

AGREEMENT

This Agreement ("Agreement") contains certain supplemental terms and conditions governing the supply of electricity to the [CUSTOMER NAME] ("Customer") by the Power Authority of the State of New York ("NYPA") (and, together with the Customer, the "Parties") under the Application for Service between NYPA and the Customer dated [insert date] ("Application for Service"). This Agreement shall be effective as of the date of execution by the Customer and NYPA below ("Effective Date") and, subject to Article XVIII, supersedes and replaces the agreement dated _____, [1995 or 1996] between the Customer and NYPA containing certain supplemental terms and conditions.

By executing this Agreement, the Customer agrees, subject to the specific provisions hereof: (a) to be a full-requirements electricity customer of NYPA for the period ending December 31, 2017, and (b) to support and pay for its share of NYPA's supply portfolio dedicated to the governmental customers in the metropolitan area of the City of New York, as listed in Attachment A hereto (the "NYC Governmental Customers") including the supply portfolio resulting from NYPA's Request for Proposals No. 3 issued on June 4, 2004 ("RFP 3") and any future supply portfolio decisions that are the result of a collaborative process similar to the RFP 3 process and to which the NYC Governmental Customers have consented pursuant to Article XI hereof.

I. 2005 Rates

Production charges in NYPA's Service Tariff No. [___] (General Provision C) are revised beginning with the January 2005 billing cycle to reflect negotiated rates for 2005 designed to produce \$105 million in new revenues from NYC Governmental Customers. The rates for 2005 will be fixed and not subject to the Energy Charge Adjustment ("ECA") except for the Stabilized ECA already in place through December 31, 2005 as set forth in the applicable Service Tariff and which consists of costs for Decontamination and Decommissioning for Indian Point 3 and Demand Side Management. These negotiated 2005 rates reflect, *inter alia*, adoption of comments filed during NYPA's proceeding concerning the 2005 rates that Debt Service for the Poletti Steam Unit will be amortized through 2013, and that such

amortization should be recognized in future rate revisions implemented in accordance with Article II below.

II. Annual Planning and Pricing Process For Rate Years 2006 and Thereafter

A. Overview

NYPA and the NYC Governmental Customers agree to undertake a joint Annual Planning and Pricing Process ("Annual Process") pursuant to this Article II that will include analyses of Fixed and Variable Costs (defined below), future energy and fuel market risks, development of alternative market risk hedging strategies, submission of load forecasts and supply resource planning. Each year prior to the beginning of a calendar Rate Year ("Rate Year") this Annual Process will lead to the setting of rates for the NYC Governmental Customers for the forthcoming Rate Year. NYPA's Fixed and Variable Costs will be recovered through the following mechanisms as determined during the Annual Process, all of which are described in detail in this Article:

1. *Fixed and Variable Costs:* Fixed Costs will be established based on Cost of Service ("COS") principles and may be changed only in formal State Administrative Procedure Act ("SAPA") proceedings and Variable Costs will be based on a projected COS which shall be provided by NYPA each year in the Annual Process.
2. *Cost Recovery Mechanisms:* NYC Governmental Customers will choose one from among various cost recovery mechanisms to be employed by NYPA for the Rate Year to manage risk to the level desired by NYC Governmental Customers. Certain of these mechanisms will be subject to the Sharing Plan as described in detail below ("Sharing Options"). The Energy Charge Adjustment ("ECA") Option and the ECA with Hedging Option, all described below, are not subject to the Sharing Plan. The Minimum Price Volatility Option, which is also not subject to the Sharing Plan, may be selected, at the earliest, during the 2007 Annual Process to be effective beginning with the 2008 Rate Year.
3. *Sharing Plan:* The Sharing Plan shall be based upon the Base Variable Costs, as defined below, using the COS for the applicable Rate Year. Under the Sharing Plan, if, with respect to service during such Rate Year, Variable Costs incurred by NYPA (including Hedging Costs, as defined below) to serve the NYC Governmental Customers exceed the Base Variable Costs defined below (including Hedging Costs),

- then the positive difference shall be shared 50/50 by NYPA and the NYC Governmental Customers provided, however, that (i) the exposure of the NYC Governmental Customers shall be capped at \$30 million of additional charges with respect to service in any Rate Year that the Sharing Plan is in effect; and (ii) NYPA shall bear all responsibility for all such costs over a total of \$60 million. If, with respect to service during an applicable Rate Year, Variable Costs incurred by NYPA to serve the NYC Governmental Customers are less than the Base Variable Costs (plus Hedging Costs), all such savings shall be shared 50/50 between NYPA and the NYC Governmental Customers, provided that the first \$10 million of any such savings accumulated during the term of this Agreement shall be credited to the NYC Governmental Customers, with no sharing by NYPA. The annual pricing adjustment mechanism set forth in Article III shall be utilized to charge or credit the Customer.
4. *Hedging Costs*: Hedging Costs are all the costs of managing risk associated with the cost of reducing price volatility associated with fuel, purchased power and other variable costs using various techniques including, but not limited to, forward physical purchases (of *e.g.*, fuel & gas transportation and energy), contracts for differences, options, caps, collars, Over the Counter ("OTC") gas and basis swaps or NYMEX futures contracts, including any associated transaction fees.

B. *Cost of Service Based Rate Changes*

1. *Fixed and Variable Costs*: Cost of Service-based rates will consist of Fixed Costs and Variable Costs, determined as follows:
- a. Fixed Costs will be included as part of NYPA's annual COS documentation provided to the NYC Governmental Customers, and will include the costs shown on Attachment B. Additions to the cost categories shown in Attachment B, such as other costs not included within the Variable Costs below, must be justified as reasonably incurred to provide service to the NYC Governmental Customers. Fixed Costs will include only those costs justified on the basis of cost causation principles and shall be set consistent with accepted regulatory COS methodologies. Fixed Costs will be included in the Annual Target Amount established in Article III.B.1 and can be changed only through a rate case filing in accordance with SAPA.

- b. Variable Costs will be included as part of NYPA's annual COS documentation provided to the NYC Governmental Customers, and are comprised of the expected cost of fuel, purchased power, an O&M Reserve (defined below in this subsection), ancillary services and other NYISO-related charges and Hedging Costs incurred by NYPA to serve the NYC Governmental Customers, including the Hedging Costs associated with any Sharing Option or ECA with Hedging Option. All NYISO capacity, energy, ancillary service and reliability-related revenues generated by resources dedicated to serving NYC Governmental Customers (including 250MW of Blenheim-Gilboa, Poletti (until its retirement from service), the 500MW Combined Cycle Plant, small hydro, RFP 3 resources and any other production resources that are added to the supply portfolio as a result of a collaborative process similar to the RFP 3 process), as well as any other NYISO credits or revenues received by NYPA and associated with providing service to the NYC Governmental Customers (*e.g.*, as a generator or a load serving entity), including Transmission Congestion Credits and rents associated with transmission paths dedicated to serving the NYC Governmental Customers, shall be credited to the Variable Costs. Notwithstanding which, if any, cost recovery mechanism is selected by the NYC Governmental Customers under Article II.C.3 below, NYPA will continue to purchase fuel in the normal course of business to manage fuel costs and reduce fuel price volatility by taking advantage of long-term market efficiencies and lower price volatility in order to achieve more stable and predictable rates for a portion of the requirements. The costs of this program, as they relate to providing service to the NYC Governmental Customers, will be included annually in NYPA's Variable Costs.
- c. Base Variable Costs are the Variable Costs projected by NYPA during the Annual Process to be incurred during the Rate Year. The Base Variable Costs will be included in the Annual Target Amount established in Article III.B.1 and will be subject to the following:
- (i) Base Variable Costs will include the Hedging Costs associated with any Sharing Option or ECA with Hedging Option selected by the NYC Governmental Customers pursuant to Article II.C.4 below.

- (ii) An O&M Reserve will also be included in the Base Variable Costs and be set at five percent (5%) of the non-fuel O&M amount contained in the COS. Such reserve may be used by NYPA to pay for any extraordinary non-fuel O&M expenditures not reasonably anticipated when the Fixed Costs for the particular year were determined. To the extent that the O&M Reserve is drawn down in any Rate Year, it will be replenished in Base Variable Costs as part of the COS for the succeeding year, but only to the extent necessary to meet the five percent (5%) of the non-fuel O&M amount, and provided that the deficiency is due to the permitted utilization of such reserve.
- (iii) Base Variable Costs shall be modified annually based on the COS. The Base Variable Costs shall be subject to Customer review and comment with respect to any Sharing Option, the ECA Option or any ECA with Hedging Option as part of the Annual Process. Throughout this process, NYPA will promptly provide the NYC Governmental Customers access to historical information and the methodology, input and assumptions and results of the forecasting model, and the analyses that support the projected costs and also respond promptly to reasonable requests by the Governmental Customers for information supporting the projected charges. NYPA will consider such comments in its determination of Base Variable Costs for purposes of setting the Annual Target Amount. The NYC Governmental Customers reserve their rights with respect to the setting of Base Variable Costs.

2. *Rate Case Filings Required to Change Fixed Costs:* Fixed Costs will be set on the basis of COS principles in the context of a rate case filing. With respect to any Rate Year, NYPA may unilaterally institute, or if Fixed Costs for the upcoming Rate Year are projected by NYPA to be lower than the current year's Fixed Costs by three percent (3%) or more, the NYC Governmental Customers may require NYPA to institute, a rate case filing to modify Fixed Costs. The NYC Governmental Customers shall give notice to NYPA not later than thirty (30) days of receipt of the annual COS of the year preceding the applicable Rate Year that they request NYPA to institute the rate case filing for modification of the Fixed Costs. Except in the case of an Emergency Action, any SAPA filing to modify the NYC Governmental

Customer rates shall be preceded by the provision to such Customers on or before May 15th of the preceding calendar year, of historical and pro forma (*i.e.* projected Rate Year) COS studies. Throughout this process, NYPA will promptly provide the NYC Governmental Customers access to historical information and the methodology, input and assumptions and results of the forecasting model, and the analyses that support the projected costs and also respond promptly to reasonable requests by the Governmental Customers for information supporting the projected charges. At least thirty (30) days prior to its initial SAPA filing NYPA will hold a confidential meeting or meetings where the NYC Governmental Customers can voice their concerns with the projected costs and/or the data underlying them to NYPA staff. NYPA will consider such concerns before projected rates are finalized or presented to NYPA's Trustees or issued for public comment. The NYC Governmental Customers reserve their rights with respect to the setting of Fixed Costs.

C. *Cost Recovery Mechanisms*

In accordance with the process described below, each year the NYC Governmental Customers shall have the right to select a cost recovery mechanism to be implemented during the following Rate Year.

1. *Rate Years 2006 and 2007:* For Rate Years 2006 and 2007, the NYC Governmental Customers may propose and NYPA will offer the ECA Option and up to three (3) additional cost recovery mechanisms selected from the following categories: (i) ECA with Hedging Options, or (ii) Sharing Options, each as described below.
2. *Rate Years 2008 and Rate Years Thereafter:* Beginning in the 2007 Annual Process for Rate Year 2008 and each year thereafter the NYC Governmental Customers may propose and NYPA will offer the ECA Option and up to three (3) additional cost recovery mechanisms selected from the following categories: (i) ECA with Hedging Options, (ii) Sharing Options, or (iii) the Minimum Price Volatility Option, each as described below.
3. Until the right of each NYC Governmental Customer to elect a cost recovery mechanism on an individual basis is implemented, as set forth in Article II.D.4, NYPA will afford the NYC Governmental Customers the opportunity to choose

collectively, pursuant to Article V hereof, only one cost recovery mechanism from among those proposed during the Annual Process for each Rate Year.

4. *Mechanisms*

- a. Sharing Options: Sharing Options may be proposed on an annual basis by the NYC Governmental Customers in accordance with the process set forth below. The Sharing Options will be developed through a consultative process with the NYC Governmental Customers to address those variable costs that are volatile and hedgeable, as set forth below. Such options may include caps, collars or other risk management techniques and, if appropriate, shall specify value at risk levels, confidence levels, volatility bands and other parameters for each hedging option. The risk management strategies shall be designed to capture potential volatility in variable fuel, purchased power, ancillary services and other NYISO-related costs and off-setting revenues. The Hedging Costs of any Sharing Option ultimately selected will be assigned to Base Variable Costs, as defined below, in the annual COS and used to determine the revised rates for the upcoming calendar year. Any Sharing Option shall be subject to the Sharing Plan and the annual pricing adjustment mechanism as described in Article III.
- b. Default Option: The Default Option is a risk management alternative proposed by NYPA, which may be one of the proposed Sharing Options or may be an additional risk management alternative, but shall be subject to the Sharing Plan and the annual pricing adjustment mechanism as described in Article III. The Hedging Costs of the Default Option, if implemented, will be assigned to Base Variable Costs in the annual COS and used to determine the revised rates for the upcoming Rate Year.
- c. ECA Option: Notwithstanding anything in this Agreement to the contrary, the NYC Governmental Customers may elect beginning in the 2005 Annual Process for the 2006 Rate Year (and thereafter during each year's Annual Process) to take service under the ECA Option, which shall be a full Variable Costs pass-through option using an Energy Charge Adjustment ("ECA"), provided that such election must be for at least two (2) consecutive Rate Years. Under the ECA Option, which will be developed through a consultative process with the NYC Governmental Customers, the NYC Governmental Customers shall pay NYPA's

Fixed Costs through set tariff charges and NYPA's Variable Costs through the ECA. The charges for electric service during the applicable Rate Year shall be subject to adjustment through the ECA based on the difference between the Variable Costs incurred to serve the NYC Governmental Customers and the projected Base Variable Costs so that the NYC Governmental Customers electing such option shall be responsible for all positive differences and shall have the benefit of all negative differences. The Customer understands and agrees that under the ECA Option it may be exposed to and accepts the risk of wide variations in Variable Costs. An ECA in the form attached hereto as Attachment C shall be utilized to charge or credit the Customers.

- d. ECA with Hedging Options: Notwithstanding anything in this Agreement to the contrary, the NYC Governmental Customers may elect beginning in the 2005 Annual Process for the 2006 Rate Year (and thereafter during each year's Annual Process) to take service under an ECA with Hedging Option. ECA with Hedging Options may be proposed on an annual basis by the NYC Governmental Customers in accordance with the process set forth below. An ECA with Hedging Option is identical to the ECA Option above, but with hedging features as outlined below, and will be developed through a consultative process with the NYC Governmental Customers. The ECA with Hedging Option includes hedging features such as caps, collars or other risk management techniques (to the extent consistent with the risk management policies adopted by NYPA's Trustees) specified by the NYC Governmental Customers and, if appropriate, shall specify value at risk levels, confidence levels, volatility bands and other parameters for each hedging option. The risk management strategies shall be designed to reduce potential volatility in variable fuel, purchased power, ancillary services and other NYISO-related costs and off-setting revenues. The Hedging Costs associated with any ECA with Hedging Option ultimately selected will be assigned to Base Variable Costs. The charges for electric service during the applicable Rate Year shall be subject to adjustment through the ECA based on the difference between the Variable Costs incurred to serve the NYC Governmental Customers and the projected Base Variable Costs so that the NYC Governmental Customers electing such option shall be responsible for all positive differences and shall have the

benefit of all negative differences. The Customer understands and agrees that under the ECA with Hedging Option it may be exposed to and accepts the risk of variations in Variable Costs. An ECA in the form attached hereto as Attachment C shall be utilized to charge or credit the Customers.

- e. Minimum Price Volatility Option: The Minimum Price Volatility Option is a unit electricity production price that is not subject to any variation during the Rate Year, except as provided in Article II.E.1, 2 & 3 and Article VII. The Minimum Price Volatility Option will be first offered as part of the 2007 Annual Process for the 2008 Rate Year (and thereafter during each year's Annual Process). The Minimum Price Volatility Option must be selected or not by the NYC Governmental Customers on or before June 15 only at the price offered by NYPA during the Annual Process and the Minimum Price Volatility Option shall not be subject to the consultative process that applies to the Sharing Options, ECA Option, and ECA with Hedging Options as set forth in this Agreement. The Minimum Price Volatility Option shall apply for the next Rate Year only and there shall be no refunds or credits to either Party if actual costs incurred by NYPA during the Rate Year are more or less than the cost to the NYC Customers under this option.
 - f. Other Market Risk Hedging Options: The foregoing shall not foreclose mutual agreement by NYPA and the NYC Governmental Customers on a cost recovery mechanism which employs market risk hedging strategies relating to Variable Costs that are different than those described in this Article.
5. The NYC Governmental Customers agree and understand that any Sharing Option or ECA with Hedging Option is a discrete, integrated package of risk management devices and strategies designed to achieve a particular risk management objective. Any such Sharing Option or ECA with Hedging Option shall be consistent with the risk management policies adopted by NYPA's Trustees. Commencing with the Effective Date of this Agreement, NYPA shall provide the NYC Governmental Customers with a copy of such risk management policies, as they may be amended from time to time, and, provided further, that NYPA shall provide such Customers with an opportunity to provide comment on such policies from time to time.

D. Annual Process Schedule

The annual process for identifying and selecting the cost recovery mechanism for each Rate Year shall be subject to the following schedule:

1. By March 1 of each year preceding the applicable Rate Year, or such other date as may be mutually agreed, the NYC Governmental Customers will provide to NYPA:
 - a. their proposed cost recovery mechanisms as set forth in Article II.C.4 above; and
 - b. a ten-year forecast of each NYC Governmental Customer's capacity and energy requirements, including any specific plans for Distributed Generation and Renewable Resources, which shall be a non-binding estimate only, and provided for information purposes only, and that no inaccuracies or misstatements therein shall result in financial or other consequences to the NYC Governmental Customers provided, however, that the information in the Ten-Year Forecast will be used to determine whether the Customer shall be subject to (i) the Pricing for New Incremental Load under Article II.E.2 below, and (ii) an Exit Fee for Distributed Generation under Article X.A.5 or Renewable Resources under Article X.A.6.
2. On or before May 15 of each year preceding the applicable Rate Year, or such other date as may be mutually agreed, NYPA will provide to the NYC Governmental Customers a fully supported COS study, including the projected Fixed and Base Variable Costs for the succeeding year, together with indicative price quotes on each of the Sharing Options or ECA with Hedging Options requested with a description of the methodology and source data. At this time, NYPA also will designate one of the proposed Sharing Options or a separate hedging option developed by NYPA as the "Default Option" to be implemented in the event the NYC Governmental Customers do not select an option pursuant to Article V below. NYPA shall also provide an indicative price quote for the Default Option if it is not one of the proposed Sharing Options. In the event NYPA includes in any hedging option a self-hedging position for the benefit of the NYC Governmental Customers, NYPA will demonstrate that such position results in a lower cost for that option than a market-based position. Throughout this process, NYPA will provide the NYC Governmental Customers access to historical information and analyses that support the projected costs and also

- respond to reasonable requests by the NYC Governmental Customers for information supporting the projected charges. Beginning with the 2007 Annual Process for the 2008 Rate Year, NYPA will, on or before May 15, offer a price for the Minimum Volatility Option for the NYC Customers' consideration.
3. By June 15 of the year preceding the applicable Rate Year (but not less than one month from NYPA's presentation of the hedging alternatives), the NYC Governmental Customers, collectively pursuant to Article V or individually as set forth in Article II.D.4 below, will select (i) a Sharing Option, (ii) the ECA Option, (iii) an ECA with Hedging Option, or (iv) beginning in 2007 for Rate Year 2008 and each Rate Year thereafter, the Minimum Price Volatility Option, for NYPA to implement for the succeeding Rate Year. If a Sharing Option or an ECA with Hedging Option is selected, NYPA will implement the selected option in an efficient and cost-effective manner given prevailing market conditions. In the event that the actual cost to implement the selected option exceeds the indicative quotes by no more than five percent (5.0%), NYPA will be authorized to implement such hedging option. Should the actual cost exceed five percent (5.0%), NYPA shall not proceed without the consent of the NYC Governmental Customers to implement such hedging option. In the event the NYC Governmental Customers are unable to agree to the implementation of such hedging option within ten (10) business days, the Default Option shall be implemented by NYPA and the actual costs incurred by NYPA shall be included in the Base Variable Costs.
 4. NYPA agrees to work diligently with the NYC Governmental Customers to identify and assess a fair and equitable method whereby each Customer may select a different cost recovery mechanism from among the cost recovery mechanisms proposed by the NYC Governmental Customers and priced by NYPA during each year's Annual Process. Such method shall be consistent with NYPA's risk management and billing capabilities. Further, NYPA shall use commercially reasonable efforts to implement such a customer choice mechanism by Rate Year 2008. If, pursuant to this provision, any NYC Governmental Customer has the ability to choose a different cost recovery mechanism than another NYC Governmental Customer, there shall be no right of refunds or any other payments based on the fact that one Customer's rates may be

different from those of another Customer that chose a different cost recovery mechanism.

E. Other Provisions Relating to Pricing and the Annual Process

1. *Changes in Taxes, Fees, and Other External Charges:* Tariff charges shall be subject to increases or decreases by NYPA at any time due to changes in applicable taxes, fees, assessments or other external charges (excluding fines and penalties) that are levied on NYPA (or that NYPA is required to collect from Customer) by federal, state and local government entities, or by grid or market operators such as the NYISO or its successors, it being the Parties' intent that these external charges be passed through to Customer as incurred, without mark-up. NYPA will use reasonable efforts to provide timely notice of the imposition of any such charges to its NYC Governmental Customers and nothing shall impede any such Customer's right to challenge such taxes, fees or charges before the entity imposing them. NYPA and Customer shall cooperate to minimize any new taxes, fees, assessments, market rules or other charges that result in increased costs levied upon NYPA in association with the sale of electricity to Customer.
2. *Pricing for New Incremental Load:* If any new account with a peak demand of 500kW or more is added by Customer (net of (i) any demonstrated decrease in Customer load at other specific accounts of Customer; and (ii) any loads transferred to Customer from another Governmental Customer) and such load was not identified in the load forecast submitted in the year preceding the Rate Year in which the load commenced as provided in Article II.D.1.b, that account will either (i) be billed to such Customer at an incremental price of supply (short term market) for the remainder of the Rate Year until the full load growth is incorporated into the annual supply plan, risk management plan, and rate plan, or (ii) at the Customer's option, be served by a supplier other than NYPA provided, that if this option is selected by Customer, NYPA will be under no obligation to serve such account thereafter but, at its sole discretion, may agree to do so. Notwithstanding anything contained in this Article II.E.2 to the contrary, NYPA will not charge a separate rate for qualifying incremental load unless and until it is able to use electronic billing protocols that are

- currently in effect such that special rates for those accounts and transfer to the rates provided for in this Agreement are handled automatically and made explicit in bills rendered by NYPA to Customer.
3. *Pricing for Renewable Energy*: If Customer elects to purchase renewable electricity and/or renewable attributes (*i.e.*, "green tags") from NYPA, the cost of such electricity and/or attributes will be borne directly by Customer through an appropriate bill surcharge.
 4. *Reports*:
 - a. Quarterly Reports: On an ongoing basis, NYPA will provide to the NYC Governmental Customers on a confidential basis quarterly reports that will allow the Customers to monitor variance between projected and actual costs and to assess the performance of NYPA's operations. The Quarterly Reports will, among other things, compare NYPA's projected and actual costs to serve the NYC Governmental Customers' load and explain major variances in such costs and load. NYPA will provide the actual cost of purchased capacity, energy and ancillary services, as well as all associated revenue credits, and mutually agreeable plant operations information including, for example, non-fuel O&M, plant availability, heat rates and unforced capacity data.
 - b. Annual Plant Operations Reports: Beginning on March 1, 2005 and each year thereafter, NYPA shall provide to the NYC Governmental Customers plant operations information for the previous year including, for example, non-fuel O&M, plant availability, heat rates and unforced capacity data from facilities in the U.S. electric utility industry similar to NYPA's that are then available to or reasonably accessible by NYPA.
 - c. The contents of the reports required hereunder shall be developed jointly by NYPA and the NYC Governmental Customers.
 5. *Confidentiality*: NYPA and the Customer agree that appropriate protocols will be agreed to no later than the commencement of each year's Annual Process relating to the confidential treatment of documents and other information exchanged during such process, consistent with the New York Freedom of Information Law and other statutory disclosure requirements. Notwithstanding this commitment, the Customer shall disclose such information to the extent required by an order or directive issued

- by any court, agency or other governmental entity with jurisdiction to issue such an order or directive, and provided further that Customer may utilize and disclose any such information in connection with any NYPA rate case proceeding or litigation concerning NYPA's rates to the NYC Governmental Customers and may disclose such information to its in-house or outside counsel, consultants, staff, officers and directors.
6. *Costs of RFP Contract Termination:* Customer agrees that if any RFP Contract, as defined in Article X.B, is terminated as a result of a termination other than by reason of default, and NYPA is required to make a termination payment (the "Termination Payment") as a result of such termination, then such Termination Payment may be included in the annual COS for electricity production rates to the NYC Governmental Customers, provided, however, that such Termination Payment may be included only in those instances where the termination in question occurred pursuant to a termination provision in an RFP Contract to which the Customer has given its prior approval. For purposes of developing the annual COS, the Termination Payment shall be divided by the number of years (including any fractions thereof) remaining in the terminated contract, measured from the date of termination of the contract until the scheduled expiration of the contract, and the result of such division (the "Yearly Amount"), shall be added as soon as feasible to the Fixed Costs for each succeeding Rate Year until the Termination Payment has been recovered. The Yearly Amount shall include interest on the unpaid Termination Payment amounts, in accordance with Federal Energy Regulatory Commission ("FERC") interest rate provisions, 18 C.F.R. 35.19a(a)(2)(iii). Such Yearly Amounts shall also be included in the calculation of the Exit Fee as discussed in Article X.B. Similarly, NYPA agrees that if any RFP Contract is terminated as a result of a termination other than by reason of default, and the supplier makes a Termination Payment as a result of such termination, then such Termination Payment will be included as a credit in the annual COS for electricity production rates to the NYC Governmental Customers, or as a credit to any Exit Fee, as appropriate, subject to the terms and conditions set forth above.

III. Annual Pricing Adjustment Mechanism and Tariffs

- A. If the ECA Option, an ECA with Hedging Option or the Minimum Price Volatility Option is implemented as part of the Annual Process, this Article shall not apply, except as provided in Article III.C below.
- B. If the Sharing Plan is implemented as part of the Annual Process through the selection of a Sharing Option, there shall be an annual pricing adjustment for the applicable Rate Year as described below. Such pricing adjustment is comprised of two (2) components, both of which will be paid by Customer for NYPA production service through appropriate tariffs issued by NYPA:
1. *Annual Target Amount:* The Annual Target Amount ("ATA") will comprise the Fixed Costs and the Base Variable Costs. The Fixed and Base Variable Costs will be determined in accordance with the provisions of this Agreement. Each year within the Annual Process set forth in Article II, above, NYPA will develop new base production rates as appropriate to recover the ATA in the next calendar year.
 2. *Variable Cost Adjustment:* The Variable Cost Adjustment ("VCA") is the Customer's share of the difference between Variable Costs incurred, as compared to the Base Variable Costs (actual and Base Variable Costs shall include the actual and projected Hedging Costs, respectively, for any Sharing Option selected under Article II above). NYPA shall provide Customers with its calculations underlying the VCA and Customers shall have the right to review and comment thereon. NYPA will calculate the VCA for each Rate Year based on the aggregate of the differences between actually incurred Variable Costs and Base Variable Costs tracked each month, and complete such calculation in the subsequent Rate Year (*e.g.*, in February or March) as soon as all monthly data for the subject Rate Year is available. The VCA shall accrue interest in accordance with the methods and procedures employed by the Federal Energy Regulatory Commission concerning refunds, 18 C.F.R. § 35.19a(a)(2)(iii) (2004). The Customer's share of the VCA will be based on the Customer's energy usage divided by the total NYC Governmental Customer energy use during the calendar year and, once determined, the VCA will apply in equal increments over the next twelve billing periods (commencing, *e.g.* in April) as a credit or charge to Customer. Charges and credits under the VCA shall be subject to the following:

- a. Variable Costs in Excess of Base Variable Costs: If, with respect to service during a calendar year, Variable Costs incurred by NYPA exceed the Base Variable Costs, up to \$60 million of any such excess shall be shared evenly by NYPA and the Governmental Customers such that the Governmental Customers shall bear a maximum of \$30 million of charges under the VCA with respect to service in a calendar year. NYPA shall bear all responsibility for such costs over a total of \$60 million. NYPA and the Governmental Customers shall consult periodically to determine whether this \$60 million threshold should be adjusted for subsequent calendar years.
 - b. Variable Costs Less Than Base Variable Costs: If, with respect to service during a calendar year, Variable Costs incurred by NYPA are less than the Base Variable Costs, such savings shall be shared evenly with the Governmental Customers, without limitation, provided that the first \$10 million of any such savings accumulated during the term of this Agreement shall be credited to the Governmental Customers through the VCA, with no sharing by NYPA.
- C. The VCA shall not apply to Rate Years for which the NYC Governmental Customers have elected the ECA Option, any ECA with Hedging Option or the Minimum Price Volatility Option, except that monthly credits or charges to Customer during such Rate Years arising out of the application of this annual pricing adjustment for prior Rate Years shall continue in order to achieve the full reconciliation of costs as set forth above.

IV. Energy Risk Assessment

A. *Independent Review*

In 2005, NYPA will engage a qualified, independent expert to review its risk management and control function. The objective of the review is to assess NYPA's overall risk management and control capability and, in particular, its readiness to execute and/or manage a risk management plan as determined in Article II. Customers shall be offered an opportunity to consult on the scope of work included in the request for proposals to engage such an expert and the entities to whom the RFP will be sent. NYPA and the NYC Governmental Customers will jointly review the responses to the RFP and shall mutually select the expert, provided that the NYC Governmental Customers shall have the sole authority to determine the price to be paid for such assessment. The NYC

Governmental Customers shall be provided with the results of the review and the recommendations, provided that, to the extent permitted by law, such review and recommendations shall be treated on a confidential basis by the NYC Governmental Customers and not released to third persons other than in connection with any NYPA rate case proceeding or litigation concerning NYPA's rates to the NYC Governmental Customers or to the NYC Governmental Customers' in-house or outside counsel, consultants, staff, officers and directors. The cost of such review will be made part of the COS and be recovered from the NYC Governmental Customers.

B. *Implementation*

NYPA will implement all recommended changes, including the acquisition of new capability, if found appropriate in consultation with the Customers.

V. Decisions by the NYC Governmental Customers

Wherever in this Agreement a decision of the NYC Governmental Customers as a group is required, such decisions shall be made binding on Customer if made by NYC Governmental Customers representing at least 80 percent of the total actual annual energy usage supplied by NYPA by kilowatthour during the most recent full calendar year for which such information is available.

VI. Rate Design Study, New Tariffs

NYPA will complete COS studies of the demand, energy, and delivery charges in NYPA's tariffs by March 31, 2008. Any such studies shall be performed with input and concurrence from the NYC Governmental Customers on the scope, design, data collection and cost allocation method to be employed, it being the goal of the Parties to, *inter alia*, redesign rates so that the rates charged to the NYC Governmental Customers are aligned with costs, all on a basis that is revenue neutral to NYPA and in a manner that recognizes individual customer bill impacts and ameliorates such impacts. The results of such studies will be shared with the NYC Governmental Customers and the NYC Governmental Customers agree that, as provided below, the appropriate tariff changes shall be implemented. After the studies are completed, and in cooperation with the NYC Governmental Customers, NYPA will initiate

the public comment and approval process under SAPA to adopt appropriate tariff changes. The cost of any such studies and the cost of any metering or other equipment required to provide data for such studies or to implement the results of studies shall be included in the COS and borne by NYC Governmental Customers unless such costs can be specifically assigned to a particular Governmental Customer or Customers (*e.g.*, metering costs).

VII. Bond Covenant

Notwithstanding any provision of this Agreement to the contrary, the demand and energy charges shall be subject to increase by NYPA at any time upon 60 days prior written notice to Customer if, after consideration by NYPA of its legal obligations, the marketability of the output or use of each NYPA facility and NYPA's competitive position with respect to other suppliers, NYPA determines in its discretion that increases in rates obtainable from any other NYPA customers will not provide revenues, together with other available NYPA funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in NYPA's bond and note resolutions and covenants with the holders of its financial obligations. NYPA shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the baseline demand and energy charges pursuant to this Article. Any rate increase to Customer under this provision shall be on a non-discriminatory basis as compared to other customers after giving consideration to the factors set forth in the first sentence of this Article.

VIII. Delivery Service Charges

NYPA will pass on to the NYC Governmental Customers on a basis that is revenue neutral to NYPA all charges assessed by the Consolidated Edison Company of New York, Inc. ("Con Edison") or any other entity from which NYPA is required to secure transmission and delivery service. Delivery rates to individual Customers may vary depending on the cost study performed pursuant to Article VI, and implementation of the results thereof.

Aggregate delivery charges to the NYC Governmental Customers shall be designed to equal, to the extent practicable, the aggregate amounts charged by Con Edison or other entity to NYPA. To the extent necessary and practicable, NYPA will use a true-up mechanism to assess charges for under-recovery and apply credits for over-recovery of Con Edison delivery charges. NYPA shall cooperate with the Customers to oppose increases in delivery charges.

[NYC version only:] Consistent with the proposed settlement in the 2004 Con Edison delivery service rate settlement, NYPA, Con Edison and NYC DOT will work together to jointly define the functional requirements for a new New York City street lighting billing system.

IX. Energy Efficiency and Other Initiatives

- A.** NYPA and the NYC Governmental Customers will continue to work in partnership to identify energy efficiency and clean energy technology projects at the Customers' facilities and to implement such projects that are economically feasible and agreeable to NYPA and the NYC Governmental Customers. The availability of this financing allows the Customer to implement major capital projects that will promote energy efficiency and improve the environment. NYPA commits to finance up to \$_____ million of energy efficiency and clean energy technology programs each year over the term of the Agreement for the benefit of Customer. The costs of such programs shall be borne by Customer.
- B.** Customer will continue to have the right to contract with outside service providers for engineering, design, construction, commissioning, monitoring and verification of energy efficiency projects while retaining access to NYPA financing.
- C.** The items set forth above in subsections A through B of this Article IX will be implemented in the context of existing or revised ENCORE agreements, or other cost recovery agreement(s), as necessary.
- D. [NYC Version Only]** If requested by Customer in support of the City's Energy Policy Task Force, NYPA will undertake studies and other initiatives in areas where NYPA has expertise, and provided that NYPA is able to recover all costs associated with such studies and initiatives from Customer.

X. Termination and Reduction of Service; Exit Fee

- A.** Customer agrees to purchase its full electricity requirements from NYPA through December 31, 2017, unless (i) this Agreement is earlier terminated as provided in paragraph 1, 2, 3 or 4 below; (ii) Customer installs distributed generation or secures renewable power sources from other suppliers pursuant to paragraphs 5 or 6 below; or (iii) Customer adds new load and secures an alternate supplier pursuant to Article II.E.2.

If Customer and NYPA have not reached agreement on new terms to govern service after December 31, 2017, but Customer nevertheless requests that NYPA continue to provide service after such date, such service will not be under the provisions of this Agreement, but will be on such terms and conditions as NYPA shall offer consistent with statutory requirements:

1. *Changes in Market Structure:* If the structure of the electricity market in NY State undergoes a fundamental change during the term of the Agreement, and because of such change a material provision or provisions of this Agreement cannot be given effect or is materially altered, Customers and NYPA will negotiate any necessary changes to the Agreement, with the goal of maintaining the rights, obligations, benefits and burdens accruing to the parties to the greatest extent possible. In the event that the Parties cannot agree on the terms and conditions necessary and appropriate to accommodate fundamental changes in the structure of the electricity market, Customer may serve a notice of termination of its Agreement to become effective twelve (12) months after the notice of termination, provided that if Customer exercises such right it shall pay the Exit Fee to NYPA determined in accordance with Article X.B, below.
2. *Termination of Certain Transmission Rights:* Customer may terminate service upon twelve (12) months written notice in the event that certain grandfathered transmission rights (see NYISO OATT, Original Sheet No. 526, as same may be amended from time to time, (specifically Contracts Nos. 58 and 59 in Attachment L)) are terminated and such termination of transmission rights is not with the agreement of the NYC Governmental Customers (*i.e.*, voluntary termination), provided if Customer exercises such right it shall pay the Exit Fee to NYPA determined in accordance with Article X.B, below.
3. *Bond Covenant Related Termination:* Customers may terminate all service from NYPA, upon twelve (12) months written notice in the event that NYPA invokes the terms and conditions of Article VII to increase rates for the purpose of meeting bond covenant requirements. In this instance, no Exit Fee shall apply.
4. *Termination for Any Reason:* Upon three (3) years' prior written notice, Customer may terminate its obligations under this Agreement for any reason and shall pay the Exit Fee to NYPA determined in accordance with Article X.B, below.

5. *Distributed Generation:* Customer may install distributed generation resources at or adjacent to its facilities, provided that Customer shall pay an Exit Fee determined in accordance with Article X.B below, except that an Exit Fee shall not apply so long as the Customer: (i) provides NYPA with twelve (12) months notice of the planned start-up date for any such resource; (ii) the aggregate of such generation added at such Customer's accounts in a given calendar year shall not exceed the greater of one percent (1%) per year of Customer's highest coincident peak billing demand or 250kW, whichever is greater; (iii) such distributed generation resource has been included in Customer's annual 10-year load forecast provided pursuant to Article II.D.1.b.; and (iv) the majority of the output of such distributed generation resource is consumed at such Customer facilities at or adjacent to the distributed generation resource. The Exit Fee obligation set forth in this Article X.A.5 shall not apply with respect to distributed generation installed at Customer accounts that are deemed to be new incremental load qualified to be served by a supplier other than NYPA under Article II.E.2 of this Agreement.
6. *Renewable Resources:* Customer may secure non-NYPA physical renewable resources (as opposed to acquiring only green "attributes") in order to meet requirements of Executive Order 111 or other renewable energy policy objectives, provided, however, that Customer shall pay an Exit Fee to NYPA determined in accordance with Article X.B below, except that an Exit Fee shall not apply as long as: (i) Customer gives NYPA at least twelve (12) months notice of the commencement of such supply; (ii) the renewable generation resources qualifying for the exemption do not exceed five percent (5%) of the Customer's annual peak load in any given Rate Year; and (iii) such resource has been included in Customer's annual 10-year load forecast provided pursuant to Article II.D.1.b. This Article X.A.6 shall not apply to renewable resources acquired by Customer prior to December 31, 2005 and shall not apply to Customer facilities deemed new incremental load in accordance with Article II.E.2. of this Agreement.

B. *Exit Fee*

1. Any termination or reduction of service by Customer pursuant to the terms hereof that is designated to be subject to an Exit Fee under this Agreement prior to the expiration of the full term hereof shall be subject to the payment of such an Exit Fee to NYPA

- based on Customer's *pro-rata* share (for installed capacity resources - based on the ratio of Customer's peak load to the coincident peak load of all NYC Governmental Customers, and for energy resources - based on the ratio of Customer's annual consumption of NYPA-supplied energy to the total annual energy consumed by all NYC Governmental Customers, as measured over the twelve month period prior to such termination) of the aggregate stranded costs, as defined below, directly arising from the RFP 3 contracts and any subsequent portfolio additions that result from a similar collaborative RFP process, and to which the NYC Governmental Customers have consented pursuant to Article XI hereunder (the "RFP Contracts"), which make up the portfolio serving the Customer. As of the date of this Agreement, the RFP 3 contracts are the only RFP Contracts that would be utilized to calculate an Exit Fee.
2. For the purposes of this Article X.B, subject to the next two succeeding paragraphs, the term "aggregate stranded costs" means the aggregate of the stranded costs directly arising from each RFP Contract. The stranded costs directly arising from each RFP Contract shall be measured as of the effective date of termination of this Agreement and shall be calculated regardless of whether the RFP Contract in question is actually terminated. Subject to the next sentence, the stranded costs associated with each RFP Contract shall be equal to the net present value, measured as of the date of the Customer's termination, of the differences between the amounts to be paid by NYPA under the RFP Contract and the projected market value of such Contract, as the case may be, calculated by NYPA in a commercially reasonable manner. However, with respect to those RFP Contracts, whether they be physical delivery contracts or contracts for differences, which have early termination provisions, the stranded costs directly arising from each such RFP Contract shall be equal to Customer's allocated share (as set forth in paragraph X.B.1, above) of the early termination payment amount which would have to be paid by NYPA upon such early termination and calculated in accordance with the terms of such early termination provision. In no event, however, shall this Article X.B require NYPA to make any payment to the Customer.
 3. The measurement of stranded costs directly arising from an RFP Contract terminated by NYPA (for which NYPA has made payment to a third party) shall not be subject to review. If Customer disputes NYPA's calculation of the stranded costs directly

- arising from an RFP Contract not actually terminated by NYPA, Customer may seek review of whether such calculation was performed in a commercially reasonable manner by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules.
4. To the extent allowed by and subject to the terms of an RFP Contract, at Customer's sole discretion, the Customer may take an assignment of its *pro-rata* share (as determined above) of such RFP Contract. If such assignment occurs, then that portion of the RFP Contract assigned shall be excluded from the calculation of the aggregate stranded costs and Exit Fee, as discussed above.

C. Effect of Termination

Any full termination of service under this Agreement shall operate to terminate the Application for Service and all other documents pertaining to the provision of electric service by NYPA to Customer, provided that such agreements shall remain in effect for as long as necessary to effect final billings and account settlements.

XI. New Supply Resources

NYPA shall obtain the express consent of the NYC Governmental Customers to any agreements or contracts that add long term supply resources to the supply portfolio serving the NYC Governmental Customers. If any such new long-term supply resource agreements have a term longer than the term of this Agreement, the Parties shall mutually agree on whether to extend the term of this Agreement or otherwise address such timing mismatch prior to entering into such new long-term supply resource agreement.

XII. Dispute Resolution

Except for the limited arbitration provision set forth in Article X.B.3, the Parties shall use good faith efforts to settle promptly all disputes arising under the Agreement. In the event that a dispute, including a billing dispute, a dispute concerning the application of the risk management principles set forth in the Agreement, or a dispute regarding the interpretation of the Agreement, arises and cannot be resolved in the normal course of business by operating personnel, any Party may give the other Parties notice of the dispute. In the event that such notice is given, the Parties shall attempt to resolve the dispute by negotiation between

representatives who have authority to settle the controversy. Within 10 days after delivery of the notice, the receiving Party shall submit to the other Parties a written response.

Thereafter, the representatives shall confer in person or by telephone promptly to attempt to resolve the dispute. All reasonable requests for information by one Party to another Party will be honored. To the extent that disputes are not resolved pursuant to this process, the Parties reserve all rights.

XIII. Most Favorable Terms

Through December 31, 2006, Customer may elect to receive service under such price and other terms equivalent to the most favorable terms offered by NYPA to the NYC Governmental Customers listed on Attachment B, provided that if Customer opts for such other terms and conditions, Customer shall be required to accept all the terms applicable to such other customers (including the period of time they apply). Throughout this process, NYPA will provide the NYC Governmental Customers access to historical information and analyses that support the projected costs and also respond to reasonable requests by the NYC Governmental Customers for information supporting the projected charges.

XIV. Other Documents

The Application for Service, the applicable Tariffs and the NYPA Rules and Regulations continue in full force and effect, except to the extent modified by this Agreement. In the event of any conflicts in the terms of the Agreement and the Application for Service, Supplemental Agreements, Tariffs or Rules and Regulations, this Agreement shall control.

XV. [NYC Version Only] New York City Hydro

NYPA will work with the City to ensure that the benefits of the Neversink (21MW) and Grahamsville (17MW) hydro generation facilities are flowed directly to the City after the City takes ownership and control. Subject to the satisfactory completion of a due diligence investigation by NYPA of the physical condition, the permit status and such other matters concerning the facilities as NYPA deems prudent, NYPA agrees to operate the two hydro plants pursuant to an agreement between the parties to be negotiated that will include, among other things, NYPA's recovery of its costs, including any direct costs as well as administrative overheads, provision for the use of outside firms for the direct operation,

protocols for bidding the output into the marketplace and the disposition of the revenues from the sale of the output.

XVI. Approvals

Execution of this Agreement has been authorized and approved by the governing board, authorized executive or commissioner of the Customer whose approval is required for the execution of this Agreement, and by NYPA's Board of Trustees.

XVII. Amendment

This Agreement may be amended at any time but only upon a written agreement signed by both Parties.

XVIII. Prior Claims

Nothing contained herein shall be read to preclude either Party from asserting claims or bringing actions related to service and/or bills rendered prior to the Effective Date of this Agreement.

AGREED:

{ CUSTOMER NAME }

BY: _____

TITLE: _____

DATE: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

TITLE: _____

DATE: _____

Attachment A

NYC Governmental Customers

Battery Park City Authority

Convention Center Operating Corporation

Empire State Development Corporation

Hudson River Park Trust

Metropolitan Transportation Authority

New York City Housing Authority

City of New York

New York State Office of General Services

The Port Authority of New York & New Jersey

Roosevelt Island Operating Corporation

United Nations Development Corporation

Attachment B

2005 Fixed Cost Elements

Operation and Maintenance

Shared Services

Debt Service

Other Expenses

Investment and Other Income

(Source: New York Power Authority Preliminary Staff Report,
2005 Rate Modification Plan for the Southeast New York
Government Customers, Exhibit A)

ATTACHMENT C

ENERGY CHARGE ADJUSTMENT

If an Energy Charge Adjustment ("ECA") Option is implemented as part of the Annual Process, an ECA will be applied with respect to each billing period in the applicable Rate Year as set forth herein.

The charges for electric service to Customer will be subject each month (whether or not during the Rate Year) to an addition or a deduction when the "average cost of energy" for the previous month or part thereof occurring during the Rate Year as defined below increases or decreases from the Base Variable Costs as those terms are defined in and established pursuant to the 2005 Long-Term Agreement ("Agreement").

The base cost of energy shall include the same costs, charges and offsetting revenues as specified for Base Variable Costs determined in Article II.B.1.b of the Agreement and shall be determined each year during the Annual Process. The base cost of energy will be expressed in cents per kilowatthour and shall be stated in the Power Authority's production tariffs for Customer.

The "average cost of energy" shall be equal to (a) the sum of all the types of costs and charges included in Base Variable Costs as specified in Article II.B.1.b of the Agreement including the fuel and fuel related charges associated with the operation of the NYPA's thermal generating units supplying the NYC Governmental Customers; the cost of purchased power, the cost of ancillary services and other NYISO related charges and Hedging Costs, less (b) any NYISO capacity, energy, and ancillary service revenues or credits received by NYPA and associated with the service provided by NYPA (whether as a generator or a load serving entity) to the NYC Governmental Customers; all divided by the total kilowatthours sold to such NYC Governmental Customers for such previous month.

The "average cost of energy" as determined hereinabove will be adjusted from time to time as determined by NYPA to permit reconciliation of revenues derived from Energy Charge Adjustments billed to Customer in prior billing periods with energy related costs applicable to such billing periods.

The difference between the "average cost of energy", including adjustments, and the base cost of energy shall be added or subtracted monthly from the charges for electric service to Customer.