

POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY TO  
CONNECTICUT MUNICIPAL ELECTRIC ENERGY COOPERATIVE

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service  
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service  
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

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

**30 South Pearl Street**

**Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

Connecticut Municipal Electric Energy Cooperative, which is the bargaining agent for the State of Connecticut, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

**I. Definitions**

**Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers of the Authority who are served by the Project.

**Agreement** means this Agreement.

**Authority** is the Power Authority of the State of New York.

**Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

**Customer** is the bargaining agent identified above.

**Designated States** means the states represented by the Neighboring State Customers.

**Distributing Entities** are the entities listed in Appendix A to this Agreement.

**Effective Date** means the date that this Agreement is fully executed by the Parties

**Electric Service** is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

**FERC** means the Federal Energy Regulatory Commission (or any successor organization).

**FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

**Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy** means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Energy** means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Peaking Energy** means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

**Firm Hydroelectric Peaking Power** means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Power** means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

**Mutual Assistance** is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

**Neighboring State Customers** means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

**Non-Firm Hydroelectric Energy** is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

**NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

**NYISO** means the New York Independent System Operator, Inc. or any successor organization.

**NYISO Capability Period** is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

**Planned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

**Project** means the Niagara Power Project, FERC Project No. 2216.

**Project Power and Energy** means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

**Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

**RTO** means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

**Rules** are the applicable provisions of 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).

**Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

**Substitute Energy** means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

**Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

## **II. Electric Service to be Provided**

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below\*:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-1      -      8,300 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-2      -      1,800 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to  
Service Tariff No. NS-3      -      As available

\*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

### **III. Modification of Neighboring State Customers Allocations**

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

#### **IV. Rules, Regulations and Service Tariffs**

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

#### **V. Resale of Project Power and Energy**

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

## **VI. Determination of Monthly Energy Allocations and Distributing Entities**

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted



to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

## **VII. Transmission and Delivery of Power and Energy**

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

### **VIII. Scheduling Procedures**

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

### **IX. Dispatching Agent**

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

## **X. Rates**

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority except as otherwise provided for below.

Customer waives any challenges to any of the following methodologies and principles<sup>1</sup> to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).

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<sup>1</sup> These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

## **XI. Other Classes of Power and Energy**

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

## **XII. Reallocation of Project Power and Energy**

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

### **XIII. Hydropower Curtailments and Substitute Energy**

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur, unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

#### **XIV. Environmental Attributes**

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

## **XV. Reports**

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

## **XVI. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

## **XVII. Term and Termination of Service**

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation 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 (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

## **XVIII. Communications**

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

**[Name]**  
**[Title]**  
**[Organization]**  
**[Address]**  
**[phone #]**  
**[e-mail address]**

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.



- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs  
New York Power Authority  
123 Main St.  
White Plains, New York 10601  
(914) 681-6200  
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]  
[E-mail Address]  
[Cell Phone]**

#### **XIX. Legal or Regulatory Change; Cooperation**

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

## **XX. Applicable Law**

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 the Niagara Redevelopment Act.

## **XXI. Venue**

Each Party consents to 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.

## **XXII. Mutual Assistance**

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

### **XXIII. Successors and Assigns**

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, which consent shall not be unreasonably withheld.

### **XXIV. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

### **XXV. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

### **XXVI. Severability and Voidability**

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 be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

#### **XXVII. 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.

#### **XXVIII. 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.

#### **XXIX. Effectiveness of Agreement**

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

**CUSTOMER**

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

Accepted:

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

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## APPENDIX A

### **I. DISTRIBUTING ENTITIES INFORMATION – Connecticut Municipal Electric Energy Cooperative**

<u>Distributing Entity</u>	<u>Resale (Y/N)</u>
1. Bozrah	N
2. Groton	N
3. Jewett City	N
4. Norwalk III	N
5. Norwich	N
6. MTUA	N
7. S. Norwalk	N
8. Wallingford	N

## APPENDIX A

### II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Connecticut Municipal Electric Energy Cooperative

Public Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
Bozrah	2,295	3.58
Groton	13,886	21.65
Jewett City	1,846	2.88
Norwalk III	3,066	4.78
Norwich	17,414	27.15
MTUA	50	0.08
S. Norwalk	4,852	7.57
Wallingford	20,726	32.32
Total	64,135	100.00

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POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY TO  
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service  
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service  
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

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

**30 South Pearl Street**

**Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

Massachusetts Department of Public Utilities, which is the bargaining agent for the Commonwealth of Massachusetts, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

**I. Definitions**

**Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers of the Authority who are served by the Project.

**Agreement** means this Agreement.

**Authority** is the Power Authority of the State of New York.

**Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

**Customer** is the bargaining agent identified above.

**Designated States** means the states represented by the Neighboring State Customers.

**Distributing Entities** are the entities listed in Appendix A to this Agreement.

**Effective Date** means the date that this Agreement is fully executed by the Parties

**Electric Service** is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

**FERC** means the Federal Energy Regulatory Commission (or any successor organization).

**FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

**Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy** means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Energy** means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Peaking Energy** means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

**Firm Hydroelectric Peaking Power** means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Power** means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

**Mutual Assistance** is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

**Neighboring State Customers** means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

**Non-Firm Hydroelectric Energy** is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

**NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

**NYISO** means the New York Independent System Operator, Inc. or any successor organization.

**NYISO Capability Period** is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

**Planned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

**Project** means the Niagara Power Project, FERC Project No. 2216.

**Project Power and Energy** means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

**Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

**RTO** means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

**Rules** are the applicable provisions of 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).

**Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

**Substitute Energy** means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

**Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

## **II. Electric Service to be Provided**

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below\*:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-1 - 43,900 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-2 - 9,400 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to  
Service Tariff No. NS-3 - As available

\*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability

changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

### **III. Modification of Neighboring State Customers Allocations**

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

### **IV. Rules, Regulations and Service Tariffs**

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

### **V. Resale of Project Power and Energy**

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and

maintained on a current basis, and which are “public bodies or nonprofit cooperatives” under the NRA (“Distributing Entities”), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

## **VI. Determination of Monthly Energy Allocations and Distributing Entities**

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

## **VII. Transmission and Delivery of Power and Energy**

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access



Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

## **VIII. Scheduling Procedures**

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

## **IX. Dispatching Agent**

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape

basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

## **X. Rates**

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority except as otherwise provided for below.

Customer waives any challenges to any of the following methodologies and principles<sup>1</sup> to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.

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<sup>1</sup> These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.
- (viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

## **XI. Other Classes of Power and Energy**

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

## **XII. Reallocation of Project Power and Energy**

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer

shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event, the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

### **XIII. Hydropower Curtailments and Substitute Energy**

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur, unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the

Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

#### **XIV. Environmental Attributes**

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

#### **XV. Reports**

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

#### **XVI. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

#### **XVII. Term and Termination of Service**

- a. Once initiated, service shall continue until the earliest of (a) termination by

Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation 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 (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

## **XVIII. Communications**

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

**[Name]**  
**[Title]**  
**[Organization]**  
**[Address]**  
**[phone #]**  
**[e-mail address]**

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs  
New York Power Authority  
123 Main St.  
White Plains, New York 10601  
(914) 681-6200  
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]  
[E-mail Address]  
[Cell Phone]**

#### **XIX. Legal or Regulatory Change; Cooperation**

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.



## **XX. Applicable Law**

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 the Niagara Redevelopment Act.

## **XXI. Venue**

Each Party consents to 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.

## **XXII. Mutual Assistance**

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

### **XXIII. Successors and Assigns**

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, which consent shall not be unreasonably withheld.

### **XXIV. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

### **XXV. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

### **XXVI. Severability and Voidability**

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 be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

#### **XXVII. 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.

#### **XXVIII. 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.

#### **XXIX. Effectiveness of Agreement**

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

**CUSTOMER**

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

Accepted:

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

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## APPENDIX A

### **I. DISTRIBUTING ENTITIES INFORMATION – Massachusetts Department of Public Utilities**

Distributing Entities	Resale (Y/N)?	Distributing Entities	Resale (Y/N)?
<b>Ashburnham</b>	N	<b>Templeton</b>	N
<b>Belmont</b>	N	<b>Wakefield</b>	N
<b>Boylston</b>	N	<b>Wellesley</b>	N
<b>Braintree</b>	N	<b>W. Boylston</b>	N
<b>Chester</b>	N	<b>Westfield</b>	N
<b>Chicopee</b>	N		
<b>Concord</b>	N		
<b>Danvers</b>	N		
<b>Georgetown</b>	N		
<b>Groton</b>	N		
<b>Groveland</b>	N		
<b>Hingham</b>	N		
<b>Holden</b>	N		
<b>Holyoke</b>	N		
<b>Hudson</b>	N		
<b>Hull</b>	N		
<b>Ipswich</b>	N		
<b>Littleton</b>	N		
<b>Mansfield</b>	N		
<b>Marblehead</b>	N		
<b>Merrimac</b>	N		
<b>Middleborough</b>	N		
<b>Middleton</b>	N		
<b>N. Attleborough</b>	N		
<b>Norwood</b>	N		
<b>Paxton</b>	N		
<b>Peabody</b>	N		
<b>Princeton</b>	N		
<b>Reading</b>	N		
<b>Rowley</b>	N		
<b>Russell</b>	N		
<b>Shrewsbury</b>	N		
<b>S. Hadley</b>	N		
<b>Sterling</b>	N		
<b>Taunton</b>	N		

## APPENDIX A

### II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Massachusetts Department of Public Utilities

Distributing Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
Ashburnham	2,687	0.70
Belmont	9,956	2.94
Boylston	1,845	0.57
Braintree	12,498	3.88
Chester	594	0.16
Chicopee	23,378	7.12
Concord	6,255	2.18
Danvers	10,362	3.15
Georgetown	2,987	0.80
Groton	3,989	1.18
Groveland	2,391	0.66
Hingham	8,754	2.69
Holden	6,301	1.87
Holyoke	17,061	4.82
Hudson	7,929	2.97
Hull	5,664	1.43
Ipswich	5,863	1.74
Littleton	5,648	1.83
Mansfield	8,327	2.39
Marblehead	9,137	2.75
Merrimac	2,502	0.78
Middleboro	12,264	3.14
Middleton	2,825	0.68
N. Attleboro	11,545	3.34
Norwood	12,934	3.26
Paxton	1,586	0.49
Peabody*	20,283	6.25
Princeton	1,391	0.42
Reading	24,434	7.54
Rowley	2,287	0.65
Russell	438	0.13
Shrewsbury	13,461	3.92
S. Hadley	6,793	2.26
Sterling	3,104	0.84
Taunton	31,105	8.38
Templeton	3,380	0.82

<b>Wakefield</b>	<b>9,990</b>	<b>2.86</b>
<b>Wellesley</b>	<b>8,812</b>	<b>3.01</b>
<b>W. Boylston</b>	<b>2,753</b>	<b>0.81</b>
<b>Westfield</b>	<b>15,419</b>	<b>4.59</b>
 <b>Total</b>	 <b>338,932</b>	 <b>100.00</b>

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POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY TO  
PUBLIC POWER ASSOCIATION OF NEW JERSEY

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service  
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service  
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

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

**30 South Pearl Street**

**Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

Public Power Association of New Jersey, which is the bargaining agent for the State of New Jersey, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

**I. Definitions**

**Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers of the Authority who are served by the Project.

**Agreement** means this Agreement.

**Authority** is the Power Authority of the State of New York.

**Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

**Customer** is the bargaining agent identified above.

**Designated States** means the states represented by the Neighboring State Customers.

**Distributing Entities** are the entities listed in Appendix A to this Agreement.

**Effective Date** means the date that this Agreement is fully executed by the Parties

**Electric Service** is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

**FERC** means the Federal Energy Regulatory Commission (or any successor organization).

**FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

**Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy** means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Energy** means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Peaking Energy** means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

**Firm Hydroelectric Peaking Power** means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Power** means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

**Mutual Assistance** is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

**Neighboring State Customers** means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

**Non-Firm Hydroelectric Energy** is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

**NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

**NYISO** means the New York Independent System Operator, Inc. or any successor organization.

**NYISO Capability Period** is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

**Planned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

**Project** means the Niagara Power Project, FERC Project No. 2216.

**Project Power and Energy** means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

**Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

**RTO** means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

**Rules** are the applicable provisions of 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).

**Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

**Substitute Energy** means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

**Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

## **II. Electric Service to be Provided**

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below\*:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-1      -      9,000 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-2      -      1,900 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to  
Service Tariff No. NS-3      -      As available

\*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

### **III. Modification of Neighboring State Customers Allocations**

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

#### **IV. Rules, Regulations and Service Tariffs**

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

#### **V. Resale of Project Power and Energy**

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

## **VI. Determination of Monthly Energy Allocations and Distributing Entities**

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

## **VII. Transmission and Delivery of Power and Energy**

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.



In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

### **VIII. Scheduling Procedures**

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

### **IX. Dispatching Agent**

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

## X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority except as otherwise provided for below.

Customer waives any challenges to any of the following methodologies and principles<sup>1</sup> to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).

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<sup>1</sup> These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

## **XI. Other Classes of Power and Energy**

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

## **XII. Reallocation of Project Power and Energy**

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

### **XIII. Hydropower Curtailments and Substitute Energy**

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur, unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

#### **XIV. Environmental Attributes**

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

## **XV. Reports**

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

## **XVI. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

## **XVII. Term and Termination of Service**

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation 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 (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

## **XVIII. Communications**

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

**[Name]**  
**[Title]**  
**[Organization]**  
**[Address]**  
**[phone #]**  
**[e-mail address]**

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs  
New York Power Authority  
123 Main St.  
White Plains, New York 10601  
(914) 681-6200  
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]  
[E-mail Address]  
[Cell Phone]**

#### **XIX. Legal or Regulatory Change; Cooperation**

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.



## **XX. Applicable Law**

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 the Niagara Redevelopment Act.

## **XXI. Venue**

Each Party consents to 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.

## **XXII. Mutual Assistance**

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

### **XXIII. Successors and Assigns**

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, which consent shall not be unreasonably withheld.

### **XXIV. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

### **XXV. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

### **XXVI. Severability and Voidability**

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 be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

#### **XXVII. 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.

#### **XXVIII. 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.

#### **XXIX. Effectiveness of Agreement**

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

**CUSTOMER**

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

Accepted:

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

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## APPENDIX A

### **I. DISTRIBUTING ENTITIES INFORMATION – Public Power Association of New Jersey**

<u>Distributing Entity</u>	<u>Resale (Y/N)</u>
1. Butler	N
2. Lavallette	N
3. Madison	N
4. Milltown	N
5. Park Ridge	N
6. Pemberton	N
7. Seaside Heights	N
8. South River	N
9. Sussex	N
10. Vineland	N

## APPENDIX A

### II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Public Power Association of New Jersey

Distributing Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
Butler	10,022	14.37
Lavallette	2,577	3.69
Madison	5,920	8.49
Milltown	2,787	4.00
Park Ridge	3,388	4.86
Pemberton	652	0.93
Seaside Heights	2,091	3.00
South River	6,350	9.10
Sussex	11,546	16.55
Vineland	24,421	35.01
Total	69,754	100.00

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POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY TO  
CITY OF CLEVELAND

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service  
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service  
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

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

**30 South Pearl Street**

**Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

City of Cleveland, which is the bargaining agent for the State of Ohio, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

**I. Definitions**

**Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers of the Authority who are served by the Project.

**Agreement** means this Agreement.

**Authority** is the Power Authority of the State of New York.

**Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

**Customer** is the bargaining agent identified above.

**Designated States** means the states represented by the Neighboring State Customers.

**Distributing Entities** are the entities listed in Appendix A to this Agreement.

**Effective Date** means the date that this Agreement is fully executed by the Parties

**Electric Service** is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

**FERC** means the Federal Energy Regulatory Commission (or any successor organization).



**FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

**Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy** means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Energy** means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Peaking Energy** means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

**Firm Hydroelectric Peaking Power** means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Power** means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

**Mutual Assistance** is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

**Neighboring State Customers** means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

**Non-Firm Hydroelectric Energy** is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

**NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

**NYISO** means the New York Independent System Operator, Inc. or any successor organization.

**NYISO Capability Period** is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

**Planned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

**Project** means the Niagara Power Project, FERC Project No. 2216.

**Project Power and Energy** means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

**Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

**RTO** means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

**Rules** are the applicable provisions of 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).

**Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

**Substitute Energy** means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

**Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

## **II. Electric Service to be Provided**

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below\*:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-1      -      84,000 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-2      -      18,000 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to  
Service Tariff No. NS-3      -      As available

\*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

### **III. Modification of Neighboring State Customers Allocations**

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

#### **IV. Rules, Regulations and Service Tariffs**

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

#### **V. Resale of Project Power and Energy**

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

## **VI. Determination of Monthly Energy Allocations and Distributing Entities**

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

## **VII. Transmission and Delivery of Power and Energy**

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

### **VIII. Scheduling Procedures**

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

### **IX. Dispatching Agent**

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.



## X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority except as otherwise provided for below.

Customer waives any challenges to any of the following methodologies and principles<sup>1</sup> to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).

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<sup>1</sup> These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

## **XI. Other Classes of Power and Energy**

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

## **XII. Reallocation of Project Power and Energy**

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

### **XIII. Hydropower Curtailments and Substitute Energy**

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur, unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

#### **XIV. Environmental Attributes**

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

## **XV. Reports**

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

## **XVI. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

## **XVII. Term and Termination of Service**

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation 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 (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

## **XVIII. Communications**

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

**[Name]**  
**[Title]**  
**[Organization]**  
**[Address]**  
**[phone #]**  
**[e-mail address]**

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs  
New York Power Authority  
123 Main St.  
White Plains, New York 10601  
(914) 681-6200  
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]  
[E-mail Address]  
[Cell Phone]**

#### **XIX. Legal or Regulatory Change; Cooperation**

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

## **XX. Applicable Law**

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 the Niagara Redevelopment Act.

## **XXI. Venue**

Each Party consents to 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.

## **XXII. Mutual Assistance**

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.



- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

### **XXIII. Successors and Assigns**

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, which consent shall not be unreasonably withheld.

### **XXIV. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

### **XXV. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

### **XXVI. Severability and Voidability**

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 be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

#### **XXVII. 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.

#### **XXVIII. 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.

#### **XXIX. Effectiveness of Agreement**

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

**CUSTOMER**

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

Accepted:

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

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## APPENDIX A

### I. DISTRIBUTING ENTITIES INFORMATION – City of Cleveland

Distributing Entities	Resale (Y/N)?	Distributing Entities	Resale (Y/N)?	Distributing Entities	Resale (Y/N)?
Amherst	N	Celina	N	Montpeller	N
Arcadia	N	Cleveland	N	Napoleon	N
Arcanum	N	City of Clyde	N	New Bremen	N
Beach City	N	Columbiana	N	New Knoxville	N
Bloomdale	N	Columbus	N	Newton Falls	N
Bowling Green	N	Custar	N	Niles	N
Bradner	N	Cuyahoga Falls	N	Oak Harbor	N
Brewster	N	Cygnat	N	Oberlin	N
Bryan	N	Deshler	N	Ohio City	N
Adams	N	Dover	N	Orville	N
Buckeye Rural Elec. Co-op	N	Edgerton	N	Painesville	N
Butler	N	Eldorado	N	Pemberville	N
Carroll	N	Elmore	N	Pioneer	N
Consolidated	N	Galion	N	Piqua	N
Darke	N	Genoa	N	Plymouth	N
Firelands	N	Georgetown	N	Prospect	N
Frontier	N	Glouster	N	Republic	N
Guernsey-Muskingum	N	Grafton	N	Seville	N
Hancock-Wood	N	Greenwich	N	Shelby	N
Holmes-Wayne	N	Hamilton	N	Shiloh	N
Licking	N	Haskins	N	South Vienna	N
Logan	N	Holiday City	N	St. Clairsville	N
Lorain-Medina	N	Hubbard	N	St. Marys	N
Mid-Ohio	N	Hudson	N	Sycamore	N
Midwest Electric	N	Huron	N	Tipp City	N
North Central	N	Jackson	N	Versailles	N
NorthWestern	N	Jackson Center	N	Wadsworth	N
Paulding-Putnam	N	Lakeview	N	Wapakoneta	N
Pioneer	N	Lebanon	N	Waynesfield	N
South Central	N	Lodi	N	Wellington	N
S.E. (Midwest Energy)	N	Lucas	N	Westerville	N
Tricounty	N	Mendon	N	Wharton	N
Union	N	Milan	N	Woodsfield	N
Washington	N	Minster	N	Woodville	N
Carey	N	Monroeville	N	Yellow Springs	N

## APPENDIX A

### II. DISTRIBUTING ENTITIES - CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - City of Cleveland

Preference Power Entities	Number of R & D Consumers (2002 CY)	NIAGARA Allocation %
Amherst	4,896	0.76
Arcadia	249	0.04
Arcanum	1,571	0.24
Beach City	862	0.13
Bloomdale	284	0.04
Bowling Green	11,529	1.78
Bradner	503	0.08
Brewster	879	0.14
Bryan	4,945	0.76
Buckeye Power, Inc.		
<i>Adams</i>	7,515	1.16
<i>Buckeye Rural Electric Co-op</i>	17,899	2.76
<i>Butler</i>	9,622	1.49
<i>Carroll</i>	9,831	1.52
<i>Consolidated</i>	12,451	1.92
<i>Darke</i>	4,795	0.74
<i>Firelands</i>	8,072	1.25
<i>Frontier</i>	6,634	1.02
<i>Guernsey-Muskingum</i>	12,722	1.96
<i>Hancock-Wood</i>	9,938	1.53
<i>Holmes-Wayne</i>	12,699	1.96
<i>Licking</i>	20,935	3.23
<i>Logan</i>	4,108	0.63
<i>Lorain-Medina</i>	13,398	2.07
<i>Mid-Ohio</i>	7,021	1.08
<i>Midwest Electric</i>	9,135	1.41
<i>North Central</i>	8,568	1.32
<i>NorthWestern</i>	5,349	0.83
<i>Paulding-Putnam</i>	8,815	1.36
<i>Pioneer</i>	14,676	2.27
<i>South Central</i>	95,696	14.78
<i>S.E. (Midwest Energy)</i>	921	0.14
<i>Tricounty</i>	3,425	0.53
<i>Union</i>	6,862	1.06
<i>Washington</i>	8,515	1.31
Carey	1,631	0.25

## **APPENDIX A**

Celina	6,348	0.98
Cleveland	79,362	12.26
City of Clyde	2,380	0.37
Columbiana	3,069	0.47
Columbus	9,501	1.47
Custar	120	0.02
Cuyahoga Falls	21,629	3.34
Cygnnet	3,048	0.47
Deshler	899	0.14
Dover	5,579	0.86
Edgerton	931	0.14
Eldorado	274	0.04
Elmore	763	0.12
Galion	6,103	0.94
Genoa	907	0.14
Glouster	1,028	0.16
Grafton	900	0.14
Greenwich	670	0.10
Hamilton	24,943	3.85
Haskins	404	0.06
Holiday City	0	0.00
Hubbard	3,457	0.53
Hudson	5,622	0.87
Jackson	3,390	0.52
Jackson Center	620	0.10
Lakeview	822	0.13
Lebanon	6,997	1.08
Lodi	1,563	0.24
Lucas	285	0.04
Mendon	306	0.05
Milan	695	0.11
Minster	1,116	0.17
Monroeville	883	0.14
Montpeller	2,082	0.32
Napoleon	5,075	0.78
New Bremen	1,230	0.19
New Knoxville	369	0.06
Newton Falls	2,206	0.34
Niles	10,435	1.61
Oak Harbor	1,538	0.24
Oberlin	2,569	0.40
Ohio City	458	0.07
Orvile	5,779	0.89
Painesville	9,057	1.40
Pemberville	625	0.10

## **APPENDIX A**

Pioneer	808	0.12
Piqua	9,351	1.44
Plymouth	787	0.12
Prospect	633	0.10
Republic	251	0.04
Seville	1,467	0.23
Shelby	4,979	0.77
Shiloh	216	0.03
South Vienna	201	0.03
St. Clairsville	2,483	0.38
St. Marys	3,489	0.54
Sycamore	435	0.07
Tipp City	3,788	0.58
Versailles	1,501	0.23
Wadsworth	9,699	1.50
Wapakoneta	4,485	0.69
Waynesfield	457	0.07
Wellington	2,183	0.34
Westerville	13,228	2.04
Wharton	159	0.02
Woodsfield	1,300	0.20
Woodville	910	0.14
Yellow Springs	1,790	0.28
Total	647,588	100.00

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POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY TO  
ALLEGHENY ELECTRIC COOPERATIVE, INC.

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service  
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service  
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

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

**30 South Pearl Street**

**Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

Allegheny Electric Cooperative, Inc., which is the bargaining agent for the Commonwealth of Pennsylvania, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

**I. Definitions**

**Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers of the Authority who are served by the Project.

**Agreement** means this Agreement.

**Authority** is the Power Authority of the State of New York.

**Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

**Customer** is the bargaining agent identified above.

**Designated States** means the states represented by the Neighboring State Customers.

**Distributing Entities** are the entities listed in Appendix A to this Agreement.

**Effective Date** means the date that this Agreement is fully executed by the Parties

**Electric Service** is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

**FERC** means the Federal Energy Regulatory Commission (or any successor organization).

**FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

**Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy** means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Energy** means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Peaking Energy** means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

**Firm Hydroelectric Peaking Power** means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Power** means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

**Mutual Assistance** is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

**Neighboring State Customers** means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

**Non-Firm Hydroelectric Energy** is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

**NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

**NYISO** means the New York Independent System Operator, Inc. or any successor organization.

**NYISO Capability Period** is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

**Planned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

**Project** means the Niagara Power Project, FERC Project No. 2216.

**Project Power and Energy** means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

**Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

**RTO** means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

**Rules** are the applicable provisions of 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).

**Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

**Substitute Energy** means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

**Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

## **II. Electric Service to be Provided**

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below\*:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-1      -      33,600 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-2      -      7,200 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to  
Service Tariff No. NS-3      -      As available

\*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability

changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

### **III. Modification of Neighboring State Customers Allocations**

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

### **IV. Rules, Regulations and Service Tariffs**

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

### **V. Resale of Project Power and Energy**

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and

maintained on a current basis, and which are “public bodies or nonprofit cooperatives” under the NRA (“Distributing Entities”), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

## **VI. Determination of Monthly Energy Allocations and Distributing Entities**

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

## **VII. Transmission and Delivery of Power and Energy**

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access



Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

### **VIII. Scheduling Procedures**

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

### **IX. Dispatching Agent**

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape

basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

## **X. Rates**

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority except as otherwise provided for below.

Customer waives any challenges to any of the following methodologies and principles<sup>1</sup> to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.

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<sup>1</sup> These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.
- (viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

## **XI. Other Classes of Power and Energy**

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

## **XII. Reallocation of Project Power and Energy**

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer

shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event, the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

### **XIII. Hydropower Curtailments and Substitute Energy**

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur, unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the

Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

#### **XIV. Environmental Attributes**

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

#### **XV. Reports**

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

#### **XVI. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

#### **XVII. Term and Termination of Service**

- a. Once initiated, service shall continue until the earliest of (a) termination by

Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation 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 (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

## **XVIII. Communications**

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

**[Name]**  
**[Title]**  
**[Organization]**  
**[Address]**  
**[phone #]**  
**[e-mail address]**

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs**  
**New York Power Authority**  
**123 Main St.**  
**White Plains, New York 10601**  
**(914) 681-6200**  
**PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]**  
**[E-mail Address]**  
**[Cell Phone]**

#### **XIX. Legal or Regulatory Change; Cooperation**

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.



## **XX. Applicable Law**

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 the Niagara Redevelopment Act.

## **XXI. Venue**

Each Party consents to 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.

## **XXII. Mutual Assistance**

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

### **XXIII. Successors and Assigns**

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, which consent shall not be unreasonably withheld.

### **XXIV. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

### **XXV. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

### **XXVI. Severability and Voidability**

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 be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

#### **XXVII. 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.

#### **XXVIII. 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.

#### **XXIX. Effectiveness of Agreement**

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

**CUSTOMER**

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

Accepted:

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

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## APPENDIX A

### **I. DISTRIBUTING ENTITIES INFORMATION – Allegheny Electric Cooperative, Inc.**

Distributing Entities	Resale (Y/N)?
ALLEGHENY	N
BERLIN	N
BLAKELY	N
CATAWISSA	N
CHAMBERSBURG	N
DUNCANNON	N
EAST CONEMAUGH	N
ELLWOOD CITY	N
EPHRATA	N
GIRARD	N
GROVE CITY	N
HATFIELD	N
HOOVERSVILLE	N
KUTZTOWN	N
LANSDALE	N
LEHIGHTON	N
MIDDLETOWN	N
MIFFLINBURG	N
MONT ALTO	N
OLYPHANT	N
PERKASIE	N
QUAKERTOWN	N
ROYALTON	N
SCHUYLKILL HAVEN	N
SMETHPORT	N
SUMMERHILL	N
WATSONTOWN	N
WEATHERLY	N

## APPENDIX A

### II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Allegheny Electric Cooperative, Inc.

Distributing Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
ALLEGHENY	195,760	74.97
BERLIN	1,029	0.39
BLAKELY	3,003	1.15
CATAWISSA	808	0.31
CHAMBERSBURG	8,851	3.39
DUNCANNON	828	0.32
EAST CONEMAUGH	740	0.28
ELLWOOD CITY	3,641	1.39
EPHRATA	5,685	2.18
GIRARD	1,270	0.49
GROVE CITY	2,528	0.97
HATFIELD	1,318	0.50
HOOVERSVILLE	349	0.13
KUTZTOWN	1,855	0.71
LANSDALE	7,113	2.72
LEHIGHTON	2,466	0.94
MIDDLETOWN	3,577	1.37
MIFFLINBURG	1,911	0.73
MONT ALTO	597	0.23
OLYPHANT	2,368	0.91
PERKASIE	3,432	1.31
QUAKERTOWN	3,650	1.40
ROYALTON	466	0.18
SCHUYLKILL HAVEN	2,611	1.00
SMETHPORT	881	0.34
SUMMERHILL	300	0.11
TARENTUM	2,066	0.79
WATSONTOWN	857	0.33
WEATHERLY	1,161	0.44
<b>TOTAL</b>	<b>261,121</b>	<b>100.00</b>

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POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY TO  
RHODE ISLAND PUBLIC UTILITIES COMMISSION

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service  
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service  
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

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

**30 South Pearl Street**

**Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

Rhode Island Public Utilities Commission, which is the bargaining agent for the State of Rhode Island, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

**I. Definitions**

**Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers of the Authority who are served by the Project.

**Agreement** means this Agreement.

**Authority** is the Power Authority of the State of New York.

**Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

**Customer** is the bargaining agent identified above.

**Designated States** means the states represented by the Neighboring State Customers.

**Distributing Entities** are the entities listed in Appendix A to this Agreement.

**Effective Date** means the date that this Agreement is fully executed by the Parties

**Electric Service** is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

**FERC** means the Federal Energy Regulatory Commission (or any successor organization).



**FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

**Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy** means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Energy** means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Peaking Energy** means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

**Firm Hydroelectric Peaking Power** means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Power** means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

**Mutual Assistance** is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

**Neighboring State Customers** means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

**Non-Firm Hydroelectric Energy** is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

**NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

**NYISO** means the New York Independent System Operator, Inc. or any successor organization.

**NYISO Capability Period** is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

**Planned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

**Project** means the Niagara Power Project, FERC Project No. 2216.

**Project Power and Energy** means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

**Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

**RTO** means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

**Rules** are the applicable provisions of 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).

**Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

**Substitute Energy** means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

**Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

## **II. Electric Service to be Provided**

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below\*:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-1      -      600 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-2      -      100 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to  
Service Tariff No. NS-3      -      As available

\*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

### **III. Modification of Neighboring State Customers Allocations**

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

#### **IV. Rules, Regulations and Service Tariffs**

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

#### **V. Resale of Project Power and Energy**

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

## **VI. Determination of Monthly Energy Allocations and Distributing Entities**

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

## **VII. Transmission and Delivery of Power and Energy**

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

### **VIII. Scheduling Procedures**

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

### **IX. Dispatching Agent**

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.



## X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority except as otherwise provided for below.

Customer waives any challenges to any of the following methodologies and principles<sup>1</sup> to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).

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<sup>1</sup> These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the RSR explanatory statement attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

## **XI. Other Classes of Power and Energy**

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

## **XII. Reallocation of Project Power and Energy**

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

### **XIII. Hydropower Curtailments and Substitute Energy**

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur, unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

#### **XIV. Environmental Attributes**

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

## **XV. Reports**

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

## **XVI. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

## **XVII. Term and Termination of Service**

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation 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 (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

## **XVIII. Communications**

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

**[Name]**  
**[Title]**  
**[Organization]**  
**[Address]**  
**[phone #]**  
**[e-mail address]**

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs  
New York Power Authority  
123 Main St.  
White Plains, New York 10601  
(914) 681-6200  
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]  
[E-mail Address]  
[Cell Phone]**

#### **XIX. Legal or Regulatory Change; Cooperation**

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

**XX. Applicable Law**

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 the Niagara Redevelopment Act.

**XXI. Venue**

Each Party consents to 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.

**XXII. Mutual Assistance**

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.



- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

### **XXIII. Successors and Assigns**

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, which consent shall not be unreasonably withheld.

### **XXIV. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

### **XXV. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

### **XXVI. Severability and Voidability**

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 be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

#### **XXVII. 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.

#### **XXVIII. 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.

#### **XXIX. Effectiveness of Agreement**

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

**CUSTOMER**

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

Accepted:

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

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## APPENDIX A

### **I. DISTRIBUTING ENTITIES INFORMATION – Rhode Island Public Utilities Commission**

<u>Distributing Entities</u>	<u>Resale (Y/N)</u>
Pascoag Utility District	N
Block Island Utility District	N

### **II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT**

Info From: 2007 Niagara Agreement - Rhode Island Public Utilities Commission

<u>Distributing Entities</u>	<u>Number of R &amp; D Consumers (2002 CY)</u>	<u>NIAGARA Allocation %</u>
Pascoag Utility District	4,291	100

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POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY TO  
VERMONT DEPARTMENT OF PUBLIC SERVICE

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service  
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service  
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

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

**30 South Pearl Street**

**Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

Vermont Department of Public Service, which is the bargaining agent for the State of Vermont, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

**I. Definitions**

**Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers of the Authority who are served by the Project.

**Agreement** means this Agreement.

**Authority** is the Power Authority of the State of New York.

**Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

**Customer** is the bargaining agent identified above.

**Designated States** means the states represented by the Neighboring State Customers.

**Distributing Entities** are the entities listed in Appendix A to this Agreement.

**Effective Date** means the date that this Agreement is fully executed by the Parties

**Electric Service** is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

**FERC** means the Federal Energy Regulatory Commission (or any successor organization).

**FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

**Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy** means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Energy** means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Peaking Energy** means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

**Firm Hydroelectric Peaking Power** means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

**Firm Hydroelectric Power** means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

**Mutual Assistance** is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

**Neighboring State Customers** means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

**Non-Firm Hydroelectric Energy** is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

**NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

**NYISO** means the New York Independent System Operator, Inc. or any successor organization.

**NYISO Capability Period** is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

**Planned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

**Project** means the Niagara Power Project, FERC Project No. 2216.

**Project Power and Energy** means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

**Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

**RTO** means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

**Rules** are the applicable provisions of 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).

**Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

**Substitute Energy** means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm



Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

**Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

## **II. Electric Service to be Provided**

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below\*:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-1      -      11,800 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-2      -      2,500 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to  
Service Tariff No. NS-3      -      As available

\*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

### **III. Modification of Neighboring State Customers Allocations**

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

#### **IV. Rules, Regulations and Service Tariffs**

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

#### **V. Resale of Project Power and Energy**

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

## **VI. Determination of Monthly Energy Allocations and Distributing Entities**

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

## **VII. Transmission and Delivery of Power and Energy**

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

### **VIII. Scheduling Procedures**

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

### **IX. Dispatching Agent**

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

## X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority except as otherwise provided for below.

Customer waives any challenges to any of the following methodologies and principles<sup>1</sup> to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).

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<sup>1</sup> These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

## **XI. Other Classes of Power and Energy**

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

## **XII. Reallocation of Project Power and Energy**

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,



the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

### **XIII. Hydropower Curtailments and Substitute Energy**

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur, unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

#### **XIV. Environmental Attributes**

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

## **XV. Reports**

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

## **XVI. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

## **XVII. Term and Termination of Service**

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation 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 (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

## **XVIII. Communications**

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

**[Name]**  
**[Title]**  
**[Organization]**  
**[Address]**  
**[phone #]**  
**[e-mail address]**

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs  
New York Power Authority  
123 Main St.  
White Plains, New York 10601  
(914) 681-6200  
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]  
[E-mail Address]  
[Cell Phone]**

#### **XIX. Legal or Regulatory Change; Cooperation**

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

## **XX. Applicable Law**

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 the Niagara Redevelopment Act.

## **XXI. Venue**

Each Party consents to 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.

## **XXII. Mutual Assistance**

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

### **XXIII. Successors and Assigns**

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, which consent shall not be unreasonably withheld.

### **XXIV. Previous Agreements and Communications**

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

### **XXV. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

### **XXVI. Severability and Voidability**

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 be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

#### **XXVII. 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.

#### **XXVIII. 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.

#### **XXIX. Effectiveness of Agreement**

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.



**CUSTOMER**

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

Accepted:

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

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## APPENDIX A

### **I. DISTRIBUTING ENTITIES INFORMATION – Vermont Department of Public Service**

Distributing Entities	Resale (Y/N)?
Barton Village	N
Burlington Electric Light	N
Enosburg Falls Village	N
Hardwick Town	N
Hyde Park Village	N
Village of Jacksonville	N
Village of Johnson	N
Village of Ludlow	N
Lyndonville Electric	N
Village of Morrisville	N
Northfield Village	N
Village of Orleans	N
Town of Stowe	N
Village of Swanton	N
Vermont Electric Co-op	N
Washington Electric Co-op	N

## APPENDIX A

### II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Vermont Department of Public Service

Distributing Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
Barton Village	1,916	2.11
Burlington Electric Light	16,168	17.83
Enosburg Falls Village	1,389	1.53
Hardwick Town	3,771	4.16
Hyde Park Village	1,113	1.23
Village of Jacksonville	669	0.74
Village of Johnson	722	0.80
Village of Ludlow	2,998	3.31
Lyndonville Electric	4,551	5.02
Village of Morrisville	3,232	3.56
Northfield Village	1,637	1.81
Village of Orleans	584	0.64
Village of Readsboro	265	0.29
Tonw of Stowe	3,052	3.37
Village of Swanton	3,021	3.33
Vermont Electric Co-op	35,817	39.51
Washington Electric Co-op	9,758	10.76
Total	90,663	100.00