

Exhibit "1c-A"  
May 26, 2010

---

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street  
10<sup>th</sup> Floor  
Albany, New York 12207-3425

**AGREEMENT FOR THE SALE OF  
EXPANSION AND/OR REPLACEMENT POWER AND ENERGY**

TO [EXISTING EP/RP RECIPIENT]

---

## POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street, 10<sup>th</sup> Floor  
Albany, New York 12207-3425

### AGREEMENT FOR THE SALE OF EXPANSION AND/OR REPLACEMENT POWER AND ENERGY

This Agreement for the Sale of Expansion and/or Replacement Power and Energy is made and entered into as of this \_\_\_ day of \_\_\_\_, 2010, by and between the Power Authority of the State of New York ("Authority"), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 of Article 5 of the New York Public Authorities Law ("PAL"), having its office and principal place of business at 30 South Pearl Street, 10<sup>th</sup> Floor, Albany, New York 12207-3425, and [Company, Inc., with its facilities located at \_\_\_\_] ("Customer"). The Authority and the Customer are from time to time referred to in this Agreement individually as a "Party" or collectively as the "Parties."

#### RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project known as Expansion Power (or "EP") and Replacement Power (or "RP") to qualified businesses in New York State in accordance with PAL § 1005(5) and (13).

WHEREAS, EP consists of 250 megawatts ("MW"), and RP consists of 445 MW, of firm hydroelectric power and associated energy produced by the Niagara Power Project.

WHEREAS, Niagara Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in western New York State.

WHEREAS, the Authority has the authority under PAL § 1005(13)(a) to award and extend allocations of EP and RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant's long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient's facilities are located.

WHEREAS, the Authority and the Customer are currently parties to one or more agreements governing the allocation and sale of EP and/or RP for ultimate use by the Customer.

WHEREAS, the Customer's existing allocations for the purchase of RP (if any) are scheduled to expire at 12:01 a.m. January 1, 2013 or later, and the Customer's existing

allocations for the purchase of EP (if any) are scheduled to expire midnight June 30, 2013 or later, as indicated by the "Expiration Date" specified in Schedule A to this Agreement.

WHEREAS, the Authority's Trustees have approved extensions of the Customer's EP and/or RP allocations (if any) until the "Extended Expiration Date" specified in Schedule A of this Agreement.

WHEREAS, the Authority has determined that the extensions are authorized by the PAL.

WHEREAS, the Trustees have authorized the Authority to provide electric service with the Customer's extended allocations of EP (if any) and/or the extended allocations of RP (if any) at the rates and on the terms and conditions provided for in this Agreement.

WHEREAS, the Parties desire to enter into this Agreement in advance of the expiration of the EP and/or RP allocations identified in Schedule A in order to promote commercial and financial certainty and long term planning by each of the Parties.

WHEREAS, the Authority supports the efficient use of energy, including EP and RP allocated and sold pursuant to this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

#### **Article I. Definitions**

- A. **Agreement** means this Agreement as further described in the preamble, including all documents attached to and incorporated into the Agreement.
- B. **Allocation** or **Allocations** refers to the total amount of power (in kilowatts ("kW")) and associated energy from the EP and/or RP allocations as set forth in Schedule A to this Agreement authorized by the Authority's Trustees to be sold to the Customer in accordance with the provisions of this Agreement.
- C. **Contract Demand** is the amount of Expansion Power and/or Replacement Power provided to the Customer by Authority in accordance with the provisions of this Agreement.
- D. **Electric Service** is Firm Power and Firm Energy associated with the Allocation and sold to the Customer in accordance with the provisions of this Agreement, Service Tariff No. WNY-1 (as applicable), and the Rules.
- E. **Firm Energy** has the meaning set forth in Service Tariff No. WNY-1.

- F. **Firm Power** has the meaning set forth in Service Tariff No. WNY-1.
- G. **EP Allocation** refers to an Allocation of EP (if any) identified in Schedule A.
- H. **Expansion Power** (or **EP**) has the meaning set forth in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which new license became effective September 1, 2007 after expiration of the Project's original license issued in 1957.
- K. **Hydro Projects** is a collective reference to the Project (defined below) and Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **International Joint Commission (or "IJC")** refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.
- M. **Load Serving Entity (or "LSE")** means an entity designated by a retail electricity customer to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- N. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- O. **NYISO Charges** has the meaning set forth in the Service Tariff No. WNY-1.
- P. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- Q. **PAL** means the New York Public Authorities Law.
- R. **Project** means the Niagara Power Project, FERC Project No. 2216.
- S. **Replacement Power** (or **RP**) has the meaning set forth in Service Tariff No. WNY-1.
- T. **RP Allocation** refers to an Allocation of RP (if any) identified in Schedule A.

- U. **Rules** refers to the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by Authority.
- V. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement. As further provided in this Agreement, Service Tariff No. WNY-1 shall be applicable to Electric Service provided on July 1, 2013 and thereafter.
- W. **Schedule A** refers to the Schedule A entitled "Expansion Power and Replacement Power Allocations" which is attached to and made part of the Agreement.
- X. **Schedule B** refers to the Schedule B entitled "Expansion and Replacement Power Commitments" which is attached to and made part of the Agreement.
- Y. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement.
- Z. **Taxes** have the meaning set forth in Service Tariff No. WNY-1.
- AA. **Unforced Capacity (or "UCAP")** is the electric capacity required to be provided by Load Serving Entities to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

## **Article II. Electric Service During the Interim Service Period**

- A. From 12:01 a.m. January 1, 2013 or such later date prior to July 1, 2013 on which any RP Allocation identified in Schedule A expires through midnight June 30, 2013 (hereinafter referred to as the "Interim Service Period"), the Authority shall provide and the Customer shall pay for Electric Service to enable the Customer to receive such RP Allocation during the Interim Service Period. The rates applicable to Electric Service sold to the Customer during the Interim Service Period shall be the rates associated with such RP Allocation in effect as of December 31, 2012.
- B. The Customer shall be responsible for payment of all applicable assessments and charges of whatever kind for transmission and delivery services assessed by the Customer's local electric utility that are associated with the RP Allocation, and all assessments and charges of whatever kind, including, but not limited to, NYISO Charges and Taxes that are associated with the RP Allocation, during the Interim Service Period. To the extent that the Authority incurs any of these assessments or charges during the Interim Service Period, the Customer will compensate the Authority for assessments and charges associated with the RP Allocation.

- C. The Customer understands and acknowledges that for the Interim Service Period the Customer shall remain bound by the employment commitments set forth in any agreement between the Parties in effect as of December 31, 2012 providing for electric service to the Customer for the RP Allocation, and the Authority shall have the right to reduce the RP Allocation during the Interim Service Period for the Customer's failure to meet such commitments.

### **Article III. Electric Service Commencing July 1, 2013**

- A. Commencing July 1, 2013, the Authority shall provide and the Customer shall pay for Electric Service with respect to any EP Allocation and/or RP Allocation as specified in Schedule A.
- B. The Customer shall not be entitled to receive Electric Service for any EP Allocation or RP Allocation that is not specified in Schedule A.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer's NYISO Unforced Capacity requirements associated with the Allocation in accordance with the NYISO Tariffs.
- D. The Contract Demand may not exceed the Allocation.
- E. The Contract Demand or the Allocation may be modified by the Authority if the amount of power and energy available for sale as EP and RP from the Project is modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. Any such modification will be made on a *pro rata* basis to all EP and RP customers, as applicable, based on the terms of such ruling, order or decision.

#### **Article IV. Rates for Electric Service Commencing July 1, 2013**

- A. Commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Electric Service shall be subject to the demand and energy rates determined in accordance with Service Tariff No. WNY-1 as of **[insert date], 2010**, which shall be in effect commencing July 1, 2013 for the term of this Agreement, and no subsequent amendment to Service Tariff No. WNY-1 shall affect the determination of rates for EP and RP sold to the Customer during the term of the Agreement except insofar as authorized by this Agreement. This provision shall not limit the Authority's discretion to determine rates with respect to additional allocations awarded to the Customer made pursuant to Article X of this Agreement.
- C. Should the Authority at any time during the term of this Agreement enter into an agreement with another EP or RP customer for sales of power and energy at rates more advantageous to such customer than the power and energy rates contained herein, the Customer shall be entitled to such more advantageous power and energy rates in place of the power and energy rates required by this Agreement and Service Tariff No. WNY-1.
- D. Notwithstanding any other provision of this Agreement to the contrary, the power and energy rates for Electric Service commencing July 1, 2013 shall be subject to increase by the Authority at any time upon 30 days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Project and the Authority's competitive position with respect to other suppliers, the Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this provision. Any rate increase to the Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

## **Article V. Billing and Methodology**

- A. Commencing July 1, 2013, the billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the local electric utility’s applicable tariffs. An alternative billing methodology may apply provided there is mutual agreement in writing between the Parties, and the consent of the local electric utility.
- B. The Authority shall render bills for power and energy by the tenth (10<sup>th</sup>) business day of the month for charges due for the previous month. Such bills shall include the NYISO Charges and Taxes (each as defined in Service Tariff No. WNY-1) associated with the Allocation. The NYISO Charges shall be subject to adjustments consistent with any subsequent NYISO re-billings to Authority.

## **Article VI. Transmission and Delivery of Power and Energy**

- A. Commencing July 1, 2013, the Customer shall be responsible for securing arrangements with the local electric utility for transmission and delivery service associated with the Allocation unless otherwise agreed to by the Parties. The Authority shall cooperate in good faith to assist Customer in securing such arrangements, regardless of whether the Authority provides Electric Service through a direct sale to Customer or through a sale for resale arrangement with the local electric utility.
- B. The Customer shall pay the local electric utility for transmission and delivery service associated with the Allocation in accordance with all applicable tariffs, agreements, rulemakings and orders. The Customer shall compensate the Authority for any all charges the Authority incurs for transmission and delivery associated with the Allocation.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the Load Serving Entity with respect to the NYISO, or arrange for another entity to do so on the Authority’s behalf. The Customer agrees and understands that it shall be responsible to Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariffs, or other applicable tariff (*i.e.*, NYISO Charges), as set forth in Service Tariff No. WNY-1.

## **Article VII. Expansion and Replacement Power Customer Commitments**

- A. The Customer understands and acknowledges that the extension of the EP Allocations and/or RP Allocations provided for in Schedule A is partly in consideration of the Customer meeting the commitments provided for in Schedule

B. Commencing July 1, 2013, the Authority shall have the right to reduce the Allocations based on reductions in the Contract Demand made pursuant to Schedule B if the Customer fails to meet such commitments.

- B. In addition to any reduction of an Allocation made pursuant to Article VII.A of this Agreement, if the Authority reduces the quantity of EP or RP allocated to the Customer prior to July 1, 2013, or the Customer's EP or RP allocation is reduced for any other reason and as a result the quantity of EP and/or RP is less than the RP Allocation or EP Allocation provided for in Schedule A as of July 1, 2013, the Authority shall have the right to reduce accordingly the EP Allocation or RP Allocation provided for in Schedule A applicable to Electric Service provided on and after July 1, 2013.
- C. The Authority will provide written notice to the Customer of any reduction made pursuant to this Article within thirty (30) days of such determination and will furnish the Customer with a revised Schedule A which reflects the reduced Allocation.

### **Article VIII. Hydropower Curtailments and Substitute Energy**

- A. Reduced Water Flows; Curtailments. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served from the Hydro Projects, hydropower curtailments in the amount of firm power and energy to which the Customer is entitled shall be applied in accordance with Service Tariff No. WNY-1.
- B. Provision of Substitute Energy. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied under this Agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.
- C. Billing for Substitute Energy. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO Charges and Taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's current Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. Affect of Substitute Energy on Agreement. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement.

## **Article IX. Conflicts**

The Rules and Service Tariff No. WNY-1 are hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the Service Tariff No. WNY-1 and any other provisions of this Agreement, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Rules and Service Tariff No. WNY-1, but in no event shall the Authority provide less notice than that required to be provided to similarly affected Authority customers within New York State.

**Article X. Additional Allocations**

- A. Upon application by the Customer, the Authority may award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority shall establish. Once the Customer agrees to purchase Electric Service associated with such additional allocations, the Authority will incorporate the additional allocations into Schedule A, or in its discretion, will produce a supplemental schedule, to reflect such additional allocations, and produce a modified Appendix A of Schedule B, as appropriate. The Authority will furnish the Customer with a modified Schedule A, a supplemental schedule, and/or a modified Appendix A as appropriate, within thirty (30) days of the commencement of Electric Service for any such additional allocation.
  
- B. The Customer shall furnish such documentation and other information as the Authority requests to enable the Authority to evaluate whether any additional allocations should be made to the Customer and the terms of any additional allocation.

**Article XI. Notification**

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

Michael J. Huvane  
Vice President, Marketing  
New York Power Authority  
123 Main Street  
White Plains, New York 10601  
Telephone: (914) 390-8117  
Facsimile: (914) 390-8156  
Electronic mail: michael.huvane@nypa.gov

To: Customer

Mr./Ms. First Name Last Name  
Title  
Company, Inc.  
Address  
City, New York Zip  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Electronic mail: \_\_\_\_\_

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above, (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above, (3) if delivered by hand, with written confirmation of receipt, (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt, or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

### **Article XII. Applicable Law**

Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and rulings by the IJC and without regard to conflicts of law provisions.

### **Article XIII. Venue**

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

### **Article XIV. Successors and Assigns; Resale**

- A. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained.
- B. The Customer may not resell any EP or RP that it has purchased from the Authority under this Agreement.

### **Article XV. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of RP for the Interim Service Period and the Allocation thereafter, and supersedes all previous communications between the Parties hereto, either oral or written, with reference to the sale of RP for the Interim

Service Period and the Allocation thereafter. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

#### **Article XVI. Waiver**

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

#### **Article XVII. Severability and Voidability**

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

#### **Article XVIII. Term, Modification, Termination and Effect**

- A. Electric Service under this Agreement shall continue with respect to an Allocation until the earliest of: (1) termination by the Customer with respect to all of the Allocation upon at least thirty (30) days prior written notice to the Authority; (2) termination by Authority pursuant to the Rules upon required notice; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- B. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days prior written notice to the Authority. The termination shall be effective commencing with the first "Billing Period" as defined in Service Tariff No. WNY-1 following the required notice.
- C. The Authority may modify or terminate Electric Service hereunder or modify the quantities of power and energy associated with an Allocation: (1) if such termination or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any

licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement or in the Rules.

- D. This Agreement shall become legally binding and effective only upon satisfaction of the following conditions precedent: (1) receipt of approval of this Agreement by the Authority Board of Trustees; (2) receipt of approval of this Agreement by the Governor of the State of New York pursuant to PAL § 1009; and (3) execution of this Agreement by the Authority and the Customer.

#### **Article XIX. Extensions of Allocations and Agreement**

- A. The Customer may apply to the Authority for an extension of the Extended Expiration Date of an Allocation identified in Schedule A as follows: (1) after this Agreement becomes effective but before January 1, 2013, based on additional capital investments the Customer proposes to make to the Customer's facilities identified in Appendix A of Schedule B prior to the Extended Expiration Date; (2) during the twenty-four month period immediately preceding the Extended Expiration Date; (3) pursuant to another process established by the Authority, if any; or (4) with the Authority's consent in writing.
- B. The Authority in its discretion may extend the term of this Agreement upon: (1) an extension of an Allocation by the Authority; or (2) an award of an additional allocation pursuant to Article X of this Agreement by the Authority.
- C. The length of an extension of the term of this Agreement, if any, and the terms and conditions of such extension provided pursuant to this Article, shall be within the Authority's discretion based consideration of the criteria for eligibility prescribed in PAL § 1005(13).

#### **Article XX. Execution**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

**[SIGNATURES FOLLOW ON NEXT PAGE]**

AGREED:

**COMPANY, INC.**

BY: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Seal)

Attest by: \_\_\_\_\_

AGREED:

**POWER AUTHORITY OF THE STATE OF NEW YORK**

BY: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Seal)

Attest by: \_\_\_\_\_

SCHEDULE A

**EXPANSION POWER AND REPLACEMENT POWER ALLOCATIONS**

<u>Type of Allocation</u>	<u>Allocation (kW)</u>	<u>Expiration Date</u>	<u>Extended Expiration Date</u>
---------------------------	------------------------	------------------------	---------------------------------

1. [EP Allocation]

2. [RP Allocation]

---

**TOTALS:**

## SCHEDULE B

### EXPANSION AND REPLACEMENT POWER COMMITMENTS

#### Article I. Employment Commitments

##### A. Employment Levels.

The provision of Expansion or Replacement Power to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in Appendix A of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's facilities identified in Appendix A to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the facilities identified in such Appendix A (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such facilities shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

##### B. Employment Records and Reports.

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's facilities identified in Appendix A to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify

## SCHEDULE B

the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

### **Article II. Reductions of Contract Demand**

#### A. Employment Levels.

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

#### B. Power Utilization Levels.

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the facilities receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is defined in Service Tariff No. WNY-1) for Expansion and Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract

## SCHEDULE B

Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

### C. Capital Investment Levels.

Customer records of the Customer's capital investment for the calendar years 2006, 2007 and 2008 shall be shared with the Authority for purposes of determining the Customer's historical three-year average capital investment ("Historical Average"), provided, however, that the Authority shall take due regard for extraordinary capital investment levels in the 2006-2008 period and accordingly reduce the Historical Average upon Customer demonstration satisfactory to Authority. Each year, the Customer shall record its annual capital investment for purposes of determining a rolling three-year average ("Rolling Average"), which shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. If the Customer's Rolling Average is less than 90% of its Historical Average, the Contract Demand may be reduced by the Authority subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Historical Average. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

### D. Notice of Intent to Reduce Contract Demand.

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

## SCHEDULE B

### **Article III. Energy Efficiency Audits; Information Requests**

- A. The Customer shall undergo an energy efficiency audit of its facilities and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the facilities.
- B. The Customer agrees to cooperate to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.
- C. The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.
- D. The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

## SCHEDULE B

### APPENDIX A

#### Base Employment Level

In accordance with Article I of this Schedule, the Customer agrees to a Base Employment Level of XX persons at the Customer's facility located at Address, City, New York Zip, to be effective on the effective date of this Agreement.

#### Capital Investment Level

In accordance with Article II of this Schedule, the Customer agrees to a Historic Average of \_\_\_\_\_.