

# Attachment F:

## Agreement to Purchase or Sell Unforced Capacity in NYISO Installed Capacity Auctions

THIS AGREEMENT TO PURCHASE OR SELL UNFORCED CAPACITY (the "Agreement"), dated as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is given by \_\_\_\_\_, having a principal business address at \_\_\_\_\_ (referred to hereinafter as "Market Participant," or "Offeror" or "Bidder").

### RECITALS

WHEREAS, pursuant to the terms of the New York Independent System Operator Market Administration and Control Area Services Tariff (the "ISO Services Tariff") and the NYISO Installed Capacity Manual (the "ICAP Manual"), the New York Independent System Operator, Inc. (the "NYISO") will administer (i) six-month Capability Period "Strip" auctions (twice per year) and "Monthly" auctions (12 per year), wherein Offerors may sell and Bidders may purchase Unforced Capacity, and, (ii) "Spot Market" auctions (12 per year), wherein Offerors may sell Unforced Capacity and the NYISO will purchase Unforced Capacity on behalf of Load Serving Entities; and

WHEREAS, a capitalized term used herein without definition shall have the meaning ascribed thereto in the ISO Services Tariff or the Independent System Operator Agreement (the "ISO Agreement") or the ICAP Manual; and

WHEREAS, because Market Participant may, at various times, be participating in the Strip, Monthly, or Spot Market Auctions as an Offeror seeking to sell or a Bidder seeking to purchase Unforced Capacity, Article 1 of this Agreement shall govern bids to purchase Unforced Capacity ("Bids") and Article 2 of this Agreement shall govern offers to sell Unforced Capacity ("Offers"); and

WHEREAS, to the extent that Bidder purchases Unforced Capacity under the terms of this Agreement, Bidder satisfies its Unforced Capacity requirements with the Unforced Capacity so purchased; and

WHEREAS, Market Participant, whether acting as a Bidder or Offeror, is a Customer under the ISO Services Tariff and is eligible to participate in a NYISO Installed Capacity ("ICAP") auction ("Auction"), and intends to submit this Agreement, coupled with submissions of properly formatted Bids or Offers (each an "Electronic Bid" or "Electronic Offer") (such Bids or Offers together with the Agreement constituting a "Bid Package" or "Offer Package" respectively) to Auctions operated on an automated basis through the submission of Bids and Offers over the Internet (the "[ICAP Automated ICAP Market System](#)"); and

WHEREAS, Market Participant intends that such Bid Package or Offer Package shall constitute a binding Bid or Offer for the purposes of each Auction in which Market Participant submits an Electronic Bid or Offer and that the Bid or Offer Package will be recorded and objectively analyzed pursuant to the ISO Services Tariff and the ICAP Manual, which materials have been reviewed by Market Participant; and

WHEREAS, any prior Agreement to Purchase Unforced Capacity in NYISO Installed Capacity Auctions or Agreement to Sell Unforced Capacity in NYISO Installed Capacity Auctions executed by Market Participant and the NYISO shall remain in full force and effect until the implementation of the ICAP Automated ~~ICAP~~-Market System, at which time such prior agreement shall be superseded by this Agreement, and thereafter this Agreement shall govern Market Participant's ICAP market participation; and

NOW, THEREFORE, in consideration of the NYISO's including Market Participant's Electronic Bids and Electronic Offers in the Auctions, which Market Participant acknowledges and agrees is adequate consideration for its obligations hereunder, Market Participant and the NYISO (together the "Parties") hereby agree to the following:

## **1. Purchases of Unforced Capacity**

### **A. Bids to Purchase Unforced Capacity.**

- (1) Auctions shall be conducted in accordance with the ISO Services Tariff and the ICAP Manual.
- (2) Each Electronic Bid submitted is valid for only one Auction. An Electronic Bid must be submitted for each Auction in which Bidder desires to participate.
- (3) Bidder offers to purchase Unforced Capacity in the amounts, for the monthly effective periods, in the locations and for the maximum price (or less) listed in Bidder's Electronic Bids (each individual bid listed in Bidder's Electronic Bid being referred to as an "Individual Bid"), and requests that the NYISO include the Individual Bids in the Auction for which they are submitted.
- (4) The purchase price for the Unforced Capacity offered in each Individual Bid in an Auction shall be the Market Clearing Price established in that Auction as determined by the NYISO.
- (5) Bidder's submission of a completed Bid Package represents a binding obligation of Bidder to purchase and pay for the amount of Unforced Capacity designated by the NYISO in the Award Notice (as defined below) pursuant to the terms of the ISO Services Tariff and the ICAP Manual.

- (6) The submission of a Bid Package does not obligate the NYISO to accept the Bid Package, in whole or in part, nor does the submission of a Bid Package grant any right to Bidder to purchase any Unforced Capacity.
- (7) The Market Clearing Price for Unforced Capacity can be positive or zero.
- (8) Any of the Individual Bids contained in Bidder's Electronic Bids, or an entire Electronic Bid, may be amended by Bidder at any time during the period specified for the submission of Electronic Bids (the "Bidding Period") by submitting an amended Individual Bid or a new entire Electronic Bid, any of which subsequent Bids must be received in accordance with this Agreement, the ISO Services Tariff and the ICAP Manual. If such an amended Individual Bid or new Electronic Bid is timely and correctly submitted by Bidder as provided herein, the most recently received Individual Bid or Electronic Bid, as indicated by the date and time of submission reported in the [ICAP Automated ~~ICAP~~ Market System](#), shall supersede any previous version of the Individual Bid or Electronic Bid being changed, and any superceded Individual Bid or Electronic Bid shall have no further force or effect. A newly uploaded Electronic Bid must include all Individual Bids that Bidder intends to be in effect, including any previously submitted Individual Bids that are not being amended.
- (9) To complete a Bid Package, Bidder must submit, in addition to this Agreement, a properly formatted Electronic Bid to the [ICAP Automated ~~ICAP~~ Market System](#) prior to the close of the Bidding Period in each Auction in which Bidder wishes to participate. The Parties further agree that all Electronic Bids must be submitted in the format, and include all the information, required by the [ICAP Automated ~~ICAP~~ Market System](#), the ISO Services Tariff and the ICAP Manual, and that the time of submission for all Electronic Bids shall be determined by the [ICAP Automated ~~ICAP~~ Market System](#).
- (10) Timely submission of a Bid Package does not guarantee that the Bid Package is valid for inclusion in an Auction. This Agreement is a component of a complete Bid Package, and if not completed in conformity with the ISO Services Tariff and the ICAP Manual and the terms and conditions of the form of this Agreement included in the ICAP Manual as Attachment F thereto shall, in the NYISO's sole determination, be invalid and may be rejected. Signature by the NYISO in the place provided below shall signify its acceptance of this Agreement. Whether the Electronic Bid component of a Bid Package is sufficient in format and content shall be assessed by the [ICAP Automated ~~ICAP~~ Market System](#), which may reject any incomplete or insufficient Electronic Bid.
- (11) In the event that the NYISO rejects a form of this Agreement tendered as a component of a Bidder's Bid Package, it shall notify Bidder as soon as

reasonably possible via email. If a Bidder's Agreement is rejected, Bidder shall have the right to submit a replacement Agreement ~~at any time until the close of the time period for submitting Agreements prior to any Auction, as provided for in Section 6(1) below.~~ Rejected Electronic Bids may be resubmitted at any time during the Bidding Period for an Auction until the close of that Bidding Period.

- (12) Bidder bears the sole responsibility for submitting a correct and complete Bid Package.
- (13) Bidder shall not assign any of its rights or obligations under a Bid Package unless the assignee of such rights and obligations makes the representations and warranties in Section 5 applicable to bidders and is otherwise eligible to participate in the Auction or Auctions to which the Bid Package is applicable.

**B. Payment Procedures for the Purchase of Unforced Capacity.**

- (1) Bidder's obligation to purchase and pay for Unforced Capacity shall become effective upon the posting following each Auction in the ICAP Automated ~~ICAP~~-Market System of awards of Unforced Capacity from the Auction results (the "Award Notice"). The Award Notice shall specify the amount of Unforced Capacity, if any, that Bidder shall be required to purchase (the "Awarded Unforced Capacity"), the Market Clearing Price of such Awarded Unforced Capacity, the location of such Awarded Unforced Capacity, and the Total Purchase Price, as defined in this Section 1B(1). The Total Purchase Price shall equal the sum of the products of the amount of Awarded Unforced Capacity and the Market Clearing Price for such capacity.
- (2) Amounts due on Unforced Capacity purchased in a Strip Auction shall be settled on a monthly basis. In each monthly billing, the NYISO shall issue bills for one sixth of the Total Purchase Price specified in the Award Notice for the last Capability Period Auction. Bills issued by the NYISO for the purchase of Unforced Capacity shall be net of any rebates due to Bidder.
- (3) Amounts due on Unforced Capacity purchased in Monthly and Spot Market Auctions shall be settled on a monthly basis. In each monthly billing, the NYISO shall issue bills for the Total Purchase Price specified in the Award Notice for the last Auction. Bills issued by the NYISO for the purchase of Unforced Capacity shall be net of any rebates due to Bidder.
- (4) By 10:00 AM on the first banking day after the fifteenth day of the month after the month for which Unforced Capacity was purchased in any Auction, Bidder shall cause funds to be wired according to instructions in

the monthly billing invoice in an amount equal to the cumulative Total Purchase Price from all such Auctions as indicated in the monthly billing invoice issued by the NYISO.

- (5) To the extent that Bidder disputes the calculation of the Total Purchase Price due and payable, Bidder shall remain obligated to make payment in full for the Unforced Capacity indicated in the Award Notice. If it is later determined in accordance with this Agreement that an overpayment has been made by Bidder to the NYISO, then the NYISO shall refund the amount overpaid to Bidder. If it is later determined in accordance with this Agreement that an underpayment has been made by Bidder, then Bidder shall pay the amount owed to the NYISO. Payments made pursuant to this Section 1B(5) shall also include interest calculated from the date that the overpayment or underpayment was made, in accordance with the methodology specified for interest on refunds in the Federal Energy Regulatory Commission ("FERC") regulations at 18 C.F.R. § 35.19a(a)(2)(iii).
- (6) If the NYISO determines that a mistake has been made in the information provided in an Award Notice after its delivery, the NYISO reserves the right and has the obligation to revise the Award Notice and the information therein, and Bidder acknowledges that it shall be obligated to pay or receive payment for Unforced Capacity in accordance with the revised Award Notice. Prior to making such revision, the NYISO shall notify Bidder of the mistake and provide Bidder with an explanation of the basis for the revised Award Notice.

## **2. Sales of Unforced Capacity**

### **A. Offers to Sell Unforced Capacity.**

- (1) Auctions shall be conducted in accordance with the ISO Services Tariff and the ICAP Manual.
- (2) Each Electronic Offer submitted is valid for only one Auction. An Electronic Offer must be submitted for each Auction in which Offeror desires to participate.
- (3) Offeror offers to sell Unforced Capacity in the amounts, for at least the minimum prices, and from the resources specified in Offeror's Electronic Offers (each individual offer listed in an Offeror's Electronic Offer being referred to as an "Individual Offer"), and requests that the NYISO submit the Individual Offers in the Auction for which they are submitted.
- (4) The sale price for Unforced Capacity offered in each Individual Offer in an Auction shall be the Market Clearing Price established in that Auction as determined by the NYISO; provided, however, that if the Unforced

Capacity is from a Subject Generator (as defined in Attachment I of the ICAP Manual) then the sale price for the Unforced Capacity indicated in such Individual Offer shall be calculated pursuant to the ICAP Manual.

- (5) Offeror's submission of a completed Offer Package represents a binding obligation of Offeror to sell the amount of Unforced Capacity referenced in an Electronic Offer.
- (6) The submission of an Offer Package does not obligate the NYISO to accept the Offer Package, in whole or in part, nor does the submission of an Offer Package grant any right to Offeror to sell any Unforced Capacity.
- (7) The Market Clearing Price for Unforced Capacity can be positive or zero.
- (8) Any of the Individual Offers contained in Offeror's Electronic Offers, or an entire Electronic Offer, may be amended by Offeror at any time during the period specified for the submission of Electronic Offers (the "Offering Period") by submitting an amended Individual Offer or a new entire Electronic Offer, any of which subsequent offers must be received in accordance with this Agreement, the ISO Services Tariff and the ICAP Manual. If such an amended Individual Offer or new Electronic Offer is timely and correctly submitted by Offeror as provided herein, the most recently received Individual Offer or Electronic Offer, as indicated by the date and time of submission reported in the [ICAP Automated ICAP Market System](#), shall supersede any previous version of the Individual Offer or Electronic Offer being changed, and any such superceded Individual Offer or Electronic Offer shall have no further force or effect. A newly uploaded Electronic Bid must include all Individual Offers that Offeror intends to be in effect, including any previously submitted Individual Offers that are not being amended.
- (9) To complete an Offer Package, Offeror must submit, in addition to this Agreement, a properly formatted Electronic Offer to the [ICAP Automated ICAP Market System](#) prior to close of the Offering Period in each Auction in which Offeror wishes to participate. The Parties further agree that all Electronic Offers must be submitted in the format, and include all the information, required by the [ICAP Automated ICAP Market System](#), the ISO Services Tariff and the ICAP Manual, and that the time of submission for all Electronic Offers shall be determined by the [ICAP Automated ICAP Market System](#).
- (10) Timely submission of an Offer Package does not guarantee that the Offer Package is valid for inclusion in an Auction. This Agreement is a component of an Offer Package, and if not completed in conformity with the ISO Services Tariff and the ICAP Manual and the terms and conditions of the form of this Agreement included in the ICAP Manual as Attachment F thereto shall, in the NYISO's sole determination, be invalid

and may be rejected. Signature by the NYISO in the place provided below shall signify its acceptance of this Agreement. Whether the Electronic Offer component of an Offer Package is sufficient in format and content shall be assessed by the [ICAP](#) Automated ~~ICAP~~ Market System, which may reject any incomplete or insufficient Electronic Offer.

- (11) In the event that the NYISO rejects a form of this Agreement tendered as a component of an Offeror's Offer Package, it shall notify Offeror as soon as reasonably possible via email and Offeror shall have the right to submit a replacement Agreement ~~until the close of the time period for submitting Agreements prior to any Auction, as provided for in Section 6(1) below.~~ Rejected Electronic Offers may be resubmitted at any time during the Offering Period for an Auction until the close of that Offering Period.
- (12) The Parties agree that Offeror bears the sole responsibility for submitting a correct and complete Offer Package.

**B. Payment Procedures for Sales of Unforced Capacity**

- (1) Offeror's obligation to sell Unforced Capacity shall become effective upon the posting following each Auction in the [ICAP](#) Automated ~~ICAP~~ Market System of awards of Unforced Capacity from the Auction results (the "Award Notice"). The Award Notice shall specify the amount of Unforced Capacity that Offeror has sold in the Auction ("Sold Capacity"), the Market Clearing Price of such Unforced Capacity, the location of the resource and the Total Selling Price, as defined in this Section 2B(1). The Total Selling Price shall equal the sum of the products of the amounts of Sold Capacity and the Market Clearing Price applicable to each Individual Offer for such Sold Capacity, except, if any Individual Offer to be included in such calculation includes Unforced Capacity from a Subject Generator (as defined in the Attachment I of the ICAP Manual), then the individual sales price for any such Individual Offer that must be included in the calculation of Total Selling Price shall be calculated pursuant to the ICAP Manual.
- (2) Amounts owed on Unforced Capacity sold in a Strip Auction shall be settled on a monthly basis. In each monthly payment, the NYISO shall pay one sixth of the Total Selling Price specified for an Offeror in the Award Notice for the last Capability Period Auction, and continue such payments each month thereafter until the total award value is satisfied.
- (3) Unforced Capacity sold in Monthly and Spot Market Auctions shall be settled on a monthly basis. In each monthly billing, the NYISO shall issue bills for the Total Selling Price specified in the Award Notice for the last Auction.

- (4) By 10:00 AM on the first banking day after the 20th day of the month after the month for which Unforced Capacity was sold in any Auction, the NYISO shall cause funds to be wired to the accounts specified by Offeror in an amount equal to the cumulative Total Selling Price from all such Auctions, as indicated in the monthly billing invoice issued by the NYISO.
- (5) Within six (6) business days after the day on which Offeror's Award Notice is posted on the [ICAP](#) Automated ~~ICAP~~ Market System, Offeror shall give wiring instructions to the NYISO, designating the account(s) to which funds generated from the Auction shall be transferred by the NYISO pursuant to the ICAP Manual.
- (6) To the extent that Offeror disputes the calculation of the Total Selling Price due and payable, NYISO shall remain obligated to make payment in full for the Unforced Capacity as indicated in the Award Notice. If it is later determined in accordance with this Agreement that an underpayment has been made by the NYISO to Offeror, then the NYISO shall pay the amount owed to Offeror. If it is later determined in accordance with this Agreement that an overpayment has been made by the NYISO to Offeror, then Offeror shall refund the amount of the overpayment to the NYISO. Payments made pursuant to this Section 2B(6) shall also include interest calculated from the date that the underpayment or overpayment was made, in accordance with the methodology specified for interest on refunds in the FERC regulations at 18 C.F.R. § 35.19a(a)(2)(iii).
- (7) If the NYISO determines that a mistake has been made in the information provided in an Award Notice after its delivery, the NYISO reserves the right and has the obligation to revise the Award Notice and the information therein, and Offeror acknowledges that it shall be obligated to pay or receive payment for Unforced Capacity in accordance with the revised Award Notice. Prior to making such revision, the NYISO shall notify Offeror of the mistake and provide Offeror with an explanation of the basis for the revised Award Notice.

### 3. **Dispute Resolution**

- (1) Within six (6) business days after the day on which Market Participant's Award Notice is posted on the [ICAP](#) Automated ~~ICAP~~ Market System, to the extent that Market Participant disputes the calculation of the Total Purchase Price or the Total Selling Price, Market Participant shall give written notice by email or electronic facsimile transmission to the NYISO, setting forth in reasonable detail the basis for any such disagreement ("Dispute"). If Market Participant does not give written notice within the six (6) business day period, Market Participant shall be deemed to have irrevocably accepted the Total Purchase Price or Total Selling Price as



specified in the Award Notice as delivered to Market Participant by the NYISO.

- (2) If a timely filed written notice of a Dispute is given, Market Participant and the NYISO shall promptly commence good faith negotiations with a view to resolving the Dispute within five (5) business days of the NYISO's receipt of such notice. If the Dispute is not resolved within the five (5) business day period, then the Dispute shall thereafter be referred by either Market Participant or the NYISO to the Director of the FERC Office of Dispute Resolution Service or the successor office (the "Director") for a resolution of such Dispute in accordance with this Agreement, the ISO Services Tariff and the ICAP Manual. The resolution of the Dispute shall be conducted in the following manner:
  - (a) Within three (3) business days after being notified of a Dispute, the Director shall identify and create a list of five (5) arbitrators who must be knowledgeable about the electric energy industry, and deliver the list to Market Participant and the NYISO.
  - (b) Within five (5) business days of receipt of such list from the Director, Market Participant and the NYISO, separately, shall select three (3) arbitrators from the Director's list and resubmit their selections to the Director.
  - (c) Within two (2) business days of the Director's receipt of the resubmitted lists of arbitrators from Market Participant and the NYISO, the Director shall select in its sole discretion one arbitrator (the "Arbitrator") from the common name or names on the resubmitted lists to resolve the Dispute in accordance with the terms and conditions of this Agreement and the ICAP Manual. The decision and resolution of the Arbitrator shall be rendered within twenty (20) business days after referral of the Dispute to the Arbitrator and shall be final and binding upon the parties. During this twenty (20) business day period, Market Participant and the NYISO shall be afforded an opportunity to make written and oral presentations to the Arbitrator. Market Participant and the NYISO shall use their best efforts to enable the Arbitrator to render a decision within the twenty (20) business day period described above, and each shall cooperate with the Arbitrator and provide the Arbitrator with access to the books, records and representatives of each as the Arbitrator may require in order to render its determination. All of the fees and expenses of any Arbitrator retained pursuant to this Section shall be paid by the party who does not prevail in the Dispute.

- (d) In the event that Market Participant is barred by law from entering into binding arbitration, Disputes shall be heard in a court of competent jurisdiction in the State of New York.

#### **4. Representations and Warranties of Market Participant**

##### **A. Market Participant hereby represents and warrants to the NYISO as follows:**

- (1) Market Participant is a Customer eligible to participate in Auctions and is purchasing or selling Unforced Capacity solely for purposes related to its business as a producer, processor, commercial user of or a merchant handling Unforced Capacity or the products or by-products thereof.
- (2) Market Participant shall not resell any Unforced Capacity purchased through an Auction for the purpose of meeting the electric generation capacity requirements in an External Control Area.
- (3) Market Participant has full power and authority to execute and deliver the Bid or Offer Package and to perform its obligations hereunder. Each completed Bid or Offer Package constitutes a valid and legally binding obligation of Market Participant.
- (4) The execution and delivery of all Bid or Offer Packages and the consummation of the transactions contemplated thereby have been duly and validly approved by all requisite action, corporate or otherwise, on the part of Market Participant, and no other proceeding or action, corporate or otherwise, on the part of Market Participant is necessary to approve and submit Bid or Offer Packages and to consummate the transactions contemplated thereby.
- (5) Market Participant is qualified to purchase Unforced Capacity awarded in an Auction and has sufficient funds to purchase such Unforced Capacity as contemplated herein.
- (6) Any and all Unforced Capacity being offered pursuant to this Agreement is free and clear of any restrictions on transfer (other than those imposed under the ISO Services Tariff and the ICAP Manual), taxes, security interests, options, warrants, purchase rights, contracts, commitments, equities, claims, or demands.
- (7) The amount of Unforced Capacity that Market Participant offers for sale at any time pursuant to this Agreement shall not exceed the amount of capacity that meets the qualifications for Installed Capacity set forth in the ICAP Manual that the resource from which such Unforced Capacity is obtained (the "Selected Resource") is permitted to provide. Market Participant shall provide documentation evidencing the amount of such capacity that the Selected Resource may provide.

- (8) The amount of Unforced Capacity that Market Participant offers for sale at any time pursuant to this Agreement shall not exceed Market Participant's share of the amount of Unforced Capacity that the Selected Resource is permitted to provide.
- (9) Market Participant owns, has contracted to purchase, or is an authorized agent for the owner of, all shares of Unforced Capacity from the Selected Resource offered pursuant to this Agreement.
- (10) The Unforced Capacity offered for sale for any Capability Period pursuant to this Agreement has not previously been committed in the New York market or in any other capacity market for that same Capability Period.
- (11) All Unforced Capacity sold by Market Participant in an Auction is thereby committed to the New York Control Area ("NYCA") and cannot be released by Market Participant outside the NYCA until the commitment term of such Unforced Capacity sold in such Auction has expired.
- (12) Market Participant shall hold, use, or assign any Unforced Capacity offered in any Auction in accordance with the terms and conditions set forth in the ISO Services Tariff and the ICAP Manual.
- (13) Market Participant holds all licenses, franchises, permits and authorizations in compliance with all applicable laws, rules or regulations that are necessary for the lawful ownership or use of Unforced Capacity.
- (14) Other than providing the information required to complete this Agreement, Market Participant has not amended or changed this Agreement in any way to make it different from the "Agreement to Purchase or Sell Unforced Capacity in NYISO Installed Capacity Auctions" appended to the ICAP Manual as Attachment F, as may be amended by the NYISO from time to time.
- (15) All representations and warranties contained herein shall be deemed to be made again at the time of each purchase or sale of Unforced Capacity in an Auction.

## **5. Indemnification; Release of Liability**

- (1) Market Participant agrees to indemnify and save and hold harmless the NYISO, and all of its officers, directors, employees, and agents, from and against any and all losses, damages, expenses, liabilities, claims or demands, including attorney's fees, (collectively, "Damages") whatsoever suffered or incurred by such parties resulting, arising from or relating to Market Participant's breach of any of its agreements, covenants, representations or warranties contained herein, except for those Damages resulting from the NYISO's gross negligence or intentional misconduct.

- (2) Market Participant hereby releases the NYISO, and all of its officers, directors, employees and agents, from any and all liability arising from or relating to the Auctions, except with respect to any gross negligence or intentional misconduct on the part of the NYISO, its officers, directors, employees, or agents.

## 6. Miscellaneous

~~(1) The original of this Agreement must be received by the NYISO by overnight mail service or delivery service requiring the signature of the addressee by 12:00 PM on the fifth business day before the day of the first Auction in which Market Participant desires to participate, which scheduled Auction dates are provided in the Auction timeline on the NYISO website; provided further, however, that for participation in the Winter 2005/2006 Capability Period Auction, this Agreement must be received by the NYISO by 12:00 PM of the twentieth business day before the day of the Winter 2005/2006 Capability Period Auction. Express mail deliveries must be delivered to:~~

~~Manager—Auxiliary Market Operations  
c/o New York Independent System Operator, Inc.  
3890 Carman Road  
Schenectady, NY 12303~~

~~(2)(1)~~ All inquires, notices, and communications can be given by the NYISO to Market Participant as follows:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

~~(3)(2)~~ Unless otherwise specified in the Agreement, all inquires, notices, and communications can be given by Market Participant to the NYISO as follows:

Kathy Whitaker  
Manager – Auxiliary Market Operations  
c/o New York Independent System Operator, Inc.  
3890 Carman Road  
Schenectady, NY 12303  
Phone: 518-356-6060

Fax: 518-356-6208  
E-mail: [kwhitaker@nyiso.com](mailto:kwhitaker@nyiso.com)

~~(4)~~(3) All representations, warranties, covenants, and obligations of this Agreement shall survive each purchase or sale of Unforced Capacity by Market Participant.

~~(5)~~(4) Market Participant's Bid or Offer Packages, together with the ISO Services Tariff and the ICAP Manual, shall constitute the entire agreement between the Parties on the subject matter hereof and shall supersede all prior discussions, agreements, and understandings of any kind and nature between them on such subject matter.

~~(6)~~(5) It is understood and agreed that the provisions of this Agreement are intended for the respective benefit of Market Participant and the NYISO and may be enforced directly by the NYISO against Market Participant or by Market Participant against the NYISO.

~~(7)~~(6) This Agreement and all Electronic Bids and Electronic Offers shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict of laws provisions.

IN WITNESS WHEREOF, this Agreement has been submitted as of the date first above written.

NAME OF MARKET PARTICIPANT:

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

Name: \_\_\_\_\_

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

(An officer or employee with legal  
authority to bind Market Participant)

New York Independent System Operator, Inc.

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

Name: \_\_\_\_\_

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

(An officer or employee with legal  
authority to bind the NYISO)