

Contract No. 467

Central Hudson Gas & Electric Corporation

With

Consolidated Edison Energy, Inc.

REDACTED COPY – CONFIDENTIAL TRADE SECRET STATUS REQUESTED

Type of Contract: ISDA Master Agreement

Term: Commence on effective date and shall remain in effect until terminated

Date of Execution: April 6, 2018

Date Effective: March 31, 2018

# ISDA<sup>®</sup>

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of March 31, 2018

CONSOLIDATED EDISON ENERGY, INC.

and

CENTRAL HUDSON GAS & ELECTRIC  
CORP.

("Party A")

("Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) General Conditions.

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:

(i) in the same currency; and

(ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:

(1) promptly notify the other party ("Y") of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(c) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of an payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. **Representations**

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would

occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification, in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

#### 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:

(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) institutes or 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, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) 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 (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 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) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) *Merger Without Assumption.* The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:

(i) *Illegality.* Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) *Tax Event.* Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e))

and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## **6. Early Termination**

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).



Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) *Two Affected Parties.* If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) *Right to Terminate.* If:

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) *Calculations.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) *Payment Date.* An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to

designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) *Events of Default.* If the Early Termination Date results from an Event of Default:

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate*. The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## **7. Transfer**

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## **8. Contractual Currency**

(a) *Payment in the Contractual Currency*. Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments*. To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities*. To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss*. For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
- (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12 Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in a inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether

before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:

**"Additional Termination Event"** has the meaning specified in Section 5(b).

**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means:

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"Burdened Party"** has the meaning specified in Section 5(b).

**"Change in Tax Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in

such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and "lawful" and "unlawful" will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meanings specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in



either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Currency"** has the meaning specified in the Schedule.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**"Termination Event"** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

**CONSOLIDATED EDISON ENERGY, INC.**

By: Thomas DiCapua  
Name: Thomas DiCapua  
Title: Managing Director  
Date: April 6, 2018

**CENTRAL HUDSON GAS & ELECTRIC CORP.**

By: Christopher Capone  
Name: CHRISTOPHER CAPONE  
Title: CFO  
Date: 4-5-18



**PARAGRAPH 13**  
to the  
**ISDA CREDIT SUPPORT ANNEX**

dated as of March 31, 2018

between

**CONSOLIDATED EDISON ENERGY, INC.**, a corporation organized under the law of the State of New York ("Party A")

and

**CENTRAL HUDSON GAS & ELECTRIC CORP.**, a corporation organized under the law of the State of New York ("Party B")

**Paragraph 13. Elections and Variables.**

- (a) **Security Interest for "Obligations".** The term "Obligations" as used in this Annex includes the following additional obligations:

With respect to Party A: None.

With respect to Party B: None.

- (b) **Credit Support Obligations.**

- (i) **Delivery Amount, Return Amount, and Credit Support Amount.**

(A) "Delivery Amount" has the meaning specified in Paragraph 3(a).

(B) "Return Amount" has the meaning specified in Paragraph 3(b).

(C) "Credit Support Amount" will mean the higher of (i) the amount calculated as provided in the definition of that term in Paragraph 3 or (ii) the sum of the Pledgor's Independent Amounts; provided that, the Credit Support Amount shall be deemed to be zero on any Valuation Date in which there are no Transactions outstanding and Party A and Party B have no obligations, contingent or otherwise, to each other under this Agreement or any Credit Support Document.

- (ii) **Eligible Collateral.** The following items will qualify as "Eligible Collateral" for the party specified.

	Party A	Party B	Valuation Percentage
(A) Cash	[ x ]	[ x ]	100%
(B) Other: None			

- (iii) **Other Eligible Support.** The following items will qualify as "Other Eligible Support" for the party specified:

**EXECUTION VERSION**

	<b>Party A</b>	<b>Party B</b>	<b>Valuation Percentage</b>
Letters of Credit	[x]	[x]	100% unless either (i) a Letter of Credit Default shall apply with respect to such Letter of Credit or (ii) twenty (20) or fewer Local Business Days remain prior to the expiration of such Letter of Credit, in which case the Valuation Percentage shall be 0.

**(iv) Thresholds.**

(A) **"Independent Amount"** means with respect to Party A, zero ("0"), unless otherwise agreed in writing by both parties; *provided, however*, that at any time the Credit Rating for Party A's Credit Support Provider shall be less than BBB- by S&P or less than Baa3 by Moody's then Party A shall have an Independent Amount of \$250,000.00.

**"Independent Amount"** means with respect to Party B, zero ("0"), unless otherwise agreed in writing by both parties; *provided, however*, that at any time the Credit Rating for Party B (or Party B's Credit Support Provider, as the case may be) shall be less than BBB- by S&P or less than Baa3 by Moody's then Party A shall have an Independent Amount of \$250,000.00.

(B) **"Threshold"** means, with respect to Party A and Party B, the lesser of (a) the amount set forth opposite the lowest Credit Rating applicable to a party (or a party's Credit Support Provider, as the case may be) or (b) the amount to which the guaranty of a party's Credit Support Provider identified in Part 4(d) of the Schedule (Credit Support Documents) is limited, provided, however, that the Threshold for a party shall be zero ("0") if at any time there has occurred an Event of Default or a Potential Event of Default with respect to the Party.

<b><u>PARTY A THRESHOLD</u></b>	<b><u>PARTY B THRESHOLD</u></b>	<b><u>S&amp;P CREDIT RATING</u></b>	<b><u>MOODY'S CREDIT RATING</u></b>
U.S. \$10,000,000	U.S. \$10,000,000	Above A+	Above A1
U.S. \$8,000,000	U.S. \$8,000,000	A- to A+	A3 to A1
U.S. \$5,000,000	U.S. \$5,000,000	BBB to BBB+	Baa2 to Baa1
U.S. \$ 1,000,000	U.S. \$ 1,000,000	BBB-	Baa3
U.S. \$ 0	U.S. \$ 0	Below BBB-	Below Baa3

(C) **"Minimum Transfer Amount"** means with respect to Party A: U.S. \$1.

**"Minimum Transfer Amount"** means with respect to Party B: U.S. \$1.

(D) **Rounding.** The Delivery Amount will be rounded up to the nearest integral multiple of U.S. \$100,000 and the Return Amount will be rounded down to the nearest integral multiple of U.S. \$100,000.

**(c) Valuation and Timing.**

EXECUTION VERSION

(i) "Valuation Agent" means, for purposes of Paragraph 3, the party making the demand under Paragraph 3; for purposes of Paragraph 4(d), the Secured Party for purposes of calculating the Value of the Substitute Credit Support and Posted Credit Support involved in the substitution; for purposes of Paragraph 5, the Secured Party; and for purposes of Paragraph 6(d), the Secured Party receiving or deemed to receive the Distributions or the Interest Amount, as applicable; provided, however, that in all cases, if an Event of Default or Potential Event of Default or Specified Condition has occurred and is continuing with respect to the party designated as the Valuation Agent, then in such case, and for so long as the Event of Default or Potential Event of Default or Specified Condition continues, the other party shall be the Valuation Agent.

(ii) "Valuation Date" means any Local Business Day in New York City.

(iii) "Valuation Time" means:

☐ the close of business in New York City on the Valuation Date or date of calculation, as applicable;

☒ the close of business in New York City on the Local Business Day before the Valuation Date or date of calculation, as applicable;

provided that the calculations of Value and Exposure will be made as of approximately the same time on the same date.

(iv) "Notification Time" means 12:00 p.m., New York City time, on a Local Business Day.

(d) **Conditions Precedent and Secured Party's Rights and Remedies.** The following Termination Event(s) will be a "Specified Condition" for the party specified (that party being the Affected Party if the Termination Event occurs with respect to that party):

Specified Condition	Party A	Party B
Illegality	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Tax Event	<input type="checkbox"/>	<input type="checkbox"/>
Tax Event Upon Merger	<input type="checkbox"/>	<input type="checkbox"/>
Credit Event Upon Merger	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Additional Termination Event(s):	None	None

(e) **Substitution.**

(i) "Substitution Date" has the meaning specified in Paragraph 4(d)(ii).

(ii) **Consent.** If specified here as applicable, then the Pledgor must obtain the Secured Party's consent for any substitution pursuant to Paragraph 4(d):  
 Applicable ☐  
 Inapplicable ☒

**(f) Dispute Resolution.**

(i) **"Resolution Time"** means 1:00 p.m., New York City time, on the Local Business Day following the date on which notice of the dispute is given under Paragraph 5.

(ii) **Value.** For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support as of the relevant calculation date will be, with respect to cash, the face amount thereof.

(iii) **Alternative:** The provisions of Paragraph 5 will apply except to the following extent; pending the resolution of a dispute, Transfer of the undisputed Value of Eligible Credit Support or Posted Credit Support involved in the relevant demand will be due as provided in Paragraph 5 if the demand is given by the Notification Time but will be due on the second Local Business Day after the demand if the demand is given after the Notification Time.

(iv) **Documentation.** In the event of a dispute, the Disputing Party must provide the other party with detailed calculations and documentation supporting their withholding of the disputed amount no later than the date for delivery of the undisputed amount. If the Disputing Party cannot provide such detailed calculations and documentation, then the Disputing Party must deliver to the other party, the Delivery Amount of Return Amount, as applicable, without deduction or setoff of any disputed amount.

**(g) Holding and Using Posted Collateral.**

**(i) Eligibility to Hold Posted Collateral; Custodians.**

Party A and Party A's Custodian will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); provided that the following conditions applicable to it are satisfied:

- (1) Posted Collateral may be held only in the following jurisdictions: Any jurisdiction within the United States.
- (2) Party A is not a Defaulting Party.
- (3) Party A may hold Posted Collateral only through a Custodian at any time that Party A's Credit Support Provider shall fail to maintain a Credit Rating of at least BBB from S&P and Baa2 from Moody's (a "Downgrade Event").
- (4) The Custodian for Party A shall not be an Affiliate of Party A.
- (5) The Custodian is a commercial bank or trust company organized under the law of the United States or a political subdivision thereof, with a Credit Rating of at least "A-" in the case of S&P or "A3" in the case of Moody's ("Qualified Institution"), approved by Party B (which approval shall not be unreasonably withheld).
- (6) Upon the occurrence of a Downgrade Event with respect to Party A, the Custodian shall hold the Posted Collateral in a segregated, safekeeping or custody account within the Custodian with the title of such account indicating that the property contained therein is being held as Posted Collateral for the ownership of

Party B, subject to the security interest of Party A.

Party B and Party B's Custodian will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); provided that the following conditions applicable to it are satisfied:

- (1) Posted Collateral may be held only in the following jurisdictions: Any jurisdiction in the United States.
- (2) Party B is not a defaulting Party.
- (3) Party B may hold Posted Collateral only through a Custodian at any time that Party B's Credit Support Provider shall fail to maintain a Credit Rating of at least BBB from S&P's and Baa2 from Moody's (a "Downgrade Event").
- (4) The Custodian for Party B shall not be an Affiliate of Party B.
- (5) The Custodian is a Qualified Institution, approved by Party A (which approval shall not be unreasonably withheld).
- (6) Upon the occurrence of a Downgrade Event with respect to Party B, the Custodian shall hold the Posted Collateral in a segregated, safekeeping or custody account within the Custodian with the title of such account indicating that the property contained therein is being held as Posted Collateral for the ownership of Party A, subject to the security interest of Party B.

**(ii) Use of Posted Collateral.**

The provisions of Paragraph 6(c) will apply to the parties so long as there is not a Downgrade Event. In the event of Downgrade Event, the provisions of Paragraph 6(c) will not apply to the Downgraded Party. In the event of a Downgrade Event, the Custodian shall hold the Posted Collateral in a segregated safekeeping or custody account within the Custodian with the title of such account indicating that the property contained therein is being held as Posted Collateral for the ownership of Pledgor subject to the security interest of the Secured Party.

(iii) For purposes of Section 5(a)(iii) of this Agreement, failure by a party or its Custodian to comply with any of the obligations under this Paragraph 13(g) will constitute an Event of Default with respect to such party if the failure continues for two (2) Local Business Days after notice of the failure is given to that party.

**(h) Distributions and Interest Amount.**

(i) **Interest Rate.** The "Interest Rate" will be: Federal Funds Effective Rate as from time to time in effect.

(ii) **Transfer of Interest Amount.** Upon request, the Transfer of the Interest Amount will be made on the third Local Business Day of each calendar month for the prior calendar month.



(i) **Other Eligible Support and Other Posted Support.**

(i) "Value" with respect to Other Eligible Support and Other Posted Support means: The Valuation Percentage times the stated amount then available under the Letter of Credit to be unconditionally drawn by the Secured Party.

(ii) "Transfer" with respect to Other Eligible Support and Other Posted Support means: For purposes of Paragraph 3(a), delivery of the Letter of Credit by the Pledgor to the Secured Party at the address specified in this Annex or delivery of an executed amendment to such Letter of Credit (extending the term or increasing the amount available to the Secured Party thereunder) by the Pledgor to the Secured Party at the address specified in this Annex; and for purposes of Paragraph 3(b), return of the Letter of Credit by the Secured Party to the Pledgor, at the address specified in this Annex, or delivery of an executed amendment to the Letter of Credit in form and substance satisfactory to the Pledgor, reducing the amount available to the Secured Party thereunder by the Pledgor to the Secured Party at the address specified in this Annex.

(iii) All Other Eligible Support and Other Posted Support consisting of Letters of Credit shall be issued and maintained in accordance with the provisions set forth in Exhibit A and in the form attached hereto as Schedule 1, or such other form as may be reasonably acceptable to the Secured Party.

(j) **Demands and Notices.**

All demands, specifications, and notices under this Annex will be made pursuant to the Notices Section of this Agreement.

(k) **Addresses for Transfers.**

Party A: Mellon Bank  
500 Ross Street  
Pittsburgh, PA 15262  
ABA: 043000261  
Acct: 0084603  
For the account of ConEdison Energy

Party B: To be provided in notice requesting delivery/return of Eligible Credit Support/Posted Credit Support.

(m) **Other Provisions.**

(i) Paragraph 7(i) of this Annex is hereby amended by inserting the words "Eligible Credit Support, other Posted Support" after "Eligible Collateral" in the first line.

(ii) [Reserved.]

(iii) Paragraph 8(a)(iii) is hereby amended to the extent of inserting the words "or Other Posted Support" after "Posted Collateral" in each instance where it appears in the subparagraph.

EXECUTION VERSION

(iv) Paragraph 8(b)(iv) is hereby amended to the extent of inserting the words "or Other Posted Support" after "Posted Collateral" in each instance where it appears in the subparagraph.

(v) Paragraph 12 of this Annex is hereby amended by adding the following:

"Credit Rating" means with respect to a Party (or its Credit Support Provider, as the case may be) or entity, on any date of determination, the respective ratings then assigned to such party's (or its Credit Support Provider's, as the case may be) or entity's unsecured, senior long-term debt (not supported by third party credit enhancement) or current issuer or corporate credit rating (whichever is lower) or if such entity is a financial institution, its long term unsecured unsubordinated deposits by S&P or Moody's. In the event of an inconsistency in ratings by S&P and Moody's (a "split rating"), the lowest rating assigned shall control."

"Letter of Credit" means an irrevocable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch of a foreign bank with a Credit Rating of at least "A-" by S&P and "A3" by Moody's, provided that such bank shall be reasonably acceptable to the Party in whose favor the letter of credit is issued, and provided further that such letter of credit shall be maintained in accordance with the provisions set forth in Exhibit A, and in the form attached hereto as Schedule 1, or such other form as may be reasonably acceptable to the Party in whose favor the letter of credit is issued. Each Letter of Credit shall be a Credit Support Document.

"Moody's" means Moody's Investors Service, Inc. or its successor.

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

CONSOLIDATED EDISON ENERGY,  
INC.

By: Thomas DeCapua  
Name: Thomas DeCapua  
Title: Managing Director  
Date: April 6, 2018

CENTRAL HUDSON GAS & ELECTRIC  
CORP.

By: Christopher Capone  
Name: Christopher Capone  
Title: CEO  
Date: 4-5-18

## **EXHIBIT A**

### **to Paragraph 13 of Annex A**

#### **LETTER OF CREDIT PROVISIONS**

**I. Letters of Credit.** Posted Credit Support provided by one party ("X") for the benefit of the other ("Y") in the form of a Letter of Credit shall be subject to the following provisions.

(a) Any Letter of Credit shall be delivered by X to such address as Y shall specify and shall be maintained for the benefit of Y or its designee. X or the issuer of the Letter of Credit shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis and provide either a renewed Letter of Credit, a substitute Letter of Credit or other Eligible Credit Support in each case at least thirty (30) Local Business Days prior to the expiration of the outstanding Letter of Credit. The Letter of Credit shall provide that: (i) in the event that an Early Termination Date, an Event of Default, a Potential Event of Default or other drawing event specified in the Letter of Credit has occurred, the issuer of the Letter of Credit must honor Y's properly documented request to draw on the Letter of Credit within one (1) Banking Day ("Banking Day" as defined in the UCP or ISP, as applicable) of presentation of the request to draw and (ii) the Letter of Credit shall be governed by (x) the Uniform Customs and Practice For Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (the "UCP") provided that where the UCP is silent, the Letter of Credit shall be governed by New York Law without reference to its choice of law provisions and provide further that if the Letter of Credit shall expire during an interruption of business of the Issuer of such Letter of Credit arising from a cause or circumstance referenced in Article 36 of the UCP (as such Article may be amended from time to time), the Issuer of such Letter of Credit shall specifically agree to honor drafts drawn on such Letter of Credit if they are presented to the Issuer within thirty (30) days after the Issuer's resumption of business from such interruption and such drawings are otherwise in compliance with the terms and conditions of such Letter of Credit or (y) the International Standby Practices – ISP 98, 1998 Version, International Chamber of Commerce Publication No. 590 (the "ISP"), provided, however, that where the ISP is silent, the Letter of Credit shall be governed by New York law, without reference to its choice of law provisions.

(b) Upon the occurrence of a Letter of Credit Default, X agrees to deliver to Y either a substitute Letter of Credit or other Eligible Credit Support, in each case on or before the second Local Business Day after the occurrence thereof (or on or before the fifth Local Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies and the Credit Rating of the issuer of the Letter of Credit is not less than BBB by S&P or Baa 2 by Moody's). "Letter of Credit Default" shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit, including, but not limited to the issuer's failure to honor a properly documented request to draw, if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of this Agreement; or (v) any event analogous to an event specified in Section 5(a)(vii) of this Agreement shall occur with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit

**SCHEDULE 1A**  
**(UCP Version)**

**IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT FORMAT**  
**DATE OF ISSUANCE: \_\_\_\_\_**

[Address]

Re: Credit No. \_\_\_\_\_

We (the "Issuing Bank") hereby establish this Irrevocable Transferable Standby Letter of Credit in favor of \_\_\_\_\_ ("Beneficiary") for the account of \_\_\_\_\_ (the "Account Party"), for drawings in the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$\_\_\_\_\_), available to Beneficiary at sight upon demand at our counters at [Location] on or before the expiration hereof against presentation to us of either of the following statements, dated and signed by a representative of the Beneficiary:

1. "An Event of Default or Potential Event of Default (as defined in the ISDA Master Agreement dated as of \_\_\_\_\_ between Beneficiary and the Account Party, as the same may have been amended (the "Master Agreement")) has occurred and is continuing with respect to the Account Party under the Master Agreement";
2. "An Early Termination Date (as defined in the ISDA Master Agreement dated as of \_\_\_\_\_ between Beneficiary and the Account Party, as the same may have been amended (the "Master Agreement")) has occurred as a result of a Termination Event (as defined in the Master Agreement) and the Account Party has failed to make all payments due and owing to Beneficiary in accordance with the terms of the Master Agreement"; or
3. "This Letter of Credit expires in thirty (30) days or less and Account Party has failed to renew or replace this Letter of Credit in accordance with the Master Agreement and applicable Transaction Confirmation(s)."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any previous drawings paid through the Issuing Bank referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.

This Letter of Credit shall expire \_\_\_\_\_.

Drawings by fax are acceptable and should be faxed to: \_\_\_\_\_ ~~issuing bank to issue~~  
~~beneficiary to draw~~

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified. In addition, our undertaking under this Letter of Credit is in no way contingent upon reimbursement with respect to any drawing hereunder or upon our ability to perfect any security interest or other lien.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (the "UCP"), provided, however, that where the UCP is silent, this Letter of Credit shall be governed by New York law without reference to its choice of law provision, and provided further that to the extent that the terms hereof are

Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to X in accordance with the terms of this Agreement.

(c) As one method of providing additional Posted Credit Support, X may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(d) (i) A Letter of Credit shall provide that Y may draw upon the Letter of Credit in an amount that is equal to all amounts that are due and owing from X but have not been paid to Y within the time allowed for such payments under this Agreement. A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the bank issuing the Letter of Credit of one or more certificates of Y in accordance with the specific requirements of the Letter of Credit.

(ii) Upon or at any time after the occurrence of an Event of Default or Potential Event of Default with respect to X, Y may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates in accordance with the specific requirements of the Letter of Credit. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Posted Collateral and shall either be (y) applied against all amounts that are due and owing from X but have not been paid to Y within the time allowed for such payments under this Agreement or (z) maintained in accordance with this Annex. Notwithstanding Y's receipt of Cash under the Letter of Credit, X shall remain liable to Y for any failure to Transfer sufficient Eligible Credit Support to Y in accordance with the terms of this Annex. In addition, X shall remain liable for any amounts owing to Y and remaining unpaid after the application of the amounts so drawn by Y.

(e) If a party's Credit Support Provider shall furnish a Letter of Credit hereunder, the amount otherwise required under such Letter of Credit may at the option of such Credit Support Provider be reduced by the amount of any Letter of Credit established by such party (but only for such time as such party's Letter of Credit shall be in effect). In the event a party shall be required to furnish a Letter of Credit hereunder, the amount otherwise required under such Letter of Credit may at the option of such party be reduced by the amount of any Letter of Credit established by such party's Credit Support Provider (but only for such time as such Credit Support Provider's Letter of Credit shall be in effect).

(f) Upon or at any time after the occurrence or deemed occurrence of an Early Termination Date as a result of a Termination Event and the failure of X to make all payments due and owing to Y in accordance with the terms of this Agreement, Y may draw on any outstanding Letter of Credit in an amount equal to such amounts owing to it. X shall remain liable for any amounts owing to Y and remaining unpaid after the application of the amounts so drawn by Y.

(g) All fees and costs associated with the Letter of Credit are for the account of X and in no event, may the issuer of a Letter of Credit reduce the amount of a Letter of Credit by deducting therefrom any fees incurred by X.

(g) The provisions of this Exhibit A shall constitute agreements for all purposes of this Agreement and this Annex, including Section 5(a)(iii) of this Agreement.

inconsistent with the provisions of the UCP, including but not limited to Articles 14(b), 16(d) and 36 of the UCP, the terms of this Letter of Credit shall govern.

~~Issuing Bank may select either Option 1 or Option 2 to include in L/C~~

**Option 1:** *With respect to Articles 14(b) and 16(d) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed one (1) Banking Day (as defined in the UCP) following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform and make payment to the Beneficiary accordingly.*

**OR**

**Option 2:** *With respect to the Articles 14(b) and 16(d) of the UCP, if a drawing is made by Beneficiary hereunder on a Banking Day (as defined in the UCP) before 2:00 P.M. (New York City time) payment shall be made of the amount specified in immediately available funds by the close of business (New York City time) on the following Banking Day; if a drawing is made by Beneficiary hereunder on a Banking Day after 2:00 P.M. (New York City time) payment shall be made of the amount specified in immediately available funds by the close of business (New York City time) on the second following Banking Day.*

If this Letter of Credit shall expire during an interruption of business of the Issuing Bank arising from a cause or circumstance referenced in Article 36 of the UCP, the Issuing Bank specifically agree to honor drafts drawn on this Letter of Credit if they are presented to us within thirty (30) days after the Issuing Bank's resumption of business from such interruption and such drawings are otherwise in compliance with the terms and conditions of this Letter of Credit.

This Letter of Credit may not be amended, changed or modified, or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to, or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, without the express written consent of the Beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]

**SCHEDULE 1B**  
**(ISP Version)**

**IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT FORMAT**  
**DATE OF ISSUANCE: \_\_\_\_\_**

[Address]

Re: Credit No. \_\_\_\_\_

We (the "Issuing Bank") hereby establish this Irrevocable Transferable Standby Letter of Credit in favor of \_\_\_\_\_ ("Beneficiary") for the account of \_\_\_\_\_ (the "Account Party"), for drawings in the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$\_\_\_\_\_), available to Beneficiary at sight upon demand at our counters at [Location] on or before the expiration hereof against presentation to us of either of the following statements, dated and signed by a representative of the Beneficiary:

1. "An Event of Default or Potential Event of Default (as defined in the ISDA Master Agreement dated as of \_\_\_\_\_ between Beneficiary and the Account Party, as the same may have been amended (the "Master Agreement")) has occurred and is continuing with respect to the Account Party under the Master Agreement";
2. "An Early Termination Date (as defined in the ISDA Master Agreement dated as of \_\_\_\_\_ between Beneficiary and the Account Party, as the same may have been amended (the "Master Agreement")) has occurred as a result of a Termination Event (as defined in the Master Agreement) and the Account Party has failed to make all payments due and owing to Beneficiary in accordance with the terms of the Master Agreement"; or
3. "This Letter of Credit expires in thirty (30) days or less and Account Party has failed to renew or replace this Letter of Credit in accordance with the Master Agreement and applicable Transaction Confirmation(s)."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any previous drawings paid through the Issuing Bank referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.

This Letter of Credit shall expire \_\_\_\_\_.

Drawings by fax are acceptable and should be faxed to: \_\_\_\_\_ ~~Issuing Bank to Issue~~  
~~thereafter to draw hereafter~~

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified. In addition, our undertaking under this Letter of Credit is in no way contingent upon reimbursement with respect to any drawing hereunder or upon our ability to perfect any security interest or other lien.

This Letter of Credit shall be governed by the International Standby Practices - ISP 98, 1998 Version, International Chamber of Commerce Publication No. 590 (the "ISP"), provided, however, that where the ISP is silent, this Letter of Credit shall be governed by New York law, without reference to its choice of law provisions; and provided further that to the extent that the terms hereof are inconsistent with

the provisions of the ISP, including but not limited to Rules 2.01 and/or 5.01 of the ISP, in which case the terms of this Letter of Credit shall govern.

~~Issuing Bank may select either Option 1 or Option 2. Option 1 is the default.~~

~~Option 1:~~ With respect to Rules 2.01 and/or 5.01 of the ISP, the Issuing Bank shall have a reasonable amount of time, not to exceed one (1) Banking Day (as defined in the ISP) following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform and make payment to the Beneficiary accordingly.

~~Option 2:~~

~~Option 2:~~ With respect to the Rules 2.01 and/or 5.01 of the ISP, if a drawing is made by Beneficiary hereunder on a Banking Day (as defined in the ISP) before 2:00 P.M. (New York City time) payment shall be made of the amount specified in immediately available funds by the close of business (New York City time) on the following Banking Day; if a drawing is made by Beneficiary hereunder on a Banking Day after 2:00 P.M. (New York City time) payment shall be made of the amount specified in immediately available funds by the close of business (New York City time) on the second following Banking Day.

This Letter of Credit may not be amended, changed or modified, or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to, or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, without the express written consent of the Beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]



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**SCHEDULE  
to the  
1992 MASTER AGREEMENT  
(Multicurrency-Cross Border)**

dated as of March , 2018

between

**CONSOLIDATED EDISON ENERGY, INC., a corporation organized under the law of the State of New York ("Party A")**

**and CENTRAL HUDSON GAS & ELECTRIC CORP., a Corporation organized under the law of the State of New York ("Party B")**

**Part 1. Termination Provisions.**

- (a) **"Specified Entity"** means in relation to Party A, none; and in relation to Party B, none.
- (b) **"Specified Transaction"** has the meaning specified in Section 14 of this Agreement.
- (c) The **"Cross Default"** provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B; provided however, that Section 5(a)(vi) is hereby amended by deleting in the seventh line thereof the words " , or becoming capable at such time of being declared,".

**"Specified Indebtedness"** has the meaning specified in Section 14 of this Agreement.

**"Threshold Amount"** means: with respect to Party A's Credit Support Provider, three percent (3%) of the Tangible Net Worth of Party A's Credit Support Provider, and with respect to Party B, three percent (3%) of Party B's Tangible Net Worth. **"Tangible Net Worth"** means with respect to any entity, the total assets of such entity less intangible assets and total liabilities of such entity. For purpose of this definition, "intangible assets" includes benefits such as goodwill, patents, copyrights and trademarks..

- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(iv) will apply to Party A and will apply to Party B. For purposes of Section 5(b)(iv), and without limitation of other facts and circumstances that may make the creditworthiness of the applicable resulting, surviving or transferee entity ("Y") "materially weaker" than that of its predecessor, Y's creditworthiness shall in all cases be deemed "materially weaker" than that of its predecessor if Y's long-term, unsecured, unsubordinated debt rating or the corporate rating, as applicable, is below "Baa2" by Moody's Investor's Service, Inc. or "BBB" by Standard & Poor's Rating Services.
- (e) The **"Automatic Early Termination"** provision of Section 6(a) will not apply to Party A and will not apply to Party B.
- (f) **Payments on Early Termination.** For the purpose of Section 6(e):
  - (i) Market Quotation will apply, and
  - (ii) the Second Method will apply.

- (g) "Termination Currency" means United States Dollars.
- (h) "Additional Termination Event" of Section 5(b)(v) will not apply.

**Part 2. Tax Representations.**

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

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii), or 6(e)) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f), (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii), and (iii) the satisfaction of the agreement of the other party contained in Section 4(d), *provided* that it shall not be a breach of this representation where reliance is placed on Clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) **Payee Representations.** For the purpose of Section 3(f), Party A and Party B make the following representations:

- (i) The following representation applies to Party A:

It is a corporation duly organized under the laws of the State of New York, is not a foreign corporation for U.S. tax purposes, and has the following U.S. tax identification number: 13-3977918

- (ii) The following representation applies to Party B:

It is a corporation duly organized under the laws of the State of New York, is not a foreign corporation for U.S. tax purposes, and has with the following U.S. tax identification number: 14-0555980.

**Part 3. Agreement to Deliver Documents**

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

- (a) Tax forms, documents, or certificates to be delivered are:

Party required to <u>deliver</u> <u>document</u>	<u>Form/Document/</u> <u>Certificate</u>	<u>Date by which</u> <u>to be delivered</u>
---	---	--

Party A and  
Party B

An executed U.S. Internal  
Revenue Service Form W-9  
("Form W-9"), and such other  
U.S. tax forms as may be  
reasonably requested by the  
other party.

The Form W-9 shall be provided  
promptly following execution of this  
Agreement but no later than thirty  
(30) days after such execution, and  
promptly upon such form previously  
provided by such party becoming  
obsolete or incorrect, including as  
soon as reasonably practicable after  
each January 1 following the  
execution of this Agreement. Other  
U.S. tax forms shall be provided  
promptly following the reasonable  
request of the other party and  
promptly following such forms  
previously provided becoming  
obsolete or incorrect.

(b) Other documents to be delivered are:

Party required  
to

deliver  
document

Form/Document/  
Certificate

Date by which  
to be delivered

Covered by  
Section 3(d)  
Representatio  
n

Party A and  
Party B

Evidence of capacity,  
authority and specimen  
signatures with respect  
to the party's and its  
Credit Support  
Provider's signatories  
executing this  
Agreement, each  
Transaction and any  
Credit Support  
Document (provided  
that with respect to  
Party A's Credit  
Support Provider, an  
incumbency certificate  
shall be the document  
provided)

At execution of this  
Agreement

Yes

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A and Party B	Annual Audited Consolidated Financial Statement of the party's Credit Support Provider certified by independent public accountants (if a party does not have a Credit Support Provider, these financial statements shall be provided with respect to the party itself)	Promptly following demand by the other party, but in no event later than 120 days after the end of each fiscal year of the party's Credit Support Provider (or, if applicable, of the party), if such financial statement is not available on "EDGAR" or such party's Credit Support Provider's (or, if applicable, such party's) internet home page	Yes
Party A and Party B	Quarterly Unaudited Consolidated Financial Statement of the party's Credit Support Provider (if a party does not have a Credit Support Provider, these financial statements shall be provided with respect to the party itself)	Promptly following demand by the other party, but in no event later than 60 days after the end of each of its first three fiscal quarters, if such financial statement is not available on "EDGAR" or such party's Credit Support Provider's (or, if applicable, such party's) internet home page.	Yes
Party A and Party B	Duly executed Credit Support Document specified in Part 4(d)	At execution of this Agreement	Yes

**Part 4. Miscellaneous.**

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

**Address for notices or communications to Party A:**

*For confirmations and invoices:*

Address: Consolidated Edison Energy, Inc.  
100 Summit Lake Drive

*For all other notices and communications:*

Consolidated Edison Energy, Inc.  
100 Summit Lake Drive

Suite 210  
Valhalla, NY 10595  
Attention: **Commodity Operations**  
Fax No.: (914) 993-2150  
Tel. No.: (914) 993-2178

Suite 210  
Valhalla, NY 10595  
Attention: **Contract Manager**  
Fax No.: (914) 993-2111  
Tel. No.: (914) 993-2168

*A copy of any notice sent to Party A pursuant to Section 5 or 6 must also be sent to:*

Address: **Consolidated Edison Energy, Inc.**  
100 Summit Lake Drive  
Suite 210  
Valhalla, NY 10595  
Attention: **Credit Manager**  
Fax No.: (914) 993-2111  
Tel. No.: (914) 993-2155

*- and -*

Address: **Consolidated Edison Energy, Inc.**  
100 Summit Lake Drive  
Suite 210  
Valhalla, NY 10595  
Attention: **Vice President, Legal and Compliance Services**  
Fax No.: (914) 686-1413  
Tel. No.: (914) 286-7085

**Address for notices or communications to Party B:**

Address: [ 284 South Avenue Poughkeepsie NY 12601 ]  
Attention: [ Energy Resources ]  
Facsimile No.: [ 845-486-5626 ]  
Telephone No.: [ 845-486-5497 ]

(b) **Offices; Multibranch Parties.** The provisions of Section 10(a) will be applicable.  
For the purpose of Section 10(c):

Party A is not a Multibranch Party.

Party B [is not] a Multibranch Party.

(c) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction; provided, however, if an Event of Default, a Potential Event of Default, or an Early Termination Date has been named with respect to Party A, the Calculation Agent shall be Party B until such time as the relevant circumstance no longer exists; and provided further, that if a calculation or determination is disputed by the other Party, the Parties shall first endeavor to resolve such dispute and if they are unable to do so within one (1) Local Business Day, each Party shall appoint a Reference Market-maker in commodity

derivatives to provide a calculation or determination with respect to the issue in dispute. The calculation or determination of the two Reference Market-makers will be averaged and the Parties agree that the resulting calculation or determination will prevail. The Reference Market-makers selected must agree to provide their reports prior to the Payment Date.

**(d) Credit Support Documents. "Credit Support Document" means:**

(i) As to Party A, the Guaranty dated as of [date of existing guaranty] by **Consolidated Edison, Inc.** in favor of Party B as beneficiary thereof in the form attached hereto as Exhibit B.

(ii) As to Party B, none.

(iii) As to Party A and Party B, the ISDA Credit Support Annex incorporated by reference and attached hereto as Annex A, and

(iv) As to Party A and Party B, any Letter of Credit provided pursuant to Annex A.

**(e) Credit Support Provider.** (i) Credit Support Provider means in relation to Party A, Consolidated Edison, Inc., and (ii) Credit Support Provider means in relation to Party B, None.

**(f) Netting of Payments.** Subparagraph (ii) of Section 2(c) will not apply to any Transactions unless otherwise specified in the relevant Confirmation.

**(g) Governing Law.** This Agreement and each Confirmation will be governed by, and construed, interpreted, and enforced in accordance with, the substantive law of the State of New York (without reference to its choice of law doctrine, other than Section 5-1401 and 5-1402 of the New York General Obligations Law).

**(h) Jurisdiction.** Section 13(b) is amended by (1) deleting in the second line of clause (i) the word "non-"; and (2) deleting the last sentence.

**Part 5. Other Provisions.**

**(a) Conditions Precedent.** Clause (1) of Section 2(a)(iii) is amended by adding "(except as may be specified in writing to the other party or acknowledged in writing by the other party prior to the trade date for a specific transaction)" after the word "continuing." The condition precedent set forth in clause (1) of Section 2(a)(iii) shall not apply to payments owed by a party if the other party shall have satisfied in full all its payment and delivery obligations under Section 2(a)(i) and shall at the relevant time have no future payment or delivery obligations whether absolute or contingent, under Section 2(a)(i).

**(b) Consents.** Section 3(a)(iv) is amended by deleting the word "All" at the beginning of such section and substituting the following in its place: "Except as may be specified in writing to the other party or acknowledged in writing by the other party prior to the trade date for a specific Transaction, all".

(c) **Absence of Certain Events.** Section 3(b) is amended by adding "(except as may be specified in writing to the other party or acknowledged in writing by the other party prior to the trade date for a specific Transaction)" after the word "Default" in each place that such word appears in such section.

(d) **Representations.** Section 3 is hereby amended by adding at the end thereof the following Subsections (g), (h), (i), and (j):

(g) **Line of Business.** (i) It is entering into this Agreement, including without limitation, any Credit Support Document to which it is a party and each Transaction, in conjunction with its line of business (including financial intermediation services) or the financing of its business; and (ii) with respect to Options (other than weather-related options), it is a producer, processor, commercial user of, or merchant handling, the commodity subject to the Transaction or the products or byproducts thereof, and is entering into each Option Transaction solely for purposes related to its business as such; and (iii) with respect to any weather-related Transactions, it is exposed in the conduct of its business to the risk of variations in weather and is entering into such Transactions to manage or offset such risks.

(h) **Eligible Contract Participant.** It constitutes an "eligible contract participant" under Section 1a(12) of the Commodity Exchange Act, as amended (7 U.S.C. § 1a(12)(2000)).

(i) **Customization and Creditworthiness.** The economic terms of this Agreement, any Credit Support Document to which it is a party, and each Transaction have been individually tailored and negotiated by it; the creditworthiness of the other party was a material consideration in its entering into or determining the terms of this Agreement, such Credit Support Document, and such Transaction.

(j) **No Reliance.** In connection with the negotiation of, the entering into, and the confirming of the execution of this Agreement, any Credit Support Document to which it is a party, and each Transaction: (i) it is acting as principal (and not as agent or in any other capacity, fiduciary or otherwise); (ii) the other party is not acting as a fiduciary or financial or investment advisor for it; (iii) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement and in such Credit Support Document; (iv) it has not been given by the other party (directly or indirectly through any other person) any advice, counsel, assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) of this Agreement, such Credit Support Document, or such Transaction; (v) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own investment, trading, hedging, and other decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary, and not upon any view expressed by the other party; (vi) its decisions have been the result of arm's length negotiations between the parties; and (vii) it is entering into this Agreement, such Credit Support Document, and such Transaction with a full understanding of all of the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume those risks.



(e) **Reference Market-makers.** The definition of "Reference Market-makers" in Section 14 is hereby amended by: (i) deleting "(a)" from the second line thereof, and (ii) deleting the words "and (b) to the extent practicable, from among such dealers having an office in the same city."

(f) **Definitions.** This Agreement, each Confirmation, and each Transaction are subject to the 2000 ISDA Definitions, as such definitions may be amended, supplemented, replaced or modified from time to time (collectively, the "Definitions"), each as published by the International Swaps and Derivatives Association, Inc. ("ISDA"), and will be governed in all respects by the Definitions (except that any references to "Swap Transactions" in the Definitions will be deemed to be references to "Transactions"). The Definitions are incorporated by reference in, and made part of, this Agreement and each relevant Confirmation as if set forth in full in this Agreement and such Confirmation. In the event of any inconsistency between the provisions of this Agreement and the Definitions, this Agreement will prevail.

(g) **Procedures for Entering into Transactions.** The parties hereby delete the content of Section 9(e)(ii) in its entirety and replace it with the following sentences: "The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). Where both parties use eConfirm, each party shall, in lieu of sending or acknowledging any Confirmation where required or permitted hereunder, input the terms of any Transaction into the eConfirm portal and reconcile any differences as between the terms inputted by the other party such that the transaction is fully-confirmed in eConfirm. Where either party does not use eConfirm, then within three Local Business Days following the Trade Date of a Transaction, Party B will send to Party A a Confirmation. Party A will promptly thereafter confirm the accuracy of, or request the correction of, such Confirmation. If any dispute shall arise as to whether an error exists in a Confirmation, the parties shall in good faith make reasonable efforts to resolve the dispute. If Party A fails to accept or dispute the Confirmation in the manner set forth above within three Local Business Days after it was effectively sent to Party A, the Confirmation shall be deemed to correctly reflect the parties' agreement on the terms of the Transaction referred to therein, absent manifest error. In the event that Party B shall fail to forward a Confirmation to Party A within three Local Business Days following the Trade Date of Transaction, Party A may send to Party B a Confirmation. If Party B fails to accept or dispute the Confirmation in the manner set forth above within three Local Business Days after it was effectively sent to Party B, the Confirmation shall be deemed to correctly reflect the parties' agreement on the terms of the Transaction referred to therein, absent manifest error. The requirement of this Section and elsewhere in this Agreement that the parties exchange Confirmations shall for all purposes be deemed satisfied by a Confirmation sent and an acknowledgment deemed given as provided herein. A Confirmation may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation."

(h) **Recording.** Each party consents to the recording, at any time and from time to time, by the other party of any and all telephone communications between marketing, trading and support personnel of the Parties in connection with this Agreement or any Transaction hereunder, and waives any further notice of such recording. Each party agrees to notify its affected employees of such recording and to obtain any necessary consent of such employees. Promptly

upon the request by a Party, the other Party will provide a copy of such recording to the Party making the request. Each Party agrees (i) to secure such recordings from improper access, (ii) not to distribute or make public any recording without the prior written consent of the other Party, subject to applicable law and (iii) that such recordings may be submitted in evidence in any proceeding or action relating to this Agreement, provided, however, the Parties agree not to object to admission of such evidence based on the fact that the recording may not be a "writing" and may not be "signed".

(i) **Setoff.** Upon the designation or deemed designation of an Early Termination Date, the Non-defaulting Party or the non-Affected Party (in either case, "X") may, at its option and in its discretion, setoff, against any amounts owed to the Defaulting Party or Affected Party (in either case, "Y") in Dollars or any other currency by X, any amounts owed in Dollars or any other currency by Y to X or any Affiliate of X (irrespective of place of payment or booking office of the obligation) under this Agreement or otherwise. The obligations of Y to X under this Agreement (and the obligations of Y to any such Affiliate of X) in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. To the extent that any such setoff is comprised of an amount owed by Y to X's Affiliate, X shall hold Y harmless from any claim by X's Affiliate that Y has failed to pay such amount. X will give Y notice of any setoff effected under this section as soon as practicable after the setoff is effected, provided that failure to give such notice shall not affect the validity of the setoff.

For this purpose, the amounts subject to the setoff to the extent necessary may be converted by X into the Termination Currency at the rate of exchange at which X, acting in a reasonable manner and in good faith, would be able to purchase the relevant amount of the currency being converted.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing herein shall be effective to create a charge or other security interest. This setoff provision 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).

(j) **Fully Paid Transactions.** 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 Section 6(e) until the Non-defaulting Party has received confirmation satisfactory to it in its reasonable discretion that all other obligations of any kind whatsoever (whether pursuant to Specified Indebtedness as defined herein or otherwise) of the Defaulting Party to make any payments to the Non-defaulting Party or an Affiliate of the Non-defaulting Party under this Agreement or otherwise, which are due and payable as of the early Termination Date hereof, have been fully and finally performed.

(k) **Limitation of Liability.** NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY ARISING FROM, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT NOTHING IN THIS PROVISION SHALL

AFFECT THE ENFORCEABILITY OF SECTION 6(e) OF THIS AGREEMENT. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE AND GENUINE PRE-ESTIMATE AND APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.

(l) **Confidentiality.** The contents of this Agreement and all other documents relating to this Agreement, and any information made available by one party or its Credit Support Provider to the other Party or its Credit Support Provider with respect to this Agreement are confidential and shall not be disclosed to any third Party (nor shall any public announcement relating to this Agreement be made by either party), except for such information (i) as may become generally available to the public other than a result of a violation of this Agreement, (ii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, or accounting disclosure rule or standard, requirement of any regulator or (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party or its Credit Support Provider in making such disclosure. Notwithstanding anything herein, a Party may make disclosure of any such information to such Party's Affiliates and to such Party's and its Affiliates' directors, trustees, officers, employees, agents or advisors (including without limitation, attorneys, accountants, consultants, bankers, and financial advisors) who shall be informed of the confidential nature of the information and who agree to maintain such information confidential.

(m) **Applicable Rate.** The definition of "Applicable Rate" set forth in Section 14 is hereby amended by adding to the end of Subsection (b) of the definition after the word "Rate" the following provision: "provided, however, that if the payee is a Defaulting Party for purposes of Section 6(e), then the rate shall be the Non-default Rate."

(n) **Severability.** If any term, provision, covenant or condition of this Agreement, or the application thereof to any party or circumstance, shall be held to be invalid or unenforceable (in whole or in part) for any reason, the remaining terms, provisions, covenants, and conditions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid or unenforceable portion eliminated, so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter of this Agreement and the deletion of such portion of this Agreement will not substantially impair the respective benefits or expectations of the parties to this Agreement; provided, however, that this severability provision shall not be applicable if any provision of Section 1, 2, 5 or 6 (or any definition or provision in Section 14 to the extent it relates to, or is used in or in connection with any such Section) shall be so held to be invalid or unenforceable.

(o) **Limitation of Rate.** Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the Default Rate, Non-default Rate, or Termination Rate exceed the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged, or received on the subject indebtedness under the law applicable to such party.

(p) **Waiver of Jury Trial.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.

(q) **Accuracy of Specified Information.** Section 3(d) is hereby amended by adding in the third line thereof after the word "respect" and before the period the words "or, in the case of audited or unaudited financial statements or balance sheets, fairly presents, in all material respects, the financial condition and results of operations of the Company.

(r) **Definitions.** Section 14 is amended by the deletion of the definitions of "Default Rate", "Non-default Rate" and "Termination Rate" and the substitution in their place of the following:

**"Default Rate"** means a rate equal to 1% plus the Fed Funds Rate.

**"Non-default Rate"** means a rate equal to the Fed Funds Rate.

**"Termination Rate"** means a rate equal to the Fed Funds Rate.

**"Fed Funds Rate"** means the rate per annum equal to the overnight Federal Funds Rate as reported in Federal Reserve Publication H. 15-519 or any successor publication, published by the Board of Governors of the Federal Reserve System.

(s) **Dodd-Frank Provisions**

(i) **General Dodd-Frank Representations.** Each party represents to the other as of the date hereof, as of the time of entering into each Transaction hereunder, and as of the time of each Reportable Event, unless otherwise stated in a subsequent notice delivered to the other party, that:

(a) it is, and any guarantor, Credit Support Provider or Pledgor of assets in support of its obligations are each, an Eligible Contract Participant.

(b) it is not a Swap Dealer (nor is it a "Security-Based Swap Dealer" as defined in Section 3(a)(71) of the Securities Exchange Act of 1934, as amended, and SEC Rule 3a71-1);

(c) it is not a Major Swap Participant (nor is it a "Major Security-Based Swap Participant" as defined in Section 3a(67) of the Securities Exchange Act and SEC Rule 3a67-1);

(d) it is a U.S. person;

(e) it is not a Financial Entity;

(f) except as otherwise provided in Part 5(s)(ii), it is not a Special Entity; and

(g) its CICI/LEI number is as follows:

Party A: 5493004XXGY2FJGW7125; and Party B:  
TP9WEQL6JOF6GP647G47.

(ii) **Utility Special Entity Representations.** ☐ This Part 5(s)(ii) is an optional provision; if not checked, Part 5(s)(ii) is inapplicable.

(a) Party B hereby represents to Party A as of the date hereof, as of the time of entering into each Transaction hereunder, and as of the time of each Reportable Event, unless otherwise stated in a subsequent notice delivered to Party A, that with respect to any Swap entered into hereunder:

(I) it is a "utility special entity" as such term is defined in CFTC Regulation 1.3(ggg)(4)(i)(B) as set forth in the rule entitled "Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities," 79 Fed. Reg. 57,767 (Sept. 26, 2014) ("Final USE Rule");

(II) any such Swap is a "utility operations-related swap" as such term is defined in CFTC Regulation 1.3(ggg)(4)(i)(B) under the Final USE Rule;

(III) it is using any such Swap in the manner described in CFTC Regulation 50.50(c) (17 C.F.R. 50.50(c));

(IV) any such Swap meets all of the conditions of a "utility operations-related swap" as specified in CFTC Regulation 1.3(ggg)(4)(i)(B) under such Final USE Rule.

(iii) **Physical Commercial Agreements, Contracts or Transactions for the supply and consumption of energy that provide flexibility, such as tolls on power plants, transportation agreements on natural gas pipelines, and natural gas storage agreements ("Physical Commercial Transactions").** Each party represents to the other party as of the time it enters into each Physical Commercial Transaction, if any, and each time that the party that is the buyer thereunder ("PCT Buyer") elects to use the facility specified thereunder (i.e., the specified facility) or part thereof that, unless notice to the contrary has been given to the other party prior to each election by the PCT Buyer thereunder, each party reasonably believes, based upon contract terms, such party's knowledge of the facts and circumstances, and such party's knowledge of the CFTC Regulations, that:

(a) **Physical Commercial Agreement.**

(I) This Physical Commercial Transaction is intended to be a flexible physical commercial agreement that qualifies for the forward contract exclusion as set forth under Section 1a(47)(B)(ii) of the CEA and is not intended to be interpreted by the CFTC to be a commodity option, because this Physical Commercial Transaction meets the three-part test for the forward contract exclusion as set forth in the Interpretive Guidance #2, namely: (1) the subject of this Physical Commercial Transaction is usage of a specified facility or part thereof rather than the purchase or sale of the commodity that is to be created, transported, processed or

stored using the specified facility; (2) this Physical Commercial Transaction grants the PCT Buyer the exclusive use of the specified facility or part thereof during the term of this Physical Commercial Transaction, and provides for an unconditional obligation on the part of the other party thereunder ("PCT Seller") to grant the PCT Buyer the exclusive use of the specified facility or part thereof; and (3) the payment for the use of the specified facility or part thereof represents a payment for its use rather than the option to use it; and

(II) Under this Physical Commercial Transaction, if PCT Buyer pays for use of the specified facility or part thereof (i.e., the commodity) in two parts, then PCT Buyer pays the PCT Seller's fixed/known costs upfront in a charge ("Demand Charge/Reservation Fee") that is paid monthly for the exclusive right to use the specified facility or part thereof for each month, regardless of whether PCT Buyer actually elects to use the specified facility or part thereof during such month, and PCT Buyer pays the PCT Seller's variable costs for such month in a charge ("Usage Fee") that is determined by the costs actually incurred by PCT Seller for such month associated with PCT Buyers' actual usage of the specified facility or part thereof during such month, and, therefore, this Physical Commercial Transaction is not intended to be an option and is not intended to be covered by the "however paragraph" in the Interpretive Guidance #2, because this Physical Commercial Transaction satisfies the five-part test as set forth in the OGC FAQ, namely: (1) this facility usage agreement includes a two-part fee structure, (2) the right to use the specified facility or part thereof for the term of this Physical Commercial Transaction is legally established upon entering into this Physical Commercial Transaction, (3) the PCT Buyer who has legally established the right to use the specified facility or part thereof for the term of this Physical Commercial Transaction pays the Demand Charge/Reservation Fee in a commercially reasonable timeframe, (4) the use of the specified facility or part thereof does not depend on the further exercise of an option, and (5) the Usage Fee is in the nature of a reimbursement for the variable costs incurred by the PCT Seller as the operator of the specified facility or part thereof in rendering the service; and

(b) Forward Contract with Volumetric Optionality.

(I) Under this Physical Commercial Transaction, if the CFTC disagrees with the foregoing interpretations of the applicability of the forward contract exclusion to this Physical Commercial Transaction by the PCT Buyer and PCT Seller as set forth in Part 5(s)(iii)(a) above, because the CFTC interprets each election by PCT Buyer under this Physical Commercial Transaction to use the specified facility or part thereof as the purchase and sale of a Commodity (each a "PCT Transaction") that contains an embedded volumetric option, then the parties hereto intend that each such PCT Transaction qualifies for the forward contract exclusion as set forth under section 1a(47)(b)(ii) of the CEA and the seven (7) factor test in the Interpretive Guidance #1, which requires that: (1) the embedded option does not undermine the overall nature of the PCT Transaction as a whole; (2) the predominant feature of the PCT Transaction is actual delivery; (3) the embedded option cannot be severed and marketed separately; (4) PCT Seller intends at the time it enters into each PCT Transaction, to deliver the underlying nonfinancial commodity if the option is exercised by PCT Buyer; (5) PCT Buyer intends at the time it enters into each PCT Transaction to take delivery of the underlying nonfinancial commodity if it exercises the embedded option; (6) all parties are Commercial Parties (defined as a producer, processor, or commercial user of, or a merchant handling the Commodity, or the products or byproducts thereof, that are the subject of each PCT Transaction); and (7) the exercise or non-

exercise of the embedded option is based primarily on physical factors or regulatory requirements beyond the control of the parties.

(II) With respect to any such PCT Transaction described in Part 5(s)(iii)(b)(I) above, each of the parties makes the following representations as of the date the parties enter into each such PCT Transaction (the "Trade Date"):

(A) each party is a producer, processor, or commercial user of, or a merchant handling, the Commodity, or the products or byproducts thereof, that are the subject of the PCT Transaction, and is entering into such PCT Transaction solely for purposes related to its business as such; and

(B) each party intends to make or take physical delivery of the Commodity, and any optionality under the PCT Transaction is merely incidental to the predominant purpose of effecting delivery.

(c) **Commodity Option Transactions; Trade Option Exemption.** With respect to each PCT Transaction entered into hereunder that is construed to be a "Commodity Option Transaction" as defined in CFTC Regulation 1.3(hh) and entered into pursuant to the Trade Option exemption set forth in CFTC Regulation 32.3(a), each party makes the following representations to the other party as of the Trade Date:

(I) the party that is the offeror of the Commodity Option Transaction represents to the other party (i.e., the offeree) that it is (a) an Eligible Contract Participant, or (b) (1) a producer, processor, or commercial user of, or a merchant handling, the Commodity that is the subject of the Commodity Option Transaction, or the products or by-products thereof, and (2) that such offeror is offering or entering into the Commodity Option Transaction solely for purposes related to its business as such; and

(II) the party that is the offeree of the Commodity Option Transaction represents to the other party (i.e., the offeror) that it is (a) a producer, processor, or commercial user of, or a merchant handling, the Commodity that is the subject of the Commodity Option Transaction, or the products or by-products thereof, and (b) entering into the Commodity Option Transaction solely for purposes related to its business as such; and

(III) each party intends to physically settle the Commodity Option Transaction, so that if exercised, the Commodity Option Transaction will result in the sale of an "exempt commodity" as defined in Section 1a(20) of the CEA or an "agricultural commodity" as defined in CFTC Regulation 1.3(zz) for immediate or deferred shipment or delivery; and

(IV) each party acknowledges that in reliance on CFTC Letter No. 13-08 dated April 5, 2013, unless one of the parties is a Swap Dealer or Major Swap Participant, the PTC Transaction is an unreported Trade Option that must be reported by each Party on Form TO pursuant to CFTC Regulation 32.3(b)(2).

**(iv) Full Requirements Contracts, Output Contracts and Other Transactions Involving Non-Financial Commodities Intended to be Physically Settled.**

(a) Each party represents as of each time it enters into a Transaction hereunder that involves a non-financial commodity that is intended to be physically settled, unless notice to the contrary has been given to the other party prior to entering into any such Transaction, each party reasonably believes, based upon contract terms, such party's knowledge of the facts and circumstances and the regulations of the CFTC, that (I) each such Transaction entered into is either a "forward contract" or a "trade option" and (II) each such Transaction (a) [that is identified as a "forward contract" in a Transaction Confirmation] qualifies for the forward contract exclusion as set forth under Section 1a(47)(B)(ii) of the CEA or (b) [that is identified as a "trade option" in a Transaction Confirmation] qualifies for the trade option exemption as set forth under CFTC Regulation 32.3(a).

(b) Forward Transactions.

(I) With respect to each Transaction entered into hereunder for the purchase and sale of a Commodity that obligates one party to purchase and take from the other party, and obligates the other party to sell and deliver to the first party, a Commodity, including any Transaction for the purchase and sale of the full requirements of one party for the Commodity, or the purchase and sale of the full output of a party for the Commodity, then the parties intend that such Transaction qualifies for the forward contract exclusion as set forth under Section 1a(47)(b)(ii) of the CEA and the applicable provisions of the Interpretive Guidance #1.

(II) With respect to each Transaction entered into hereunder for the purchase and sale of a Commodity that contains an embedded volumetric option, then the parties hereto intend that such Transaction qualifies for the forward contract exclusion as set forth under section 1a(47)(b)(ii) of the CEA and the seven (7) factor test in the Interpretive Guidance #1, which requires that: (1) the embedded option does not undermine the overall nature of the Transaction as a whole; (2) the predominant feature of the Transaction is actual delivery; (3) the embedded option cannot be severed and marketed separately; (4) seller intends, at the time it enters into the Transaction, to deliver the underlying nonfinancial commodity if the option is exercised; (5) buyer intends at the time it enters into the Transaction to take delivery of the underlying nonfinancial commodity if it exercises the embedded option; (6) both parties are Commercial Parties (defined as a producer, processor, or commercial user of, or a merchant handling the Commodity, or the products or byproducts thereof, that are the subject of the Transaction); and (7) the exercise or non-exercise of the embedded option is based primarily on physical factors or regulatory requirements beyond the control of the parties.

(III) With respect to any such Transaction described in (I) or (II) above, each of the parties makes the following representations as of the date the parties enter into such Transaction (the "Trade Date"):

(A) each party is a producer, processor, or commercial user of, or a merchant handling, the Commodity, or the products or byproducts thereof, that are the subject of the Transaction, and is entering into such Transaction solely for purposes related to its business as such; and



(B) each party intends to make or take physical delivery of the Commodity, and any optionality under the Transaction is merely incidental to the predominant purpose of effecting delivery.

(c) **Commodity Options; Trade Option Exemption.** With respect to each Transaction entered into hereunder that is construed to be a "Commodity Option Transaction" as defined in CFTC Regulation 1.3(hh) and entered into pursuant to the Trade Option exemption set forth in CFTC Regulation 32.3(a), each party makes the following representations to the other party as of the Trade Date:

(I) the party that is the offeror of the Commodity Option Transaction represents to the other party (i.e., the offeree) that it is (a) an Eligible Contract Participant, or (b) (1) a producer, processor, or commercial user of, or a merchant handling, the Commodity that is the subject of the Commodity Option Transaction, or the products or by-products thereof, and (2) that such offeror is offering or entering into the Commodity Option Transaction solely for purposes related to its business as such; and

(II) the party that is the offeree of the Commodity Option Transaction represents to the other party (i.e., the offeror) that it is (a) a producer, processor, or commercial user of, or a merchant handling, the Commodity that is the subject of the Commodity Option Transaction, or the products or by-products thereof, and (b) entering into the Commodity Option Transaction solely for purposes related to its business as such; and

(III) each party intends to physically settle the Commodity Option Transaction, so that if exercised, the Commodity Option Transaction will result in the sale of an "exempt commodity" as defined in Section 1a(20) of the CEA or an "agricultural commodity" as defined in CFTC Regulation 1.3(zz) for immediate or deferred shipment or delivery; and

(IV) each party acknowledges that in reliance on CFTC Letter No. 13-08 dated April 5, 2013, unless one of the parties is a Swap Dealer or Major Swap Participant, the Commodity Option Transaction is an unreported Trade Option that must be reported by each party on Form TO pursuant to CFTC Regulation 32.3(b)(2).

**(v) Provisions Regarding Swaps.**

(a) **Dodd Frank Requirements - Reporting.** The Dodd Frank Act and the CFTC Regulations (together with the Dodd Frank Act, the "Dodd Frank Requirements") impose mandatory data reporting requirements with respect to any Swap Transactions entered into and/or outstanding after the enactment of the Dodd Frank Act (each, a "Reportable Swap Transaction"). Pursuant to CFTC Regulation 45.8, when counterparties to a Reportable Swap Transaction have the same regulatory status under the Dodd-Frank Requirements, they must mutually agree on which party will be responsible for complying with the mandatory data reporting provisions applicable to the Reportable Swap Transaction (the agreed party, the "Reporting Party"). In light of the foregoing and in order to facilitate compliance with such mandatory data reporting requirements, Party A agrees (subject to Party B's compliance with the provisions of this Part 5(s)(v)) to serve as the Reporting Party as follows:

(I) For all Reportable Swap Transactions (if any) between Party A and Party B, including Transactions that meet the requirements for a Trade Option as set forth in CFTC Regulation 32.3(a), but subject to any applicable no-action or other regulatory relief issued by the CFTC, Party A shall be the Reporting Party for all reporting required pursuant to Parts 43 and 45 of the CFTC Regulations.

(II) Provided that Party B shall have complied with its obligations under Part 5(s)(v)(b) below, for any Reportable Swap Transaction (if any) entered into between Party A and Party B for which Party B elects the exception to any applicable mandatory clearing requirement under Section 2(h)(7)(A) of the Commodity Exchange Act (7 U.S.C. § 2(h)(7)(A)) (an "End-User Swap Transaction"), Party A shall be responsible for all reporting required pursuant to Section 50.50(b) of the CFTC Regulations.

(b) **Dodd Frank Requirements -- End User Exception.** In connection with the agreement of Party A in Part 5(s)(v)(a) above and in order to permit Party A, as the Reporting Party, to comply with the applicable mandatory data reporting obligations of Parts 43 and 45 and Section 50.50(b) of the CFTC Regulations (the "Reporting Regulations"), Party B agrees that:

(I) It will timely provide to Party A all necessary information reasonably requested by Party A to allow it to comply with the Reporting Regulations.

(II) Notwithstanding any confidentiality or other similar agreement, obligation, or requirement between the parties, Party A may disclose the information required by the Reporting Regulations to a SDR and Party B waives, solely to the extent necessary to permit such disclosure, any obligation of confidentiality which would otherwise bar or restrict such disclosure.

(III) With respect to any End-User Swap Transaction:

(A) Party B is eligible to exercise an exception from any applicable mandatory clearing obligation, Party B will provide notice to Party A of its election with respect to each such End-User Swap Transaction, and Party B will provide such additional information (including a copy of any current End-User Information (as defined below) report filed by Party B) as may be reasonably requested by Party A for it to establish "a reasonable basis to believe that Party B meets the requirements for an exception to the clearing requirement" under Section 50.50 of the CFTC Regulations, as required under Section 50.50(b)(3) of the CFTC Regulations.

(B) Party B will file with the CFTC an annual report of all information required to be reported under Section 50.50(b)(1)(iii) of the CFTC Regulations (the "End-User Information") or, in the event that Party B has not filed such a report or any required amendment thereto during the three hundred sixty-five (365) day period immediately preceding the trade date for any End-User Swap Transaction with Party A, Party B shall deliver to Party A the required End-User Information prior to entering into each such End-User Swap Transaction so that such information can be reported by Party A.

(C) As of the date of this Agreement, Party B is not registered as a Swap Dealer or Major Swap Participant and is not a Financial Entity that has been

assigned reporting obligations pursuant to Section 45.8(c) of the CFTC Regulations (a "CFTC Reporting Entity") and, in the event it becomes a CFTC Reporting Entity, Party B will promptly notify Party A in writing of such change in its status and this Part 5(s)(v)(b) shall be deemed deleted from this Agreement, with no further action required of either party.

(c) The failure of either party to comply with its respective obligations under this Part 5(s)(v) shall not constitute an event of default or termination event (however defined or described) under, or otherwise constitute grounds on which the other party may vitiate, cancel, or otherwise terminate a Reportable Swap Transaction or this Agreement governing the terms thereof, or any other agreement between the parties.

(d) Notwithstanding the foregoing, in no event shall the agreements in this Part 5(s)(v) relieve Party B of its reporting obligations with respect to any unreported Trade Options set forth in Part 32 of the CFTC Regulations.

(vi) **Definitions.** For the purpose of this Part 5(s), the following definitions shall apply:

**"CFTC"** means the U.S. Commodity Futures Trading Commission.

**"CFTC Regulations"** means the rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations published or issued by the CFTC, in each applicable case as amended, modified, superseded, or otherwise supplemented from time to time, and when used herein may also include specific citations to Titles, Parts or Sections of Title 17 of the Code of Federal Regulations without otherwise limiting the applicability of other rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations.

**"Commodity"** shall mean any nonfinancial commodity that can be physically delivered and that is an "exempt commodity" as defined in Section 1a(20) of the CEA or an "agricultural commodity" as defined in CFTC Regulation 1.3(zz), and includes any tangible or intangible commodity (that is not an "excluded commodity" as defined in Section 1a(19) of the CEA), and all services relating to, and rights and interests in, such nonfinancial commodity, whether presently or in the future dealt in (including, without limitation, any electric energy, electric capacity, ancillary services, natural gas, natural gas liquids, oil, heating oil, other petroleum products or fuels, environmental attributes, or renewable energy credits).

**"Commodity Exchange Act" or "CEA"** means the U.S. Commodity Exchange Act, as amended, 7 USC Section 1, *et seq.*

**"Commodity Option Transaction"** means a "commodity option transaction" within the meaning of CFTC Regulation 1.3(hh).

***"Dodd Frank Act"*** means The Dodd Frank Wall Street Reform and Consumer Protection Act.

***"Eligible Contract Participant"*** has the meaning set forth in Section 1a(18) of the CEA.

***"Financial Entity"*** means a "financial entity" as defined in Section 2(h)(7)(C)(i)(I) - (VIII) of the CEA and CFTC Regulations.

***"Interpretive Guidance #1"*** means the CFTC's interpretive guidance for "Commodity Options Embedded in Forward Contracts" set forth in part II.B.2.(b)(ii) of the CFTC's Products Definition Final Rule, 77 Federal Register 48208 at 48237-48242 (August 13, 2012).

***"Interpretive Guidance #2"*** means the CFTC's interpretive guidance for "Certain Physical Commercial Agreements, Contracts or Transactions" set forth in part II.B.2.(b)(iii) of the CFTC's Products Definition Final Rule, 77 Federal Register 48208 at 48242-48243 (August 13, 2012).

***"Major Swap Participant"*** has the meaning set forth in Section 1a(39) of the CEA and CFTC Regulation 1.3(hhh).

***"OGC FAQ"*** means the Office of General Counsel Response to Frequently Asked Questions Regarding Certain Physical Commercial Agreements for the Supply and Consumption of Energy, issued by the CFTC's Office of General Counsel on November 14, 2012.

***"Reporting Counterparty"*** means Party A, or as otherwise agreed to by the parties in a Swap Transaction.

***"Reportable Event"*** means any event that results in a Swap under this Agreement or in a change to the primary economic terms of such a Swap, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a Swap.

***"SDR"*** means a registered "swap data repository" as defined in Section 1a(48) of the CEA and CFTC Regulations.

***"Swap"*** means a "swap" as defined in the Section 1a(47) of the CEA and CFTC Regulations.

***"Swap Dealer"*** has the meaning set forth in Section 1a(49) of the CEA and CFTC Regulation 1.3(ggg).

***"Swap Transaction"*** means a transaction between the parties under this Agreement involving a Swap.

**"Trade Option"** means a Commodity Option Transaction between the parties under this Agreement that meets the conditions for a trade option exemption contained in CFTC Regulation 32.3(a).

**"U.S. person"** means the use made of such term within Part 45 of the CFTC Regulations.

(vii) **Miscellaneous Dodd Frank Provisions.**

(a) Each party shall promptly give notice to the other party if any of the representations made in this Part 5(s) by such party become incorrect or misleading. Notwithstanding anything to the contrary in this Agreement, no breach of a representation made in this Part 5(s) shall be deemed to have occurred solely on the basis of a representation made in this Part 5(s) being incorrect or misleading in any material respect as a result of any subsequent CFTC Regulation or subsequent decision by a court of competent jurisdiction in the United States provided that such representation was true and correct in all material respects prior to such subsequent CFTC Regulation or such subsequent court decision.

(b) Each party shall promptly provide the other party any information reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Act and CFTC Regulations in connection with any Transaction between the parties under this Agreement. Notwithstanding anything to the contrary in this Agreement or in any non-disclosure, confidentiality or similar agreement between the parties, each party hereby consents to the disclosure of information by the other party to the extent required under CFTC Regulations.

(i) **Bankruptcy Matters.** With respect to all Transactions:

(i) Each Party acknowledges and agrees that (i) certain Transaction(s) constitute "forward contracts" within the meaning of title 11 of the United States Code (the "Bankruptcy Code"); (ii) each of Party A and Party B is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any Transactions that constitute "forward contracts"; (iii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code; (iv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and (v) each Party's rights under Section 6, "Early Termination", of this Agreement constitute a "contractual right to liquidate" the Transactions within the meaning of the Bankruptcy Code.

(ii) To secure its obligations under this Agreement, each Party hereby grants the other Party a present and continuing security interest in, lien on, and right to setoff against, its respective payment obligations to the other Party under this Agreement. Each Party acknowledges and agrees that the pledge of its payment obligations to the other Party under this Agreement shall serve to "margin," "guaranty" or "secure" such obligations within the meaning of the Bankruptcy Code.

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**Part 6. Additional Provisions For Commodity Derivatives Transactions.**

(a) The 2005 ISDA Commodity Definitions (with any Annexes or supplements thereto), and as may be amended, supplemented, replaced or modified from time to time, (the "Commodity Definitions") are incorporated by reference in this Agreement and the relevant Confirmations with respect to "Transactions," as defined by the Commodity Definitions in commodities, except as otherwise specifically provided in the relevant Confirmation. All terms used in this Part 6 that are not otherwise defined shall have the meanings given to them in the Commodity Definitions.

(b) The "Market Disruption Events" specified in Section 7.4(c) of the Commodity Definitions shall apply, except as otherwise specified in the Confirmation.

(c) "Additional Market Disruption Events" shall apply only if so specified in the relevant Confirmation.

(d) Disruption Fallback. Section 7.5(c) of the Commodity Definitions is hereby amended by adding at the end thereof the following new section:

(vii) "Dealer Fallback" "Dealer Fallback" means that, promptly upon becoming aware that the Relevant Price has not been determined within the specified time period by Negotiated Fallback (the "Negotiated Fallback Time"), each party shall expeditiously and in good faith select one independent leading dealer in the principal trading market for the relevant underlying commodity market selected in good faith from among dealers which satisfy all the criteria that the Parties apply generally at the time in deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to the Transaction that is affected by the Market Disruption Event or Additional Market Disruption Event. Such dealers shall be appointed to make a determination of the Relevant Price taking into consideration the latest available quotation for the relevant Commodity Reference Price and any other information that in good faith they deem relevant. The Relevant Price shall be the average of the two amounts determined to be the Relevant Price by such dealers, in which case such calculation shall be binding and conclusive absent manifest error. If the Parties have not agreed upon the appointment of the dealers on or before the second Business Day following the expiration of the Negotiated Fallback Time, or if a determination of the Relevant Price cannot be obtained from the two dealers, the next applicable Disruption Fallback shall apply to the Transaction.

(e) The following "Disruption Fallbacks" specified in Section 7.5(c) of the Commodity Definitions shall apply in the following order, except as otherwise specified in the relevant Confirmation:

- (i) "Fallback Reference Price" (if the parties have specified an alternate Commodity Reference Price in the relevant Confirmation);
- (ii) "Delayed Publication or Announcement" *and* "Postponement" (with the Maximum Days of Disruption equal to two (2) Commodity Business Days);

- (iii) "Negotiated Fallback";
- (iv) "Dealer Fallback"; and
- (v) "No Fault Termination".

## **Part 7. Physically Settled Power Transactions**

### **(a) Power Transactions under this Agreement; Credit Support Documents**

(i) **Power Transactions.** The provisions of this Part 7 shall apply solely to transactions between the parties for the purchase or sale of a Product (as defined below) on a spot or forward basis or as an option to purchase, sell or transfer a Product (collectively, "Power Transactions"). All Power Transactions will be deemed to have been entered into in accordance with the terms of this Agreement and shall be Transactions for the purposes hereof. A subsequent agreement between the parties to settle a Power Transaction without involving a physical delivery of a Product shall not affect such Power Transaction's status as a Power Transaction under this Part 7. In the event of any inconsistency among or between the other provisions of this Agreement and this Part 7, this Part 7 will govern with respect to Power Transactions.

(ii) **Applicability to Outstanding Power Transactions.** If elected under clause (j) as being applicable: upon the effectiveness of this Part 7, all Power Transactions then outstanding ("Outstanding Power Transactions") shall be Transactions for purposes of this Agreement and shall be governed by and subject to the terms and conditions of, this Agreement. All confirmations evidencing such Outstanding Power Transactions shall constitute "Confirmations" within the meaning of this Agreement that supplement, form part of and are subject to this Agreement. If any Confirmation issued or entered into in respect of one or more Outstanding Power Transactions was issued or entered into pursuant to the terms of a master agreement or in a form that contains non-economic substantive provisions such as those relating to default and termination rights (such master agreement or the portion of such Confirmations containing such non-economic terms being referred to herein as the "Prior Master Agreement"), then the terms of the Schedule and the pre-printed form of this Agreement shall automatically supersede such Prior Master Agreement effective upon the execution of this Part 7.

(iii) **Credit Support Documents.** If elected under clause (j) as being applicable:

(A) **Outstanding Credit Support.** The parties agree that to the extent any collateral, margin, performance assurance or other similar form of credit support (such credit support, excluding guarantees, being referred to herein as "Outstanding Credit Support") is held by a party in connection with the obligations of the other party under Outstanding Power Transactions, such Outstanding Credit Support shall be deemed to have been delivered in respect of the obligations of the other party under Outstanding Power Transactions.

The parties further agree that with respect to any Outstanding Credit Support that (x) if the parties have entered into a Credit Support Document in connection with this Agreement that governs the provision of collateral, margin, performance assurance or other similar form of credit

support (such Credit Support Document, an "Existing ISDA Credit Support Document") then the Outstanding Credit Support shall be deemed to constitute credit support provided under such Existing ISDA Credit Support Document and such Existing ISDA Credit Support Document shall automatically supersede any agreement between the parties pursuant to which the Outstanding Credit Support was provided (the "Outstanding Credit Support Document") effective upon the execution of this Part 7 and (y) if the parties have not entered into an Existing ISDA Credit Support Document, then the Outstanding Credit Support Document constitutes a Credit Support Document with respect to the party that provided such credit support.

(B) *Amendments/Guaranties.* The parties agree that they will enter into such amendments to any Outstanding Credit Support Document as may be necessary to give effect to the terms of this clause (a)(iii). To the extent that a guaranty was delivered in connection with a party's obligations under Outstanding Power Transactions or a Prior Master Agreement, that party represents and warrants that any amendments necessary to ensure that the guaranty would extend to Transactions subject to this Agreement have been made prior to the effectiveness of this Part 7 and agrees (x) that such guaranty constitutes a Credit Support Document with respect to the obligations of such party and (y) the guarantor under such guaranty constitutes a Credit Support Provider with respect to the obligations of such party.

(b) **Obligations and Deliveries**

(i) *Seller's and Buyer's Obligations.* With respect to each Power Transaction, Seller shall sell and deliver, or cause to be delivered, the Quantity of the Product to the Delivery Point. Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point and shall pay Seller the Contract Price. However, with respect to options, the obligations set forth in the preceding two sentences shall only arise if the option is exercised in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

(ii) *Transmission and Scheduling.* Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the parties in the Power Transactions, or in the absence thereof, in accordance with the practice of Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

(iii) *Force Majeure.* To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under any Power Transaction and such party (the "Claiming Party") gives notice and details of the Force Majeure to the other party (the "non-Claiming Party") as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Power Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming 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. If the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement form, Section 5(b)(ii) of this Agreement shall not apply to any Power Transaction.

**(c) Remedies for Failure to Deliver or Receive; Limitation on Condition Precedent**

(i) ***Seller Failure.*** If Seller fails to Schedule and/or deliver all or part of the Product pursuant to a Power Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified in clause (j), within five (5) Local Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price (as defined below). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(ii) ***Buyer Failure.*** If Buyer fails to Schedule and/or receive all or part of the Product pursuant to a Power Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified in clause (j), within five (5) Local Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price (as defined below) from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(iii) ***Limitation on Condition Precedent.*** Section 2(a)(iii) of this Agreement is hereby amended by adding the following phrase at the end of clause (1) immediately before the last comma of such phrase:

"(provided, however, that in relation to any Transaction that is a Power Transaction, if an Event of Default or a Potential Event of Default has occurred and is continuing for longer than ten (10) NERC Business Days without an Early Termination Date being designated, then the condition specified in this clause (1) shall cease to be a condition precedent to the obligations under Section 2(a)(i))."

**(d) Payment**

(i) ***Billing Period.*** Unless otherwise specifically agreed upon by the parties, the calendar month shall be the standard period for all payments pursuant to any Power Transaction under this Agreement (other than (x) payments due as a result of the designation of an Early Termination Date; (y) any option premium payments; or (z) if "Accelerated Payment of Damages" is specified as being applicable, payments due pursuant to clauses (c)(i) and (c)(ii)). 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.

(ii) ***Timeliness of Payment.*** The parties shall designate which of the following two options shall apply with respect to the timing of when payment obligations are due in relation to Power Transactions:

Option A: Unless otherwise agreed by the parties, all invoices for payment pursuant to a Power Transaction shall be due and payable in accordance with each party's invoice instructions on or before the later of the fifth (5th) Local Business Day of each month, or the second (2nd) Local Business Day after receipt of the invoice.

Option B: Unless otherwise agreed by the parties, all invoices for payment pursuant to a Power Transaction shall be due and payable in accordance with each party's invoice instructions on or before the later of the twenty fifth (25th) day of each month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Local Business Day, then on the next Local Business Day.

Each party will make payments by Automated Clearinghouse Credit, 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 Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(iii) *Payment for Options.* The premium amount for the purchase of an option shall be paid within two (2) Local Business Days of receipt of an invoice from the option seller. Upon exercise of an option, payment for the Product underlying such option shall be due in accordance with the applicable provisions of clauses (d)(i) and (d)(ii).

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

(A) the party obligated to deliver the greater amount of Product will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Power Transactions, and

(B) the party owing the greater aggregate payment will pay the net difference owed between the parties.

Each single Power Transaction resulting under this clause shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Power Transaction occurs, outstanding obligations under the Offsetting Power Transactions which are satisfied by such offset shall terminate. For the purposes of this Part 7, "Offsetting Power Transaction" shall mean any two or more Power Transactions having the same or overlapping Delivery Period(s) (as specified in the Power Transaction), Delivery Point and payment date, where under one or more of such Power Transactions, one party is the Seller and under the other such Power Transaction(s) the same party is the Buyer.

(v) *Disputed Amounts.* If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party may pay only such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide explanation or supporting documentation acceptable in industry practice to support the amount paid or disputed. Notwithstanding any provision of this Agreement, in no event shall either Party be required to provide the other Party original books or records; copies thereof are sufficient. In

the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Part 7(d).

(vi) **Books and Records.** A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under this Power Annex. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to Gas Transactions under this Gas Annex. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two (2) years after the Month of Power delivery. All retroactive adjustments under this Part 7(d) shall be paid in full by the party owing payment within thirty (30) Days of notice and substantiation of such inaccuracy.

(e) **Limitation of Liability**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CLAUSE (e), THE FOLLOWING PROVISION SHALL APPLY SOLELY TO POWER TRANSACTIONS, AND NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTION 6 OF THIS AGREEMENT WITH RESPECT TO POWER TRANSACTIONS OR OTHERWISE. IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THIS PROVISION AND THE TERMS OF PART 5(k) OF THE MASTER AGREEMENT, THE TERMS OF THIS PROVISION SHALL CONTROL AND APPLY TO POWER TRANSACTIONS.**

**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, 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 A POWER TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. 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. 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 IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.**

**(f) Taxes**

**(i) Cooperation.** Each party shall use reasonable effort to implement the provisions of and to administer this Agreement insofar as it applies to Power Transactions in accordance with the intent of the parties to minimize all Taxes, so long as neither party is materially adversely affected by such efforts.

**(ii) Taxes.** Notwithstanding Section 2(d) of this Agreement, Seller shall pay or cause to be paid all Taxes imposed by any government authority on or with respect to the Product or a Power Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the Product or a Power Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a party to pay or be liable to pay any Taxes for which it is exempt under the law.

**(g) Title, Risk of Loss and Indemnity**

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

**(ii) Indemnity.** Each party shall indemnify, defend and hold harmless the other party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such party as provided for herein. Each party shall indemnify, defend and hold harmless the other party against any Taxes for which such party is responsible.

**(h) Miscellaneous**

**(i) Tariff.** Seller agrees to provide service to Buyer, and Buyer agrees to pay Seller for such service, in accordance with Seller's Tariff, if any, and the terms of this Agreement. Each party agrees that if it seeks to amend any Tariff during the term of this Agreement, such amendment will not in any way affect outstanding Power Transactions under this Agreement without the prior written consent of the other party. Each party further agrees that it will not

assert, or defend itself, on the basis that any applicable Tariff is inconsistent with this Agreement. For the purposes of this Part 7 "FERC" shall mean the Federal Energy Regulatory Commission. Each of the Party A FERC Electric Tariff and the Party B FERC Electric Tariff is referred to herein as a "Tariff" and collectively as the "Tariffs", which Tariffs, to the extent applicable as set forth in clause (j), are incorporated herein.

(ii) **Severability.** If elected under clause (j) as being applicable with respect to Power Transactions only, any provision of this Agreement declared or rendered unlawful by any applicable court or law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events being referred to herein as a "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement. The parties agree that if a Regulatory Event occurs, they will use their best efforts to reform this Agreement with respect to Power Transactions only to give effect to the original intention of the parties; provided, however, that nothing in this provision shall affect the enforceability of Sections 5 or 6 of this Agreement with respect to Power Transactions or otherwise. In the event of a conflict or inconsistency between the terms of this provision and the terms of Part 5(n) of the Master Agreement, the terms of Part 5(n) will control and apply.

(iii) Except as modified by this Power Annex, all terms and conditions of the Master Agreement shall remain in full force and effect. All capitalized terms used but not defined in this Amendment shall have the meaning specified in the Master Agreement.

(iii) **FERC Standard of Review; Certain Covenants and Waivers.** If elected under clause (j) as being applicable:

(A) Absent agreement of all parties to a proposed modification of this Agreement, the standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC's own motion or on behalf of a signatory or a non-signatory, shall be the "public interest" application of the "just and reasonable" 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) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S.Ct. 2733, 171 L.Ed.2d. 607 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm'n*, 558 U.S. 165 (2010).

(B) In addition, and notwithstanding the foregoing subsection (A), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the parties hereto, it being the express intent of the parties that, to the fullest extent permitted by applicable law, neither party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. 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 subsection (B) shall not apply, provided that, consistent with the foregoing subsection (A), neither party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (A).

**(i) Certain Modifications to this Agreement**

**(i) *Single Agreement: Section 1(c).*** With respect to all Power Transactions, the words "the Tariffs, if any" are hereby added immediately following "this Master Agreement" in Section 1(c) of this Agreement.

**(ii) *Events of Default: Sections 5(a)(i) and 5(a)(ii)(1).***

**(A)** With respect to all Power Transaction, the words "or delivery" are hereby deleted in Section 5(a)(i) of this Agreement.

**(B)** With respect to all Power Transaction, the words "(or to deliver or receive the Product, the exclusive remedy for which is provided in clause (c) of Part 7 of the Schedule)" are hereby added at the end of the parenthetical of Section 5(a)(ii) of this Agreement.

**(iii) *Effect of Designating an Early Termination Date: Section 6(c)(i).*** Section 6(c)(i) of this Agreement is hereby amended by adding the following phrase at the end of such section:

"(it being understood, that to the extent in the reasonable opinion of the Non-defaulting Party or the Non-Affected Party, as the case may be, any of the Terminated Transactions that are Power Transactions may not be liquidated and terminated under applicable law on the Early Termination Date, then such Terminated Transactions shall be liquidated and terminated as soon as thereafter as is reasonably practicable)".

**(iv) *Definitions: Section 14.*** Section 14 of this Agreement is hereby amended by adding the following definitions:

"Buyer" means the party to a Power Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in a Power Transaction.

"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.

"Contract Price" means the price in U.S. Dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in a Power Transaction.

"Delivery Point" means the point at which the Product will be delivered and received as specified in a Power Transaction.

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

**"NERC Business Day"** means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant party's place of business. The relevant party, in each instance unless otherwise specified, shall be the party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

**"Product"** means electric capacity, energy or other product(s) related thereto specified in a Power Transaction by reference to a Product listed in Schedule P, which is incorporated herein, or as otherwise specified by the parties in the Power Transaction. In addition to the Products set out in Schedule P, the Parties agree to use a product or service level defined by a different agreement (i.e., the WSPP Agreement, etc.) for a particular Power Transaction under this Agreement. If so, then the Power Transaction shall be subject to all the terms of this Agreement, except that (1) the product or service level definition, (2) force majeure, uncontrollable force definitions or other excuses for performance, (3) applicable regional reliability requirements and guidelines, and (4) other terms and conditions as mutually agreed in writing, shall have the meaning given to them in the different agreement or in the applicable confirmation.

**"Quantity"** means the quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, as specified in a Power Transaction.

**"Replacement Price"** means (A) the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point for delivery a replacement for any Product specified in a Power Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or absent a purchase, (B) the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties,

ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

"Sales Price" means (A) the price at which Seller, acting in a commercially reasonable manner, resells any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or absent a Sale, (B) the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such Product shall be deemed equal to zero (0); provided further that in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

"Schedule" or "Scheduling" means the action of Seller, Buyer and/or their designated representatives, including each party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

"Schedule P" means "Schedule P: Products and Related Definitions" to the Master Power Purchase & Sale Agreement published and modified from time to time by the Edison Electric Institute (the "EEI").

"Seller" means the party to a Power Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in a Power Transaction.

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

"West Firm" or "WSPPC-Firm" means with respect to a Transaction, a Product defined by the WSPP Agreement as amended, in Service Schedule C as Firm Capacity/Energy Sale or Exchange Service."

"WSPP Agreement" means the Western Systems Power Pool Agreement as amended from time to time.

**(j) Elective Provisions**



1. (a)(ii) ☒ Applicability of Part 7 to Outstanding Power Transactions. If not checked, not applicable.
2. (a)(iii) ☒ Applicability of Outstanding Credit Support held by a party in connection with Outstanding Power Transactions. If not checked, not applicable.
3. (c)(i) and (c)(ii) ☒ Accelerated Payment Damages. If not checked, not applicable.
4. (d)(ii): Timeliness of Payment  
                     Option A  
                     ☒ Option B

If neither is checked, Option B shall be deemed to apply.

5. (h)(i): Wholesale Power Tariffs

☒ Party A Electric Tariff.      Tariff/Date/Docket  
 Tariff: FERC Electric Rate      Dated: 6/1/98 as      Docket Number: ER 98-2491-00  
Schedule No. 1      amended

☒ Party B Electric Tariff.      Tariff/Date/Docket  
 Tariff:      Dated:      Docket Number:

If not checked, not applicable.

6. (h)(ii) ☒ Applicability of Severability provision. If not checked, not applicable.
7. (h)(iii) ☒ Applicability of FERC Standard of Review and Certain Covenants and Waivers. If not checked, not applicable."

**(k) Notice Information for Physical Transactions**

Party A – Consolidated Edison Energy, Inc.

All Notices:  
 Street: 100 Summit Lake Drive, Suite 410  
 City: Valhalla, NY Zip: 10595  
 Attn: Contract Administration  
 Phone: 914-993-2168  
 Facsimile: 914-613-1376  
 Duns: 048942564  
 Federal Tax ID Number: 13-3477918

**Confirmations:**

Attn: Confirmations Department  
 Phone: 914-993-2178  
 Facsimile No.: 914-993-2150

**Invoices:**

Attn: Commodity Operations  
 Phone: 914-993-2178  
 Facsimile: 914-993-2150

**Scheduling**

Attn: Manager of Scheduling  
Phone: 914-993-2110  
Facsimile: 914-993-2150

**Payments**

Attn: Accounts Payable  
Phone: 914-286-4524  
Facsimile: 914-993-2150

**Wire Transfer**

BNK: Mellon Bank  
ABA: [REDACTED]  
ACCT: [REDACTED]

**Credit and Collections**

Attn: Manager, Credit & Risk Management  
Phone: 914-993-2155  
Facsimile: 914-993-2150

**For additional Notices of an Event of Default or Potential Event of Default to:**

Attn: Vice President, Legal & Compliance  
Phone: 914-286-7083 Facsimile: 914-993-2150

**Party B -**

All Notices as set forth in Part 4 of the schedule are to be sent to the following:

Street:  
City: [REDACTED] State: [REDACTED] Zip: [REDACTED]

Attn:  
Phone:  
Facsimile:  
E-Mail:

Telex: [REDACTED] ID Number: [REDACTED]

**Confirmations**

Attn:  
Phone:  
Facsimile No:

**Invoices**

Attn:  
Phone:  
Facsimile:

**Option Exercise**

Attn:  
Phone:  
Facsimile:

**Scheduling**

Attn:  
Phone:  
Facsimile:

**Payments**

Attn:  
Phone:  
Facsimile:

**Wire Transfer**

BNK: Wells Fargo Bank  
ABA: [REDACTED]  
ACCT: [REDACTED]

Other Details: Ref. Central Hudson Gas & Electric  
Credit and Collections:  
Attn:  
Phone:  
Facsimile:  
With additional Notices of an Event of Default or Potential Event  
of Default to Same as set forth in Part 4 of the Schedule unless  
otherwise set forth below:  
Attn:  
Phone:  
Facsimile:

### **Part 8 Physically Settled Gas Transactions**

#### **(a) Physical Gas Transactions under this Agreement**

(i) ***Physical Gas Transactions under this Agreement.*** The provisions of this Part 8 ("***Gas Annex***") shall apply solely to transactions between the parties for the purchase or sale of physical Gas with delivery points in North America on a Firm or Interruptible basis on a spot or forward basis or as an option to purchase or sell Gas (collectively, "***Gas Transactions***"). All Gas Transactions will be deemed to have been entered into in accordance with the terms of this Agreement and shall be Transactions for all purposes of this Agreement. A subsequent agreement between the parties to settle a Gas Transaction without involving a physical delivery of Gas shall not affect such Gas Transaction's status as a Gas Transaction under this Gas Annex. In the event of any inconsistency among or between the other provisions of this Agreement and this Gas Annex, this Gas Annex will govern with respect to Gas Transactions. In the event of any inconsistency between the Confirmation for a Gas Transaction and this Gas Annex, the Confirmation will govern with respect to such Gas Transaction, except as provided in clause (a)(ii) with respect to Outstanding Gas Transactions.

(ii) ***Applicability to Outstanding Gas Transactions.*** Gas Transactions executed by the parties prior to the effectiveness of this Gas Annex and selected under clause (i)(1) ("***Outstanding Gas Transactions***") shall be Transactions and shall be subject to the terms and conditions of this Agreement upon effectiveness of this Gas Annex, unless otherwise agreed in writing by the parties with respect to one or more specific Outstanding Gas Transactions. All confirmations evidencing such Outstanding Gas Transactions shall constitute "***Confirmations***" within the meaning of this Agreement that supplement, form part of and are subject to this Agreement. If any confirmation issued or entered into with respect to one or more Outstanding Gas Transactions pursuant to the terms of a master agreement or in a form that contains provisions that are not directly related to the commercial terms of the Transaction and that are inconsistent with or duplicative of the terms and conditions of this Agreement (such master agreement or the portion of such Confirmation containing such non-commercial terms being referred to herein as the "***Prior Master Agreement***"), then, notwithstanding any provision of this Agreement to the contrary, the terms of the Schedule and the pre-printed form of this Agreement shall automatically supersede such Prior Master Agreement effective upon the effectiveness of this Gas Annex.

**(b) Performance Obligation**

- (i) Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular Gas Transaction in accordance with the terms of this Gas Annex. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a Gas Transaction.
- (ii) **Spot Price Standard:** The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this clause (b)(ii), but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in clause (c)(iii) of this Gas Annex. The amount of such unfavorable difference shall be payable five Local Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.
- (iii) Notwithstanding clause (b)(ii) of this Gas Annex, the parties may agree to Alternative Damages in a Confirmation executed in writing by both parties.

**(c) Transportation, Nominations and Imbalances**

- (i) Seller shall have the sole responsibility for transporting the Gas to the Delivery Point. Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point to the Facility.
- (ii) The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior notice, sufficient to meet the requirements of all Transporter(s) involved in the Gas Transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party. The Parties promptly shall notify each other as soon as possible of any imbalance that is occurring or has occurred and shall cooperate in a commercially reasonable manner to eliminate imbalances and minimize Imbalance Charges to the extent possible.
- (iii) The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such

Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer. "Unpaid Amounts" as defined in Section 14 of this Agreement shall include unpaid Imbalance Charges, if any. The Parties promptly shall notify each other as soon as possible of any imbalance that is occurring or has occurred and shall cooperate in a commercially reasonable manner to eliminate imbalances and minimize Imbalance Charges to the extent possible.

**(d) Quality and Measurement**

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of Gas Transactions shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

**(e) Taxes**

(i) **Cooperation.** Each party shall use reasonable effort to implement the provisions of and to administer this Agreement insofar as it applies to sales of Gas in accordance with the intent of the parties to minimize all Taxes, so long as neither party is materially adversely affected by such efforts.

(ii) **Seller Pays Before and At Delivery Point.** Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("**Taxes**") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). Taxes payable under this Gas Annex specifically exclude Buyer's and Seller's federal, state and local income taxes. If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

**(f) Billing, Payment and Audit**

(i) Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available. The premium amount for the purchase of an option shall be paid within two (2) Business Days of the Gas Transaction trade date.

(ii) Subject to clause (f)(iv) of this Gas Annex, Buyer shall remit the amount due under clause (f)(i) of this Gas Annex, by Automated Clearinghouse Credit, or by other mutually agreeable method(s), to the account specified from time to time by Seller, on or before the Payment Date elected in clause (1)(5) of this Gas Annex. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this clause (f)(ii).

(iii) If a party is liable for damages under Section (b)(ii) or (b)(iii) (the "Non-Performing Party"), the other party (the "Performing Party") may accelerate the payment related to the non-performance by sending to the Non-Performing Party an invoice (an "Accelerated Payment Invoice") for such amount setting forth the calculation thereof and a statement that pursuant to this Section (f)(iii), such amount is due in five (5) Business Days. If the Performing Party does not deliver an Accelerated Payment Invoice, amounts payable pursuant to Section (b)(ii) shall be invoiced and payable in accordance with Sections (f)(i) and (f)(ii). Netting shall not apply to any accelerated payment obligation; provided, however, that the party due payment under an Accelerated Payment Invoice may net all sums due thereunder against any amounts payable by it when making payments under Section (f). Notwithstanding Section (f)(ii), the Non-Performing Party shall pay when invoiced any undisputed amounts regarding any payment required to be made under this Section (f)(iii), subject to payment of any amounts underpaid with interest at the rate provided in Section 2(e) of the Agreement in the event that the dispute is resolved in favor of the Performing Party.

(iv) If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party may pay only such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide explanation or supporting documentation acceptable in industry practice to support the amount paid or disputed. Notwithstanding any provision of this Agreement, in no event shall either Party be required to provide the other Party original books or records; copies thereof are sufficient. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this clause (f).

(v) A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under this Gas Annex. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to Gas Transactions under this Gas Annex. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two (2) years after the Month of Gas delivery. All retroactive adjustments under clause (f) of this Gas Annex shall be paid in full by the party owing payment within thirty (30) Days of notice and substantiation of such inaccuracy.

**(g) Title, Warranty and Indemnity**

(i) Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas at and after its delivery to Buyer at the Delivery Point(s).

- (ii) In the event Seller owned title to Gas under a Transaction outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.
- (iii) Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS CLAUSE (g)(ii), ALL OTHER WARRANTIES WITH RESPECT TO GAS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.
- (iv) Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all third parties, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all third parties, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.
- (v) Notwithstanding the other provisions of this clause (g) of this Gas Annex, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of clause (d) of this Gas Annex.

(h) **Force Majeure**

- (i) Except with regard to a party's obligation to make payment(s) due under clause (f) of this Gas Annex, Section 6 (e) of this Agreement and Imbalance Charges under clause (c)(iii) of this Gas Annex, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in clause (h)(ii) of this Gas Annex.
- (ii) Force Majeure shall include, but not be limited to, the following: (A) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (B) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (C) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (D) acts such as terrorist attacks, strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (E) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse

impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. However, if an event or occurrence of Force Majeure is expected and or anticipated to last at least fifty (50%) of the term of the Gas Transaction, then both parties agree that the party not claiming Force Majeure shall have the right to terminate the Gas Transaction.

- (iii) Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (A) the loss, interruption or curtailment of interruptible or secondary Firm transportation, on any transporter necessary to effect receipt or delivery of Gas hereunder unless primary, in-path, Firm transportation is also lost, interrupted, or curtailed, and then only to the extent of such loss, interruption or curtailment on the affected pipeline segment; (B) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (C) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (D) the loss of Buyer's market(s) or Buyer's inability, economically or otherwise, to use or resell Gas purchased hereunder, except, in either case, as provided in clause (h)(ii) of this Gas Annex; (E) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in clause (h)(ii) of this Gas Annex or (F) interruption of specific supply or markets at "pooling points" or "hubs" without (i) the hub or pooling point operator claiming Force Majeure, or (ii) Gas Daily reporting less than two (2) Gas Transactions at that pooling point during the claimed Force Majeure event. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.
- (iv) Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.
- (v) The party whose performance is prevented by Force Majeure must provide notice to the other party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.
- (vi) Notwithstanding clauses (h)(ii) and (h)(iii) of this Gas Annex, the parties may agree to alternative Force Majeure provisions in a Confirmation executed in writing by both parties.
- (vii) The party claiming Force Majeure as an excuse for performance shall provide the other party a good faith estimate of the duration of the Force Majeure so that the other party may make alternative arrangements and shall provide the other party



documentation of proof of the cause for Force Majeure (if such proof is reasonably available).

(i) **Limitation of Liability**

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER 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 A GAS TRANSACTION, A PARTY'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, EXCEPT TO THE EXTENT CAUSED BY SUCH PARTY'S FRAUD OR WILLFUL MISCONDUCT. 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 SPECIFIED, 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. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT PARTY A WILL LOOK SOLELY TO THE ASSETS UNDER THE CONTROL OF PARTY B PURSUANT TO THE RECEIVERSHIP ORDER INCLUDING, BUT NOT LIMITED TO, ANY CASH OR ASSETS AND LINES OF CREDIT AND ANY CREDIT SUPPORT FOR PAYMENT OF ALL AMOUNTS PAYABLE BY PARTY B HEREUNDER AND FOR THE SATISFACTION OF ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES, COSTS OR EXPENSES OF PARTY B ARISING OUT OF OR RELATING HERETO AND THAT PARTY B SHALL NOT BE PERSONALLY LIABLE FOR THE PAYMENT OF AMOUNTS OWED BY PARTY B HEREUNDER.

(j) **Certain Amendments to this Agreement for Gas Transactions**

- (i) *Section 5(a)(i).* With respect to all Gas Transactions, the words "or delivery under Section 2(a)(i) or 2(e)" in the second line of Section 5(a)(i) of this Agreement are hereby deleted.
- (ii) *Section 5(a)(ii).* With respect to all Gas Transactions, the words "or delivery under Section 2(a)(i) or 2(e)" in the second line of Section 5(a)(ii) are hereby deleted and the words "or to deliver or receive Gas, the exclusive remedy for which is provided in

clause (b)(ii) of the Gas Annex to the Schedule" are hereby added at the end of the parenthetical of Section 5(a)(ii).

(iii) *Section 6(e)(i)*. With respect to all Gas Transactions, the following provision shall apply in lieu of Section 6(e)(i) of this Agreement:

As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under clause (b)(ii) of this Gas Annex), for which payment has not yet been made by the party that owes such payment under this Agreement and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this clause (j) of this Gas Annex, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

(k) **Definitions.** For purposes of this Gas Annex, the following definitions apply:

(i) **"Alternative Damages"** shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the

event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

- (ii) **"British thermal unit"** or **"Btu"** shall mean the International BTU, which is also called the Btu (IT).
- (iii) **"Buyer"** shall mean the party receiving Gas under a Gas Transaction.
- (iv) **"Contract Price"** shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a Gas Transaction.
- (v) **"Contract Quantity"** shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a Gas Transaction.
- (vi) **"Cover Standard"** shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Gas Annex, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- (vii) **"Day"** shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- (viii) **"Delivery Period"** shall be the period during which deliveries are to be made as agreed to by the parties in a Gas Transaction.
- (ix) **"Delivery Point"** means, except as otherwise specified in a Gas Transaction, the outlet flange of meter number 093 on the interstate pipeline facilities of Algonquin Gas Transmission Company ("AGT"), where AGT's facilities interconnect with the natural gas intake facilities owned by Party B located at or near the Facility.
- (x) **"EFP"** shall mean, when used in a Confirmation of a Gas Transaction, the purchase, sale or exchange of Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the U.S. Commodity Exchange Act (7 U.S. Code 1, as amended).
- (xi) **"Facility"** means a single, dual-fueled General Electric 6B gas turbine operating in combined cycle with a Nooter Eriksen heat recovery steam generator with duct-firing capability, and a single ABB Vax steam turbine generator, with a 68 MW (winter max) and 62 MW (summer max) capacity, located in Dartmouth, Massachusetts.
- (xii) **"Firm"** shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure;

provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in clause (c)(iii) of this Gas Annex related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

- (xiii) "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- (xiv) "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- (xv) "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in clause (c)(iii) of this Gas Annex related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- (xvi) "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- (xvii) "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- (xviii) "Payment Date" shall mean the payment date for Gas Transactions under this Gas Annex, as specified in clause (l) of this Gas Annex.
- (xix) "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- (xx) "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- (xxi) "Seller" means the party delivering Gas under a Gas Transaction.
- (xxii) "Spot Price" as referred to in clause (b)(ii) of this Gas Annex shall mean the price published as the Spot Price Index for the relevant Day, provided, if there is no single price published as the Spot Price Index for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

(xxiii) "**Spot Price Index**" shall mean, with respect to a Gas Transaction, unless otherwise specified in the Confirmation for that Transaction, the "Daily Midpoint" price set forth in Gas Daily (published by Platts), or any successor publication, in the column "Daily Price Survey" under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day or, if an alternative index or price is specified in clause (1)(6) below, such alternative index or price.

(xxiv) "**Transporter(s)**" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Gas Transaction.

(l) **Elective Provisions**

**Outstanding Gas Transactions.** This Gas Annex shall apply to the following pre-existing Gas Transactions pursuant to clause (a)(ii): None.

**Payment Date**

The Payment Date shall be the later of the twenty-fifth (25<sup>th</sup>) Day of Month following Month of delivery and ten (10) Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

(m) Notices for Gas Transactions

**PARTY A: Consolidated Edison Energy, Inc.**

**Invoices:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Nominations:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Confirmations:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

☐ Wire Transfer - or - ☒ ACH (check one box):

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Bank: Mellon Bank  
ABA: \_\_\_\_\_  
Account: \_\_\_\_\_  
Other: Con Edison Energy,  
Details: Inc.

**PARTY B:**

**Invoices:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Nominations:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Confirmations:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

☐ Wire Transfer - or - ☒ ACH (check one box):

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Bank: Wells Fargo Bank NA  
ABA: \_\_\_\_\_  
Account: \_\_\_\_\_  
Other: Ref: Central Hudson  
Details: \_\_\_\_\_

(n) **Other Provisions/Modifications to this Gas Annex.**

(i) The following shall be added at the end of Section (m):

**PARTY A: Consolidated Edison Energy, Inc.**

**Notices:**

To: 100 Summit Lake Dr. Suite 210  
Valhalla, NY 10547  
Attn: Contract Administration

Phone: 914-993-2168

Facsimile: 914-993-2150

**Credit and Collections:**

Attn: Manager, Credit & Risk  
Management

Phone: 914-993-2155

Facsimile: 914-993-2150

**Tax:**

Attn: [same as above] Attn:

Phone: Phone:

Facsimile: Facsimile:

**PARTY B:**

Notices: As set forth in Part 4

To:

Phone:

Facsimile:

**Credit and Collections:**

Attn:

Phone:

Facsimile:

Tax:

**PARTY A: Consolidated Edison Energy, Inc.**

**Additional Information:**

Federal ID Number: 13-3977918

Duns #: 048942564

Category: Marketer

State of Incorporation: New York

**PARTY B:**

**Additional Information:**

Federal ID Number: 14-0555980

## **ISDA North American Gas Annex Other Provisions/Modifications**

- (i) **Events of Default.** Section 5(a) of the Master Agreement is amended to the extent of inserting the following new subsection:

"(ix) In addition to the remedies provided pursuant to the Gas Annex, if Seller or Buyer breaches a Firm obligation to deliver or receive Gas for a period of (i) three (3) consecutive Days or (ii) five (5) or more cumulative Days in any thirty (30) day period, under any one (1) transaction, and such breach is not excused due to an event of Force Majeure or by the other party's failure to perform, then an Event of Default shall have occurred with respect to the defaulting party and the non-defaulting party shall have the right to suspend its performance under any or all transactions and to terminate and liquidate any or all transactions under this Agreement, in addition to any and all remedies available hereunder."

- (ii) **Market Quotation.** The definition of "Market Quotation" in Section 14 of the Master Agreement is amended to the extent of inserting the following at the end thereof:

"With respect to Gas Transactions only, the party making the determination may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. The rate of interest used in calculating net present value shall be determined by the determining party in a commercially reasonable manner."



IN WITNESS WHEREOF, the parties have executed this Schedule as of the date first written above.

**CONSOLIDATED EDISON ENERGY, CENTRAL HUDSON GAS & ELECTRIC  
INC.**

By: *Thomas DiCapua*  
Name: Thomas DiCapua  
Title: Managing Director  
Date: April 16, 2018

By: *Christopher Capone*  
Name: CHRISTOPHER CAPONE  
Title: CEO  
Date: 4-5-18

EXHIBIT A  
EXHIBIT B

ISDA CREDIT SUPPORT ANNEX, including Paragraph 13 thereto  
FORM OF GUARANTY (FROM PARTY A'S CREDIT SUPPORT

# Request for Taxpayer Identification Number and Certification

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type.  
See specific instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Central Hudson Gas & Electric Corporation

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=Corporation, S=S corporation, P=Partnership) ▶

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities; not individuals; see instructions on page 3):

Exempt pays code (if any) ▶

Exemption from FATCA reporting code (if any) ▶

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

284 South Ave

Requester's name and address (optional)

6 City, state, and ZIP code

Poughkeepsie, NY 12601

7 List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

1 4 - 0 5 5 5 9 8 0

or

Employer identification number

1 4 - 0 5 5 5 9 8 0

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ▶

*Cheryl Geschwind*

Date ▶ 1/9/18

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.



**CONSOLIDATED EDISON ENERGY, INC.**

**SECRETARY'S CERTIFICATE**

I, Paul F. Mapelli, do hereby certify that I am the Secretary of Consolidated Edison Energy, Inc. (the "Company").

I further certify that pursuant to the Company's Delegation of Authorities policy, in effect as of the date hereof, the Managing Director of the Company is authorized to execute commodity contracts on behalf of the Company.

I further certify that the following person is, and has been at all times since a date prior to the date hereof, duly elected or appointed to the office set forth opposite his name, and that the signature of such person set forth opposite his name and title is his true and genuine signature.

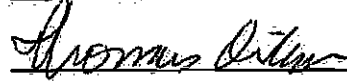
Name

Title

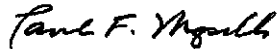
Signature

Thomas DiCapua

Managing Director



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company this 9th day of April, 2018.



Paul F. Mapelli  
Secretary

## Request for Taxpayer Identification Number and Certification

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the  
requester. Do not  
send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

**Consolidated Edison Energy, Inc.**

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ►

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ►

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) **5**

Exemption from FATCA reporting code (if any)

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

**100 Summit Lake Drive, Suite 210**

6 City, state, and ZIP code

**Valhalla, NY 10595**

7 List account number(s) here (optional)

Requester's name and address (optional)

Print or type.  
See Specific Instructions on page 3.

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see What Name and Number To Give the Requester for guidelines on whose number to enter.

Social security number

- -

or

Employer identification number

1 3 - 3 9 7 7 9 1 8

### Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign  
Here

Signature of  
U.S. person ►

Date ►

1/19/18

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (Interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

**a. Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note: ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

**b. Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

**c. Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

**d. Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

**e. Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual	Individual/sole proprietor or single-member LLC
• Sole proprietorship, or	
• Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	
• LLC treated as a partnership for U.S. federal tax purposes,	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or	
• LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	
• Partnership	Partnership
• Trust/estate	Trust/estate

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its Instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.



**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor <sup>4</sup>
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

**\*Note:** The grantor also must provide a Form W-9 to trustee of trust.

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/identitytheft](http://www.irs.gov/identitytheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

## TWELFTH AMENDMENT TO PARENT GUARANTY AGREEMENT

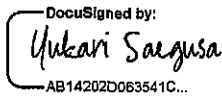

April 10, 2018

To: Central Hudson Gas & Electric Corporation

The Parent Guaranty Agreement from Consolidated Edison, Inc. to Central Hudson Gas & Electric Corporation on behalf of Consolidated Edison Energy, Inc. dated December 7, 2004, as amended by the First Amendment to Payment Guarantee dated December 15, 2005, the Second Amendment to Parent Guaranty Agreement dated December 12, 2006, the Third Amendment to Parent Guaranty Agreement dated December 17, 2007, the Fourth Amendment to Parent Guaranty Agreement dated December 16, 2008, the Fifth Amendment to Parent Guaranty Agreement dated December 16, 2009, the Sixth Amendment to Parent Guaranty Agreement dated December 15, 2010, the Seventh Amendment to Parent Guaranty Agreement dated December 3, 2012, the Eighth Amendment to Parent Guaranty Agreement dated August 14, 2013, the Ninth Amendment to Parent Guaranty Agreement dated December 1, 2015, the Tenth Amendment to Parent Guaranty Agreement dated November 30, 2016, and the Eleventh Amendment to Parent Guaranty Agreement dated November 15, 2017 (as amended, the "Guaranty") is hereby further amended, effective as of the date hereof, to the extent of deleting the clause therein that states, "to the extent of \$1,000,000 (ONE MILLION DOLLARS) (the "Guaranty Limit")" and substituting the following in its place: "to the extent of \$8,000,000 (EIGHT MILLION DOLLARS) (the Guaranty Limit)".

All other terms and conditions of the Guaranty remain unchanged and shall continue in full force and effect.

**CONSOLIDATED EDISON, INC.**

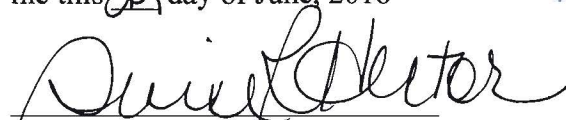
By:    
Yukari Saegusa  
Vice President and Treasurer

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF DUTCHESS)

ANTHONY S. CAMPAGIORNI, being duly sworn, deposes and says that he is the Vice President - Regulatory and Governmental Affairs of the Central Hudson Gas & Electric Corporation and that he has compared the preceding copy with the original contract (on file in the office) between Central Hudson Gas & Electric Corporation and Consolidated Edison Energy, Inc., and he does hereby certify that the same is a correct transcript therefrom and of the whole thereof.

  
\_\_\_\_\_  
Vice President - Regulatory & Governmental Affairs

Subscribed and sworn to before  
me this 22 day of June, 2018

  
\_\_\_\_\_  
Notary Public

DENISE R HECTOR  
Notary Public - State of New York  
No. 01HE6365899  
Qualified In Dutchess County  
My Commission Expires 10/16/2021

