau of Economic Analysis. In the event that such index is no longer published, the parties shall in good faith select a substitute index.

"**GDPDEF Actual Percentage**" means, for a particular Escalation Date, the average of all GDPDEF monthly values during the most recently published full twelve (12) Months prior to such Escalation Date, divided by the average of the monthly GDPDEF values for the preceding twelve (12) month period, expressed as a percentage.

(b) Each Escalated Item will be multiplied by the GDPDEF Actual Percentage, with the resulting figure being the value for such Escalated Item for the following Contract Year.

(c) An example of the Escalation Rate Process is attached as Appendix C hereto.

(4) **Seller Responsible for Compliance with all NYISO Rules.** Seller shall comply in all material respects with all NYISO Rules necessary for all Products to be sold, delivered, made available and received, including, without limitation, all Scheduling, notice and certification requirements under NYISO Rules.

(5) **Further Assurances.** Each Party shall execute all other documents and instruments and take all further actions reasonably necessary to implement and perform the transactions agreed to by the Parties.

(6) **Indemnification.** In addition to the requirements of the Master Agreement, the Parties agree that each Party (the "**Indemnifying Party**") shall indemnify and defend the other Party and each of its officers, directors, trustees, employees and agents (collectively, the "**Indemnified Party**") against any claim, suit, cause of action, judgment, award or assessment asserted or threatened by or entered in favor of any third party arising directly or indirectly from any act or omission of the Indemnifying Party. The Indemnified Party shall give prompt notice of any pending or threatened claim to the Indemnifying Party, provided, failure to do so will relieve the Indemnifying Party of liability only to the extent of any actual prejudice. The Indemnifying Party may, at its option, assume the defense of any claim and appoint its own counsel. The Indemnified Party will cooperate with the Indemnifying Party in the defense of any claim, and shall not make or accept any admission or offer of settlement without prior consent of the Indemnifying Party. The Indemnifying Party will pay defense costs, including reasonable attorneys' fees, as invoiced to the Indemnified Party.

(7) **Definitions.** When used in this Confirmation, the following terms shall have the following defined meanings:

"**Actual UCAP**" means Facility capacity for each Capability Period expressed in UCAP as defined as the "Available for Sale UCAP" as posted on the NYISO's Automated Market System (or its successor).

"**Additional Maintenance Hours**" means any Hours, or prorated portions thereof, which are not Scheduled Maintenance Hours, during which the Facility is required to be removed from service in whole or part for maintenance and repairs which under Good Utility Practice cannot be deferred until the next Scheduled Maintenance Outage, which Additional Maintenance Hours shall not exceed ____ Hours in any consecutive twelve Settlement Periods, provided, time for repairs to restore service following commencement of any Forced Outage shall not be Additional Maintenance Hours.

"Ancillary Services" means any and all services defined in the NYISO Ancillary Services Manual at any time which the Facility is capable of providing.

"Capability Period" means a Summer Capability Period or a Winter Capability Period.

"Capacity" means Unforced Capacity from the Facility in accordance with NYISO Rules.

"CO₂ Emissions Rate" means the Parties' agreed contractual rate for CO₂ emissions (_____ tons/MWh).

"CO₂ Index" means the most recent clearing price (\$/ton) of CO₂ allowances established as a result of a Regional Greenhouse Gas Initiative auction or any substitute or successor program auction or pricing arrangement, or if applicable, the average prices quoted for the applicable period by two independent brokers to be agreed upon by the Parties, or other mutually-agreed pricing arrangement.

"Contract Energy Amount" means the Actual UCAP in MW times one hour (MWh).

"Contract Year" means a twelve (12) consecutive Month period commencing with the Month in which the Commercial Operation Date occurs, and each Month thereafter in which the anniversary of the Commercial Operation Date appears.

"DMNC" means Dependable Maximum Net Capability.

"Emissions Adder" means a formula for computing the monthly emissions cost (in \$/MWh) consisting of the sum of (the CO₂ Index multiplied by the CO₂ Emissions Rate), plus the (NOx Index multiplied by the NOx Emissions Rate) plus (SO₂ Index multiplied by SO₂ Emissions Rate).

"Energy Market Revenues" means the revenues from selling the Contract Energy Amount into the NYISO Day-Ahead Market.

"Energy" means three-phase alternating current electricity delivered in accordance with NYISO Rules.

"Energy Strike Price" means the (Guaranteed Heat Rate multiplied by Fuel Price) plus the Variable O&M and the Emissions Adder.

"Escalated Items" has the meaning set forth in Special Condition 3.

"Escalation Date" has the meaning set forth in Special Condition 3.

"Escalation Rate Process" has the meaning set forth in Special Condition 3.

"Facility" means the _____ nominal megawatt block of an electric generating project to be located at _____ in _____, [STATE] consisting of _____, and which

electric generating project is sufficient to provide and deliver the Products referenced in this Confirmation.

"FERC" means the Federal Energy Regulatory Commission, or any successor federal agency.

"Forced Outage" means any outage that is not a Scheduled Maintenance Outage, Additional Maintenance Outage or outage arising from Force Majeure or unavailability of the connecting transmission system to receive Energy at the Delivery Point.

"Fuel Price" for a Settlement Period means a fuel price (in \$/MMBtu) based on the average of the published daily "Midpoints" reported for each day in such Settlement Period by [LIST INDEX] with respect to weekdays for the flow date, and with respect to weekend days and holidays for the flow rate immediately following such weekend day or holiday plus Fuel Price Adders.

"Fuel Price Adders" means agreed defined adjustments for transportation and local delivery service adder(s) set forth in Appendix A.

"Good Utility Practices" has the meaning set forth in the Master Agreement.

"Guaranteed Heat Rate" means the Parties' agreed to defined, guaranteed heat rate of _____ MMBtu (Higher Heating Value (HHV))/MWh at ISO Conditions as adjusted in accordance with the agreed Manufacturer's Degradation Curve.

"Hour" means a period of sixty (60) minutes commencing with 12:00 AM on any calendar day, and each full hour commencing at 1:00 AM, 2:00 AM etc. through the following midnight of a calendar day.

"Indemnified Party" has the meaning set forth in Special Condition 6.

"Indemnifying Party" has the meaning set forth in Special Condition 6.

"Installed Capacity" or **"ICAP"** means Installed Capacity as defined in the applicable NYISO Installed Capacity Manual, as published from time to time, or any successor publication.

"ISO Conditions" means dry bulb temperature of 59° Fahrenheit at 60 percent relative humidity and atmospheric pressure equal to 14.696 PSIA.

"Law" means all laws, statutes, rules, regulations, orders, decrees, judgments or other requirements of any governmental entity or authority, including the NYISO, applicable to the Facility or the Parties.

"LBMP" means the hourly Day-Ahead Market Locational Based Market Price at the Delivery Point.

"Manufacturer's Degradation Curve" means the heat rate degradation curve for the Facility set forth in Appendix B.

"NOx Emissions Rate" means the Parties' agreed contractual rate for NOx emissions (_____ tons/MWh).

"NOx Index" means the average prices quoted on the first day of a month for Clean Air Interstate Rule annual oxides of nitrogen allowances for such month quoted by two independent brokerages to be agreed upon by the Parties, or other mutually-agreed pricing arrangement.

"NYISO" means the New York Independent System Operator Corporation or any successor entity performing similar functions. **"NYISO Markets"** means, as applicable, each of the NYISO Capacity Markets or NYISO Energy Markets or NYISO Ancillary Services Markets, as defined in the NYISO Rules.

"Permits" means the permits and other governmental approvals necessary to construct, interconnect and operate the Facility.

"Products" means Capacity, Energy and Ancillary Services.

"SO₂ Emissions Rate" means the Parties' agreed contractual rate of SO₂ emissions (_____ tons/MWh).

"SO₂ Index" means the average of prices quoted for the first day of a month for CAIR annual oxides of sulfur allowances for such month quoted by two independent brokerages to be agreed upon by the Parties, or other mutually-agreed pricing arrangement.

"Scheduled Maintenance Hour" has the meaning set forth in Special Condition 1(c).

"Scheduled Maintenance Outage" means a scheduled maintenance outage of the Facility as described in Special Condition 1(c).

"Summer Capability Period" has the meaning set forth in the NYISO Rules.

"UCAP" or "Unforced Capacity" has the meaning set forth in the NYISO Rules.

"UCAP Revenue" means the actual UCAP revenues received by the Seller from sales of UCAP in all NYISO Capacity Markets, as defined in NYISO Rules, during such Settlement Period.

"UCAP Revenue Share" means ninety percent (90%) of UCAP Revenue during a Settlement Period.

"UCAP Strike Price" means a defined, contractual firm fixed capacity price of _____\$/kW-month (which includes fixed O&M).

"Variable O&M" means the Parties' defined, contractual firm fixed VOM of \$_____/MWh, escalated as set forth in this Confirmation.

"Winter Capability Period" has the meaning set forth in the NYISO Rules.

[signatures on next page]

Accepted and Agreed:

POWER AUTHORITY OF
THE STATE OF NEW YORK

By: _____
Name: Gil Quiniones
Title: President and Chief Executive Officer

By: _____
Name: _____
Title: _____

APPENDIX A - Fuel Price Adders

Transportation adder:

Local Delivery Adder:

APPENDIX B - Manufacturer's Annual Degradation Curve

APPENDIX C - Escalation Calculation Example

Exhibit 3 to Master Agreement

Form of Seller Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

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

Date of Issuance: _____

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

1) A Beneficiary's signed certificate stating:

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

2) A Beneficiary's signed certificate stating:

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

3) A Beneficiary's signed certificate stating:

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

4) A Beneficiary's signed certificate stating:

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

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

5) A Beneficiary's signed certificate stating:

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

Special Conditions:

- Multiple partial drawings permitted, not to exceed the maximum credit available hereunder in the aggregate.
- Documents must be presented at our servicer's counter located at _____, no later than _____, 20__.
- 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 4 to Master Agreement

NYPA OPINIONS

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

Exhibit 5 to Master Agreement

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.

Exhibit 6A to Master Agreement [if Applicable]

SITE DESCRIPTION

Exhibit 6B to Master Agreement [if Applicable]

DESIGN

Exhibit 6C to Master Agreement [if Applicable]

CONSENTS

List of Applicable NYPA Appendices

Appendix	Title
B	Prompt Payment Policy
C	Minority and Women-Owned Business Enterprise (M/WBE) Participation Goal Requirement
E	Omnibus Procurement Act of 1992 Requirements
G	Equal Employment Opportunities Requirements
H	Tax Law Requirements
J	Proposer/Consultant Compliance with New York Power Authority Policy Providing for Certain Procurement Disclosures

APPENDIX F

NON-COLLUSIVE PROPOSAL CERTIFICATION

Proposer shall submit one signed non-collusive proposal certificate with each copy of its proposal submitted.

- A. By submission of this proposal, each Proposer and each person signing on behalf of any Proposer certifies as to its own organization, under penalty of perjury, that to the best of his /her knowledge and belief:
1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor;
 2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other or to any competitor; and
 3. No attempt has been made or will be made by the Proposer to include any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.
- B. A proposal shall not be considered for selection nor shall any proposal be selected where A. 1, 2 and 3, above have not been complied with; provided however, that if in any case the Proposer cannot make the foregoing certification, the Proposer shall so state and shall furnish with the proposal a signed statement which sets forth in detail the reasons therefore. Where A.1, 2 and 3, above have not been complied with, the proposal shall not be considered for selection nor shall any selection be made unless the head of the purchasing unit of the state, public department or agency to which the proposal is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.
- C. Each proposal made by one or more corporations individually or as members or a joint venture or partnership shall be deemed to have been authorized by Proposer's respective board or boards of directors as the case may be, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of this non-collusive proposal certification as the act and deed of such respective corporations.

FIRM NAME: NYC ENERGY LLC

BY: Donald G. Bronn
(Name-Signed)

BY: _____
(Name-Signed)

TITLE: Member

DATE: 5/20/13

APPENDIX G

APPENDIX "B"

A. GENERAL

1. This statement is intended to establish rules and regulations as required under Section 2880 of the Public Authorities Law describing the policy of the Power Authority of the State of New York (the "Authority") to promptly pay all proper invoices submitted by any Contractor. Subject to the conditions and exceptions set forth in Section 2880 and herein, in the event any proper invoice is not paid promptly, the Authority shall be liable for the payment of interest on late payments. This policy shall apply to all Contracts entered into on or after April 30, 1988.

B. DEFINITIONS

1. **"CONTRACT"** means an enforceable agreement entered into between the Authority and a Contractor.
2. **"CONTRACTOR"** means any person, partnership, private corporation or association: a) selling materials, equipment or supplies or leasing property or equipment to the Authority; b) constructing, reconstructing or repairing buildings, highways or other improvements for or on behalf of the Authority; or c) rendering or providing services to the Authority pursuant to a Contract.
3. **"DESIGNATED PAYMENT OFFICE"** means the office designated by the Authority to which a proper invoice is to be submitted by a Contractor.
4. **"PROPER INVOICE"** means a written request for a Contract Payment that is submitted by a Contractor to the Authority's designated payment office setting forth the description, price and quantity of goods, property or services delivered or rendered in accordance with the terms of the Contract, in such form and supported by such other substantiating documentation as the Authority may reasonably require.
5. **"RECEIPT OF AN INVOICE"** and **"INVOICE RECEIVED DATE"** mean (a) the date on which proper invoice is actually received in the designated payment office, or (b) the date on which the Authority receives the purchased goods, property or services covered by the proper invoice, whichever is later. With regard to final payments on construction contracts, (b) shall mean the date on which all the Contract Work has been accepted as completed by the Authority in accordance with the Contract terms.
6. **"SET-OFF"** means the reduction by the Authority of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

C. RESPONSIBILITY FOR PROMPT PAYMENT

1. The Authority's Controller shall have the responsibility for the implementation of the Prompt Payment Policy and the prompt payment of all proper invoices under the general guidance and supervision of the Executive Vice President & Chief Financial Officer.

D. PROMPT PAYMENT PROCEDURE

1. A Contractor shall request payment under a Contract by submitting a proper invoice to the Authority at its designated payment office at the time and in the manner specified in the Contract.
2. The Authority shall have fifteen (15) calendar days after receipt of an invoice at its designated payment office to notify the Contractor of certain facts and conditions, including but not limited to those listed below, which, in the opinion of the Authority's Controller, justify extension of the statutory payment period.
 - a) there is a defect in the delivered goods, property or services;
 - b) there is a defect in the invoice;
 - c) there are suspected defects or improprieties of any kind the existence of which prevent the commencement of the statutory payment period;
 - d) prior to payment, a statutory or contractual provision requires an inspection period or an audit to determine the resources applied or used by the Contractor in fulfilling the contract terms;
 - e) a proper invoice must be examined by the federal government prior to payment;
 - f) the Authority is prevented from making payment by reason of the filing of a lien, attachment, other legal process or requirement of law.

Any time taken to satisfy or rectify any such facts or conditions shall extend the date by which contract payment must be made in order for the Authority not to become liable for interest payments by an equal period of time.

3. Should the Authority fail to notify a Contractor of such facts and conditions within fifteen calendar days of the invoice received date, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the Contractor. Should the Authority, in such situations, fail to provide reasonable grounds for its contention that a fact or condition justifying a time extension exists, the date by which contract payment must be made in order for the Authority not to become liable for interest payment shall be calculated from the invoice received date.
4. The Authority shall make payment within forty five (45) calendar days after the invoice received date. Effective July 1, 1989, the Authority shall make payment within thirty (30) calendar days, excluding legal holidays, after invoice received dates occurring after that date.
5. Except for the payments described in Paragraph E, every payment by the Authority to a Contractor pursuant to a Contract is eligible for interest should the Authority fail to make such payment within forty five (45) days after the invoice received date for contracts entered into between April 30, 1988 and June 30, 1989 and within thirty (30) days for contracts entered into on or after July 1, 1989.
6. The Authority shall not be liable for interest on any retention amounts withheld by the Authority in accordance with the terms of the Contract.
7. Interest shall be computed at the rate set by the state tax commission for corporate taxes pursuant to paragraph one of subsection (e) of section 1096 of the tax law, but the Authority shall not be liable for payment of interest when such interest is less than ten dollars.
8. The Authority has available funds in its custody to pay all interest penalties.

E. EXCEPTIONS

1. Payments are not eligible for interest when they are due and owing by the Authority:
 - a) under the eminent domain procedure law;
 - b) as interest allowed on a judgement by a court pursuant to any provision of law other than section 2880 of the Public Authorities Law;
 - c) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including but not limited to, counties, cities, towns, villages, school districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
 - d) in situations where the Authority exercises a legally authorized set-off against all or part of the payment due the Contractor.

APPENDIX H

NEW YORK POWER AUTHORITY
GEOGRAPHIC ORIGIN FORM

Bidder:

IMPORTANT NOTE TO BIDDERS

Pursuant to the Omnibus Procurement Act of 1992, the Authority is required to determine whether each award is designated as a NYSBE or FBE. Please complete this form to identify the location of the plant where each item in this bid package is substantially manufactured, produced or assembled or where services will be substantially performed. If necessary, please contact the manufacturer to insure the accuracy of this information.

RETURN THIS FORM WITH YOUR PROPOSAL.

- NOTE: (a) If all items are substantially manufactured in the same location, complete only item 1 indicating same.
(b) If all items are not substantially manufactured in the same location, complete a section for each item in this bid package.

PLEASE copy this form as needed for additional items.

EQUIPMENT

ITEM NO.	DESCRIPTION & MODEL NUMBER	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
1.	Manufacturer: <u>Pratt & Whitney Power Systems</u> City: <u>East Hartford</u> State: <u>CT</u>	\$ <u>1</u>	\$ <u>23.0 mil</u>	\$ <u>23.0 mil</u>
Address of plant where item is substantially manufactured: <u>400 Main St., East Hartford, CT 06118</u>				
2.	Manufacturer: <u>Innovative Steam Technologies</u> City: <u>Cambridge</u> State: <u>Ontario (Canada)</u>	\$ <u>1</u>	\$ <u>8 mil</u>	\$ <u>8 mil</u>
Address of plant where item is substantially manufactured: <u>549 Conestoga Blvd., Cambridge, Ontario, Canada N1R7P4</u>				
3.	Manufacturer: _____ City: _____ State: _____	\$ _____	\$ _____	\$ _____
Address of plant where item is substantially manufactured: _____				
4.	Manufacturer: _____ City: _____ State: _____	\$ _____	\$ _____	\$ _____
Address of plant where item is substantially manufactured: _____				
5.	Manufacturer: _____ City: _____ State: _____	\$ _____	\$ _____	\$ _____
Address of plant where item is substantially manufactured: _____				

SERVICES

Please indicate the location where services will be substantially performed:

The FPP will be constructed in a shipyard located either in New York State (if suitable facilities can be found) or on the Gulf Coast of the United States.

APPENDIX I

BIDDER/CONTRACTOR DISCLOSURE OF CONTACTS FORMProcurement ID Number (RFP or Q No.): Q13-5441LWBidder/Contractor Name: NYC ENERGY LLCAddress: 220 East 65th Street City: New York State: NY Zip Code: 10065

Person submitting this form:

Name: James HallTitle: Vice PresidentTelephone No.: (212) 688-0180**(A) Bidder/Contractor Personnel** *(Include company officers, sales or marketing personnel, engineers, lawyers, insurance specialists and other personnel)*

	Name	Location	Title	Telephone No.	Financial Interest in the Procurement?
1.	Donald G. Bronn	220 East 65th Street, NY, NY 10065	Member	(212) 688-0180	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2.	James C. Hall	220 East 65th Street, NY, NY 10065	Vice President	(212) 688-0180	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3.					<input type="checkbox"/> Yes <input type="checkbox"/> No
4.					<input type="checkbox"/> Yes <input type="checkbox"/> No
5.					<input type="checkbox"/> Yes <input type="checkbox"/> No
6.					<input type="checkbox"/> Yes <input type="checkbox"/> No
7.					<input type="checkbox"/> Yes <input type="checkbox"/> No
8.					<input type="checkbox"/> Yes <input type="checkbox"/> No
9.					<input type="checkbox"/> Yes <input type="checkbox"/> No
10.					<input type="checkbox"/> Yes <input type="checkbox"/> No

APPENDIX J

Contractor Disclosure of Prior Non-Responsibility Determinations

Bidder/Contractor Name: NYC ENERGY LLC

Address: 220 East 65th Street **City:** New York **State:** NY **Zip Code:** 10065

Person submitting this form:

Name: Donald G. Bronn

Title: Member **Telephone No.:** (212) 688-0180

Has any covered agency or authority made a finding of non-responsibility regarding the Contractor in the last five years?

☒ **No** ☐ **Yes**

If yes, was the basis for the finding of the Contractor's non-responsibility due to the intentional provision of false or incomplete information required by New York Power Authority or another state agency regarding certain procurement disclosures?

☐ **No** ☐ **Yes**

Covered Agency or Authority: _____

Year of Finding on Non-Responsibility: _____

Basis of Finding of Non-Responsibility: _____

APPENDIX K

Contractor Certification of Compliance

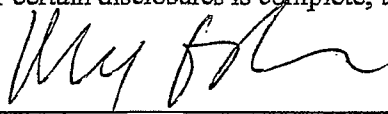
Contractor certifies that all information provided to the Authority with respect to the Authority's updated procedures, consistent with New York State Finance Law §§ 139-j and 139-k, providing for certain disclosures is complete, true and accurate. Contractor affirms that it understands and agrees to comply with the practices of the Authority relative to permissible contacts as required by New York State Finance Law §§ 139-j(3) and 139-j(6)(b).

Bid/Contract Number Q13-5441LW

CONTRACTOR CERTIFICATION:

I certify that all information provided to the Authority with respect to the Authority's practices providing for certain disclosures is complete, true and accurate.

By (signature:)



Date: 5/20/2013

Name (printed or typed:) Donald G. Bronn

Title: Member

Contractor: NYC ENERGY LLC

Address: 220 East 65th Street

City: New York

State: NY

Zip Code: 10065

APPENDIX L

Contractor Disclosure of Accuracy Form**Bidder/Contractor Name:** NYC ENERGY LLC**Address:** 220 East 65th St. **City:** New York **State:** NY **Zip Code:** 10065**Person submitting this form:****Name:** Donald G. Bronn**Title:** Member **TelephoneNo.:** (212) 688-0180

Has the Contractor cumulatively increased the amount paid or expected to be paid for influencing or attempting to influence the present contract by \$25,000 or more in the current calendar quarter? No

If yes, please describe.

Has the Contractor changed/replaced the person(s) who were hired to influence or attempt to influence the contract in the current calendar quarter? No

If yes, please describe.

Have the employee(s), officer(s), or member(s) contacted to influence or attempted to influence the contract changed in the current calendar quarter? No

If yes, please describe.

APPENDIX M

POWER AUTHORITY OF THE STATE OF NEW YORK

BID ADDENDUM NO. 1

REQUEST FOR PROPOSAL NO. Q13-5441LW

FOR

CONTINGENCY PROCUREMENT OF GENERATION AND TRANSMISSION

MAY 6, 2013

TO ALL CONCERNED:

The original Bid Document for RFQ No. Q13-5441LW is amended as noted in this Bid Addendum No. 1 date May 6, 2013 and the Addendum shall become a part of the Bid Document.

NEW YORK POWER AUTHORITY
CONTINGENCY PROCUREMENT OF GENERATION AND TRANSMISSION
REQUEST FOR PROPOSAL NO. Q13-5441LW
BID ADDENDUM NO. 1 DATED MAY 6, 2013

The original Bid Document for Request For Proposals (RFP) No. Q13-5441LW, are amended as noted in this Bid Addendum No. 1 dated May 6, 2013 and the addendum shall become a part of the bid document.

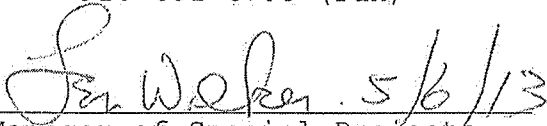
Each Proposer/Bidder shall note the following information and submit their response to the undersigned:

- A. This Bid Addendum No. 1 is issued to make available an MS Word version of Attachment 8 entitled "Master Purchase Power & Sales Agreement", for redlining purposes, as follows:
- a. Bidder/Proposer is directed to locate on the Authority's Procurement download site a 2nd new attachment (link) entitled "Addendum - 05/06/2013."

THE AUTHORITY'S DESIGNATED CONTACT PERSON DURING THE FORMAL BID PERIOD IS THE UNDERSIGNED (MR. LEN WALKER). NO OTHER AUTHORITY PERSONNEL IS AUTHORIZED TO RECEIVE, INITIATE, OR COMMUNICATE INFORMATION OF ANY KIND REGARDING THIS RFQ DURING THE FORMAL BID PERIOD. ALL INQUIRIES REGARDING THIS RFP MUST BE DIRECTED TO THE UNDERSIGNED. FAILURE OF PROSPECTIVE PROPOSER/BIDDER TO FULLY COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE REJECTION OF ITS BID PROPOSAL.

IF THERE ARE ANY QUESTIONS REGARDING THIS RFP AND ITS BID ADDENDUMS, UNDER §§ 139-J AND 139-K OF THE STATE FINANCE LAW (SFL), ALL QUESTIONS MUST BE DIRECTED IN WRITING TO:

Mr. Len Walker
Manager of Special Projects
New York Power Authority
123 Main Street
White Plains, New York 10601.
914-681-6627 (Phone)
914-681-6783 (Fax)


Manager of Special Projects

This Bid Addendum No. 1 must be executed and returned along with the Bid Proposal.

I have received this Bid Addendum No. 1, for Q13-5441LW for Contingency Procurement of Generation and Transmission, and have considered it in my submittal.

COMPANY NAME: NYC ENERGY LLC

(Typed)

BY: 

(Name-Signed)

BY: Donald G. Bronn

(Name-Typed)

TITLE: Member

DATE: 5/20/13

POWER AUTHORITY OF THE STATE OF NEW YORK

BID ADDENDUM NO. 2

REQUEST FOR PROPOSAL NO. Q13-5441LW

FOR

CONTINGENCY PROCUREMENT OF GENERATION AND TRANSMISSION

MAY 8, 2013

TO ALL CONCERNED:

The original Bid Document and Bid Addendum No. 1 dated May 6, 2013 for RFP No. Q13-5441LW is amended as noted in this Bid Addendum No. 2 date May 8, 2013 and the Addendum shall become a part of the Bid Document.

POWER AUTHORITY OF THE STATE OF NEW YORK

BID ADDENDUM NO. 2

REQUEST FOR PROPOSAL NO. Q13-5441LW

FOR

CONTINGENCY PROCUREMENT OF GENERATION AND TRANSMISSION

MAY 8, 2013

TO ALL CONCERNED:

The original Bid Document and Bid Addendum No. 1 dated May 6, 2013 for RFP No. Q13-5441LW is amended as noted in this Bid Addendum No. 2 date May 8, 2013 and the Addendum shall become a part of the Bid Document.

NEW YORK POWER AUTHORITY
CONTINGENCY PROCUREMENT OF GENERATION AND TRANSMISSION
REQUEST FOR PROPOSAL NO. Q13-5441LW
BID ADDENDUM NO. 2 DATED MAY 8, 2013

The original Bid Document for Request For Proposals (RFP) No. Q13-5441LW, are amended as noted in this Bid Addendum No. 2 dated May 8, 2013 and the addendum shall become a part of the bid document.

Each Proposer/Bidder shall note the following information and submit their response to the undersigned:

A. GENERAL CLARIFICATIONS/CORRECTIONS:

1. Referencing Page IP-3, "Your Federal Social Security Number." A Federal Social Security Number is applicable to sole proprietors that lack a Federal Employer Identification Number. A Federal Social Security Number is typically not applicable to a corporation.
2. Referencing Item "I" on Page IP-3, "Appendix J" is modified to DELETE the words, 'Nondisclosure Agreement' and SUBSTITUTE "Bidder/Contractor Compliance with State Finance Law §§ 139-J and 139-K – Providing For Certain Procurement Disclosures."
3. Referencing Page IP-4, Paragraph III.A.2, The Proposer is expected to submit a proposal which matches price and services to the materials to be furnished and/or work to be performed and, overall, which meets the requirements of the RFP.

B. APPENDICES C, E, G, and J QUESTIONS/ANSWERS:

- Q1. Is this contract considered to be a "construction contract" for purposes of Attachment No. 5 in Appendix D (sic) "C"?
- A1. No. However, compliance with Appendix C requirements are applicable to the extent the nature of a Proposer's Bid Proposal involves the components of construction, materials, goods, service, etc. towards achieving the RFP requirements.
- Q2. With regard to the W/MBE, please answer/confirm the following:
- a. Are the percentage figures in the tables mandatory goals?
 - b. Are the 'Overall' percentage figures the percentage of the overall project to which W/MBE goals are applied for that category or simply the sum of the WBE and MBE? (i.e. does NYPA expect that WBE + MBE are to supply 20% of all the equipment on site)?
 - c. What is included in the "Equipment" category on page 22 (i.e. all major and minor equipment)?
 - d. What is included in the "Personal Services" category on page 22? (Was this meant to be Personnel Services?)
 - e. Given that this is not a "bid" for a price to be paid by NYPA for construction of a project or provision of equipment, please explain how the applicable percentages are to be calculated, and to which elements of the work the percentages should be applied
- A2. Appendix C percentage values are target. As NYPA is a NYS Authority it desires to fulfill goals established by NYS to achieve minority and women owned business participation in its activities. The nature of the Proposer's bid proposal will determine if some or all of the identified categories on page IP-22 are applicable. As compliance with the participation target goals are evaluation criteria that may influence

selection, Proposers are encouraged to confirm and identify its efforts to achieve the targets, to the best extent possible.

- Q3. With respect to section III C of the Information for Proposers. Please explain what is meant by, and give examples of, the "certifications" referred to therein.
- A3. "Certifications" refer to permits, licenses, etc. required by the authorized governing bodies responsible for ensuring compliance with requirements in the jurisdiction where the work or service is being provided.
- Q4. Please clarify the form of "assurance" NYPA is seeking as a response to III.C: "Assurance that proper certifications can be supplied for the Scope required to be performed under State, City, and Federal Government laws and regulations."
- A4. Proposers shall confirm its intent and ability to comply with all applicable rules, certifications, codes, registrations, license requirements, regulations, insurance, etc. required by authorized governing entities within the jurisdiction where the work or service is being performed/provided.
- Q5. Appendix G, Attachment G-1 of the RFP asks for a "Contractor Staffing Plan." Does this staffing plan apply to construction period staffing or to operational period staffing, or to both?
- A5. Attachment G-1 may apply to one, several or to all the "Type of Contract" categories listed at the top of the page. Proposer is to reflect the make-up of its firm's workforce in accordance with the fields indicated on the form. G-1 is not intended to be used to identify contracted personnel. It may reflect a company's construction period staffing or operational period staffing if such staff are permanent employees.
- Q6. In Form J-1 please explain what is meant by "financial interest in the procurement". Is employment at the bidder (that is not contingent on contract award) be (sic) sufficient to qualify as financial interest, or should the financial interest be more definitive? If it is not merely employment at the bidder, please explain what would constitute financial interest beyond employment.
- A6. Proposers are directed to NYS Finance Law, Article IX, Contracts – NY CLS St Fin § 139-j and § 139-k.
- Q7. Please explain specifically which portions of Attachment 1 of Appendix C bidders will be required to complete in light of the fact that NYPA has not contracted with any bidder at this time.
- A7. See A2 above.
- Q8. Appendix C - Attachment 1, Appendix E – Attachments 1 and 2, Appendix G – Contractor Staffing Plan and Appendix H all appear to be required on or close to execution of a contract and would be premature at this bidding stage. Would a response committing the bidder to completing the forms at the appropriate time, e.g. just prior to contract execution, be responsive or is the expectation that bidders are to make these commitments without full knowledge of the final contract terms?
- A8. See A1, A2, and A5 above.

C. PROPOSER/BIDDER QUESTIONS and ANSWERS:

NYPA's responses to Proposer questions are grouped into four (4) categories below.

CATEGORY 1 – ANSWERS TO QUESTIONS TO AID IN PREPARATION OF RFP RESPONSES

The following questions solicit information that is likely to aid prospective respondents in better understanding the terms of the proposed transaction and their answers will enhance the quality of bid responses.

- Q1. Dodd-Frank Act. Will NYPA agree to provide information that Seller may require to comply with obligations under the Dodd-Frank Act if the contract is classified as a swap under that Act? Will NYPA consider reforming this transaction as a physical forward rather than a financial swap, if necessary in order that this transaction not contribute to Seller becoming classified as a Swap Dealer under the Dodd-Frank Act? Will NYPA consider revising its termination option and halting option if necessary in order that this transaction not be classified as a swap under the Dodd-Frank Act?
- A1. Each respondent should identify in its bid response and/or in the Power Purchase Agreement (PPA) redline, if applicable, the specific information it requires. NYPA will then indicate what information it is able to provide. Regarding contract reformation, as explained in the RFP, each respondent must submit pricing responsive to the standard format set forth in section 8.11 of the RFP but may also submit an alternative pricing arrangement for consideration. Thus, respondents may submit an alternative pricing and contractual structure to address Dodd-Frank Act concerns.
- Q2. Separately Financed Project. What assurance will there be that revenues from the TO/LSE Tariff will be sufficient to meet Seller's invoices under this agreement? What assurance will there be that the terms of the TO/LSE Tariff for any transmission operator or load serving entity might not be changed during the term of this agreement in such a way that could result in insufficient revenue to meet Seller's invoices under this agreement? What assurance will Seller have that a TO or LSE or NYSPSC will not seek to revise the TO/LSE Tariff? What assurance will Seller have of payment if NYPA fails to pay an amount due? Will NYPA commit to remit any payments not made under the TO/LSE Tariff and, if so, will NYPA provide any payment assurance to Seller in the form of a letter of credit or other mechanism? Does NYPA's obligation change depending on whether the project is still under construction or has achieved its COD? If so, how and what provisions of the agreement dictate that change? What assurance will Seller have that each transmission operator and load serving entity under the TO/LSE Tariff will make all payments as required? What assurance will Seller have of which and how many transmission operators and load serving entities will participate in the TO/LSE Tariff for the term of this agreement? Once the cost recovery mechanism is developed, will the affected TO/LSE execute agreements obligating them to pay Seller?
- A.2. These questions address the implications of the PPA provision (Section 6.7) that clearly provides that NYPA's obligation to make payments under the PPA is, throughout the PPA term, contingent on its receipt of full payment of revenues derived from the TO/LSE Tariffs, as such term is defined in the PPA. If a prospective respondent believes this provision will unduly impede project development, it is free to propose a revision to the PPA to address this concern to its satisfaction.
- Q3. Capacity Payments. Does NYPA agree that Section A(1) of the Confirmation must take into account mitigation rules that may be applicable requiring the Seller to sell its capacity into the spot market auctions.
- Energy Payments. Under B(1) of the Confirmation, does NYPA agree that the Seller must also comply with all energy market mitigation rules?
- A3. As set forth in the PPA, the Seller must comply with all applicable laws, rules and regulations, which include capacity and energy mitigation rules of the NYISO.
- Q4. Energy Payments. Please confirm that the Energy Settlement provisions set forth in Section (B) of the Confirmation will only be applied when the unit is bid into the market following the NYISO's energy bidding rules and is given a day ahead commitment.

With respect to the Energy Settlement pricing provision (Exhibit 2, section(B)), would the payment obligation to NYPA be adjusted to the extent that the project was not dispatched of its entire Contract Energy Amount? If, for example, it was dispatched as its specified minimum generation level.

Energy Payments. Under B(2) of the Confirmation, will Seller be required to remit payments to NYPA if the unit is on a forced outage? If so, please identify the payments that will be due by Seller to NYPA under those circumstances. Will no offsets be permitted between hours within a month for hours where LBMPs exceed the Energy Strike Price against other hours where LBMPs fall below the Energy Strike Price?

With respect to the Energy Settlement pricing provision (Exhibit 2, section (B)), would the payment obligation to NYPA be adjusted to the extent that the project was not dispatched at its entire Contract Energy Amount? If, for example, it was dispatched at its specified minimum generation level?

- A4. The full energy payment to NYPA is due for every hour that the Energy Strike Price is less than the Day Ahead Market LBMP, except for Scheduled Maintenance Hours, Additional Scheduled Maintenance Hours and hours in which the Facility was unable to deliver energy due to a Force Majeure or unavailability of the interconnecting transmission operator's electric transmission facilities. This payment is due, regardless of whether the Facility actually operates, even if its failure to operate is due to a Forced Outage, failure to receive a DAM commitment or receiving a DAM commitment at its minimum generation level, or for any other reason not identified above.
- Q5. Interconnection. Will NYPA share in any of the potential cost of interconnection of the Facility, including transmission upgrades that may be required, outside of the capacity and energy charges? If NYPA will not do so, does NYPA agree that any headroom created is the exclusive right of the Seller and any future payment therefor shall be made to the Seller?
- A5. NYPA expects that Seller will calculate its Capacity Strike Price to enable it to recover its project costs, including but not limited to its interconnection costs. Thus, NYPA views its payment of Capacity compensation as covering project interconnection costs. Therefore, if any required System Upgrade Facilities or System Deliverability Upgrades create headroom on the transmission system for which the headroom reimbursement provisions of NYISO's tariff apply, then any reimbursements for such headroom from subsequent project developers should flow to NYPA. This is because the headroom reimbursement is effectively a rebate of Capacity costs. We note that this reimbursement is not clearly set forth in the PPA. The PPA will be revised to reflect this principle.
- Q6. During the April 12th, 2013 bidder conference, a question was asked whether Zone K was removed as one of the required zones for interconnection since the New Capacity Zone as proposed by the NYISO consists of zones G, H, I and J. The response indicated that zone K was to be excluded. Please confirm.
- A6. The question misstates the response, which was that if a zone K resource can demonstrate that it can contribute to solving the reliability issues resulting from closure of Indian Point Energy Center, then it is qualified to respond to the RFP.
- Q7. Will the data provided to the NYISO for its interconnection request along with the relevant RFP data sheets provide sufficient electrical data to model and evaluate the project impacts?
- Will the NYISO documents labeled CEII be available to those evaluating the proposals and projects?
- A7. We ask that all proposers provide as much information as possible using the applicable data sheets provided as addenda on the NYPA procurement website. If there is any need to seek more information regarding your proposal, the Designated NYPA Contact Person will contact you.
- Q8. Are the disclosure statements required by section 8.6 of the RFP to be signed by the company?
- A8. The cover letter must be signed by the individual(s) authorized to bind the Company/Project contractually as well as attest to the accuracy of the content of the proposal.
- Q9. To facilitate NYPA and DPS evaluation of proposals, can the proposer provide notices of milestones achieved after the submittal, if the notice does not alter or change the proposal?

- A9. No. Please send all responses to the RFP by the stated due date. If more information is needed after this date, the Designated NYPA Contact Person will contact you.
- Q10. Please confirm whether there have been any addendums to the RFP as of 4/25/2013
- A10. Please register at NYPA's procurement website to view and access all related documents at <http://www.nypa.gov/Procurement/Default.aspx>
- Q11. Please confirm that so long as the project qualifies as UCAP under the NYISO Tariff and bids into the relevant NYISO capacity auction, it will be entitled to payment under the contract, even if it does not clear that particular auction.
- A11. As long as the full UCAP of the project is bid into the NYISO capacity market in conformance with applicable NYISO requirements and the terms and conditions of the PPA, it will be entitled to payment under the PPA if it fails to clear in the market due to the application of capacity mitigation rules.
- Q12. As discussed at the April 12, 2013 bidder's conference the draft version of the Halting Mechanism does not allow the Project to be developed, financed and constructed upon reasonable terms and conditions. We believe that is possible to have a Halting Mechanism that (i) provides NYPA an "off ramp" for the PPA obligations and (ii) still permits the Project to be developed, financed and constructed at reasonable costs, terms and conditions. At the conference, NYPA's representative acknowledged the concerns expressed by bidders and advised bidders to provide suggested modifications to the Halting Mechanism. Given this direction, please confirm that if bidders submit bids based on their modified Halting Mechanism, those bids will not be deemed nonconforming and result in a disqualification of the proposal.
- A12. Correct. Bidders are asked to mark-up the pro forma PPA with language that addresses any perceived ambiguity or indicates any preferences for our consideration, and revisions to the Halting Mechanism will not render the bid non-conforming.
- Q13. Please provide clarification to on what NYPA is seeking for the following item in Section 8.8:
- "Air Toxic emissions Mercury and Air Toxic ("MAT") rule for new units, fuel oil Electric Generating Units whose average annual heat input in any 3 consecutive years is less than or equal to 10% or if the annual heat input during any calendar year is less than 15% are exempt from the MAT rule)"*
- A13. If the average heat input burning fuel oil is greater than 10 percent averaged over three consecutive years of annual heat input or over 15 percent by fuel oil in any year the EPA proposed MTA rule apply and the estates toxic emission data need to included.
- Q14. Once the PPA is executed, is there another process for PSC approval of the executed agreement?
- A14. To our knowledge at this time, there would be no other PSC approvals pending in this scenario.
- Q15. Section 8.14 of the RFP (page 13) which discusses "Other Requirements" to be included in the bidder's proposal references submitting "completed Large Generating Facility Data associated with NYISO's Generation Interconnection requests (See Attachment 9)" (3rd bullet). There is no Attachment 9 in the RFP documents or on the NYPA website. Is that intentional or is there an Attachment 9 somewhere else? If NYPA desires Cricket valley to fill out an Attachment 9, please send the Attachment 9 as soon as possible.
- A15. The Large Generating Facility Data can be provided using the pertinent sections in Attachment 2 – Generation Project Data Sheet. There is no Attachment 9.
- Q16. Attachment 5 to the RFP in the title states: "Request for Proposals –Contingency Procurement of Generation and Transmission." However the entry on the left hand side two lines down states

"Transmission Assumptions." Does Attachment 5 apply only to transmission proposals? Or does it also apply to generation proposals?

A16. Yes, Attachment 5 applies only to transmission proposals.

Q17. The RFP Threshold Criteria include a Target COD no later than June 1, 2016. Will NYPA and DPS Staff evaluate proposals with a Target COD beyond June 1, 2016, or will such proposals be deemed non-responsive by default?

A17. One of the minimum threshold criteria stated in the RFP is that projects must have a commercial operation date of no later than June 1, 2016. NYPA would deem a proposal with a later date as non-responsive. NYPA will also provide the results of its screening to the DPS Staff.

Q18. Can NYPA please upload a Microsoft Word version of the Pro Forma PPA for proposers to redline?

A18. A Microsoft Word version of the pro forma PPA has been provided as Addendum No. 1 dated May 6, 2013.

Q19. NYPA has requested the UCAP Strike Price be an unescalated value. However, will NYPA entertain proposals whereby the portion of the UCAP Strike Price associated with Fixed O&M be escalated?

Would NYPA consider removing Energy Settlement from Exhibit 2 to the Master Agreement for the purposes of reducing the UCAP Strike Price, simplifying accounting and eliminating associated risk issues around the calculation?

Would you be able to clarify if proposals offering Capacity Only Product in Zones G through K (not included in the 2012 Reliability Needs Assessment) would be acceptable?

Under Section (B) Energy Settlement in the Exhibit 2 to the Master Agreement, there is a formula to settle the differences between the actual NY-ISO LBMP and the Energy Strike Price for each hour. However, NY-ISO will dispatch generation if the LBMPs are greater than its as-bid cost over a minimum run time that is greater than an hour for many generating sources including combined cycles. From our experience, there are many hours that are below the Energy Strike Price but when taken in totality over its minimum run time, the Facility is dispatched. This creates a financial risk to the generator that absent changes to the contract would have to be quantified and ultimately embedded somewhere in pricing of this contract. This seems to be an inefficient allocation of risks to the detriment of all parties. Would NYPA consider amending the language to the PPA in the following way to eliminate this inefficiency?

[REDACTED]

Under Section (B) Energy Settlement in the Exhibit 2 to the Master Agreement, there is a formula to settle the differences between the actual NY-ISO LBMP and the Energy Strike Price. The Energy Strike Price definition includes provisions for a Guaranteed Heat Rate, VOM and Emission costs. From our experience, the VOM costs as well as average heat rate of a plant are a function not only of run time but also the amount of starts incurred per run time. Without including this function within the Contract for Differences, it creates a financial risk to the generator that absent changes to the contract would have to be quantified and ultimately embedded somewhere in pricing of this contract. This seems to be an inefficient allocation of risks to the detriment of all parties. Would NYPA consider amending the language to the PPA in the following way to eliminate this inefficiency?

[REDACTED]

A19. As explained in the RFP, each respondent must submit pricing responsive to the standard format set forth in section 8.11 of the RFP but may also submit an alternative pricing arrangement for

consideration. However, if a respondent fails to submit pricing in response to the standard format, NYPA would deem its proposal non-responsive. NYPA will provide the results of its screening to the DPS Staff.

- Q20. Would it be possible for us to submit a project which is installed in stages (i.e. we could install 1 MW of capacity first and then build additional projects to scale up to 75 MW)? We already have a site chosen that could accommodate 1 MW that could be installed as early as next year.
- A20. One of the minimum threshold criteria stated in the RFP is that generation projects must provide a minimum of 75 MW of UCAP by June 1, 2016. NYPA would deem a proposal that provides less than 75 MW by this in-service deadline as non-responsive. NYPA will provide results of its screening to the DPS.
- Q21. 8.5 Project Information requests "Sponsor information" – "Sponsor" is not defined in Attachment 1. Could you please define and clarify this?
- A21. "Sponsor" refers to persons or entities with ownership or controlling interests in the project(s) proposed.

CATEGORY 2 – QUESTIONS RELATED TO PPA INTERPRETATION OR EXPECTED VALUES

A large number of questions (listed below) raise issues related to how NYPA interprets various terms and conditions of the PPA, why the PPA includes certain provisions, what values NYPA envisions will be used to fill in the blanks in the PPA and whether NYPA will agree to specific language revisions. Except to the extent addressed under Category 1, NYPA will not provide specific answers to these questions.

We note that the PPA speaks for itself. If a prospective respondent believes the PPA is ambiguous in any material respect or any of its terms or conditions would unduly impede project development, construction and/or operation, that respondent is encouraged to propose amendments to the pro forma PPA to address the perceived ambiguity or other issue to its satisfaction. Likewise, each respondent is expected to propose values for the PPA blanks that will support its ability to meet the requirements of the RFP. The process provides that if any generation project is selected by the PSC, NYPA and the selected respondent will negotiate the final terms and conditions of the PPA. In advance of a PSC project selection order, NYPA declines to pre-negotiate PPA terms with a prospective respondent that may ultimately not be qualified or selected.

- Q22. Please confirm that, under section 3.1 of the PPA, and the "Products" subsection of the Confirmation, it is sufficient for the Products, including Capacity to be offered and made available at the Delivery Point, rather than delivered and sold.
- Q23. Can Seller enter into the EPC Contract or issue the Notice to Proceed immediately upon MPPSA execution instead of providing NYPA with at least 15 Business Days prior notice per section 3.6 (e)?
- Q24. MPPSA 3.6 - Insert "within fifteen (15) business days" after "...NYPA will refund all previously-paid liquidated damage amounts, without interest." Can NYPA consider paying interest on held liquidated damages at the Interest Rate defined in 1.56?
- Q25. Will the GHR be adjusted based on fuel type, temperature and degradation?
- Q26. The RFP at Attachment 6 requests that the proposer state the "Proposed Fuel Price Index" (2nd line after "Fuel Price Components") that is applicable to the fuel supply for a bidder's proposed generation project. Can NYPA provide the forecasted natural gas prices that will be used in the evaluation process for the following index points?

- Henry Hub

- Transco, zone 6 NY
- Iroquois, zone 2
- Tennessee, zone 6 del.

- Q27. NYPA Termination Option. What date does NYPA envision for its right in Section 3.9 (no cost recovery arrangement) to terminate this agreement with NYPA having no liability to Seller? As envisioned by NYPA, could this date be after Seller and NYPA have executed the PPA and Seller has incurred significant internal and/or external costs in the development of the Facility and might have significant obligations or liabilities in connection with the Facility? If NYPA envisions that RFP respondents will designate a date, how will NYPA assess responses if different dates are designated by respondents?
- Q28. NYPA Cost Recovery. How does NYPA intend Section 3.9 of the PPA to be read with Section 14.6 of the RFP? Will NYPA execute the PPA before it has "cost recovery arrangements" in place that are "satisfactory to NYPA in its sole discretion?" If so, what is the intended effect of Section 14.6 of the RFP?
- Q29. NYPA Halting Option.
- a. What caps does NYPA envision for its obligation in Section 3.8 (halting mechanism) to reimburse Seller for project development costs in the event NYPA opts to halt the contract, starting January 1, 2014? Could reimbursement be significantly less than what Seller had incurred in internal and/or external costs in the development of the Facility to that point? Will the components of the Development Costs vary based on the stage of project development (e.g., initial stages of construction versus nearing COD)? On what basis would NYPA decline reimbursing Seller for expenses incurred under the PPA?
 - b. What internal costs does NYPA contemplate reimbursing to Seller in the event NYPA halts the contract under Section 3.8? Section 3.8(d)(iii) says that NYPA will not pay any fee or charge of Seller or its affiliates, but only out-of-pocket expenses. Section 3.8(d)(v) says that NYPA will not pay any profit margin or similar mark-up of Seller. What internal costs will Seller be entitled to recover from NYPA in the event NYPA halts the contract? Does this mean that Seller risks being bought out at cost or less, with no compensation for its risk of project development, any time NYPA decides to halt the construction of the Facility or take over the Facility itself pursuant to Section 3.8?
 - c. How will the purchase price defined in Section 3.8(viii) be determined? Will the purchase price differ from the Development Costs identified in Section 3.8(v) and, if not, why not? Will the components of the purchase price vary based on the stage of project development (e.g., initial stages of construction versus nearing COD)?
- Q30. NYPA Force Majeure Termination Option. How short of a Force Majeure delay of COD does NYPA contemplate would give NYPA the right to terminate the contract with no payment to Seller under Section [3.7]? In the event of a Force Majeure event, will the Seller be entitled to recover any Development Costs?
- Q31. NYPA Cross Default Rights. At what level of default of Seller or a provider of a letter of credit on any debt does NYPA contemplate that it would have the right to declare a cross default of Seller under Section 5.1(g)?
- Q32. Unauthorized Credit Draw by NYPA. Does Section 5.1(j) mean that NYPA can make an unauthorized draw on Seller's letter of credit without triggering an Event of Default as long as NYPA repays the

unauthorized amount within 5 days after notice from Seller? Is there otherwise any limit on NYPA's ability to do so or the number of times that NYPA is able to do so?

- Q33. Any NYPA Liability for Change in Law? Special Condition 1(a) of the Confirmation says that there will be no adjustments or set-off due to costs of Seller or its affiliates. Does this mean there will not be any provision for change in law or for change in tax law that might apply to Seller or to Seller's affiliate that owns and/or operates the Facility and, if so, how is Special Condition 1(a) of the Confirmation intended to affect the requirement for good faith negotiations in the face of a "Regulatory Event" as that term is defined in Section 10.7(f) of the PPA?
- Q34. Letter of Credit. What amount of letter of credit will Seller be required to provide and maintain, i.e., what will be the Performance Assurance Amount? Under what circumstance does NYPA anticipate that a guaranty would be provided, as referred to in Section 6.6?
- Q35. Good Utility Practice. Would Seller be liable to NYPA for any failure of the facility to deliver energy because Seller did not use Good Utility Practices and commercially reasonable efforts to operate the Facility and minimize any derates or outages? If so, please identify the provisions of the agreement that define this liability.
- Q36. Additional Maintenance Hours. Is there any limit on the number of hours of Facility derates in addition to NYISO-approved Scheduled Maintenance Outages the Seller would be entitled to take as Additional Maintenance Hours before having to make payments to NYPA under Part B(2) of the Confirmation? Does NYPA agree that repairs to restore service following the commencement of a forced outage will not constitute Additional Maintenance Hours only if such repairs are directly related to the forced outage?
- Q37. No Station Netting. Why is Seller prohibited from utilizing station netting for its internal load?
- Q38. Capacity Payments. What is the basis for requiring the Seller to adjust its Going Forward Costs "recognizing the Capacity revenues anticipated to be received under the Master Agreement and this Confirmation"?
- Q39. Voltage Support. Section 4.1 of the RFP mandates that Seller must participate in the NYISO's voltage support services program. Participation in such program is not mandated under the NYISO's Tariffs. Is there a reliability basis for mandating this service? If yes, please identify the scope and magnitude of that reliability need. If not, why is Seller being required to provide this service?
- Q40. Invoicing and Payment. Will NYPA be in a position to respond to and verify monthly invoices from Seller and pay within 10 days of Invoice for an hourly LBMP product? Given that the NYISO markets are settled on a weekly basis, why does Section 6.1 of the PPA provide for the calendar month to be the standard period for all payments? If payments are remitted to NYPA under some Tariff Rider, NYPA Cost Recovery Mechanism or by some other means, will such amounts be held in a separate escrow account by NYPA and, if so, does NYPA believe that it is authorized under the Public Authorities Law to proceed in this manner?

Category 3 – Questions Concerning Matters Subject to Pending Rehearing Petitions

It is not appropriate to respond to questions related to matters that are the subject of rehearing petitions currently pending at the PSC. For this reason, NYPA will not respond to the following questions:

- Q41. Scope of Proposals. Section 1 of the RFP states that generation and transmission proposals will be identified "that will solve or contribute to solving the reliability contingency identified in the November 30th Order." What is the scope of the reliability need that will be addressed by the RFP? Are such needs limited to the 1,350 MW figure set forth on page 3 of the RFP? Do such reliability contingency needs include transmission security needs and reactive power needs and, if not, why not?
- Q42. NYPA Process Administrator Obligations. Please identify in detail the full scope of NYPA's obligations as the process administrator as referenced in Section 3.2 of the RFP. What specifically is entailed in NYPA's "preliminary qualitative and quantitative screening analysis of each individual Proposal" as referenced at page 15 of the RFP?
- Q43. NYPSC Jurisdiction. Is it NYPA's position that the NYPSC has the statutory authority to either authorize or direct IOUs and competitive LSEs to include a Tariff Rider to charge their customers and pay NYPA's costs under the PPA or would the NYPSL have to be amended? If the former, what is the statutory basis for this position? If the latter, what is the scope of legislation required? Would the Tariff Rider also apply to LIPA, and if so, please cite the statutory basis for the NYPSC to direct LIPA to administer the Tariff Rider.
- Q44. Transmission Solutions. Section 4.2 of the RFP states that "...Selected Transmission Projects will seek cost recovery through a NYISO and/or PSC Tariff." What sections of the NYISO's tariff does NYPA believe authorizes collection of the costs of transmission solutions? Section 4.2 of the RFP further states, "it is anticipated the PSC will authorize the creation of a tariff for the recovery of costs for Selected Projects containing transmission to the extent an appropriate NYISO tariff is not available at the time of selection." What sections of the NYPSL does NYPA believe authorizes the collection of the transmission solution costs pursuant to a tariff created by the PSC?
- Q45. NYPA Customers. Section VI of the February 1, 2013 Compliance Filing with Respect to Development of Indian Point Contingency Plan that NYPA filed jointly with Consolidated Edison Company of New York, Inc. ("Joint Plan") specifies a "Shortfall Amount" and the use of a "NYPA Recovery Mechanism." It appears from these provisions that NYPA will attempt to recover its costs from its customers in the first instance. How does Section VI of the Joint Plan comport with the PPA's discussion of a TO/LSE Tariff? Would the TO/LSE Tariff be applied after NYPA recovered costs from its own customers or is payment from NYPA's customers intended to be recovered simultaneously with all other customers under a component of the TO/LSE Tariff? If the former, would NYPA's customers have any obligations under the TO/LSE Tariff if they also are customers of the affected TOs and LSEs.

Category 4 – Questions on Issues to be Determined by DPS Staff or the PSC

A number of questions seek information concerning project evaluation criteria and the ranking and selection process. Those issues are within the purview of DPS Staff, which will perform all substantive review and evaluation of the RFP responses. Other questions raise matters that will require a determination by the PSC. Accordingly, NYPA is not in a position to provide answers to the following questions:

- Q46. With respect to the TO/LSE Tariff, please describe the process for implementing the rider on LSEs and/or transmission operators.
- Q47. With respect to Section 3.8, and in reference to the above, please describe the regulatory process and timing for implementing a "cost recovery arrangement" necessary to reimburse NYPA for the liabilities under the agreement. Who is responsible for making this filing and when does NYPA anticipate that it will be made?

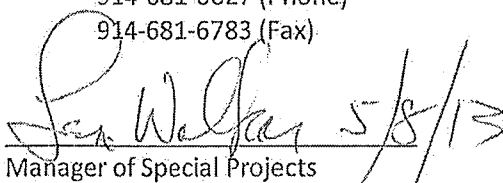
- Q48. Section 6.7 of the agreement provides that NYPA's obligations to make payments and the payments come solely from the revenues derived under eth TO/LSE Tariffs and that the Facility shall constitute a Separately Financed Project under NYPA's 1998 General Resolution Authorizing Revenue Obligations, as supplemented and amended. Please explain the process and timing for development and approval of those Tariffs.
- Q49. How will DPS evaluate a project connected in Zone J versus a project connected in say Zone G, all else being equal?
- Q51. How will DPS value and quantify the emissions benefit or increase resulting from the selection of a project? What framework will be used to determine this value/cost?
- Q52. How does DPS/NYPA plan to use the forward looking financial pro forma information required in the RFP?
- Q53. Is a developer of a merchant transmission project which anticipates setting its rates based on bilateral negotiations (pursuant to FERC Market Based Rate Authority) and which will complete Attachment 7 also required to submit a rate based alternative in order to have its submission comply with the terms of this RFP?
- Q54. If the answer to Q53 is "No", is the developer required to complete a detailed cost disclosure and submit Attachment 5 [pro forma] – which are not required by the FERC process and which appear to be applicable only to a cost of service rate based proposal but not to a project with FERC Market Based Rate Authority – in order to have its submission comply with the terms of this RFP?

During the Restricted Period the Proposer must communicate only with the Designated Contract Person for the RFP. The "Restricted Period" is defined to be the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids or solicitation of proposals, or any other method for soliciting a response from Proposers intending to result in selection of a proposal.

The Authority's Designated Contact Person during the formal bid period is the undersigned (Mr. Len Walker). No others are authorized to receive, initiate, or communicate information of any kind regarding this RFP during the "Restricted Period." All inquiries regarding this RFP must be directed to the undersigned. Failure of prospective Proposer/Bidder to fully comply with this requirement may result in the rejection of its Bid Proposal.

IF THERE ARE ANY QUESTIONS REGARDING THIS RFP AND ITS BID ADDENDUMS, UNDER §§ 139-J AND 139-K OF THE STATE FINANCE LAW (SFL), ALL QUESTIONS MUST BE DIRECTED IN WRITING TO:

Mr. Len Walker
Manager of Special Projects
New York Power Authority
123 Main Street
White Plains, New York 10601.
914-681-6627 (Phone)
914-681-6783 (Fax)


Manager of Special Projects

This Bid Addendum No. 2 must be executed and returned along with the Bid Proposal.

Q13-5441LW - Bid Addendum No. 2

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I have received this Bid Addendum No. 2, for Q13-5441LW for Contingency Procurement of Generation and Transmission, and have considered it in my submittal.

COMPANY NAME: NYC ENERGY LLC

(Typed)

BY: 

(Name-Signed)

BY: Donald G. Bronn

(Name-Typed)

TITLE: Member

DATE: 5/20/13

APPENDIX N

DUNS Number Information

Bidder/Contractor Name: NYC ENERGY LLC c/o SEF INDUSTRIES, INC.

Dun and Bradstreet Universal Numbering System ("DUNS") Number: 077448293

Central Contractor Registration Name:

Principal place of business:

Address: 220 East 65th Street

City: New York

State: New York

Zip Code: 10065

Person submitting this form:

Name: Donald G. Bronn

(Name - Printed)

Name:

(Name - Signed)

Title: Member

Telephone No.: (212) 688-0180