

AGREEMENT

AMONG

**ENERGY NUCLEAR FITZPATRICK, LLC,
ENERGY NUCLEAR INDIAN POINT 3, LLC,
ENERGY POWER MARKETING CORP.**

AND

POWER AUTHORITY OF THE STATE OF NEW YORK

FOR THE PURCHASE OF PRODUCTS AND SERVICES FROM

THE JAMES A. FITZPATRICK AND INDIAN POINT NO. 3

NUCLEAR POWER PLANTS

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ENERGY NUCLEAR FITZPATRICK, LLC,
ENERGY NUCLEAR INDIAN POINT 3, LLC,
ENERGY POWER MARKETING CORP.
AND
POWER AUTHORITY OF THE STATE OF NEW YORK

AGREEMENT entered into this 28th day of March, 2000 by and among Entergy Nuclear Fitzpatrick, LLC, a Delaware limited liability company ("ENF"), Entergy Nuclear Indian Point 3, LLC, a Delaware limited liability company ("ENIP" and together with ENF, each a "Seller" and collectively, "Sellers"), Entergy Power Marketing Corp., a Delaware corporation, and Power Authority of the State of New York, a body corporate and politic and a political subdivision of the State of New York ("Buyer").

WHEREAS, ENF intends to purchase from Buyer the specific generating facility known as the James A. FitzPatrick Nuclear Power Plant, located in Scriba, New York and certain related assets ("FitzPatrick") and ENIP intends to purchase from Buyer the specific generating facility known as the Indian Point No. 3 Nuclear Power Plant, located in Buchanan, New York, and certain related assets ("IP3," and together with FitzPatrick, each, a "Facility" and collectively, the "Facilities"), pursuant to the terms of a certain Purchase and Sale Agreement, dated the date hereof by and among Buyer and Sellers (the "Purchase and Sale Agreement") entered into concurrently with the execution hereof; and

WHEREAS, EPMC is a party to this Agreement for purposes of performing the obligations under Article 22 (Guaranty), Appendix A subsection IV(c) and Appendix B subsection IV(c).

WHEREAS, as a condition to, and upon the Closing (as defined in Article 1) of, the sale of the Facilities to Sellers, each Seller wishes to sell to Buyer and Buyer wishes to purchase from each Seller Unit Contingent Energy, Installed Capacity and Ancillary Services (as such terms are defined in Article 1) from the Facility owned by such Seller.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, each Seller and Buyer hereby agree as follows:

Article 1: Definitions

When used with initial capitalization, whether in the singular or in the plural, the following terms shall have the meanings set forth below.

- 1.1 Adequate Assurance has the meaning set forth in Section 12.11.
- 1.2 Affiliate has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.
- 1.3 Agreement means this agreement, including Appendices A, A-1, B, C and D (including Schedule 1 thereto), each as may be amended, modified, extended and supplemented by the Parties from time to time.
- 1.4 Ancillary Services means those services now or hereafter identified as ancillary services by the NYISO pursuant to the NYISO's tariff. As of the date hereof, such services are those services that are necessary to support the transmission of Power

and Energy from generators to loads while maintaining reliable operation of the New York State transmission system in accordance with Prudent Utility Practice.

- 1.5 Bankrupt means Buyer, a Seller or EPMC either: (i) files a petition or otherwise commences a proceeding (whether voluntarily or involuntarily), under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such proceeding, order or decree remains unstayed and in effect for sixty (60) days, (ii) makes a general assignment or arrangement for the benefit of its creditors, (iii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (iv) admits in writing that it is generally unable to pay its debts as they become due.
- 1.6 Business Day means any day other than a Saturday, Sunday or day on which banks are legally closed for business in New York, New York.
- 1.7 Buyer Regulatory Approvals means those approvals identified on Schedule 6.2(c) to the Purchase and Sale Agreement to be obtained by Buyer as a condition to Buyer's obligations under the Purchase and Sale Agreement.
- 1.8 Buyer Entitlement means, depending on the context, the FitzPatrick Entitlement and/or the IP3 Entitlement.
- 1.9 Capacity means the capability to generate or transmit electrical power, measured in megawatts.
- 1.10 Closing means the closing as defined in the Purchase and Sale Agreement which shall be effective as of 12 noon Eastern Standard Time on the Closing Date.

- 1.11 Closing Date means the date of Closing as defined in the Purchase and Sale Agreement.
- 1.12 Delivery Point(s) means the point or points where Power and Energy generated by each Facility or a third party source is delivered by the applicable Seller to Buyer. The Delivery Point(s) for each of the Facilities are specified in Appendices A and B.
- 1.13 Due Date has the meaning set forth in Section 12.7.
- 1.14 Energy means a quantity of electricity that is bid, produced, purchased, consumed, sold, or transmitted over a period of time, and measured or calculated in MWh. All Energy is in the form of 3-phase, 60 cycle, alternating current.
- 1.15 Event of Default has the meaning set forth in Section 11.1.
- 1.16 Facilities Agreement has the meaning specified in the Purchase and Sale Agreement.
- 1.17 Facility and Facilities have the meanings set forth in the preamble hereof.
- 1.18 FERC means the Federal Energy Regulatory Commission or its regulatory successor, as applicable.
- 1.19 FitzPatrick Ancillary Services Percentage means the percentage set forth opposite each of the following calendar years during the Term:

<u>Year</u>	<u>Percentage</u>
2000	45.45%
2001	43.63%
2002	36.72%
2003	30.90%
2004	30.90%

- 1.20 FitzPatrick Entitlement means Unit Contingent Energy, Installed Capacity and Ancillary Services as described in Appendix B and Appendix C.
- 1.21 FitzPatrick Price means the Purchase Price for the FitzPatrick Entitlement, as set forth in Article 6.
- 1.22 Forward Contract Merchant means a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- 1.23 Installed Capacity means the amount of Capacity from a particular generating facility that complies with the requirements in the NYISO Reliability Rules (the "Reliability Rules") and is capable of supplying and/or reducing the demand for Energy in the New York Control Area (as defined by the NYISO) for the purpose of ensuring that sufficient Energy and Capacity are available to meet the Reliability Rules.
- 1.24 IP3 Entitlement means Unit Contingent Energy, Installed Capacity and Ancillary Services as described in Appendix A and Appendix C.
- 1.25 IP3 Price means the Purchase Price for the IP3 Entitlement, as set forth in Article 6.
- 1.26 LBMP means Locational Based Marginal Pricing, as defined by the NYISO.
- 1.27 Lenders means any bank or other financial institution which agrees to provide financing or credit support to Sellers, including, but not limited to, those issuing letters of credit on behalf of Sellers.
- 1.28 MWh means megawatt hours.
- 1.29 Note means either of the Facilities Payment Note or the Fuel Payment Note, each as defined in the Purchase and Sale Agreement.

- 1.30 NYISO means the New York Independent System Operator organization established by the NYISO Agreement and formed in accordance with orders of FERC to administer the operation of, to provide equal access to, and to maintain the reliability of the bulk power transmission system in New York State. The term NYISO includes its successor organization(s), if any.
- 1.31 NYISO Agreement means the agreement, dated December 2, 1999, as approved by FERC, as amended from time to time.
- 1.32 NYISO Procedures means all criteria, rules and standards ("CRS"), NYISO Automated Billing System Procedures, Operating Procedures ("OP"), and Market Rules ("MR") issued or adopted by NYISO and its satellite agencies, or their successors, as amended from time to time and all successor requirements, criteria, rules and standards.
- 1.33 NYISO Requirements means all tariff requirements, criteria, rules and standards issued or adopted by the NYISO, as amended from time to time and all successor requirements, criteria, rules and standards.
- 1.34 Party means each Seller on the one hand and Buyer on the other hand and their respective successors or permitted assigns or transferees.
- 1.35 Peak Periods means the periods from (a) June 15 through and including September 15 and (b) December 1 through and including the last day of February.
- 1.36 Permanently Retired means with respect to a Facility, that such Facility has been shut down and a notice of permanent cessation of operations has been filed with

the Nuclear Regulatory Commission pursuant to 10 C.F.R. Section 50.82(a)(1)(i) with respect to such Facility.

- 1.37 Planned Outage means an outage that is scheduled well in advance and is of a predetermined duration and lasts for several weeks. Turbine and boiler overhauls or inspections, testing and nuclear refueling are typical Planned Outages.
- 1.38 Power means the time rate of generating, transmitting or using Energy, usually expressed in kilowatts or megawatts. Unless the term is specifically qualified to the contrary, Power shall also include the Energy associated therewith.
- 1.39 Prime Rate means the interest rate announced by The Chase Manhattan Bank NA (or its successor) as its prime rate in effect on the first day of the month.
- 1.40 Prudent Utility Practice means any of the practices, methods and acts engaged in; or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with applicable laws and good business practices, reliability, safety and expedition. Prudent Utility Practices are not intended to be limited to only the optimum practice, method or act to the exclusion of all others, but rather are intended to include practices, methods or acts generally accepted in the region.
- 1.41 Purchase and Sale Agreement has the meaning specified in the preamble hereof.

- 1.42 Purchase Price means the price, stated on a MWh basis, for the Buyer Entitlement provided by the applicable Seller. Depending on the context, Purchase Price shall mean the FitzPatrick Price and/or the IP3 Price, at the respective Delivery Points.
- 1.43 Redirected Energy has the meaning specified in Section 10.1(c).
- 1.44 Requesting Party has the meaning set forth in Section 12.11.
- 1.45 Seller Regulatory Approvals means those approvals identified on Schedule 6.1(c) to the Purchase and Sale Agreement to be obtained by Sellers as a condition to Sellers' obligations under the Purchase and Sale Agreement.
- 1.46 Taxes means any and all new or existing ad valorem, property, franchise, gross receipts, occupation, generation, privilege, sales, use, consumption, excise, lease, transaction and other taxes or other similar governmental charges, licenses, fees, penalties, levies, permits or assessment, and any increases in same or penalties, fines or interest thereon, excluding taxes based on net income or net worth.
- 1.47 Term has the meaning set forth in Section 8.1.
- 1.48 Unit Contingent Energy means the Energy subject to this Agreement that is intended to be supplied from particular identified generation assets, specifically, FitzPatrick and IP3, which shall be Energy subject to a Capacity Factor Minimum (as defined in Appendices A and B) during the Term.
- 1.49 Volt Ampere Reactive or VAR means voltage support and apparent power.

Article 2: Interpretations

- 2.1 The following rules of usage and interpretation shall apply to this Agreement unless otherwise required by the context or unless otherwise defined therein:

- (a) Except as otherwise expressly provided, any definition defined herein shall be equally applicable to the singular and plural forms of the terms defined.
- (b) Except as otherwise expressly provided, references to articles, sections or appendices, are references to articles, sections or appendices in or to this Agreement.
- (c) References to any person or entity shall include such person or entity, its successors and permitted assigns and transferees.
- (d) Except as otherwise expressly provided, reference to any agreement means such agreement as amended, modified, extended or supplemented from time to time in accordance with the applicable provisions thereof.
- (e) Except as otherwise expressly provided, references to any law, statute, rule, regulation or tariff include any amendment or modification thereof.
- (f) When used in any document, words such as "hereunder," "hereto," "hereof" and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof.

Article 3: Condition Precedent

- 3.1 It is a condition precedent to the obligations of Sellers, EPMC and Buyer under this Agreement that (a) the Closing shall have occurred and (b) FERC shall have issued an acceptable (in each Party's reasonable discretion) final and non-

appealable (i.e., all times for appeal have expired or from which there is no appeal) order accepting this Agreement for filing.

Article 4: General Standards for Performance

4.1 The obligations hereunder shall be undertaken consistent with Prudent Utility Practice, NYISO Requirements, NYISO Procedures and all applicable laws, rules and regulations.

Article 5: Sale and Purchase of Buyer Entitlement

5.1 Commencing on the Closing, (a) ENF agrees to sell and deliver, and Buyer agrees to purchase, accept delivery at the Delivery Point, and pay for in accordance with Article 12 the FitzPatrick Entitlement (whether accepted or rejected by Buyer or redirected by Buyer pursuant to Section 10.1) at the FitzPatrick Price (less any amounts credited pursuant to Section 10.1) and (b) ENIP agrees to sell and deliver, and Buyer agrees to purchase, accept delivery at the Delivery Point, and pay for in accordance with Article 12 the IP3 Entitlement (whether accepted or rejected by Buyer or redirected by Buyer pursuant to Section 10.1) at the IP3 Price (less any amounts credited pursuant to Section 10.1), in each case during the Term. Buyer agrees that, except as provided under Article 16 of this Agreement (*Force Majeure*), Buyer shall pay the applicable Seller for all Energy scheduled for Buyer and made available at the Delivery Point up to the Buyer Entitlement, notwithstanding Buyer's need for Energy, market conditions, or other factors affecting Buyer's ability to accept or utilize such Energy.

- 5.2 No Seller shall have any responsibility or liability for costs for the transmission of the FitzPatrick Entitlement and the IP3 Entitlement beyond the Delivery Points, including but not limited to, transmission and Ancillary Service costs and congestion costs. Notwithstanding the foregoing, EPMC shall provide Buyer with the economic equivalent of IP3 and FitzPatrick Energy and Installed Capacity as required pursuant to Appendix A subsection IV(c) and Appendix B subsection IV(c), in both cases in the event a Facility is Permanently Retired.
- 5.3 Nothing herein shall preclude either Seller from selling to third parties or to Buyer any products or services derived from the Facilities not required to fulfill such Seller's obligations hereunder, nor shall anything herein preclude Buyer from reselling to third parties or to either Seller any of the Buyer Entitlement.

Article 6: Purchase Prices

- 6.1 The Purchase Price shall be as follows for each Facility:

FitzPatrick Price: \$32 per MWh

IP3 Price: \$36 per MWh

- 6.2 The amounts payable by Buyer with respect to a particular month to the applicable Seller shall be calculated monthly and shall be equal to the product of (i) the amount of Energy (in MWh) scheduled and delivered by such Seller at the Delivery Point during such month with respect to each Facility, and (ii) the respective Purchase Price for such Facility.
- 6.3 For the Purchase Price, Buyer shall receive all the products and services included in the Buyer Entitlement.

6.4 Each Seller shall provide VARs from the Facilities to the NYISO in accordance with the NYISO Requirements. Each Seller shall use commercially reasonable efforts to comply with all NYISO Procedures for maintaining eligibility as a provider of such VARs including: (a) timely submission to the NYISO of necessary embedded cost data required by the NYISO Requirements, (b) performance of reactive power (MVAR) capability tests, (c) prompt response to the NYISO's requests for VARs, and (d) reporting to the NYISO on the operating status of the applicable Facility's automatic voltage regulator. Each Seller shall use commercially reasonable efforts to perform the required maintenance and repairs to maintain or restore to service all applicable Facility equipment required to provide such VARs. Sellers' obligation under the preceding two sentences shall be (x) conditioned upon the relevant equipment in the Facilities being delivered to Sellers at Closing in good operating condition and with the equipment being sufficient to allow Sellers to meet the requirement provided in this Section and (y) based upon and consistent with the efforts undertaken by Buyer prior to Closing with respect to maintaining eligibility and as to Buyer's repair and maintenance of the applicable equipment. Buyer shall be credited with (a) the FitzPatrick Ancillary Services Percentage of the VARs produced by FitzPatrick in response to the NYISO's requests therefor and shall receive the FitzPatrick Ancillary Services Percentage of associated revenues paid to ENF by the NYISO with respect thereto as and when received by ENF and (b) one hundred percent (100%) of the VARs produced by IP3 in response to the NYISO's requests therefor and shall receive all

associated revenues paid to ENIP by the NYISO with respect thereto as and when received by ENIP.

Article 7: Scheduling and Outages

- 7.1 Each Seller shall perform all scheduling activities with respect to the applicable Facility consistent with its obligations to Buyer hereunder. Each Seller shall use commercially reasonable efforts to ensure that the output of the applicable Facility is as high as reasonably practicable.
- 7.2 Each Seller shall provide Buyer with as much advance written notice as is practicable, and where possible at least forty-five (45) days' prior written notice, of Planned Outages of the Facilities, recognizing that the precise dates of the Planned Outages may change. To the extent reasonably possible, such Planned Outages shall be scheduled to commence and conclude outside of Peak Periods. Each Seller shall use commercially reasonable efforts to manage other outages so as to minimize outage time during Peak Periods.
- 7.3 Each Seller shall keep Buyer reasonably informed on an ongoing basis of any significant issues that may affect Facility operation, and changes or possible changes in the scheduling or duration of Planned Outages which may affect the timely delivery of Energy so that Buyer may arrange for alternative supplies of Energy if necessary.
- 7.4 All information provided to Buyer pursuant to Sections 7.2 and 7.3 and not publicly available shall be maintained as confidential information by Buyer to the maximum extent permitted by law.

Article 8: Term and Termination

- 8.1 This Agreement shall become effective on the date hereof, but the obligations of the Parties and EPMC under this Agreement shall commence on the Closing and shall continue through and including December 31, 2004, subject to the termination provisions set forth in this Agreement (such period being referred to as the "Term").
- 8.2 This Agreement may only be terminated (i) by mutual agreement of the Parties and EPMC; (ii) subject to the limitations contained in Section 11.3, by the non-defaulting party so long as any Event of Default is continuing and has not been cured within the applicable cure period; and (iii) by any Party or EPMC if a governmental, regulatory, or judicial authority of competent jurisdiction declares this Agreement to be invalid in whole or in material part pursuant to a final and non-appealable (as defined in Section 3.1) order or decision, provided that the Parties and EPMC shall have first engaged in good faith negotiations to modify this Agreement to each Party's and EPMC's commercially reasonable satisfaction in order to satisfy such governmental, regulatory and/or judicial objections. In the event this Agreement is terminated pursuant to subsections (i) or (iii), no Party nor EPMC shall be liable to another for damages due to such termination. Notwithstanding the foregoing sentence, each Party's and EPMC's pre-existing liabilities shall survive termination.
- 8.3 Each Seller reserves the right, in its sole discretion, at any time, to cause a Facility to be Permanently Retired; provided that such Seller shall give Buyer as much

advance written notice as reasonably possible, but not less than thirty (30) days' written notice.

- 8.4 After termination or expiration of the Term, applicable provisions of this Agreement shall remain in effect, including, without limitation, Article 13 (Limitation of Liability and Indemnification) and all unsatisfied billing and payment obligations which arose during the Term.

Article 9: Discussions Regarding Post-Term Sales and Purchases

9.1 The Parties recognize that Buyer may desire to purchase, and ENF may desire to sell, additional Energy (and other products and services) from FitzPatrick for delivery to Buyer after the expiration of the Term. With respect thereto:

- (a) On or before December 31, 2003, Buyer shall notify ENF of its requirements and ENF and Buyer shall discuss, in good faith, the terms and conditions (including price) of such purchase, which if agreed to shall be at such price and on such terms as each Party shall determine in its sole discretion.
- (b) (i) On or before December 31, 2003, and (ii) unless it is not commercially reasonable for ENF to do so, at any time during the Term, ENF shall notify Buyer when all but 200 MW produced by FitzPatrick have been sold or are otherwise unavailable for sale to Buyer during the period of up to five years commencing January 1, 2005. In such event, Buyer may request that the discussions contemplated by subsection (a) above

commence on an accelerated basis. To the extent reasonably practicable, ENF shall not sell, or commit to sell, the remaining 200 MW without providing Buyer a commercially reasonable opportunity to discuss its own purchase of such Energy.

- (c) (i) On or before December 31, 2003, and (ii) unless it is not commercially reasonable for Buyer to do so, at any time during the Term, Buyer shall provide ENF with as much notice as is reasonably practicable if Buyer intends to purchase Energy during the five-year period commencing January 1, 2005 to replace the FitzPatrick Entitlement. Buyer shall provide ENF with a commercially reasonable opportunity to submit its bid for the sale of Energy from FitzPatrick, or if Buyer does not contemplate soliciting requests for proposals, Buyer shall provide ENF with a commercially reasonable opportunity to commence the discussions contemplated by subsection (a) above before committing to purchase Energy from another source to replace the FitzPatrick Entitlement.
- (d) Except for the obligations to provide notice and to engage in good faith discussions concerning the terms and conditions (including price) for any proposed sale and purchase arrangement, nothing in this Article 9 is intended to limit ENF's ability or right to sell Energy, Installed Capacity or Ancillary Services produced by FitzPatrick to any third party or to Buyer, or Buyer's ability or right to purchase any products or services from any third party or from ENF.

9.2 With respect to any potential sale by ENIP and purchase by Buyer of additional Energy (and other products and services) from IP3 for delivery to Buyer after the expiration of the Term:

- (a) On or before December 31, 2003, Buyer shall notify ENIP of its requirements and ENIP and Buyer shall discuss, in good faith, the terms and conditions (including price) of such purchase, which if agreed to shall be at such price and on such terms as each Party shall determine in its sole discretion.
- (b) (i) On or before December 31, 2003, and (ii) unless it is not commercially reasonable for ENIP to do so, at any time during the Term, ENIP shall notify Buyer when all but 500 MW produced by IP3 have been sold or are otherwise unavailable for sale to Buyer during the period of up to five years commencing January 1, 2005. In such event, Buyer may request that the discussions contemplated by subsection (a) above commence on an accelerated basis. To the extent reasonably practicable, ENIP shall not sell, or commit to sell, the remaining 500 MW without providing Buyer a commercially reasonable opportunity to discuss its own purchase of such Energy. ENIP shall be deemed to have complied with the provisions of this subsection if it has given Buyer the notice provided in this subsection on one occasion.
- (c) (i) On or before December 31, 2003, and (ii) unless it is not commercially reasonable for Buyer to do so, at any time during the Term, Buyer shall provide ENIP with as much notice as is reasonably practicable if Buyer

intends to purchase Energy during the five-year period commencing January 1, 2005 to replace 500 MW of the IP3 Entitlement. Buyer shall provide ENIP with a commercially reasonable opportunity to submit its bid for the sale of IP3 Energy, or, if Buyer does not contemplate soliciting requests for proposals, Buyer shall provide ENIP with a commercially reasonable opportunity to commence the discussions contemplated by subsection (a) above before committing to purchase Energy from another source to replace the 500 MW of the IP3 Entitlement.

- (d) Except for the obligations to provide notice and to engage in good faith discussions concerning the terms and conditions (including price) for any proposed sale and purchase arrangement, nothing in this Article 9 is intended to limit ENIP's ability or right to sell Energy, Installed Capacity or Ancillary Services produced by IP3 to any third party or to Buyer, or Buyer's ability or right to purchase any products or services from any third party or from ENIP.

Article 10: Obligations and Dispatch

- 10.1 (a) Each Seller shall be responsible for any costs or charges imposed on or associated with the delivery of the Buyer Entitlement up to the Delivery Point, including all costs in connection with transmission, scheduling, dispatch and bidding. Buyer shall be responsible for any costs or charges imposed on or associated with the Buyer Entitlement at and from the Delivery Point, including all costs in connection with transmission,

scheduling, dispatch and bidding. The responsibilities set forth in the preceding two sentences shall not apply in the case of Permanent Retirement.

- (b) Each Seller shall be solely responsible for submitting the required scheduling, dispatch and bidding and other relevant information, and supplying capability data to the NYISO with respect to the Buyer Entitlement. Each Seller shall be responsible for, and shall hold Buyer harmless against, any NYISO costs, losses, claims and penalties arising out of inaccuracies in the above information, except to the extent such information or direction was provided by Buyer to the applicable Seller, in which event Buyer shall be responsible for, and shall hold the applicable Seller harmless against, such NYISO costs, losses, claims and penalties.
- (c) In certain hours Buyer may schedule less Energy from a Seller for delivery to Buyer than a Seller has available for delivery to the Delivery Point(s). The difference between the Energy available for delivery to the Delivery Point(s) by a Seller and the Energy scheduled by a Buyer from a Seller for delivery to Buyer (the "Redirected Energy") shall be sold by the applicable Seller into the NYISO LBMP market. In such case, Buyer shall pay for the full amount of Energy scheduled and delivered to the applicable Delivery Point at the applicable Purchase Price, and the proceeds the Seller receives from the NYISO from the sale of the Redirected Energy into the LBMP market shall be credited to Buyer. Buyer and Sellers shall

cooperate when scheduling and bidding into the NYISO market so as to effectuate the provisions of this Section. To the extent that a Seller, acting pursuant to Buyer's instructions and in a commercially reasonable manner, incurs costs, losses, claims or penalties in connection with the sale into the LBMP market pursuant to this subsection (c), Buyer shall be liable therefor. If the NYISO allows Buyer to resell the Redirected Energy in bilateral contracts or otherwise, Buyer will use commercially reasonable efforts to do so, as opposed to directing the applicable Seller to sell the Redirected Energy into the LBMP market.

- 10.2 Neither Seller shall be deemed in default or be liable for damages if the applicable Facility is unavailable for any reason, other than gross negligence or intentional misconduct of the relevant Seller, to generate the Buyer Entitlement; provided that nothing in this Section or in Article 16 (*Force Majeure*) shall affect Sellers' or EPMC's obligations pursuant to Appendices A, B and C.

Article 11: Events of Default and Remedies

- 11.1 An "Event of Default" shall mean, with respect to a Party or EPMC, or their successors or permitted assigns the occurrence of any of the following:
- (a) the failure of a Party or EPMC to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement made by such Party (except to the extent constituting a separate Event of Default) and such failure is not remedied within three (3) Business Days after written notice;
- (d) the failure of such Party or EPMC (in the event EPMC is required to perform under Appendix A subsection IV(c) or Appendix B subsection IV(c)) to provide Adequate Assurance in accordance with Section 12.11, if applicable;
- (e) such Party or EPMC becomes Bankrupt;
- (f) such Party or EPMC consolidates or amalgamates with, or merges or consolidates with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party or EPMC under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement containing substantially the same terms as are set forth in this Agreement;
- (g) either EPMC or Buyer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to another entity otherwise in compliance with this Agreement, and the creditworthiness of

the resulting, surviving or transferee entity is materially weaker than that of EPMC or Buyer, as the case may be;

- (h) the failure a Party or its successor to provide the information required by Section 12.10, if applicable;
- (i) the failure by either Seller to make, when due, any payment required under any Note or the Facilities Agreement within ten (10) days after written notice; or
- (j) a Facility is Permanently Retired and EPMC fails to provide replacement Energy and Installed Capacity as provided in Appendix A, B or C, as applicable, and such failure is not remedied within thirty (30) Business Days after written notice.

11.2 In addition to any other remedies which the Parties may have at law or in equity:

- (a) Subject to the provisions of Section 11.3 below, the non-defaulting Party or Parties shall have the right, so long as any Event of Default is continuing and has not been cured within the applicable cure periods, if any, to terminate this Agreement.
- (b) Subject to Buyer's right with respect to Redirected Energy pursuant to Section 10.1(c), in the event that Buyer fails at any time to accept delivery of all or part of the scheduled Buyer Entitlement and such failure is not excused by *Force Majeure*, the applicable Seller shall act in a commercially reasonable manner to mitigate damages, including but not limited to selling the unaccepted Energy to a third party. In such case,

Buyer shall pay for the full amount of Energy scheduled, at the Purchase Price, and the proceeds Seller receives from the sale of such unaccepted Energy shall be credited to Buyer.

11.3 The Parties acknowledge that each Seller has entered into this Agreement as part of the transaction contemplated by the Purchase and Sale Agreement and is relying on Buyer's purchase of the Buyer Entitlement and the payments due with respect thereto in determining the purchase price to be paid and the assumption of assumed liabilities pursuant to the Purchase and Sale Agreement. Accordingly, in the event of an Event of Default by either Seller or EPMC under this Agreement, other than an Event of Default under subsections (a), (d) (with respect only to EPMC in the event EPMC is required to perform under Appendix A subsection IV(c) or Appendix B subsection IV(c)), (i) or (j) of Section 11.1, Buyer shall not be entitled to terminate this Agreement and instead Buyer's remedies shall be limited to claims for damages, specific performance or injunctive relief.

Article 12: Meter Reading, Billing, Credits, Payment, Audit and Creditworthiness

12.1 Each Seller shall maintain metering and telemetering equipment at the applicable Delivery Point. The metering equipment shall be capable of registering and recording instantaneous and time-differentiated electric Energy and other related data from the applicable Facility. The telemetering equipment shall be capable of transmitting such data to location(s) reasonably specified by Buyer.

- 12.2 Each Seller shall provide the NYISO with hourly integrated megawatt hour readings for each hour of the previous day. Each Seller shall record hourly meter readings and log sheets and, upon Buyer's request if information is not readily available from the NYISO, provide Buyer with copies of daily meter recordings and log sheets by electronic means with hard copy back-up. All metering equipment installed shall be routinely tested at least annually. Buyer shall be provided with reasonable notice prior to such testing and shall have the right to observe the testing and to receive copies of the results thereof. Any meter tested and found to be accurate within one-half of one percent (0.5%) shall be considered correct and accurate. If, at any time, any metering equipment is found to be defective or inaccurate, the applicable Seller shall cause such metering equipment to be made accurate or replaced at such Seller's expense. In such event and to the extent appropriate, a billing adjustment shall be made by such Seller correcting all measurements made by the defective meter for either (i) the actual period during which inaccurate measurements were made if such period is determinable to the mutual satisfaction of Buyer and such Seller; or (ii) if such period is not determinable, for a period equal to one-half the time elapsed since the prior test, but in no event greater than six (6) months.
- 12.3 Seller's invoice shall include the time and date of the meter readings. Each Seller's invoice shall include such reasonable details as will enable Buyer to determine the basis for the charges for each month. Each Seller and Buyer agree to provide additional information reasonably requested by the other Party for billing purposes or data verification. Invoices may be rendered on an estimated basis if

and to the extent actual data is not available. Each invoice shall be subject to adjustment for any errors in arithmetic, computing, estimating or otherwise. Each Seller shall include any such invoicing adjustments in subsequent invoices as promptly as practicable.

- 12.4 Any credits due Buyer for Buyer's portion of Ancillary Services and for sales of Redirected Energy revenues shall be reflected on the invoice(s).
- 12.5 The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all transactions under this Agreement through netting. In such case, all amounts owed by a Party to another Party during the monthly billing period under this Agreement shall be netted so that only the excess amount remaining due shall be paid by the Party who owes such excess amount.
- 12.6 If no mutual debts or payment obligations exist, including, but not limited to interest and payments or credits, and only one Party owes a debt or obligation to the other during the monthly billing period, that Party shall pay such sum in full when due.
- 12.7 As soon as possible after the end of each calendar month, each Seller shall submit its invoices to Buyer for its payment obligations incurred hereunder during the preceding calendar month in the manner specified in Article 21. All payments shown to be due on such invoice, except amounts disputed in good faith pursuant to Section 12.8, shall be due and payable as shown on the invoice. Buyer shall pay or cause to be paid by wire transfer of immediately available funds per instructions on the invoice twenty (20) days after receipt of the relevant invoice

(the "Due Date") to such account as each Seller shall have directed; provided that if the 20th day after receipt of the invoice is not a Business Day, then the Due Date shall be the first Business Day after such 20th day.

12.8 Any amounts unpaid after the Due Date shall bear interest at a rate equal to the Prime Rate then in effect on the Due Date, compounded on a monthly basis. Buyer may in good faith dispute all or any part of any invoice by written notification to the applicable Seller on or before the time the invoice is due. Any invoice rendered shall be binding unless challenged in accordance with this Section 12.8 within twelve (12) months after the invoice is received or any specific adjustment to the invoice is made. All amounts paid by either Party which are subsequently determined to have been improperly invoiced under this Agreement shall be subject to refund with interest at a rate equal to the Prime Rate then in effect on the Due Date, compounded on a monthly basis.

12.9 Each Seller shall keep complete and accurate records and meter readings of its operations and shall maintain such data for a period of at least one (1) year after the invoice for each billing is rendered. Buyer shall have the right, upon five (5) Business Days' prior notice, during normal business hours, to examine and inspect all such records and meter readings in so far as may be necessary for the purpose of ascertaining the reasonableness and accuracy of all relevant data, estimates or statements of charges submitted to it hereunder, but shall not impair or interfere with the operation of the Facilities.

12.10 If a Party is unable, at its sole discretion, to obtain such comprehensive financial information as is reasonably required to evaluate creditworthiness with respect to

another Party, including but not limited to, annual reports containing audited consolidated financial statements and other information obtained through the public domain, the Party about whom creditworthiness information is sought shall upon thirty (30) days written notice deliver such financial information to the requesting Party. Upon the commercially reasonable request of the Party from whom financial information is sought, the requesting Party shall use best efforts to protect the confidentiality of the information disclosed hereunder.

12.11 If a Party (a "Requesting Party") has commercially reasonable grounds for insecurity concerning another Party's or EPMC's (in the event EPMC is required to perform under Appendix A subsection IV(c) or Appendix B subsection IV(c)) ability to perform under this Agreement (taking into account in the case of Sellers, the guaranty by EPMC pursuant to Article 22), including reasonable grounds for insecurity determined in accordance with commercial standards as used in Section 2-609(2) of the New York Uniform Commercial Code, then the Requesting Party will provide the other Party or EPMC with written notice requesting adequate assurance of due performance ("Adequate Assurance") of such Party's obligations under this Agreement or EPMC's obligations under Appendix A subsection IV(c) and Appendix B subsection IV(c). Upon receipt of such notice, the other Party or EPMC shall have fifteen (15) Business Days to provide such Adequate Assurance to the Requesting Party.

Article 13: Limitation of Liability and Indemnification

- 13.1 Notwithstanding any other provision of this Agreement to the contrary, neither Party (including each Party's officers, trustees, directors, agents, employees, direct and indirect parents, subsidiaries or Affiliates, and such parents', subsidiaries' or Affiliates' officers, trustees, directors, agents or employees) shall be liable or responsible to the other Party (or its direct and indirect parents, subsidiaries, Affiliates, officers, trustees, directors, agents, employees, successors or assigns) or their respective insurers, for special, incidental, indirect, exemplary, punitive or consequential damages connected with or resulting from performance or non-performance of this Agreement, or anything done in connection therewith including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), or for increased expenses for reduction in or loss of power generation production or equipment used therefor, and irrespective of whether such claims are based upon downtime costs or claims of customers, and irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of either Seller, Buyer or others), strict liability, contract, operation of law or otherwise, but excluding acts or omissions of gross negligence or willful misconduct.
- 13.2 Each Party (the "Indemnifying Party") shall defend, indemnify and hold each other Party (the "Indemnified Party"), its officers, trustees, directors, agents, employees and Affiliates and their respective officers, trustees, directors, agents and employees harmless from and against any and all third party claims,

liabilities, demands, judgments, losses, costs, expenses (including reasonable attorneys' fees), suits, or damages arising from acts, omissions or occurrences during the Term by reason of bodily injury, death or damage to third party property caused by or attributable to a breach of this Agreement by the Indemnifying Party or an action or omission of negligence or willful misconduct of the Indemnifying Party or an officer, trustee, director, agent or employee of the Indemnifying Party.

- 13.3 The rights, obligations and protections afforded by Sections 13.1 and 13.2 above shall survive the termination, expiration or cancellation of this Agreement, and shall apply to the fullest extent permitted by law.

Article 14: Taxes

- 14.1 Each Party shall use commercially reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize Taxes, so long as no Party is materially adversely affected by such efforts.
- 14.2 Each Seller shall be responsible for all applicable Taxes imposed by any government authority on or with respect to the (a) Energy up to its delivery to Buyer at the Delivery Point, and (b) Ancillary Services and Installed Capacity. Buyer shall be responsible for all applicable Taxes on or with respect to the Energy at and from the Delivery Point (excluding ad valorem, franchise, or income taxes which are related to the sale of the Energy and therefore the responsibility of the applicable Seller). If Buyer is required by law or regulation to remit or pay Taxes which are either Seller's responsibility hereunder, the

applicable Seller shall promptly reimburse Buyer for such Taxes. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law. Buyer shall be responsible for furnishing an exemption certificate or sufficient documentary evidence of exemption to Sellers in order to obtain a sales tax exemption.

Article 15: Assignment

- 15.1 No Party or EPMC shall have the right to assign this Agreement or its rights or obligations hereunder without the express written consent of the other Parties and EPMC. Such consent shall not be unreasonably withheld. Any attempted assignment without the other Parties' or EPMC's consent shall be void. No assignment shall be effective until any and all necessary regulatory approvals of the assignment have been obtained.
- 15.2 Notwithstanding the provisions of Section 15.1 above, upon prior written notice to the other Parties:
- (a) A Party may assign all or a portion of this Agreement to any Affiliate of such Party; provided that such assigning Party shall not be released from liability hereunder without the other Party's prior written consent;
 - (b) Each Seller may assign its rights in this Agreement to its Lenders and Buyer agrees to acknowledge such assignment; provided that such Seller shall not be released from liability hereunder without Buyer's prior written consent;

- (c) In the event a Seller sells a Facility, such Seller shall assign this Agreement to the purchaser of the Facility; provided that such Seller shall not be released from Liability hereunder without Buyer's prior written consent; and
- (d) Buyer shall have the right to resell any and all products and services provided by Sellers hereunder.

Article 16: Force Majeure

16.1 If a Party or EPMC is rendered wholly or partly unable to perform its obligations under this Agreement because of a *Force Majeure* event, that Party or EPMC shall be excused from whatever performance is affected by the *Force Majeure* event to the extent so affected; provided, that the Party (or EPMC) claiming *Force Majeure* shall: (i) provide prompt verbal and written notice to the other Party or Parties and EPMC of the occurrence of the *Force Majeure* event giving an estimate of its expected duration and the probable impact on the performance of its obligations hereunder and submitting good and satisfactory evidence of the existence of the *Force Majeure* event; (ii) exercise all commercially reasonable efforts to continue to perform its obligations hereunder; (iii) make all commercially reasonable efforts to correct or cure the *Force Majeure* event; (iv) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party or Parties and EPMC; and (v) provide prompt notice to the other Party or Parties and EPMC of the cessation of the *Force Majeure* event; provided,

further, that any obligations of a Party or EPMC which arose before the occurrence of the *Force Majeure* event shall not be excused as a result of the occurrence of a *Force Majeure* event.

16.2 The term *Force Majeure* means any circumstance or event not within the reasonable control of the Party (or EPMC) affected, but only if and to the extent that such circumstance or event, despite the exercise of reasonable diligence, could not be prevented, avoided, or overcome or removed by such Party or EPMC, and may include, but is not limited to, the failure or imminent threat of failure of facilities or equipment, flood, freeze, earthquake, storm or threat of storm, fire, lightning, other acts of God, epidemic, war, acts of a public enemy, riot, civil disturbance or disobedience, strike, lockout, work stoppages, other industrial disturbance or dispute, sabotage, restraint by court order or other public authority (excluding Buyer itself), and action or non-action by, or failure or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority (excluding Buyer itself), which by the exercise of reasonable due diligence such Party or EPMC could not reasonably have been expected to avoid and by exercise of commercially reasonable due diligence its effect cannot be overcome. Nothing contained herein shall be construed so as to require the Parties or EPMC to settle any strike, lockout, work stoppage or any industrial disturbance or dispute in which it may be involved, or to seek review of or take an appeal from any administrative or judicial action.

16.3 *Force Majeure* shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Energy purchased hereunder; (iii) the

loss or failure of either Seller's or EPMC's supply; (iv) lack of funds; (v) inability to obtain funds; (vi) actions, inactions or omissions of the Party (or EPMC) claiming the *Force Majeure* event; or (vii) any action by any governmental authority that disallows, prevents or limits the recovery through rates of all or any portion of the charges imposed by this Agreement.

Article 17: Governing Law, Venue, and Dispute Resolution

17.1 This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without giving effect to any choice or conflict of laws provision or rule (whether of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than New York. Buyer, each Seller and EPMC consent to the exclusive jurisdiction and venue of any state or federal court within the City of New York, New York County, New York for adjudication of any suit, claim, action or other proceeding or law or in equity relating to this Agreement or to any transaction contemplated hereby. Buyer, each Seller and EPMC each accept, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waive any objection as to venue, and any defense of forum non conveniens.

17.2 If any dispute, disagreement, claim or controversy exists between either Seller and/or EPMC and Buyer arising out of or relating to this Agreement, such disputed matter shall be submitted to a committee comprised of one designated representative of each Party to the dispute and EPMC (if applicable). Such committee shall be instructed to attempt to resolve the matter within thirty (30)

days after such dispute, disagreement, claim or controversy. If Buyer's, such Seller's and EPMC's (if applicable) designees do not agree upon a decision within thirty (30) days after the submission of the matter to them, either Party to the dispute or EPMC (if applicable) may undertake legal proceedings.

Article 18: Waiver

18.1 The failure of a Party or EPMC to require compliance with any provision of this Agreement shall not affect that Party's or EPMC's right to later enforce the same. It is agreed that the waiver by a Party or EPMC of performance of any of the terms of this Agreement, or of any breach thereof, shall not be held or deemed to be a waiver by that Party or EPMC of any subsequent failure to perform the same, or any other term or condition of this Agreement, or of any breach thereof.

Article 19: Representations and Warranties

19.1 Each Seller represents and warrants and shall provide Buyer with sufficient evidence of representations and warranties to Buyer that:

- (a) it has the legal power and authority to perform this Agreement and that its officers executing this Agreement have been duly authorized to do so;
- (b) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to do business in the State of New York;
- (c) subject to obtaining Seller Regulatory Approvals, it has all regulatory authorizations necessary for it to legally perform its obligations under this

Agreement and that such regulatory authorizations are not subject to appeal or intervention;

- (d) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, statute, rule, regulation, decree, order, judgment or the like applicable to it;
- (e) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;
- (f) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which could result in it being Bankrupt;
- (g) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (h) no Event of Default or event which, absent a cure, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (i) it is acting for its own account, has made its own independent decision to enter this Agreement and this Agreement is appropriate or proper for it

based upon its own judgment, it is not relying upon the advice or recommendations of Buyer in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of the Agreement;

- (j) it is a Forward Contract Merchant; and
- (k) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make delivery of Unit Contingent Energy, Installed Capacity and Ancillary Services products referred to in this Agreement.

19.2 Buyer represents and warrants and shall provide sufficient evidence of representations and warranties to each Seller and to Sellers' Lenders that:

- (a) it has the legal power and authority to perform this Agreement and that its respective officers executing this Agreement have been duly authorized to do so;
- (b) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (c) subject to obtaining Buyer Regulatory Approvals it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and that such regulatory authority is not subject to appeal or intervention;
- (d) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any

- contracts to which it is a party or any law, statute, rule, regulation, order, judgment or the like applicable to it;
- (e) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;
 - (f) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which could result in it being Bankrupt;
 - (g) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
 - (h) no Event of Default or event which, absent a cure, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
 - (i) it is acting for its own account, has made its own independent decision to enter this Agreement and this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the Seller in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of the Agreement;
 - (j) it is a Forward Contract Merchant; and

- (k) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to take delivery of Unit Contingent Energy, Installed Capacity and Ancillary Services products referred to in this Agreement.

Article 20: Miscellaneous Provisions

- 20.1 This Agreement may not be modified or amended except in writing signed by or on behalf of the Parties and EPMC by their duly authorized officers, and if applicable, after obtaining any required regulatory approvals.
- 20.2 It shall be the responsibility of the Parties and EPMC to take all necessary actions to satisfy any regulatory requirements which may be imposed by any statute, rule or regulation concerning transactions contemplated by this Agreement. Buyer shall cooperate with Sellers and EPMC at no cost to Sellers or EPMC and shall provide information or such other assistance as may be reasonably necessary for Sellers and EPMC to satisfy regulatory requirements of selling Unit Contingent Energy, Installed Capacity and Ancillary Services from the Facilities. Each Seller and EPMC agree to provide to Buyer at no cost to Buyer all necessary forms, data, and other information reasonably requested of Buyer concerning the transactions contemplated hereby by the NYISO, or any governmental or regulatory agency or authority having jurisdiction.
- 20.3 Subject to Article 15, this Agreement shall be binding upon, and inure to the benefit of, the Parties and EPMC and their respective permitted successors and assigns.

- 20.4 Any term or provision of this Agreement that is invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation; provided, however, that the remaining terms and provisions of this Agreement may be enforced only to the extent that such enforcement in the absence of any invalid or unenforceable terms or provisions would not result in (a) deprivation of a material aspect of a Party's original bargain upon execution of this Agreement, (b) unjust enrichment of a Party, or (c) any other manifestly unfair or inequitable result. If (a), (b) or (c) above occurs, the Parties shall to the extent possible negotiate an equitable adjustment to any provisions of this Agreement to effect the intent and purpose of this Agreement.
- 20.5 The Parties acknowledge that during the Term the NYISO Agreement, NYISO Requirements and NYISO Procedures are likely to change in various ways, including ways which the Parties cannot presently predict. In the event of such changes the Parties shall in good faith and to the extent possible negotiate an equitable adjustment to any provision of this Agreement to effect the intent and purpose of this Agreement.
- 20.6 Each Party and EPMC shall promptly and duly execute and deliver all such documents as may be required and shall take such further action as may be reasonably necessary or appropriate or reasonably requested by the other Party or EPMC in order to carry out more effectively the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created hereunder.

- 20.7 The table of contents and headings of the various Articles of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.
- 20.8 This Agreement may be executed by the Parties and EPMC in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.
- 20.9 The Parties and EPMC do not intend by this Agreement to create any rights, or grant any remedies, to any third party.
- 20.10 EPMC shall be the exclusive broker of each Seller for purposes of scheduling, billing, collections and other matters concerning the administration of this Agreement and Buyer agrees to cooperate in connection therewith.
- 20.11 Each Seller shall, and shall cause EPMC to, conduct their activities to ensure that no employee who previously held a position with Buyer is assigned any task or responsibility that will cause such employee to violate New York Public Officers Law Section 73(8).

Article 21: Notices, Invoices or Other Communications

- 21.1 Except as otherwise provided herein, any notice, invoice or other communication which is required or permitted by this Agreement shall be in writing and delivered by personal service or mailed certified or registered first class mail, postage prepaid, or transmitted by facsimile (if a conforming copy is promptly delivered by one of the foregoing methods) properly addressed as follows:

Notices and other communications:

In the case of Buyer to:

New York Power Authority
123 Main Street
White Plains, NY 10601
Attn: Vice President Power Contracts and Resource Management
Facsimile: 914 681-6297
Telephone No: 914 681-6200

With a copy to:

General Counsel
Law Department
New York Power Authority
1633 Broadway
New York, NY 10019

In the case of the Sellers and EPMC to:

Entergy Power Marketing Corp.
Parkwood Two, Suite 325
10055 Grogan's Mill Road
The Woodlands, TX 77380
Attn: Michael Kansler, President & Chief Operating Officer
Facsimile: 281 297-3241
Telephone No.: 281 297-3000

Entergy Nuclear Fitzpatrick, L.L.C.
Entergy Nuclear Indian Point 3, L.L.C.
c/o RL&F Service Corp.
One Rodney Square, 10th Floor
Tenth & King Streets
Wilmington, Delaware 19810
[Facsimile and Telephone to be provided by Closing]

With a copy to:

Joseph L. Blount, Esq.
Assistant Secretary
c/o Entergy Nuclear, Inc.
1340 Echelon Parkway
Jackson, Mississippi 39213
Facsimile: 601-368-5323

Another address or addressee may be specified in a notice duly given as provided. Each notice, invoice or other communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given and received for all purposes at such time as it is delivered to the addressee (with return receipt, the delivered receipt, the affidavit of the messenger or with respect to a facsimile, the answer back acknowledgement (or, if no answer back, the return or delivery receipt for the conformed copy), being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

Article 22: Guaranty by EPMC

22.1 EPMC irrevocably, absolutely and unconditionally guarantees as a guarantor and not a surety to Buyer, its successors and assigns, the prompt payment when due, subject to any applicable grace period, of all of Sellers' true-up payment obligations pursuant to Appendix A subsection V, Appendix B subsection V, and Appendix C subsection IV of this Agreement (collectively, the "Guaranteed

Obligations"). Notwithstanding the foregoing, EPMC's liability under this Section and Buyer's right to recover under this Section shall be limited to an aggregate amount of Twenty Million Dollars (\$20,000,000.00) ("EPMC's Liability Limit"). EPMC acknowledges that it will benefit directly or indirectly from the transactions to be entered into between Buyer and Seller.

- 22.2 The guaranty by EPMC pursuant to Section 22.1 is a continuing guaranty and constitutes a guaranty of payment and not of collection. This guaranty, provided that Buyer has made due demand of Sellers which has been dishonored, is in no way contingent on any attempt to collect from a Seller or any other contingency. This guaranty shall be binding on EPMC regardless of any change of status of EPMC or Sellers or the genuineness, regularity or validity of Sellers' obligations under this Agreement, including any lack of power or due authorization of a Seller to enter and perform this Agreement. In the event that any payment of Sellers in respect of any Guaranteed Obligations is rescinded or recovered from Buyer as a preference or fraudulent transfer under the Federal Bankruptcy Code, or any applicable state law, EPMC shall remain liable under Section 22.1 in respect to such Guaranteed Obligations as if such payment had not been made. The guaranty by EPMC pursuant to Section 22.1 shall continue to be effective if EPMC merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist. **EPMC SHALL NOT BE REQUIRED TO PAY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM A PARTY'S NEGLIGENCE) TO BUYER, EXCEPT TO THE EXTENT**

THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THE GUARANTEED OBLIGATIONS ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT MADE PURSUANT TO THE GUARANTEED OBLIGATIONS IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES, AND NOT A PENALTY.

- 22.3 EPMC agrees that Buyer may, at any time and from time to time, without notice to or consent of EPMC and without impairing or releasing the obligations of EPMC under Section 22.1: (a) make any change in the terms of any Guaranteed Obligation or liability of Sellers to Buyer, (2) take or fail to take any action of any kind in respect of any security for any Guaranteed Obligation or liability of Sellers to Buyer, (3) exercise or refrain from exercising any rights against Sellers or others, or (4) waive or compromise any right under this Agreement or subordinate any Guaranteed Obligation or liability of Sellers to Buyer, including any security therefor.
- 22.4 EPMC agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Buyer's counsel or any expenses of Buyer arising under Section 22.5) in any way relating to the enforcement or protection of the rights of Buyer under this Article; provided, that EPMC shall not be liable for any expenses of Buyer if no payment under Section 22.1 is due; provided, further,

that EPMC's obligation to pay any such out-of-pocket expenses shall be subject to, and included within, EPMC's Liability Limit to the same extent as any other liability incurred by EPMC hereunder.

- 22.5 Upon the payment in full of all Guaranteed Obligations, EPMC shall be subrogated to the rights of Buyer against Sellers with respect to any and all such payments made by EPMC under Section 22.1, and Buyer agrees to take such steps as EPMC may reasonably request to confirm and/or implement such subrogation rights.
- 22.6 EPMC reserves to itself all rights, counterclaims and other defenses which each Seller is or may be entitled to arising from or out of this Agreement, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Sellers, the power or authority of Sellers to enter into this Agreement, and to perform the Guaranteed Obligations, and the lack of validity or enforceability of this Agreement or any other documents executed in connection with this Agreement.
- 22.7 No failure or delay on the part of Buyer to exercise, and no delay in exercising, any right, remedy or power under this Article shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power under this Article preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Buyer or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Buyer from time to time.

22.8 EPMC waives notice of the acceptance of the guaranty by EPMC under Section 22.1, presentment, demand, notice of dishonor, protest, notice of any sale of collateral security and all other notices whatsoever.

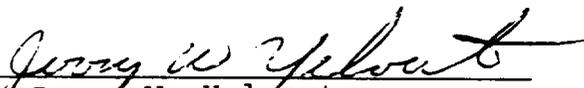
Article 23: Additional Purchase of FitzPatrick Remaining Output

23.1 In addition to the foregoing, ENF and Buyer shall have the rights and obligations set forth in Appendix D hereto with respect to sales and purchases of Energy, Installed Capacity and Ancillary Services from FitzPatrick in excess of the FitzPatrick Entitlement, for the period from and after the Closing through and including December 31, 2003. Such rights and obligations shall be solely as set forth in Appendix D and the Additional Purchase Agreement (as defined in Appendix D), and unless expressly provided in Appendix D, the terms and conditions of this Agreement and Appendices A, A-1, B, and C shall not apply thereto.

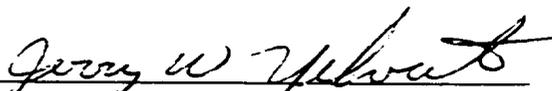
[Signature page follows]

IN WITNESS WHEREOF the Parties and EPMC have executed this Agreement as of the date first written above.

ENERGY NUCLEAR FITZPATRICK, LLC

By: 
Name: Jerry W. Yelverton
Title: President & Chief Executive Officer

ENERGY NUCLEAR INDIAN POINT 3, LLC

By: 
Name: Jerry W. Yelverton
Title: President & Chief Executive Officer

POWER AUTHORITY OF THE STATE OF NEW YORK

By: 
Name: Clarence D. Rappleyea
Title: Chairman & Chief Executive Officer

ENERGY POWER MARKETING CORP.

By: 
Name: Jerry W. Yelverton
Title: Vice President

Appendix A: IP3 Entitlement and Energy True-Up Calculation

- I. “Seasonal MW Entitlements” (“SME”): 985 MW during the Winter Capability Period (as defined in the NYISO Agreement) and 970 MW during the Summer Capability Period (as defined in the NYISO Agreement).
- II. “Delivery Point”: The 345kV bus of the Buchanan Substation, or such other location as may be mutually agreed in writing by Buyer and ENIP.
- III. Ancillary Services: Buyer shall be entitled to receive, through the payments of money or otherwise, all of the value of all Ancillary Services produced by IP3 during the Term.
- IV. Obligations and entitlements
 - (a) When IP3 is operating, Buyer shall be entitled to receive (in every hour) and ENIP shall deliver, 100% of the available Energy, Installed Capacity and Ancillary Services of IP3 (the “IP3 Entitlement”).
 - (b) When IP3 is not operating or is operating but not delivering the IP3 Entitlement for any reason whatsoever, Buyer shall be responsible for obtaining Energy, Installed Capacity and Ancillary Services otherwise provided by the IP3 Entitlement from other sources; and the true-up mechanism provided in this Appendix A with respect to Energy and in Appendix C with respect to Installed Capacity shall apply in lieu of any other rights, claims or obligations of the Parties provided in this Agreement. In the event ENIP is billed or otherwise becomes obligated to pay for Energy, Installed Capacity and Ancillary Services which Buyer is

responsible for obtaining pursuant to this subsection (b), such bill or obligation shall be promptly submitted to and paid by Buyer.

- (c) Notwithstanding the provisions of subsection IV(b) above, in the event IP3 shall have been Permanently Retired EPMC shall have the right and obligation to provide replacement Energy and Installed Capacity obtained from sources other than IP3 in accordance with this Appendix A and Appendix C. Replacement Energy shall be delivered in every hour at a rate equal to 85% of the applicable Seasonal MW Entitlement such that Buyer receives the economic equivalent of the Energy delivered at the IP3 Delivery Point. EPMC shall provide equivalent Installed Capacity (in terms of the applicable NYISO Requirements concerning the location of Installed Capacity) in an amount equal to 85% of the applicable Seasonal MW Entitlement.
- (d) For purposes of the true-up calculations pursuant to Section V, and regardless of Facility operation, Buyer shall be deemed to be entitled to receive an amount of Energy equal to the IP3 Minimum Energy Delivery (as defined in Chart A-2 below) during the time periods set forth in Chart A-1 below (the "Periods"). Such entitlement shall be hereinafter referred to as the "IP3 Minimum Energy Delivery" or "IP3 MED" and shall be calculated pursuant to the formula set forth in Chart A-2 below.

Chart A-1 - Periods

Period	Time Frame
1	Closing Date through and including the second anniversary of such date
2	Day following the end of Period 1 through and including December 31, 2004, but excluding the days (not to exceed forty days), if any, during which IP3 is not operating due to a refueling outage, if and to the extent a refueling outage occurs after the fourth anniversary of the Closing Date

Chart A-2 – Calculation of IP3 MED

The formula to calculate IP3 MED for a particular Period is as follows: ;

[Equation A-1]

$$IP3\ MED_p = [((SME_{pw} * H_{pw}) + (SME_{ps} * H_{ps})) * CFM] + DA_{p-1} - CA_{p-1}$$

Where:

p = Period

pw = Winter

ps = Summer

IP3 MED_p = IP3 Minimum Energy Delivery in Period p

SME_{pw} = Seasonal MW Entitlement in Period p Winter

H_{pw} = Hours in Period p Winter

SME_{ps} = Seasonal MW Entitlement in Period p Summer

H_{ps} = Hours in Period p Summer

CFM = Capacity Factor Minimum, which shall be equal to 0.85 for Period 1, and for Period 2 shall be determined as follows:

$$\frac{0.85A + 0.90B}{A+B}$$

Where:

A = the number of days in Period 2 from and including the first day thereof through and including the fourth anniversary of the Closing Date

B = the number of days, if any, in Period 2 from and after the day following the fourth anniversary of the Closing Date through and including December 31, 2004, but excluding the days (not to exceed 40 days), if any, during which IP3 is not operating due to a refueling outage
 DA_{p-1} = Deferral Amount (as defined in Section V(e) below) for the prior Period
 CA_{p-1} = Carryover Amount (as defined in Section V(c) below) for the prior Period

V. Energy True-up Calculation

- (a) ENIP shall determine the actual Energy scheduled and delivered from IP3 (“Actual MW Generation” or “AMWG”).
- (b) AMWG_p shall mean the AMWG during a Period p.
- (c) If AMWG_p is greater than or equal to IP3 MED during a Period, no true-up payment shall be required and the difference in MWh occurring in Period 1, but not to exceed 5% of the sum [(SME_{p_w} * H_{p_w}) + (SME_{p_s} * H_{p_s})], where p is Period 1, shall be carried over (the “Carryover Amount”) and deducted from IP3 MED in Period 2.
- (d) If AMWG_p is less than IP3 MED as calculated in accordance with Equation A-1 above during a Period, the amount of the shortfall (“E_p”) between the IP3 MED and the AMWG_p for such Period shall be calculated as follows:

[Equation A-2]

$$E_p = IP3\ MED_p - AMWG_p$$

Where:

- p = Period
- E_p = Amount of shortfall of Energy required to be delivered during Period p
- IP3 MED_p = Minimum Energy Delivery in Period p as calculated in accordance with Equation A-1 above

AMWG_p = Actual MW Generation in Period p

- (e) If E_p in Period 1 is positive, ENIP shall defer into Period 2 an amount of E_p equal to up to 5% of the sum [(SME_{p_w} * H_{p_w}) + (SME_{p_s} * H_{p_s})], where p is Period 1 (the “Deferral Amount”). In calculating the true-up payment pursuant to subsection (g) below for Period 2 or the Banked Savings under Appendix C, Section IV, the dollar value of any Deferral Amount (the “Carryover Payment”) to be included in such true-up payment shall be calculated utilizing an amount equal to the Weighted Average Cost to Cover (“WACC”) for Period 1 (calculated in accordance with Equation A-3 below) minus the IP3 Price for Period 1 (which amount may be either a positive or negative number). If and to the extent the Carryover Payment is a negative number it may be used in determining the true-up payment for Period 2 pursuant to subsection (g) below or the Banked Savings pursuant to Appendix C Section IV, but may only be used once in such calculations as ENIP shall elect.
- (f) The true-up payment shall equal the difference between (i) WACC and (ii) the IP3 Price, multiplied by (iii) the shortfall amount E_p as calculated pursuant to subsection (d) above. WACC shall be calculated as follows:

[Equation A-3]

$$WACC_p = \left[\frac{\sum_{n=1}^H ((SME_n - AMWG_n) * LBMP_n)}{\sum_{n=1}^H (SME_n - AMWG_n)} \right]$$

Where:

p = Period

WACC_p = Weighted Average Cost to Cover in Period p

SME_n = Seasonal MW Entitlement in hour n

AMWG_n = Actual MW Generation in hour n (but in no event greater than SME_n)

LBMP_n = Locational Based Marginal Price at the Delivery Point in hour n, determined as posted at the real time market for all outages for which Buyer has not received at least 72 hours' prior notice thereof, until the third calendar day of such unplanned outage from and after which LBMP_n shall be determined as posted on the day ahead schedule ("Day Ahead Price"); for all outages for which Buyer has received at least 72 hours' prior notice thereof, LBMP_n shall be determined at the Day Ahead Price.
H = hours in Period p

- (g) (i) With respect to Period 1, if WACC_{p1} is greater than the IP3 Price, ENIP shall pay to Buyer a true-up payment amount equal to:

$$(WACC_{p1} - \text{IP3 Price}) * (E_p - \text{DA})$$

Where:

DA = Deferral Amount in MWh for Period 1

- (ii) With respect to Period 1, DA shall be converted to a Carryover Payment (CP), which may be a positive or negative amount, calculated as follows:

$$\text{CP} = (WACC_{p1} - \text{IP3 Price}) * \text{DA}$$

Where:

WACC_{p1} is the Weighted Average Cost to Cover for Period 1

- (iii) With respect to Period 2, if E_{p2} is greater than or equal to DA and if WACC_{p2} is greater than the IP3 Price, ENIP shall pay to Buyer a true-up payment, if a positive number, calculated as follows:

$$[(WACC_{p2} - \text{IP3 Price}) * (E_{p2} - \text{DA})] + \text{CP}$$

Where:

CP = Carryover Payment from Period 1

(iv) With respect to Period 2, if E_p is less than DA, ENIP shall pay to Buyer a true-up payment, if a positive number, calculated as follows:

$CP - [(DA - E_{p2}) * (WACC_{p1} - IP3 \text{ Price})]$

Where:

$WACC_{p1}$ is the Weighted Average Cost to Cover for Period 1

- (h) The true-up calculation pursuant to this Section V shall be completed by ENIP and delivered to Buyer no later than the date of the invoice pursuant to Section 12.7 for the calendar month in which the last day of the Period falls. Subject to Section 12.5 regarding netting of payments, ENIP shall pay Buyer each true-up payment within twenty (20) days after the date of such invoice.
- (i) Under no circumstances shall Buyer be required to pay ENIP any amounts pursuant to the true-up provisions of this Section V, it being understood that any amounts shown as coming from Buyer are only to be used as offsets against amounts, if any, owed by ENIP to Buyer under this Appendix.
- (j) Examples set forth on Appendix A-1 illustrate the calculations pursuant to this Appendix A and Appendix B.

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Appendix A-1
PPA True- Up Examples

Period	SME (MwHr)	MED (MwHr)	AMWG (MwHr)	WACC (\$/MwHr)	Ep (MwHr)	True Up Pwr(MwHr) If CF<80%	True Up Payment(\$) If Cost>\$36	Deferral Amount Carry Over (MwHr) Pos.CF>85% Neg.CF<85%
Example A: Avg. Costs <\$36/MwHr with 89% then 75% Capacity Factor								
1	1000@85%	850	890	34	-40	0	N/A<\$36	-40
2	1000@85%	810	750	35	60	60	N/A<\$36	N/A
Example B: Avg. Costs <\$36/MwHr with 75% then 89% Capacity Factor								
1	1000@85%	850	750	34	100	50	N/A<\$36	50
2	1000@85%	900	890	35	10	10	N/A<\$36	N/A
Example C: Avg. Costs <\$36/MwHr with 81% then 70% Capacity Factor								
1	1000@85%	850	810	34	40	0	N/A<\$36	40
2	1000@85%	890	725	35	165	165	N/A<\$36	N/A
Example D: Avg. Costs <\$36/MwHr with 91% then 81% Capacity Factor								
1	1000@85%	850	910	34	-60	0	N/A<\$36	-50
2	1000@85%	800	800	35	0	0	N/A<\$36	N/A
Example E: Avg. Costs >\$36/MwHr with 89% then 75% Capacity Factor								
1	1000@85%	850	890	38	-40	0	0	-40
2	1000@85%	810	750	37	60	60	60	N/A
Example F: Avg. Costs >\$36/MwHr with 75% then 89% Capacity Factor								
1	1000@85%	850	750	38	100	50	100	50
2	1000@85%	900	890	37	10	10	20	N/A
Example G: Avg. Costs >\$36/MwHr with 81% then 70% Capacity Factor								
1	1000@85%	850	810	38	40	0	0	40
2	1000@85%	890	700	37	190	190	80+150=230	N/A
Example H: Avg. Costs >\$36/MwHr with 91% then 81% Capacity Factor								
1	1000@85%	850	910	38	-60	0	0	-50
2	1000@85%	800	810	37	-10	0	0	N/A
Example I: Avg. Costs >&<\$36/MwHr with 89% then 75% Capacity Factor								
1	1000@85%	850	890	38	-40	0	0	-40
2	1000@85%	810	750	34	60	60	N/A<\$36	N/A
Example J: Avg. Costs >&<\$36/MwHr with 75% then 89% Capacity Factor								
1	1000@85%	850	750	38	100	50	100	50
2	1000@85%	900	890	34	10	10	20	N/A
Example K: Avg. Costs <&>\$36/MwHr with 81% then 70% Capacity Factor								
1	1000@85%	850	810	34	40	0	0	40
2	1000@85%	890	700	38	190	190	300-80=220	N/A
Example L: Avg. Costs <&>\$36/MwHr with 91% then 81% Capacity Factor								
1	1000@85%	850	910	34	-60	0	0	-50
2	1000@85%	800	810	38	-10	0	0	N/A

Appendix B: FitzPatrick Entitlement and Energy True-Up Calculation

- I. “Seasonal MW Entitlements” (“SME”): The Seasonal MW Entitlements during the Winter Capability Period (as defined in the NYISO Agreement) and for the Summer Capability Period (as defined in the NYISO Agreement) shall be as set forth in Chart B-1 set forth below.

Chart B-1: Seasonal MW Entitlements

Period	Summer	Winter
Closing Date through and including December 31, 2000	375	375
January 1, 2001 through and including December 31, 2001	360	360
January 1, 2002 through and including December 31, 2002	303	303
January 1, 2003 through and including December 31, 2003	255	255
January 1, 2004 through and including December 31, 2004	255	255

- II. “Delivery Point”: The FitzPatrick 345kV bus, or such other location as may be mutually agreed in writing by the Parties.
- III. Ancillary Services to be provided by ENF at the FitzPatrick Price: Buyer shall be entitled to receive, through the payments of money or otherwise, the FitzPatrick Ancillary Services Percentage of the value of the Ancillary Services produced by FitzPatrick during the Term.
- IV. Obligations and entitlements
- (a) When FitzPatrick is operating, Buyer shall be entitled to (in every hour), and ENF shall deliver, 100% of the applicable Seasonal MW Entitlement

of Energy and Installed Capacity and the FitzPatrick Ancillary Services Percentage of all Ancillary Services (the "FitzPatrick Entitlement").

- (b) When FitzPatrick is not operating or is operating but not delivering the FitzPatrick Entitlement for any reason whatsoever, Buyer shall be responsible for obtaining Energy, Installed Capacity and Ancillary Services otherwise provided by the FitzPatrick Entitlement from other sources; and the true-up mechanism provided in this Appendix B with respect to Energy and in Appendix C with respect to Installed Capacity shall apply in lieu of any other rights, claims or obligations of the Parties provided in this Agreement. In the event ENF is billed or otherwise becomes obligated to pay for Energy, Installed Capacity and Ancillary Services which Buyer is responsible for obtaining pursuant to this subsection (b), such bill or obligation shall be promptly submitted to and paid by Buyer.
- (c) Notwithstanding the provisions of subsection IV(b) above, in the event FitzPatrick shall have been Permanently Retired EPMC shall have the right and obligation to provide replacement Energy and Installed Capacity obtained from sources other than FitzPatrick, in accordance with this Appendix B and Appendix C. Replacement Energy shall be delivered in every hour at a rate equal to 85% of the applicable Seasonal MW Entitlement such that Buyer receives the economic equivalent of the Energy delivered at the FitzPatrick Delivery Point. EPMC shall provide equivalent Installed Capacity (in terms of the applicable NYISO

Requirements concerning the location of Installed Capacity) in an amount equal to 85% of the applicable Seasonal MW Entitlement.

- (d) For purposes of the true-up calculations pursuant to Section V, and regardless of Facility operation, Buyer shall be deemed to be entitled to receive an amount of Energy equal to the Minimum Energy Delivery (as defined in Chart B-3 below) during the time periods set forth in Chart B-2 below (the "Periods"). Such entitlement shall be hereinafter referred to as the "FitzPatrick Minimum Energy Delivery" or "FitzPatrick MED" and shall be calculated pursuant to the formula set forth in Chart B-3 below.

Chart B-2: Periods

Period	Time Frame
1	Closing Date through and including the second anniversary of such date
2	Day following the end of Period 1 through and including December 31, 2004, but excluding the days (not to exceed forty days), if any, during which FitzPatrick is not operating due to a refueling outage, if and to the extent a refueling outage occurs after the fourth anniversary of the Closing Date

Chart B-3 – Calculation of FitzPatrick MED

The formula to calculate FitzPatrick MED for a particular Period is as follows:

[Equation B-1]

$$\text{FitzPatrick MED}_p = [((\text{SME}_{pw} * H_{pw}) + (\text{SME}_{ps} * H_{ps})) * \text{CFM}] + \text{DA}_{p-1} - \text{CA}_{p-1}$$

Where:

p = Period

pw = Winter
 ps = Summer
 FitzPatrick MED_p = Minimum Energy Delivery in Period p
 SME_{pw} = Seasonal MW Entitlement in Period p Winter
 H_{pw} = Hours in Period p Winter
 SME_{ps} = Seasonal MW Entitlement in Period p Summer
 H_{ps} = Hours in Period p Summer
 CFM = Capacity Factor Minimum, which shall be equal to 0.85 for Period 1, and for Period 2 shall be determined as follows:

$$\frac{0.85A + 0.90B}{A+B}$$

Where:

A = the number of days in Period 2 from and including the first day thereof through and including the fourth anniversary of the Closing Date
 B = the number of days, if any, in Period 2 from and after the day following the fourth anniversary of the Closing Date through and including December 31, 2004, but excluding the days, (not to exceed forty ; days) if any, during which FitzPatrick is not operating due to a refueling outage
 DA_{p-1} = Deferral Amount (as defined in Section V(e) below) for the prior Period
 CA_{p-1} = Carryover Amount (as defined in Section V(c) below) for the prior Period

V. Energy True-up Calculation

- (a) ENF shall determine the actual Energy scheduled and delivered from FitzPatrick (“Actual MW Generation” or “AMWG”).
- (b) AMWG_p shall mean the AMWG during a Period p.
- (c) If AMWG_p is greater than or equal to FitzPatrick MED during a Period, no true-up payment shall be required and the difference in MWh occurring in Period 1, but not to exceed 5% of the sum [(SME_{pw} * H_{pw}) + (SME_{ps} * H_{ps})], where p is Period 1, shall be carried over (the “Carryover Amount”) and deducted from FitzPatrick MED in Period 2.

- (d) If $AMWG_p$ is less than FitzPatrick MED as calculated in accordance with Equation B-1 above during a Period, the amount of the shortfall (" E_p ") between the FitzPatrick MED and the $AMWG_p$ for such Period shall be calculated as follows:

[Equation B-2]

$$E_p = \text{FitzPatrick MED}_p - AMWG_p$$

Where:

p = Period

E_p = Amount of shortfall of Energy required to be delivered during Period p

FitzPatrick MED_p = Minimum Energy Delivery in Period p as calculated in accordance with Equation B-1 above

$AMWG_p$ = Actual MW Generation in Period p

- (e) If E_p in Period 1 is positive, ENF shall defer into Period 2 an amount of E_p equal to up to 5% of the sum $[(SME_{pw} * H_{pw}) + (SME_{ps} * H_{ps})]$, where p is Period 1 (the "Deferral Amount"). In calculating the true-up payment pursuant to subsection (g) below for Period 2 or the Banked Savings under Appendix C Section IV, the dollar value of any Deferral Amount (the "Carryover Payment") to be included in such true-up payment shall be calculated utilizing an amount equal to the Weighted Average Cost to Cover ("WAAC") for Period 1 (calculated in accordance with Equation B-3 below) minus the FitzPatrick Price for Period 1 (which amount may be either a positive or negative number). If and to the extent the Carryover Payment is a negative number, it may be used in determining the true-up payment for Period 2 pursuant to subsection (g) below or the Banked

Savings pursuant to Appendix C, Section IV but may only be used once in such calculations as ENF shall elect.

- (f) The true-up payment shall equal the difference between (i) WACC and (ii) the FitzPatrick Price, multiplied by (iii) the shortfall amount E_p as calculated pursuant to subsection (d) above. WACC shall be calculated as follows:

[Equation B-3]

$$WACC_p = \left[\sum_{n=1}^H ((SME_n - AMWG_n) * LBMP_n) \right] / \sum_{n=1}^H (SME_n - AMWG_n)$$

Where:

p = Period

$WACC_p$ = Weighted Average Cost to Cover in Period p

SME_n = Seasonal MW Entitlement in hour n

$AMWG_n$ = Actual MW Generation in hour n , but in no event greater than SME_n

$LBMP_n$ = Locational Based Marginal Price at the Delivery Point in hour n , determined as posted at the real time market for all outages for which Buyer has not received at least 72 hours' prior notice thereof, until the third calendar day of such unplanned outage from and after which $LBMP_n$ shall be determined as posted on the day ahead schedule ("Day Ahead Price"); for all outages for which Buyer has received at least 72 hours' prior notice thereof, $LBMP_n$ shall be determined at the Day Ahead Price.

H = hours in Period p

- (g) (i) With respect to Period 1, if $WACC_{p1}$ is greater than the FitzPatrick Price, ENF shall pay to Buyer a true-up payment amount equal to:

$$(WACC_{p1} - \text{FitzPatrick Price}) * (E_p - DA)$$

Where:

DA = Deferral Amount in MWh for Period 1

(ii) With respect to Period 1, DA shall be converted to a Carryover Payment (CP), which may be a positive or negative amount, calculated as follows:

$$CP = (WACC_{p1} - \text{FitzPatrick Price}) * DA$$

Where:

$WACC_{p1}$ is the Weighted Average Cost to Cover for Period 1

(iii) With respect to Period 2, if E_{p2} is greater than or equal to DA and if $WACC_{p2}$ is greater than the FitzPatrick Price, ENF shall pay to Buyer a true-up payment, if a positive number, calculated as follows:

$$[(WACC_{p2} - \text{FitzPatrick Price}) * (E_{p2} - DA)] + CP$$

Where:

CP = Carryover Payment from Period 1

(iv) With respect to Period 2, if E_p is less than DA, ENF shall pay to Buyer a true-up payment, if a positive number, calculated as follows:

$$CP - [(DA - E_{p2}) * (WACC_{p1} - \text{FitzPatrick Price})]$$

Where:

$WACC_{p1}$ is the Weighted Average Cost to Cover for Period 1

(h) The true-up calculation pursuant to this Section V shall be completed by ENF and delivered to Buyer no later than the date of the invoice pursuant

to Section 12.7 for the calendar month in which the last day of the Period falls. Subject to Section 12.5 regarding netting of payments, ENF shall pay Buyer each true-up payment within twenty (20) days after the date of such invoice.

- (i) Under no circumstances shall Buyer be required to pay ENF any amounts pursuant to the true-up provisions of this Section V, it being understood that any amounts shown as coming from Buyer are only to be used as offsets against amounts, if any, owed by ENF to Buyer under this Appendix.

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Appendix C – Installed Capacity Entitlement and True-Up Calculation

I. Installed Capacity Entitlement

- (a) “IP3 Seasonal Installed Capacity Entitlement” (“IP3 ICAP”) During the Term and subject to ENIP’s obligation to supply Buyer with Installed Capacity as set forth in Appendix A, ENIP shall provide Buyer with Installed Capacity in MW of not less than an amount (i) equal to 0.85 multiplied by the Seasonal MW Entitlement for the Winter Capability Period set forth in Appendix A and (ii) equal to 0.85 multiplied by the Seasonal MW Entitlement for the Summer Capability Period set forth in Appendix A. The following formulas reflect the above:

$$\text{IP3 ICAP}_{pw} = \text{IP3 SME}_{pw} * 0.85$$

Where:

p = Period

pw = Winter

IP3 SME_{pw} = IP3 Seasonal MW Entitlement in Period p Winter

and

$$\text{IP3 ICAP}_{ps} = \text{IP3 SME}_{ps} * 0.85$$

Where:

p = Period

ps = Summer

IP3 SME_{ps} = IP3 Seasonal MW Entitlement in Period s Summer

- (b) “FitzPatrick Seasonal Installed Capacity Entitlement” (“FitzPatrick ICAP”) During the Term and subject to ENF’s obligation to supply Buyer with Installed Capacity as set forth in Appendix B, ENF shall provide

Buyer with Installed Capacity in MW of not less than an amount (i) equal to 0.85 multiplied by the Seasonal MW Entitlement for the Winter Capability Period set forth in Chart B-1 on Appendix B and (ii) equal to 0.85 multiplied by the Seasonal MW Entitlement for the Summer Capability Period set forth in Chart B-1 on Appendix B. The following formulas reflect the above:

$$\text{FitzPatrick ICAP}_{pw} = \text{FitzPatrick SME}_{pw} * 0.85$$

Where:

p = Period

pw = Winter

FitzPatrick SME_{pw} = FitzPatrick Seasonal MW Entitlement in Period p
Winter

and

$$\text{FitzPatrick ICAP}_{ps} = \text{FitzPatrick SME}_{ps} * 0.85$$

Where:

p = Period

ps = Summer

FitzPatrick SME_{ps} = FitzPatrick Seasonal MW Entitlement in Period s
Summer

- II. Installed Capacity Demonstration and Qualification. Each Seller shall comply with NYISO ICAP demonstration and qualification policies, as they may exist during the Term. If Buyer's operation of the Facilities prior to the Closing as compared with a Seller's operations after Closing adversely affects ICAP demonstration and qualification for the Facilities, Buyer's IP3 ICAP and/or FitzPatrick ICAP (each as defined in Section I above) shall be reduced by the

amount of Installed Capacity reduction caused by Buyer's operation of the Facilities.

III. ICAP Deficiency and Replacement Cost Determination

- (a) IP3. If the ICAP demonstration and qualification from IP3 is less than the IP3 ICAP, Buyer shall obtain replacement Installed Capacity to cover the deficiency in IP3 ICAP. Any IP3 ICAP deficiency, as reported by the NYISO (rounded to the nearest whole MW), shall be multiplied by the cost to replace Installed Capacity with equivalent Installed Capacity (in terms of the applicable NYISO Requirements concerning the location of Installed Capacity) from the lesser of (i) a bona fide bilateral marketplace offer obtained by Buyer, (ii) the NYISO Installed Capacity market, or (iii) a bona fide alternative Installed Capacity supplier identified by ENIP, whichever is lowest. To the extent that Seller can substitute equivalent Installed Capacity from another source (such as FitzPatrick supplying Installed Capacity for IP3 (in excess of the Installed Capacity allocated to Buyer pursuant to this Agreement)), Buyer shall accept such alternate Installed Capacity. Four seasonal periods or portions thereof (two Winter Capability Periods and two Summer Capability Periods referred to in Appendix A) which commence with the season that is coincident with the Closing Date will constitute the first Installed Capacity true-up period. Any full or partial Installed Capacity Demonstration and Qualification Season remaining after the first Installed Capacity true-up period will be included in a second Installed Capacity true-up period ending on the last

day of the Term. The IP3 ICAP deficiency for each season is determined by the following formula:

$$\text{IP3 ID}_{ps} = (\text{IP3 ICAP}_{ps} - \text{NYISO IP3 ICAP}_{ps}) * \text{ICAP RC}_{ps}$$

Where:

IP3 ID_{ps} = IP3 ICAP Deficiency in period p and season s

NYISO IP3 ICAP_{ps} = IP3 ICAP Demonstrated and Qualified by NYISO in period p and season s in MW

ICAP RC_{ps} = ICAP Replacement cost in \$/MW in period p and season s

In no event shall ENIP be liable for Installed Capacity or any ICAP deficiency for any periods after the end of the Term.

- (b) FitzPatrick If the ICAP demonstration and qualification from FitzPatrick is less than the FitzPatrick ICAP, Buyer shall obtain replacement Installed Capacity to cover the deficiency in FitzPatrick ICAP. Any FitzPatrick ICAP deficiency, as reported by the NYISO (rounded to the nearest whole MW), shall be multiplied by the cost to replace Installed Capacity with equivalent Installed Capacity (in terms of the applicable NYISO Requirements concerning the location of Installed Capacity) from (i) a bona fide bilateral marketplace offer obtained by Buyer, (ii) the NYISO Installed Capacity market, or (iii) a bona fide alternative Installed Capacity supplier identified by ENF, whichever is lowest. To the extent that Seller can substitute equivalent Installed Capacity from another source, Buyer shall accept such alternate Installed Capacity. Four seasonal periods or portions thereof (two Winter Capability Periods and

two Summer Capability Periods referred to in Appendix B) which commence with the season that is coincident with the Closing Date will constitute the first Installed Capacity true-up period. Any full or partial Installed Capacity Demonstration and Qualification Season remaining after the first Installed Capacity true-up period will be included in a second Installed Capacity true-up period ending on the last day of the Term. The FitzPatrick ICAP deficiency for each season is determined by the following formula:

$$\text{FitzPatrick ID}_{ps} = (\text{FitzPatrick ICAP}_{ps} - \text{NYISO FitzPatrick ICAP}_{ps}) * \text{ICAP RC}_{ps}$$

Where:

FitzPatrick ID_{ps} = FitzPatrick ICAP Deficiency in period p and season s
NYISO FitzPatrick ICAP_{ps} = FitzPatrick ICAP Demonstrated and Qualified by NYISO in period p and season s in MW
ICAP RC_{ps} = ICAP Replacement Cost in \$/MW in period p and season s

In no event shall ENF be liable for Installed Capacity or any ICAP deficiency for any periods after the end of the Term.

- IV. True-Up Mechanism ENF and/or ENIP, as the case may be, shall compensate Buyer for the cost to cover any Installed Capacity deficiency on the date the true-up payment is made for each of the Periods referred to in Appendix A, Chart A-1 and Appendix B, Chart B-2. The applicable Seller may reduce its payment to Buyer for the replacement cost of deficient Installed Capacity in each Period by the amount of any Buyer savings for Energy ("Banked Savings" or "BS") for the

Period, as such savings are calculated in accordance with the equations set forth below.

The Banked Savings for each Period from IP3 (Equation C-3) and from FitzPatrick (Equation C-6) shall be summed to determine the Total Banked Savings at the end of each Period. The Total Banked Savings for the Period shall be reduced by the amount(s) used by Seller(s) to reduce true-up payments under subsection V(g) of Appendix A or subsection V(g) of Appendix B. Any remainder of the Total Banked Savings may be used by either or both Sellers to offset against payments due to Buyer for the cost to cover any Installed Capacity deficiency for the Period.

The Total Banked Savings for each Period shall be applied pro rata against the IP3 ICAP deficiency and the FitzPatrick ICAP deficiency (based on the relative amounts of such deficiencies) for purposes of calculating the obligation of each Seller.

In order to determine the Banked Savings, the following calculations will be performed:

(a) IP3

(i) The Base Contract Amount of Energy for IP3 ("IP3 BCA") for Period p is:

[Equation C-1]

$$\text{IP3 BCA}_p = [(SME_{pw} * H_{pw}) + (SME_{ps} * H_{ps})] * \text{CFM}$$

Where:

p = Period

pw = Winter

ps = Summer

SME_{pw} = Seasonal MW Entitlement in Period p Winter

H_{pw} = Hours in Period p Winter

SME_{ps} = Seasonal MW Entitlement in Period p Summer

H_{ps} = Hours in Period p Summer

CFM = Capacity Factor Minimum, which shall be 0.85 for Period 1, and for Period 2 shall be determined as follows:

$$\frac{0.85A + 0.90B}{A+B}$$

Where:

A = the number of days in Period 2 from and including the first day thereof through and including the fourth anniversary of the Closing Date

B = the number of days, if any, in Period 2 from and after the day following the fourth anniversary of the Closing Date through and including December 31, 2004, but excluding the days (not to exceed 40 days), if any, during which IP3 is not operating due to a refueling outage

- (ii) ENIP shall determine the actual energy scheduled and delivered from IP3 ("Actual MW Generation" or "AMWG") as described in Appendix A, Section V.
- (iii) AMWG_p shall mean the AMWG during a Period p.
- (iv) If AMWG_p for IP3 is greater than or equal to IP3 BCA_p, the Banked Savings for the Period ("BS_p") from IP3 will be zero.
- (v) If AMWG_p for IP3 is less than IP3 BCA_p, the difference ("D_p") for each Period shall be calculated as follows:

[Equation C-2]

$$D_p = \text{IP3 BCA}_p - \text{AMWG}_p$$

If D_p is positive, the Banked Savings for Period p ("BS_p") from IP3, if any, is:

[Equation C-3]

$$\text{BS}_p = (\text{IP3 Price} - \text{WACC}_p) * D_p$$

Where:

p = Period

IP3 Price = \$36 per MWh

WACC_p = Weighted Average Cost to Cover, calculated in accordance with Equation A-3 of Appendix A.

D_p = Amount by which AMWG_p for IP3 is less than IP3 BCA_p

(b) FitzPatrick

(i) The Base Contract Amount of Energy for FitzPatrick ("FitzPatrick BCA") for Period p is:

[Equation C-4]

$$\text{FitzPatrick BCA}_p = [(SME_{pw} * H_{pw}) + (SME_{ps} * H_{ps})] * CFM$$

Where:

p = Period

pw = Winter

ps = Summer

SME_{pw} = Seasonal MW Entitlement in Period p Winter

H_{pw} = Hours in Period p Winter

SME_{ps} = Seasonal MW Entitlement in Period p Summer

H_{ps} = Hours in Period p Summer

CFM = Capacity Factor Minimum which shall be 0.85 for Period 1, and for Period 2 shall be determined as follows:

$$\frac{0.85A + 0.90B}{A+B}$$

Where:

A = the number of days in Period 2 from and including the first day thereof through and including the fourth anniversary of the Closing Date

B = the number of days, if any, in Period 2 from and after the day following the fourth anniversary of the Closing Date through and including December 31, 2004, but excluding the days, (not to exceed forty days) if any, during which FitzPatrick is not operating due to a refueling outage

- (ii) ENF shall determine the actual Energy scheduled and delivered from FitzPatrick (“Actual MW Generation” or “AMWG”) as described in Appendix B, Section V.
- (iii) $AMWG_p$ shall mean the AMWG during a Period p.
- (iv) If $AMWG_p$ for FitzPatrick is greater than or equal to FitzPatrick BCA_p , the Banked Savings for the Period (“ BS_p ”) from FitzPatrick will be zero.
- (v) If $AMWG_p$ for FitzPatrick is less than FitzPatrick BCA_p , the difference (“ D_p ”) for each Period shall be calculated as follows:

[Equation C-5]

$$D_p = \text{FitzPatrick } BCA_p - AMWG_p$$

If D_p is positive, the Banked Savings for Period p (“ BS_p ”) from FitzPatrick, if any, is:

[Equation C-6]

$$BS_p = (\text{FitzPatrick Price} - WACC_p) * D_p$$

Where:

p = Period

FitzPatrick Price = \$32 per MWh

WACC = Weighted Average Cost to Cover calculated in accordance with Equation B-3 of Appendix B

D_p = Amount by which $AMWG_p$ for FitzPatrick is less than FitzPatrick BCA_p

Appendix D: Additional Purchase of FitzPatrick Remaining Output

ENF shall sell to Buyer, and Buyer shall purchase from ENF, all of the Energy, Installed Capacity and Ancillary Services from FitzPatrick in excess of the FitzPatrick Entitlement (such excess, the "Remaining Output") at \$29 per MWh (the "Additional Purchase Price") for the period from and after the Closing through and including December 31, 2003, under the terms and conditions set forth below.

- I. For the Additional Purchase Price, Buyer will receive the Energy, Installed Capacity and Ancillary Services associated with the Remaining Output. The supply of the Remaining Output will be unit contingent and the capacity factor guaranty, Installed Capacity guaranty, financial true-up provisions and the other provisions of the Agreement (other than those expressly provided in subsection IV below) will be inapplicable.

- II. On or before May 15, 2000, Buyer and ENF shall enter into a separate power purchase and sale agreement which shall be in form and substance reasonably satisfactory to Buyer and ENF (the "Additional Purchase Agreement"). Unless Buyer and ENF agree otherwise, such Additional Purchase Agreement shall contain, at a minimum, provisions substantially the same as Articles 10 through 19, inclusive, of the Agreement as such provisions apply to ENF and Buyer only.

- III. Energy, Installed Capacity and Ancillary Services shall be supplied from FitzPatrick in the following order: first, ENF shall supply Buyer with the FitzPatrick Entitlement (at the FitzPatrick Price) and second, ENF shall supply Buyer with the Remaining Output (at the Additional Purchase Price).
- IV. In addition to the provisions specifically referenced herein, the following provisions of the Agreement apply to this Appendix D, as applicable: Article 1 ("Definitions"); Article 2 ("Interpretations"); Article 3 ("Condition Precedent"); Section 17.1 ("Governing Law, Venue"); Article 18 ("Waiver"); Sections 20.1, 20.4, 20.9, and 20.11 (miscellaneous provisions); and Article 23 ("Additional Purchase of FitzPatrick Remaining Output").

NYC1 #248205 v3

Exhibit L
to
Purchase and Sale Agreement

FACILITIES AGREEMENT

This FACILITIES AGREEMENT ("Agreement"), dated as of _____, 2000, by and among the Power Authority of the State of New York, a corporate municipal instrumentality of the State of New York ("Seller") and Entergy Nuclear Fitzpatrick, LLC, a Delaware limited liability company ("ENF") and Entergy Nuclear Indian Point 3, LLC, a Delaware limited liability company ("ENIP" and together with ENF, each, a "Buyer" and collectively, "Buyers").

W I T N E S S E T H:

WHEREAS, Buyers and Seller are parties to a certain Purchase and Sale Agreement (the "P&S Agreement"), dated as of _____, 2000, pursuant to which Seller has agreed to sell, and ENF has agreed to purchase, the James A. FitzPatrick nuclear utilization facility and certain related assets, and ENIP has agreed to purchase, the Indian Point 3 nuclear utilization facility and certain related assets, in each case on the terms and conditions set forth in the P&S Agreement;

WHEREAS, Sellers have provided and will continue to provide Buyers with significant assistance in their attempt to acquire nuclear power plants in the State of New York and elsewhere; and

WHEREAS, the consummation of the purchase and sale referred to above is subject to the execution and delivery of this Agreement by Buyers and Seller,

NOW, THEREFORE, in consideration of these premises, the mutual agreements set forth herein and other good and valuable consideration, the receipt of which is hereby expressly acknowledged, and intending to be legally bound, Buyers and Seller agree as follows:

1. Definitions.

"Acquisition Date" means the IP2 Acquisition Date, NM1 Acquisition Date or NM2 Acquisition Date, as applicable.

"Adjacent Facility" means IP2 with respect to IP3, and NM1 and/or NM2, as applicable, with respect to JAF.

“Affiliate” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

“Cessation of Operations Date” means the last date on which the applicable Facility or applicable Adjacent Facility generated electricity for commercial sale prior to the filing of a Notice of Permanent Cessation of Operation.

“ENI” means Entergy Nuclear, Inc, a Delaware corporation.

“Facility” means IP3 or JAF.

“IP2” means the nuclear plant owned by Consolidated Edison, Inc. that is located in the State of New York known as Indian Point 2 Nuclear Power Station.

“IP2 Acquisition Date” means the date, if any, on which ENI or its Affiliate acquires indefeasible title to all or a portion of the IP2 Assets, but in no event shall such date be later than the fifth anniversary hereof.

“IP2 Assets” means all of the assets necessary for ENI or its Affiliate to own and Operate IP2 (including, without limitation, fee simple title to all necessary real estate).

“IP2 Operation Agreement” means an agreement between ENI or its Affiliate and the owner of the IP2 Assets pursuant to which ENI or its Affiliate agrees to Operate the IP2 Assets as the operator licensed by the NRC for the benefit of such owner.

“IP2 Operation Agreement Date” means the later of (i) the Closing Date under the P&S Agreement and (ii) the date on which the IP2 Operation Agreement becomes effective and ENI or its Affiliate commences Operation of the IP2 Assets, but in no event shall such date be later than the fifth anniversary hereof.

“IP2 Termination Event” means any of the following events: (a) ENI or its Affiliate ceases to Operate the IP2 Assets pursuant to the IP2 Operation Agreement for any reason (unless ENI or its Affiliate acquires indefeasible title to all or a portion of the IP2 Assets, in which event Section 2.2.2 shall apply and such cessation shall not be deemed an “IP2 Termination Event”), (b) neither ENI nor its Affiliate owns title to IP2 or IP3 in whole or part, or (c) either of IP2 or IP3 is Permanently Retired.

“IP3” has the meaning set forth in the P&S Agreement.

“IP3 LED” means December 31, 2015 (which is the expiration date of the

current NRC License with respect to IP3).

“JAF” has the meaning set forth in the P&S Agreement.

“JAF LED” means October 17, 2014 (which is the expiration date of the current NRC License with respect to JAF).

“LED” means the IP3 LED with respect to IP3 and JAF LED with respect to JAF.

“NM1” means the nuclear plant owned by Niagara Mohawk Power Corporation that is located in the State of New York known as Nine Mile Point Nuclear Station Unit 1.

“NM1 Acquisition Date” means the later of (i) the Closing Date under the P&S Agreement and (ii) the date on which ENI or its Affiliate acquires indefeasible title to all or a portion of the NM1 Assets, but in no event shall such date be later than the fifth anniversary hereof.

“NM1 Assets” means all of the assets necessary for ENI or its Affiliate to own and Operate NM1 (including, without limitation, fee simple title to all necessary real estate).

“NM1 Operation Agreement” means an agreement between ENI or its Affiliate and the owner of the NM1 Assets pursuant to which ENI or its Affiliate agrees to Operate the NM1 Assets as the operator licensed by the NRC for the benefit of such owners. It is understood and agreed by the parties that the NM1 Operation Agreement and the NM2 Operation Agreement may be one agreement pursuant to which ENI or its Affiliate Operate the NM1 Assets and NM2 Assets as the operator licensed by the NRC for the benefit of the owners thereof.

“NM1 Operation Agreement Date” means the later of (i) the Closing Date under the P&S Agreement and (ii) the date on which the NM1 Operation Agreement becomes effective and ENI or its Affiliate commences Operation of the NM1 Assets, but in no event shall such date be later than the fifth anniversary hereof.

“NM1 Termination Event” means any of the following events: (a) ENI or its Affiliate ceases to Operate the NM1 Assets pursuant to the NM1 Operation Agreement for any reason (unless ENI or its Affiliate acquires indefeasible title to all or a portion of the NM1 Assets, in which event Section 3.3.2 shall apply and such cessation shall not be deemed an “NM1 Termination Event”), (b) neither ENI nor its Affiliate owns title to NM1 or JAF in whole or part, or (c) either JAF or NM1 is

Permanently Retired.

“NM2” means the nuclear plant owned by one or more of Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, Long Island Lighting Company and Central Hudson Gas & Electric Corp. that is located in the State of New York known as Nine Mile Point Nuclear Station Unit 2.

“NM2 Acquisition Date” means the later of (i) the Closing Date under the P&S Agreement and (ii) the date on which ENI or its Affiliate acquires indefeasible title to all or a portion of the NM2 Assets, but in no event shall such date be later than the fifth anniversary hereof.

“NM2 Assets” means all of the assets necessary for ENI or its Affiliate to own and Operate NM2 (including, without limitation, fee simple title to all necessary real estate).

“NM2 Operation Agreement” means an agreement between ENI or its Affiliate and the owners of the NM2 Assets pursuant to which ENI or its Affiliate agrees to Operate the NM2 Assets as the operator licensed by the NRC for the benefit of such owners. It is understood and agreed by the parties that the NM1 Operation Agreement and the NM2 Operation Agreement may be one agreement pursuant to which ENI or its Affiliate Operate the NM1 Assets and NM2 Assets as the operator licensed by the NRC for the benefit of the owners thereof.

“NM2 Operation Agreement Date” means the later of (i) the Closing Date under the P&S Agreement and (ii) the date on which the NM2 Operation Agreement becomes effective and ENI or its Affiliate commences Operation of the NM1 Assets, but in no event shall such date be later than the fifth anniversary hereof.

“NM2 Termination Event” means any of the following events: (a) ENI or its Affiliate ceases to Operate the NM2 Assets pursuant to the NM1 Operation Agreement for any reason (unless ENI or its Affiliate acquires indefeasible title to all or a portion of the NM2 Assets, in which event Section 3.4.2 shall apply and such cessation shall not be deemed an “NM2 Termination Event”), (b) neither ENI nor its Affiliate owns title to NM2 or JAF in whole or part, or (c) either JAF or NM2 is Permanently Retired.

“NRC” means the United States Nuclear Regulatory Commission, as established by Section 201 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. Section 5841, or any successor commission, agency or officer.

“Operate” and its derivations means to possess, use, manage, control,

maintain and repair.

“Operation Agreement” means the IP2 Operation Agreement, the NM1 Operation Agreement or the NM2 Operation Agreement, as applicable.

“Operation Agreement Date” means the IP2 Operation Agreement Date, the NM1 Operation Agreement Date or the NM2 Operation Agreement Date, as applicable.

“Payment Section” means each of Sections 2.1.1, 2.1.2, 2.2.1, 2.2.2, 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1, 3.3.2, 3.4.1, 3.4.2 and 3.5.

“Permanently Retired” and its derivations means any of IP2, IP3, JAF, NM1 or NM2, as applicable, is shut down and (i) the owner thereof has filed a Notice of Permanent Cessation of Operation with the Nuclear Regulatory Commission with respect to a Facility or an Adjacent Facility, pursuant to 10 C.F.R. Section 50.82(a)(1)(i), and/or (ii) the license issued by the NRC for such Facility or Adjacent Facility has expired and has not been renewed or extended.

“Present Value” shall be determined in accordance with generally accepted accounting principles on an annual basis at a discount rate of eight percent (8%) per annum.

“Termination Event” means an IP2 Termination Event, NM1 Termination Event or NM2 Termination Event, as applicable.

2. Payments with respect to IP3.

2.1 Ownership of IP2.

2.1.1 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that after the date hereof and prior to the fifth anniversary hereof, ENI or its Affiliate directly or indirectly acquires indefeasible title to all of the IP2 Assets, ENIP shall pay to Seller \$10,000,000 annually in arrears, commencing on the second anniversary of the IP2 Acquisition Date (it being the intent of the parties that no payment is due for the first year after the date thereof) and continuing through and including the earlier of (a) the IP3 LED, (b) the eleventh anniversary of the IP2 Acquisition Date or (c) the occurrence of an IP2 Termination Event.

2.1.2 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that after the date hereof and prior to the fifth anniversary hereof, ENI or its Affiliate directly or indirectly acquires indefeasible title to a portion but less than all of the IP2 Assets, ENIP shall pay to Seller an annual amount in arrears equal to

\$10,000,000 multiplied by the percentage of ENI's or its Affiliate's ownership (e.g., if ENI or its Affiliate acquires 40 percent ownership of the IP2 Assets on the IP2 Acquisition Date, such payments shall be equal to \$4,000,000 per annum), commencing on the second anniversary of the IP2 Acquisition Date (it being the intent of the parties that no payment is due for the first year after the date thereof) and continuing through and including the earliest of (a) the IP3 LED, (b) the eleventh anniversary of the IP2 Acquisition Date or (c) the occurrence of an IP2 Termination Event.

2.2 Operation of IP2.

2.2.1 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that at any time prior to the fifth anniversary hereof, ENI or its Affiliate enters into the IP2 Operation Agreement but has not acquired any portion of the IP2 Assets, ENIP agrees to negotiate with Seller to agree upon a payment amount, based upon due consideration of ENI's or its Affiliate's costs and economies of scale in regard to combined operation of IP2 and IP3, recognizing that the type and magnitude of the duties and obligations of ENI or its Affiliate under the IP2 Operation Agreement may substantially impact the amount of potential savings (i.e., an agreement pursuant to which ENI or its Affiliate merely manages the Operation of IP2 by its owner would generate a significantly smaller reduction of costs and less economies of scale for ENI or its Affiliate than an agreement pursuant to which ENI or its Affiliate is entirely responsible for the Operation of IP2); provided, (i) as a guideline, the relationship between such payment amount and ENI's or its Affiliate's actual cost savings in regard to Operation of IP2 should be generally proportional to the relationship between the payment amounts under Sections 3.3.1 and 3.4.1 and ENI's or its Affiliate's actual cost savings in regard to Operation of NM1 and NM2, and (ii) that in no event shall such payments exceed \$5,000,000 per annum. Such agreed payment shall be made on an annual basis in arrears commencing on the second anniversary of the IP2 Operation Agreement Date (it being the intent of the parties that no payment is due for the first year after the date thereof) and each subsequent anniversary of the IP2 Operation Agreement Date through and including the earliest of (a) the IP3 LED, (b) the eleventh anniversary of the IP2 Operation Agreement Date or (c) the occurrence of an IP2 Termination Event.

2.2.2 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that (a) ENI or its Affiliate enters into the IP2 Operation Agreement during the time period described in Section 2.2.1 and (b) prior to the fifth anniversary hereof, ENI or its Affiliate acquires indefeasible title to all or a portion of the IP2 Assets, on the anniversary of the IP2 Operation Agreement Date which follows the IP2 Acquisition Date, ENIP shall pay to Seller (x) the amount due pursuant to Section 2.2.1 prorated for the portion of the year during which ENI or its Affiliate

Operated but did not own any of the IP2 Assets plus (y) the amount due pursuant to the calculation under Section 2.1.1 or 2.1.2, as the case may be, prorated for the portion of the year during which ENI or its Affiliate owned all or a portion of the IP2 Assets. On each subsequent anniversary of the IP2 Operation Agreement Date through and including the earliest of (a) the IP3 LED, (b) the eleventh anniversary of the IP2 Operation Agreement Date or (c) the occurrence of an IP2 Termination Event, ENIP shall pay to Seller an annual payment calculated in accordance with Section 2.1.1 or 2.1.2, as the case may be. In such subsequent years, no payments shall be due pursuant to Section 2.2.1.

3. Payments with respect to JAF.

3.1 Ownership of NM1.

3.1.1 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that at any time prior to the fifth anniversary hereof, ENI or its Affiliate directly or indirectly acquires indefeasible title to all of the NM1 Assets, ENF shall pay to Seller \$666,666 annually in arrears, commencing on the second anniversary of the NM1 Acquisition Date (it being the intent of the parties that no payment is due for the first year after the date thereof) and continuing through and including the earliest of (a) the JAF LED, (b) the eleventh anniversary of the NM1 Acquisition Date or (c) the occurrence of an NM1 Termination Event.

3.1.2 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that at any time prior to the fifth anniversary hereof, ENI or its Affiliate directly or indirectly acquires indefeasible title to a portion but less than all of the NM1 Assets, ENF shall pay to Seller an annual payment in arrears equal to \$666,666 multiplied by the percentage of ENI's or its Affiliate's ownership (e.g., if ENI or its Affiliate acquires 40 percent ownership of the NM1 Assets, such payments shall be equal to \$266,666 per annum), commencing on the second anniversary of the NM1 Acquisition Date (it being the intent of the parties that no payment is due for the first year after the date thereof) and continuing through and including the earliest of (a) the JAF LED, (b) the eleventh anniversary of the NM1 Acquisition Date or (c) the occurrence of an NM1 Termination Event.

3.2 Ownership of NM2.

3.2.1 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that at any time prior to the fifth anniversary hereof, ENI or its Affiliate acquires indefeasible title to all of the NM2 Assets, ENF shall pay to Seller \$1,333,333 annually in arrears, commencing on the second anniversary of the NM2 Acquisition Date (it being the intent of the parties that no payment is due for the first year after the date thereof) and continuing through and including the earliest

of (a) the JAF LED, (b) the eleventh anniversary of the NM2 Acquisition Date or (c) the occurrence of an NM2 Termination Event.

3.2.2 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that at any time prior to the fifth anniversary hereof, ENI or its Affiliate acquires indefeasible title to a portion but less than all of the NM2 Assets, ENF shall pay to Seller an annual payment of \$1,333,333 multiplied by the percentage of ENI's or its Affiliate's ownership (e.g., if ENI or its Affiliate acquires 40 percent ownership of the NM2 Assets, such payments shall be equal to \$533,333 per annum), commencing on the second anniversary of the NM2 Acquisition Date and continuing through and including the earliest of (a) the JAF LED, (b) the eleventh anniversary of the NM2 Acquisition Date or (c) the occurrence of an NM2 Termination Event.

3.3 Operation of NM1.

3.3.1 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that at any time prior to the fifth anniversary of the date hereof, ENI or its Affiliate enters into the NM1 Operation Agreement but has not acquired any portion of the NM1 Assets, ENF shall pay to Seller \$666,666 annually in arrears, commencing on the second anniversary of the NM1 Operation Agreement Date (it being the intent of the parties that no payment is due for the first year after the date thereof) through and including the earliest of (a) the JAF LED, (b) the eleventh anniversary of the NM1 Operation Agreement Date or (c) the occurrence of an NM1 Termination Event.

3.3.2 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that (a) ENI or its Affiliate enters into the NM1 Operation Agreement during the time period described in Section 3.3.1 and (b) prior to the fifth anniversary hereof, ENI or its Affiliate acquires indefeasible title to all or a portion of the NM1 Assets, on the anniversary of the NM1 Operation Agreement Date which follows the NM1 Acquisition Date, ENF shall pay to Seller (x) the amount due pursuant to Section 3.3.1 prorated for the portion of the year during which ENI or its Affiliate Operated but did not own any of the NM1 Assets plus (y) the amount due pursuant to the calculation under Section 3.1.1 or 3.1.2, as the case may be, prorated for the portion of the year during which ENI or its Affiliate owned all or a portion of the NM1 Assets. On each subsequent anniversary of the NM1 Operation Agreement Date through and including the earliest of (a) the JAF LED, (b) the eleventh anniversary of the NM1 Operation Agreement Date or (c) the occurrence of an NM1 Termination Event, ENF shall pay to Seller an annual payment calculated in accordance with Section 3.1.1 or 3.1.2, as the case may be. In such subsequent years, no payments shall be due pursuant to Section 3.3.1.

3.4 Operation of NM2.

3.4.1 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that at any time prior to the fifth anniversary of the date hereof, ENI or its Affiliate enters into the NM2 Operation Agreement but has not acquired any portion of the NM2 Assets, ENF shall pay to Seller \$333,333 annually in arrears, commencing on the second anniversary of the NM2 Operation Agreement Date (it being the intent of the parties that no payment is due for the first year after the date thereof) through and including the earliest of (a) the JAF LED, (b) the eleventh anniversary of the NM2 Operation Agreement Date or (c) the occurrence of an NM2 Termination Event.

3.4.2 Subject to the provisions of Sections 3.5, 4.2 and 4.3, in the event that (a) ENI or its Affiliate enters into the NM2 Operation Agreement during the time period described in Section 3.4.1 and (b) prior to the fifth anniversary hereof, ENI or its Affiliate acquires indefeasible title to all or a portion of the NM2 Assets, on the anniversary of the NM2 Operation Agreement Date which follows the NM2 Acquisition Date, ENF shall pay to Seller (x) the amount due pursuant to Section 3.4.1 prorated for the portion of the year during which ENI or its Affiliate Operated but did not own any of the NM2 Assets plus (y) the amount due pursuant to the calculation under Section 3.2.1 or 3.2.2, as the case may be, prorated for the portion of the year during which ENI or its Affiliate owned all or a portion of the NM2 Assets. On each subsequent anniversary of the NM2 Operation Agreement Date through and including the earliest of (a) the JAF LED, (b) the eleventh anniversary of the NM2 Operation Agreement Date or (c) the occurrence of an NM2 Termination Event, ENF shall pay to Seller an annual payment calculated in accordance with Section 3.2.1 or 3.2.2, as the case may be. In such subsequent years, no payments shall be due pursuant to Section 3.4.1.

3.5. Sale of Facilities or Contracts. In the event ENIP or ENF is obligated to make payments to Seller under any Payment Section by reason of ownership and/or Operation of a Facility and any applicable Adjacent Facility or Facilities, and subsequently either (a) sells the Facility and the Adjacent Facility or Adjacent Facilities to a single purchaser or Affiliated purchasers, or (b) assigns any Operation Agreement(s) with respect to such Facility and the Adjacent Facility or Adjacent Facilities to a single assignee or Affiliated assignees, such that the purchaser(s) or assignee(s) substantially succeed to ENIP's or ENF's interest in the Facility and the Adjacent Facility or Adjacent Facilities, ENIP or ENF, as the case may be, shall make a payment to Seller, calculated pursuant to the next two sentences, upon closing of the sale or assignment transactions in question, based upon the Present Value of the remaining payments, if any, which would have been made under the applicable Payment Section(s) with respect to such Facility and the Adjacent Facility or Adjacent Facilities had ENIP or ENF continued to own and/or

Operate such Facility and relevant Adjacent Facilities (the "Termination Amount"). In the event such sale or assignment occurs (a) on or prior to the second anniversary of the applicable Acquisition Date or applicable Operation Agreement Date for the applicable Adjacent Facility, ENIP or ENF, as the case may be, shall pay the full Termination Amount to Seller and (b) after such second anniversary, the amount of the payment due from ENIP or ENF to Seller shall be (i) 80 percent of the Termination Amount if such sale or assignment occurs after the second and on or before the third anniversary, (ii) 60 percent of the Termination Amount if such sale or assignment occurs after the third and on or before the fourth anniversary, (iii) 40 percent of the Termination Amount if such sale or assignment occurs after the fourth and on or before the fifth anniversary, and (iv) 20 percent of the Termination Amount if such sale or assignment occurs after the fifth and on or before the sixth anniversary. Buyers shall have no payment obligation under this Section 3.5 after the sixth anniversary of the applicable Acquisition Date or Operation Agreement Date. Notwithstanding the foregoing, in no event shall the amount of any payment due under this Section 3.5 exceed the amount of the cash consideration received by the relevant Buyer for such sale or assignment, provided, for the purposes of this Section 3.5, "cash consideration" in any such sale or assignment transaction shall be deemed to include any securities or property received by ENI or its Affiliate and any assumption by such purchaser or assignee of debt for money borrowed in excess of the amount of the original purchase price paid by ENI or its Affiliate for the Facility and Adjacent Facility (including any debt assumed by ENI or its Affiliate upon acquisition) plus the cost of capital improvements made to such Facility or Adjacent Facility by ENI or its Affiliate.

4. Limitations on Payments: Method of Payment.

4.1. Maximum Amount of Payments. In no event shall (a) ENIP be obligated to make payments to Seller pursuant to this Agreement which exceed (i) \$100,000,000 in the aggregate with respect to ownership of IP2 and (ii) \$50,000,000 in the aggregate in regard to Operation of IP2 and (b) ENF be obligated to make payments to Seller pursuant to this Agreement which exceed (i) \$20,000,000 in the aggregate with respect to ownership of NM1 and NM2, or (ii) \$10,000,000 in the aggregate with respect to Operation of NM1 and NM2.

4.2. Proration of Partial-Year Payments. In the event the LED for either IP3 or JAF or a Termination Event in regard to the applicable Facility or Adjacent Facility occurs prior to the eleventh anniversary of the Acquisition Date or Operation Agreement Date for the applicable Adjacent Facility, the amount due in regard to the Payment Section applicable to such Adjacent Facility, if any, for the period commencing on the anniversary of the Acquisition Date or Operation Agreement Date for such Adjacent Facility immediately prior to the applicable LED or Termination Event through the applicable LED or Termination Event shall be

prorated by multiplying the amount which would have been due for the entire annual period under such Payment Section by a fraction, the numerator of which is the number of days during the period from the preceding anniversary of the applicable Acquisition Date or Operation Agreement Date through the applicable LED or Termination Event and the denominator of which is 365.

4.3. Permanent Retirement or Sale of a Facility. ENIP and/or ENF shall only be required to make the payments for in any Payment Section so long as neither the applicable Facility nor an applicable Adjacent Facility, ownership or Operation of which gives rise to the obligation under such Payment Section, has been Permanently Retired, transferred or sold in its entirety to a non-Affiliate of ENI. In the event that either the applicable Facility or an applicable Adjacent Facility is Permanently Retired, transferred or sold to a non-Affiliate of ENI, the final payment owed by ENIP or ENF to Seller regarding such Facility following such Permanent Retirement, transfer or sale shall equal the product of (a) the payment amount due for such annual period determined pursuant to the applicable Payment Section, multiplied by (b) a fraction, the numerator of which is the number of days during the period from the preceding anniversary of the applicable Acquisition Date or Operation Agreement Date through the date of such Permanent Retirement, transfer or sale, and the denominator of which is 365. Such final payment shall be due thirty (30) days following either (x) the later of (i) the Cessation of Operations Date and (ii) the date on which the applicable Buyer determines to file a Notice of Permanent Cessation of Operation or (y) the date of closing of such sale, as applicable. In the event a Buyer shall have made a payment to Seller covering an annual period extending beyond the Cessation of Operations Date, and following such Cessation of Operations Date, Buyer subsequently files a notice of Permanent Cessation of Operations without recommencing generation of electricity for commercial sale, Seller shall refund to such Buyer a portion of the annual payment made in regard to such Facility, calculated by multiplying (A) the amount previously received by Seller for the period in question, whether an annual period or a partial-year period pursuant to the applicable Payment Section, by (B) a fraction, the numerator of which is the number of days in such period from and after the Cessation of Operations Date and the denominator of which is the number of days in such annual or partial period.

4.4. Method of Payments. All payments due Seller under this Agreement shall be made in immediately available funds by wire transfer to Seller's account pursuant to instructions set forth in Schedule 2.5(a) of the P&S Agreement, or as otherwise instructed in writing by Seller from time-to-time.

5. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Buyers and Seller, and their respective successors and assigns, and therefore is not intended to and shall not confer any rights or benefits upon any

third party.

6. No Joint Venture. Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Buyers and Seller, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to Buyers or Seller.

7. Entire Agreement. This Agreement constitutes the complete and exclusive agreement and understanding between Buyers and Seller as to its subject matter.

8. Assignment. Neither Seller nor any Buyer may assign its rights or obligations under this Agreement without the consent of the non-assigning party, except that either party may assign this Agreement without the consent of the other party to an entity which is an Affiliate of the assigning party or its successor. No assignment of this Agreement or of the rights and obligations of a party shall relieve the assigning party of liability for any breach by the assignee for any other failure by the assignee to perform its obligations hereunder.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

10. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

11. Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing provided in accordance with Section 11.8 of the P&S Agreement.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

13. Consent to Jurisdiction. Seller and each Buyer consents to the exclusive jurisdiction of any local, state or federal court located within the City of New York, New York County, State of New York, for adjudication of any suit, claim, action or other proceeding at law or in equity relating to this Agreement. Seller and each Buyer accepts, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and waive any objection as to venue, and any defense of forum non conveniens.

14. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyers and Seller. Any waiver by any party of any provisions of this Agreement must be made in writing, and shall apply only to the instance referred to in the writing, and shall not, on any other occasion, be construed as a bar to, or a waiver of, any right any party has under this Agreement.

15. Severability. Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision, provided enforcement of the Agreement as so modified shall not deprive a party of the material benefits of its original bargain.

16. Construction. Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof. The parties hereto acknowledge that they have been represented by counsel in connection with the review and execution of this Agreement, and, accordingly, there shall be no presumption that this Agreement or any provision hereof be construed against the party that drafted this Agreement.

17. Dispute Resolution. Prior to instituting any litigation or alternative dispute resolution mechanism, the parties hereto shall attempt in good faith to resolve any dispute or claim promptly by referring any such matter to their respective chief executive officers for resolution. Either party may give the other party written notice of any dispute or claim. Within ten (10) days after delivery of said notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute or claim within thirty (30) days.

18. Confidentiality. Except as otherwise required by law, the parties hereto shall keep confidential the terms and conditions of this Agreement and the transactions undertaken pursuant hereto.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

POWER AUTHORITY OF THE STATE
OF NEW YORK

By: _____
Name: _____
Title: _____

ENTERGY NUCLEAR FITZPATRICK,
LLC

By: _____
Name: _____
Title: _____

ENTERGY NUCLEAR INDIAN POINT
3, LLC

By: _____
Name: _____
Title: _____

;

VALUE SHARING AGREEMENT (FITZPATRICK)

This VALUE SHARING AGREEMENT (the "Agreement"), dated as of _____, 2000, by and between the Power Authority of the State of New York, a corporate municipal instrumentality and political subdivision of the State of New York ("Buyer") and Entergy Nuclear Fitzpatrick, LLC, a Delaware limited liability company ("Seller").

WITNESSETH:

WHEREAS, Buyer, Seller and Entergy Nuclear Indian Point 3, LLC ("ENIP," and together with Seller, "Sellers") are parties to a certain Agreement for the Purchase of Products and Services from the James A. FitzPatrick and Indian Point No. 3 Nuclear Power Plants (the "Power Purchase Agreement"), dated as of _____, 2000, pursuant to which Sellers have agreed to sell, and Buyer has agreed to purchase, Unit Contingent Energy, Installed Capacity and Ancillary Services on the terms and conditions set forth in the Power Purchase Agreement (capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Power Purchase Agreement); and

WHEREAS, the consummation of the transactions contemplated by the Power Purchase Agreement is subject to the execution and delivery of this Agreement by Buyer and Seller,

NOW, THEREFORE, in consideration of these premises, the mutual agreements set forth herein and other good and valuable consideration, the receipt of which is hereby expressly acknowledged, and intending to be legally bound, Buyer and Seller agree as follows:

1. Definitions.

"Actual Market Prices" or "M_A" means the average actual market price (measured in dollars per MWh) for Energy for the applicable calendar year during the Term based on actual sales from FitzPatrick through bilateral contracts or into the open market.

"FitzPatrick" has the meaning specified in the Power Purchase Agreement.

"MW" means megawatts.

"MWh" means megawatt hours.

"NYISO" means the New York Independent System Operator organization formed in accordance with orders of FERC to administer the operation of, to provide equal access to, and to maintain the reliability of the bulk power transmission system in New York State. The term NYISO includes its successor organization(s), if any.

"Production" or "P" means an amount (measured in MWh) equal to the lesser of (a) (i) RC multiplied by (ii) 0.85 and (b) the total Energy measured in MWh produced by FitzPatrick (excluding Energy consumed at FitzPatrick) during the applicable calendar year.

"Reference Capacity or "RC" means an amount (measured in MWh) equal to the sum of (a) (i) SM_{PW} multiplied by (ii) the number of hours in the Winter Capability Period (as defined

by the NYISO) and (b) (i) SM_{PS} multiplied by the number of hours in the Summer Capability Period (as defined by the NYISO).

“Seasonal Megawatts for Summer Capability Period” or “ SM_{PS} ” means 825 MW.

“Seasonal Megawatts for Winter Capability Period” or “ SM_{PW} ” means 825 MW.

“Set Market Prices” or “ M_S ” means the forecast market prices (measured in dollars per MWh) for Energy from FitzPatrick for each of the calendar years during the Term set forth on Schedule I hereto.

“Term” has the meaning specified in Section 3 hereof.

“Value Sharing Amount” means an amount (measured in dollars) equal to the product of (a) ((i) M_A minus (ii) M_S), (b) P, and (c) 0.5. Value Sharing Amount may be a positive or negative number.

2. Value Sharing with respect to Above Market Energy Prices.

2.1 Seller shall complete a calculation of the Value Sharing Amount and deliver such calculation to Buyer within forty-five (45) days after the end of each calendar year during the Term.

2.2 If the Value Sharing Amount for a calendar year during the Term is a negative number or zero, neither Buyer nor Seller shall be required to make any payments pursuant to this Agreement with respect to such calendar year.

2.3 If the Value Sharing Amount for a calendar year during the Term is a positive number, then within fifteen (15) days after timely delivery of the calculations required pursuant to Section 2.1 hereof, Seller shall pay Buyer the Value Sharing Amount in immediately available funds to an account designated by Buyer in writing. Any payment not made when due shall bear interest at the prime rate, as established by The Chase Manhattan Bank NA as of the original due date, plus two percent (2%).

2.4 In the event that the Value Sharing Amount with respect to any calendar year during the Term is disputed, Seller shall promptly pay any undisputed amounts thereof to Buyer, and such dispute shall be resolved as provided in Section 15 below. If any portion of such disputed amount is subsequently paid to Buyer, by agreement or pursuant to resolution of a dispute pursuant to Section 15, such payment shall be made together with interest calculated as provided in Section 2.3 above from the date originally due.

2.5 During the Term, Seller shall keep complete and accurate records and meter readings of its operations and other relevant financial data and shall maintain such records and readings for a particular calendar year for a period of not less than one year following the end of such calendar year. Buyer shall have the right, upon five Business Days' prior notice, during normal business hours, to examine and inspect all such records and meter readings as may be reasonably necessary to allow Seller to ascertain the accuracy of all relevant data and calculations, but in no event shall Seller impair or interfere with the operation of FitzPatrick.

3. Term. This Agreement shall become effective on the date hereof, but the obligations of the parties under this Agreement shall commence on January 1, 2005 and shall continue until the earlier to occur of (a) Seller or its Affiliate ceases to own FitzPatrick and (b) December 31, 2014 (such period, the "Term").

4. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Buyer and Seller, and their respective successors and assigns, and therefore is not intended to and shall not confer any rights or benefits upon any third party.

5. No Joint Venture. Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Buyer and Seller, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to Buyer or Seller.

6. Entire Agreement. This Agreement constitutes the complete and exclusive agreement and understanding between Buyer and Seller as to its subject matter.

7. Assignment.

7.1 Neither Buyer nor Seller may assign its rights or obligations under this Agreement without the written consent of the non-assigning party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, either party may assign this Agreement without the consent of the other party to an entity which is an Affiliate of the assigning party or its successor.

7.2 No assignment of this Agreement or of the rights and obligations of a party shall relieve the assigning party of liability for any breach by the assignee or for any other failure by the assignee to perform its obligations hereunder.

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

9. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10. Notices. All notices, requests, demands, claims, and other communications hereunder shall be provided in accordance with Section 11.8 of the Purchase and Sale Agreement, dated _____, 2000, between Buyer and Sellers.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

12. Consent to Jurisdiction. Buyer and Seller each consents to the nonexclusive jurisdiction of any local, state or federal court located within the City of New York, New York County, State of New York, for adjudication of any suit, claim, action or other proceeding at law or in equity relating to this Agreement. Buyer and Seller each accepts, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and waive any objection as to venue, and any defense of forum non conveniens.

13. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer and Seller. Any waiver by any party of any provisions of this Agreement must be made in writing, and shall apply only to the instance referred to in the writing, and shall not, on any other occasion, be construed as a bar to, or a waiver of, any right any party has under this Agreement.

14. Severability. Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision, provided enforcement of this Agreement as so modified shall not result in (a) deprivation of a material aspect of a party's original bargain upon execution of this Agreement, (b) unjust enrichment of any party, or (c) any other manifestly unfair or inequitable result. If (a), (b) or (c) above occurs, the parties shall to the extent possible negotiate an equitable adjustment to any provisions of this Agreement to effect the intent and purpose of this Agreement.

15. Dispute Resolution. Prior to instituting any litigation or alternative dispute resolution mechanism, the parties hereto shall attempt in good faith to resolve any dispute or claim promptly by referring any such matter to their respective chief executive officers for resolution. Any party may give the other party written notice of any dispute or claim. Within thirty (30) days after delivery of said notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute or claim within thirty (30) days. In the event any dispute arising as to any Value Sharing Amount, or the amount of any payment due to Buyer, if the parties are not able to resolve such dispute as provided above, the matter shall be submitted to a single arbitrator, who shall be a certified public accountant from a national practice firm, appointed pursuant to the Commercial Rules of the American Arbitration Association, for resolution in a proceeding to be held in accordance with such Rules. The arbitrator shall render a decision within ninety (90) days after submission of the matter by any party, and shall award expenses, including reasonable attorneys' fees, to the prevailing party. A party may apply to any court of competent jurisdiction for an order enforcing the award.

16. Confidentiality. Upon Seller's reasonable request, and to the extent permitted by law, Buyer shall use best efforts to protect the confidentiality of information disclosed under this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Name: _____

Title: _____

ENTERGY NUCLEAR FITZPATRICK, LLC

By: _____

Name: _____

Title: _____

Schedule I
Set Market Prices

<u>Year</u>	<u>Market Price</u>
2005	\$37.51
2006	\$38.84
2007	\$40.21
2008	\$41.64
2009	\$43.11
2010	\$44.64
2011	\$46.22
2012	\$47.85
2013	\$49.55
2014	\$51.30

VALUE SHARING AGREEMENT (INDIAN POINT 3)

This VALUE SHARING AGREEMENT (the "Agreement"), dated as of _____, 2000, by and between the Power Authority of the State of New York, a corporate municipal instrumentality and political subdivision of the State of New York ("Buyer") and Entergy Nuclear Indian Point 3, LLC, a Delaware limited liability company ("Seller").

WITNESSETH:

WHEREAS, Buyer, Seller and Entergy Nuclear Fitzpatrick, LLC ("ENF," and together with Seller, "Sellers") are parties to a certain Agreement for the Purchase of Products and Services from the James A. FitzPatrick and Indian Point No. 3 Nuclear Power Plants (the "Power Purchase Agreement"), dated as of _____, 2000, pursuant to which Sellers have agreed to sell, and Buyer has agreed to purchase, Unit Contingent Energy, Installed Capacity and Ancillary Services on the terms and conditions set forth in the Power Purchase Agreement (capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Power Purchase Agreement); and

WHEREAS, the consummation of the transactions contemplated by the Power Purchase Agreement is subject to the execution and delivery of this Agreement by Buyer and Seller,

NOW, THEREFORE, in consideration of these premises, the mutual agreements set forth herein and other good and valuable consideration, the receipt of which is hereby expressly acknowledged, and intending to be legally bound, Buyer and Seller agree as follows:

1. Definitions.

"Actual Market Prices" or "M_A" means the average actual market price (measured in dollars per MWh) for Energy for the applicable calendar year during the Term based on actual sales from Indian Point 3 through bilateral contracts or into the open market.

"Indian Point 3" has the meaning specified in the Power Purchase Agreement.

"MW" means megawatts.

"MWh" means megawatt hours.

"NYISO" means the New York Independent System Operator organization formed in accordance with orders of FERC to administer the operation of, to provide equal access to, and to maintain the reliability of the bulk power transmission system in New York State. The term NYISO includes its successor organization(s), if any.

"Production" or "P" means an amount (measured in MWh) equal to the lesser of (a) (i) RC multiplied by (ii) 0.85 and (b) the total Energy measured in MWh produced by Indian Point 3 (excluding Energy consumed at Indian Point 3) during the applicable calendar year.

"Reference Capacity or "RC" means an amount (measured in MWh) equal to the sum of (a) (i) SM_{PW} multiplied by (ii) the number of hours in the Winter Capability Period (as defined

by the NYISO) and (b) (i) SM_{PS} multiplied by the number of hours in the Summer Capability Period (as defined by the NYISO).

“Seasonal Megawatts for Summer Capability Period” or “ SM_{PS} ” means 970 MW.

“Seasonal Megawatts for Winter Capability Period” or “ SM_{PW} ” means 985 MW.

“Set Market Prices” or “ M_S ” means the forecast market prices (measured in dollars per MWh) for Energy from Indian Point 3 for each of the calendar years during the Term set forth on Schedule I hereto.

“Term” has the meaning specified in Section 3 hereof.

“Value Sharing Amount” means an amount (measured in dollars) equal to the product of (a) ((i) M_A minus (ii) M_S), (b) P , and (c) 0.5. Value Sharing Amount may be a positive or negative number.

2. Value Sharing with respect to Above Market Energy Prices.

2.1 Seller shall complete a calculation of the Value Sharing Amount and deliver such calculation to Buyer within forty-five (45) days after the end of each calendar year during the Term.

2.2 If the Value Sharing Amount for a calendar year during the Term is a negative number or zero, neither Buyer nor Seller shall be required to make any payments pursuant to this Agreement with respect to such calendar year.

2.3 If the Value Sharing Amount for a calendar year during the Term is a positive number, then within fifteen (15) days after timely delivery of the calculations required pursuant to Section 2.1 hereof, Seller shall pay Buyer the Value Sharing Amount in immediately available funds to an account designated by Buyer in writing. Any payment not made when due shall bear interest at the prime rate, as established by The Chase Manhattan Bank NA as of the original due date, plus two percent (2%).

2.4 In the event that the Value Sharing Amount with respect to any calendar year during the Term is disputed, Seller shall promptly pay any undisputed amounts thereof to Buyer, and such dispute shall be resolved as provided in Section 15 below. If any portion of such disputed amount is subsequently paid to Buyer, by agreement or pursuant to resolution of a dispute pursuant to Section 15, such payment shall be made together with interest calculated as provided in Section 2.3 above from the date originally due.

2.5 During the Term, Seller shall keep complete and accurate records and meter readings of its operations and other relevant financial data and shall maintain such records and readings for a particular calendar year for a period of not less than one year following the end of such calendar year. Buyer shall have the right, upon five Business Days' prior notice, during normal business hours, to examine and inspect all such records and meter readings as may be reasonably necessary to allow Seller to ascertain the accuracy of all relevant data and calculations, but in no event shall Seller impair or interfere with the operation of Indian Point 3.

3. Term. This Agreement shall become effective on the date hereof, but the obligations of the parties under this Agreement shall commence on January 1, 2005 and shall continue until the earlier to occur of (a) Seller or its Affiliate ceases to own Indian Point 3 and (b) December 31, 2014 (such period, the "Term").

4. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Buyer and Seller, and their respective successors and assigns, and therefore is not intended to and shall not confer any rights or benefits upon any third party.

5. No Joint Venture. Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Buyer and Seller, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to Buyer or Seller.

6. Entire Agreement. This Agreement constitutes the complete and exclusive agreement and understanding between Buyer and Seller as to its subject matter.

7. Assignment.

7.1 Neither Buyer nor Seller may assign its rights or obligations under this Agreement without the written consent of the non-assigning party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, either party may assign this Agreement without the consent of the other party to an entity which is an Affiliate of the assigning party or its successor.

7.2 No assignment of this Agreement or of the rights and obligations of a party shall relieve the assigning party of liability for any breach by the assignee or for any other failure by the assignee to perform its obligations hereunder.

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

9. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10. Notices. All notices, requests, demands, claims, and other communications hereunder shall be provided in accordance with Section 11.8 of the Purchase and Sale Agreement, dated _____, 2000, between Buyer and Sellers.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

12. Consent to Jurisdiction. Buyer and Seller each consents to the nonexclusive jurisdiction of any local, state or federal court located within the City of New York, New York County, State of New York, for adjudication of any suit, claim, action or other proceeding at law or in equity

relating to this Agreement. Buyer and Seller each accepts, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and waive any objection as to venue, and any defense of forum non conveniens.

13. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer and Seller. Any waiver by any party of any provisions of this Agreement must be made in writing, and shall apply only to the instance referred to in the writing, and shall not, on any other occasion, be construed as a bar to, or a waiver of, any right any party has under this Agreement.

14. Severability. Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision, provided enforcement of this Agreement as so modified shall not result in (a) deprivation of a material aspect of a party's original bargain upon execution of this Agreement, (b) unjust enrichment of any party, or (c) any other manifestly unfair or inequitable result. If (a), (b) or (c) above occurs, the parties shall to the extent possible negotiate an equitable adjustment to any provisions of this Agreement to effect the intent and purpose of this Agreement.

15. Dispute Resolution. Prior to instituting any litigation or alternative dispute resolution mechanism, the parties hereto shall attempt in good faith to resolve any dispute or claim promptly by referring any such matter to their respective chief executive officers for resolution. Any party may give the other party written notice of any dispute or claim. Within thirty (30) days after delivery of said notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute or claim within thirty (30) days. In the event any dispute arising as to any Value Sharing Amount, or the amount of any payment due to Buyer, if the parties are not able to resolve such dispute as provided above, the matter shall be submitted to a single arbitrator, who shall be a certified public accountant from a national practice firm, appointed pursuant to the Commercial Rules of the American Arbitration Association, for resolution in a proceeding to be held in accordance with such Rules. The arbitrator shall render a decision within ninety (90) days after submission of the matter by any party, and shall award expenses, including reasonable attorneys' fees, to the prevailing party. A party may apply to any court of competent jurisdiction for an order enforcing the award.

16. Confidentiality. Upon Seller's reasonable request, and to the extent permitted by law, Buyer shall use best efforts to protect the confidentiality of information disclosed under this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
Name:
Title:

ENERGY NUCLEAR INDIAN POINT 3, LLC

By: _____
Name:
Title:

;

Schedule I

Set Market Prices

<u>Year</u>	<u>Market Price</u>
2005	\$42.26
2006	\$43.75
2007	\$45.30
2008	\$46.91
2009	\$48.56
2010	\$50.28
2011	\$52.06
2012	\$53.90
2013	\$55.80
2014	\$57.77

:

POWER AUTHORITY OF THE STATE OF NEW YORK
PERMIT FOR TEMPORARY USE

PROJECT(S) CENTROPLEX BUILDING

COUNTY WESTCHESTER

CITY: WHITE PLAINS

POWER AUTHORITY OF THE STATE OF NEW YORK (hereinafter referred to as "Authority"), with its principal office and place of business at 1633 Broadway, New York, New York 10019, insofar as it lawfully may, and without covenant or warranty of any kind, express or implied, hereby grants permission to the [ENTERGY NUCLEAR] (hereinafter referred to as "Permittee") having an address at _____ to use [a portion of] the 10th and 11th floors in the building known as Centroplex (hereinafter "Building") and located at 123 Main Street, White Plains, New York, 10601 (hereinafter "Property") and consisting of approximately _____ rentable square feet (hereinafter referred to as the "Premises" as shown in Exhibit "A" attached hereto upon the following terms and conditions:

1. **NATURE OF OCCUPANCY** Permittee may use the Premises for general office purposes in the same manner and use as was previously used by the Authority, including without limitation, in support of its emergency preparedness activities and for no other purpose.

2. **TERM** This permit shall be for a one year term (hereinafter "Term") commencing on _____, 2000 (hereinafter "Commencement Date") and expiring on _____, 2001 ("Expiration Date") or until such Term shall earlier or later cease and terminate as hereinafter provided. Permittee shall have the right, at its option, to extend the Term for a one (1) year period ("Extension Term") on the same terms and considerations set forth herein provided this permit shall then be in full force and effect and: (i) Permittee is not in default under the Permit as of the time of the giving of the Extension Notice and the commencement of Extension Term. The Extension Term shall commence on the day after the Expiration Date and shall expire on the first (1st) anniversary of the Expiration Date unless the Extension Term shall sooner end pursuant to any of the terms, covenants or conditions of this permit or pursuant to law. Permittee shall give the Authority written notice of Permittee's intention to exercise such option ("Extension Notice") on or before the date which shall be three (3) months prior to the expiration of the initial Term, the time of exercise being of the essence and upon the giving of such notice, this permit and the Term shall be extended without execution or delivery of any other or further documents, with the same force and effect as if the Extension Term had originally been included in the Term and the Expiration Date shall thereupon be deemed to be the last day of the Extension Term.

3. **CONSIDERATION** The consideration for this permit is \$ _____ per month (hereinafter "Consideration"), payable to the Authority on or before the first day of each month. The Authority will provide electricity to the Premises at a cost of \$2.25 per rentable square foot per year payable by Permittee as Additional Consideration. All sums other than Consideration payable by Permittee hereunder shall be deemed Additional Consideration. Any obligation of Permittee for payment of Consideration or Additional Consideration which shall have accrued with respect to any period during or prior to the Term shall survive the expiration or termination of this permit. The Authority represents and warrants that the Consideration and Additional Consideration are fair and reasonable and are comparable to consideration paid for comparable commercial real estate in the White Plains commercial district.

4. **ASSIGNMENT** This permit is nonassignable and shall inure only to the personal use and benefit of Permittee, its controlled affiliates and successors by merger or acquisition.

5. **USE OF PREMISES** Permittee shall not use or occupy the Premises in any manner or suffer or permit the Premises or any part thereof to be used in any manner, or do or suffer or permit anything to be done in the Premises, or bring anything into the Premises or suffer or permit anything to be brought into the Premises, which would in any way do any of the following: (i) violate any of the provisions of the mortgage, if any; (ii) violate any Legal Requirements, Insurance Requirements or Environmental Laws; (iii) make void or voidable any insurance policy then in force with respect to the Premises, Building or Property; (iv) make unobtainable from insurance companies authorized to do business in the State of New York and rated by Best's Insurance Rating Service with a rating at least equal to A:XII, at standard rates without any special premium or charge, any fire or other casualty insurance with extended coverage, or rental, liability or boiler and machinery insurance, or other insurance provided for in Section 9 or otherwise may be required to be furnished by Authority under the terms of the mortgage with respect to the Premises; (v) cause physical damage to the Premises, Building or Property, or any part thereof; (vi) constitute a public or private nuisance; (vii) in the judgment of Authority, substantially impair the appearance, dignity or character of the Premises, Building or Property or impose any additional burden upon Authority in its operation; (viii) cause Permittee to default in the observance and performance of any of its other obligations to be observed and performed under this permit; (ix) unreasonably interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Premises; or (x) violate any of the Building's Rules and Regulations annexed hereto as Exhibit "B", as same may be amended from time to time. Notwithstanding the foregoing, Permittee shall not permit any prisoners, persons under arrest or any persons in custody to enter the Building at any time. Permittee further agrees that any firearms brought into the building will be concealed at all times.

6. **CONDITION OF PREMISES** Permittee has inspected the Premises and the state of title thereto and Permittee accepts the Premises in their "AS IS" state and condition on the Commencement Date and without any representation or warranty (except as expressly set forth herein), express or implied, in fact or by law, by Authority or Authority's agents, and without recourse to Authority, as to title thereto, the nature, condition or usability thereof or as to the use or occupancy which may be made thereof. Authority makes no representation as to the actual rentable square foot area of the Premises or the Building. The execution of this permit by Permittee shall be conclusive evidence as against Permittee, that, on the date hereof, the Premises and the Building were in good and satisfactory condition on the Commencement Date. Permittee shall not alter the Premises in any way without the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.

7. **INDEMNIFICATION** Permittee shall indemnify and save harmless Authority and The State of New York against and from all liabilities, obligations, damages, penalties, claims, costs and expenses, including reasonable attorney fees, suffered or incurred as a result of any breach by Permittee, Permittee's agent, contractors, employees, invitees, or licensees, of any covenant or condition of this permit, or any other claim arising out of, in connection with, or as a consequence of negligence or improper conduct of the Permittee, Permittee's agents, contractors, employees, invitees or licensees. Permittee's liability under this permit extends to the acts and omissions of any sub-permittee, and any agent, contractor, employee, invitee or licensee of any sub-permittee. In case any action or proceeding is brought against Authority by reason of any such claim, Permittee, upon written notice from Authority, will, at Permittee's expense, resist or defend such action or proceeding by counsel approved by Authority in writing, such approval not to be unreasonably withheld.

8. **RULES AND REGULATIONS** Permittee, at Permittee's sole cost and expense, shall comply with all laws, orders and regulations of federal, state, county and municipal authorities, and with any direction of any public officer or officers, pursuant to law, which result from Permittee's use or occupation of the Premises.

9. INSURANCE

9.1. Permittee shall not violate, or permit the violation of, any condition imposed by any insurance policy then issued in respect to the Building and/or the property therein and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Premises which would subject Authority to any liability or responsibility for bodily injury or death or property damage or which would increase any insurance rate in respect to the Building or the property therein over the rate which would otherwise then be in effect or which would result in insurance companies of good standing refusing to insure the Building or the property therein in amounts reasonably satisfactory to Authority, or which would result in the cancellation of or the assertion of any defense by the insurer in whole or in part to claims under any policy of insurance in respect of the Building or the property therein, but nothing contained in this Section 9 shall be construed to restrict Permittee's use of the Premises for the purposes permitted under Section 1 hereof.

9.2. If, by reason of any failure of Permittee to comply with the provisions of Section 8 or this Section 9, the premiums on Authority's insurance on the Building and/or equipment or property therein shall be higher than they otherwise would be, Permittee shall reimburse Authority, on demand, for that part of such premiums attributable to "make up" such failure on the part of Permittee. A schedule or "make up" of rates for the Building or the Premises, as the case may be, issued by the applicable fire insurance rating organization or other similar body making rates for insurance for the Building or the Premises, as the case may be, shall be conclusive evidence of the facts therein stated and of the several items and charges in the insurance rate then applicable to the Building or the Premises, as the case may be.

9.3. Permittee, at its expense, shall maintain at all times during the Term of this permit (a) "all risk" property insurance covering Permittee's property and improvements and betterments to a limit of not less than 80% of the replacement cost thereof and (b) commercial general liability insurance, including contractual liability, in respect of the Premises and the conduct or operation of business therein, with Authority, the State of New York and any lessor of any ground or underlying permit or the holder of any mortgage, as the case may be, whose name and address shall have been furnished to Permittee, as additional insureds, with limits of not less than \$3,000,000 combined single limit bodily injury and property damage liability. Authority hereby agrees that the comprehensive general liability insurance requirement described in clause (b) of the preceding sentence may be satisfied through the use of umbrella coverage, which umbrella coverage must be evidenced by a policy or certificate of insurance in form satisfactory to Authority. The limits of such insurance shall not limit the liability of Permittee hereunder. Permittee shall deliver to Authority such fully paid-for policies or certificates of insurance in form satisfactory to Authority (or true and complete copies thereof) issued by the insurance company or its authorized agent, at least thirty (30) days before the Commencement Date. Permittee shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Permittee shall deliver to Authority such renewal policy or certificates of coverage at least thirty (30) days before the expiration of any existing policy. All such policies shall be issued by companies reasonably acceptable to Authority. Permittee shall, without charge, at any time and from time to time, within ten (10) days after request by Authority, deliver copies of all applicable insurance policies. If Authority is included as a named payee on any check issued by Permittee's insurer in payment of any claim solely with respect to Permittee's property, Authority agrees that it will promptly upon Permittee's request endorse such check to Permittee. Authority further agrees that it shall have no right or authority to participate in any settlement of any claim by Permittee against its insurer which relates solely to damage or loss to Permittee's property. In lieu of obtaining the insurance policies, Permittee may, at its option and with the Authority's prior written approval, which shall not be unreasonably withheld, elect to self insure against risk of loss. The decision to self insure will not relieve Permittee of any of the obligations imposed herein and will afford the Authority the protection against loss and rights it would have received if Permittee had obtained such policies of insurance.

9.4. Authority or its agents shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the

Building, or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause whatsoever.

9.5. Authority or its agents shall not be liable for any damage which Permittee may sustain if at any time any window of the Premises is temporarily closed, darkened or bricked up for any reason whatsoever, or permanently closed, darkened or bricked up to comply with Legal Requirements or the requirements of Authority's insurers, and Permittee shall not be entitled to any compensation therefor or abatement of consideration or to any release from any of Permittee's obligations under this permit, nor shall the same constitute an eviction.

9.6. Permittee shall reimburse Authority for all expenses, damages or fines incurred or suffered by Authority, by reason of any breach, violation or non-performance by Permittee, or its agents, servants or employees, of any covenant or provision of this permit, or by reason of damage to persons or property caused by moving property of or for Permittee in or out of the Building, or by the installation or removal of furniture or other property of or for Permittee, or by reason of or arising out of the act, omission, occupancy, neglect, negligence, carelessness or improper conduct of Permittee, Permittee's sub-permittees, agents, employees, invitees or licensees, in the use or occupancy of the Premises.

9.7. Permittee shall give Authority notice in case of fire or accidents in the Premises promptly after Permittee is aware of such event.

9.8. Authority shall cause its insurance carrier to waive its right of recovery or subrogation against the Permittee to the extent of any insurance proceeds paid to Authority in consequence of such use, provided, however, that this waiver shall be applicable and in force and effect only to the extent that such waiver shall be lawful at that time and in any event only with respect to loss or damage during such time as the insurance carriers policies shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair said policies or prejudice the right of the insurance carrier to recover thereunder and then only to the extent of the insurance proceeds payable under such policies.

10: **PARKING**

10.1. Authority shall make available for Permittee's use in the parking area adjacent to the Building ("Parking Area"), _____ () parking spaces on a non-reserved basis for a period to be coterminous with the Term of this permit. Permittee shall pay to Authority, as Additional Consideration, a monthly fee ("Non-Reserved Parking Fee") of \$75.00 for each non-reserved parking space used by Permittee, to be paid by Permittee together with each monthly installment of Consideration. Each individual utilizing such parking space will be required to sign a separate parking agreement. Authority shall make available for Permittee's use in the Parking Area, _____ () parking spaces on a reserved basis for a period to be coterminous with the Term of this permit. Permittee shall pay to Authority, as Additional Consideration, a monthly fee ("Reserved Parking Fee") of \$90.00 for each reserved parking space used by Permittee, to be paid by Permittee together with each monthly installment of Consideration. Each individual utilizing such parking space will be required to sign a separate parking agreement. Permittee agrees that Authority shall have the right, in its sole and absolute discretion, upon thirty (30) days written notice to Permittee, to change the location of all reserved Parking Areas in the event that Authority determines to change the area, level, location and arrangement of Parking Areas and other facilities; and to temporarily restrict parking by Permittees, their officers, agents and employees and to close all or any portion of said areas or facilities to such extent as may be legally sufficient to prevent a dedication thereof, the accrual of any right to any person or the public therein or for the maintenance or repair of the Parking Area.

10.2. All parking spaces and any other parking areas used by Permittee, its personnel and visitors will be at their own risk, and Authority shall not be liable for any injury to person or property, or for loss or damage to any automobile or its contents, resulting from theft, collision, vandalism or any other cause whatsoever.

10.3 Permittee agrees not to use, or permit its employees or invitees to use, any portion of the parking areas which have been designated for the exclusive use of another Permittee in the Building.

11. SERVICES

11.1. As long as Permittee is not in default under any of the covenants of this permit, Authority shall provide: (a) necessary passenger elevator facilities on Monday through Friday from 8:00 a.m. to 6:00 p.m. except on the holidays set forth in Section 13 (collectively, "Business Hours") and shall have at least one passenger elevator subject to call at all other times; (b) heat to the Premises during Business Hours as defined herein; (c) water for ordinary lavatory purposes, but if Permittee uses or consumes water for any other purposes or in unusual quantities (of which fact Authority shall be the sole judge), Authority may install a water meter at Permittee's expense which Permittee shall thereafter maintain at Permittee's expense in good working order and repair to register such water consumption and Permittee shall pay for water consumed as shown on said meter as Additional Consideration as and when bills are rendered; (d) cleaning service for the Premises on Business Days at Authority's expense provided that the same are kept in order by Permittee. If, however, said Premises are to be kept clean by Permittee, it shall be done at Permittee's sole expense, in a manner satisfactory to Authority and no one other than persons approved by Authority shall be permitted to enter the Premises for such purpose. If the Premises are to be kept clean by Permittee, Permittee shall pay Authority the cost of removal of any of Permittee's refuse and rubbish from the building.

11.2. Authority shall, at its expense, through the Building's air conditioning system, provide air conditioning for the Premises, during the air conditioning season and such other times as Authority deems necessary, during Business Hours as defined in Section 11.1. The air conditioning season for the purposes of this permit shall be May 15 through September 15 of each calendar year.

11.3. Permittee shall keep entirely unobstructed all the vents, intakes, outlets and grilles, at all times and shall keep all windows closed, and to lower and close all window coverings when necessary because of the sun's position whenever the said air conditioning system is in operation, and Permittee agrees at all times to cooperate fully with Authority and to abide by all the regulations and requirements promulgated by Authority in connection with the heating, ventilating and air conditioning of the Building. Authority, throughout the Term, shall have free and unrestricted access to any and all air conditioning facilities in the Premises.

11.4. At Authority's option, the elevators shall be operated by automatic control or by manual control, or by a combination of both of such methods.

11.5. During the Term hereof, Authority shall furnish to Permittee cleaning services for the Premises in accordance with the Cleaning Specifications annexed hereto as Exhibit "C".

11.6. A. If Permittee uses the Premises outside Business Hours, Permittee agrees to pay to Authority an overtime charge to cover Authority's expenses for electricity for lighting and normal building equipment and other incidental equipment, extra building maintenance, building employee overtime, furnishing water for lavatories, air cooling, heat, ventilation, wear and tear, etc.

B. Authority shall furnish such overtime service to Permittee provided that (i) Permittee pays to Authority as Additional Consideration a special overtime charge therefore which shall be at an hourly rate, along with Permittee's next monthly installment of Consideration if such service shall have been furnished to Permittee prior to the fifteenth (15th) day of the month or along with the subsequent monthly installment of Consideration if such service shall have been furnished to Permittee after the fifteenth (15th) day of the month, (ii) that Permittee's request shall be received by Authority by not later than 2:00 P.M. on the day for which after Business Hours service is requested (and by not later than 2:00 P.M. on the day preceding any requested before Business Hours service), (iii) that Authority shall not be required to furnish such overtime services to

Permittee for more than twenty (20) hours in any one (1) week and (iv) the Building HVAC system is not then producing ice for future HVAC use. Notwithstanding anything contained to the contrary in this Section 11.6, Permittee shall not be required to pay overtime charges for intermittent use of the Premises outside Business Hours, provided that such use shall not be on a scale and of a frequency so as to constitute the regular operation of Permittee's business outside Business Hours. In no event, however, shall Authority be obligated to supply heating or air conditioning outside of Business Hours unless Permittee shall request and pay for the same as provided in this Section 11.6.

11.7. Authority shall have no responsibility or liability for the ventilating conditions and/or temperature of the Premises during the hours or days Authority is not required to furnish heat, ventilation or air-conditioning pursuant to this Section 11. Permittee hereby agrees to comply with and observe all regulations and requirements prescribed by Authority for the proper functioning of the heating, ventilating and air-conditioning systems.

11.8. Permittee shall pay to Authority on demand the costs incurred by Authority for (a) extra cleaning work in the Premises required because of (i) misuse or neglect on the part of Permittee or its employees or invitees, (ii) use of portions of the Premises for preparation, serving or consumption of food or beverages, data processing or reproducing operations, private lavatories or toilets or other special purposes requiring greater or more difficult cleaning work than office areas, (iii) unusual quantity of interior glass surfaces, (iv) non-building standard materials or finishes installed by Permittee or at its request, and (b) removal from the Premises and the Building of so much of any refuse and rubbish of Permittee as shall exceed that ordinarily accumulated daily in the routine of business office occupancy. Authority, its cleaning contractor and their employees shall have access outside of Business Hours to the Premises and the use (at Permittee's expense) of light, power and water in the Premises as reasonably required for the purpose of cleaning the Premises in accordance with Authority's obligations hereunder.

11.9. Authority reserves the right to stop the heating, air-conditioning, elevator, plumbing, electric and other systems when necessary by reason of accident or emergency or for repairs, alterations, replacements or improvements, provided that except in case of emergency, Authority will notify Permittee in advance of any such stoppage and its estimated duration, and will proceed diligently with the work necessary to resume such service as promptly as possible and in a manner so as to minimize interference with the Permittee's use and enjoyment of the Premises but nothing herein shall be deemed to require Authority to perform the same on an overtime or premium pay basis unless requested to do so by, and at the expense of, Permittee.

11.10. It is expressly agreed that only Authority or any one or more persons, firms or corporations authorized in writing by Authority will be permitted to furnish laundry, linen, towels, drinking water, ice, food or beverages and other similar supplies and services to Permittees and licensees in the Building provided the quality thereof and the charges therefor are reasonably comparable to that of other suppliers of such services. Authority may fix, in its own absolute discretion, at any time and from time to time, the hours during which and the regulations under which such supplies and services are to be furnished. Authority expressly reserves the right to act as or to designate, at any time and from time to time, an exclusive supplier of all or any one or more of the said supplies and services, provided that the quality thereof and the charges therefor are reasonably comparable to that of other suppliers; and Authority furthermore expressly reserves the right to exclude from the Building any person, firm or corporation attempting to furnish any of said supplies or services but not so designated by Authority. It is understood, however, that Permittee or regular office employees of Permittee who are not employed by any supplier of such food or beverages or by any person, firm or corporation engaged in the business of purveying such food or beverages, may personally bring food or beverages into the Building for consumption within the Premises by employees of Permittee, but not for resale to or for consumption by any other Permittee or any tenant of the Building. Authority may fix in its absolute discretion, at any time and from time to time, the hours during which, and the regulations under which, foods and beverages may be brought into the Building by regular employees of Permittee.

11.11. Permittee agrees to employ such office maintenance contractor as Authority may from time to time designate, for all waxing, polishing, lamp replacement, cleaning (other than those cleaning services Authority is obligated to furnish) and the maintenance work in the Premises, provided that the quality thereof and the charges therefor are reasonably comparable to that of other contractors. Permittee shall not employ any other contractor without Authority's prior written consent, which consent shall not be unreasonably withheld or delayed.

11.12. Authority will not be required to furnish any other services, except as otherwise provided in this permit.

12. **SIGNAGE** Permittee shall not place or install any sign anywhere in, on, or about the Premises without the prior written consent of the Authority. As used in this section, the word "sign" shall be construed to include any placard, light or other advertising symbol or object irrespective of whether the same be temporary or permanent.

13. **DEFINITIONS**

13.1. "'Business Days" excludes Saturdays, Sundays and the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Friday after Thanksgiving Day and Christmas Day.

13.2. "Environmental Laws" shall mean any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any governmental or quasi-governmental authority regulating, relating to or imposing liability or standards of conduct concerning environmental conditions at the Premises, Building or Property as now or may at any time hereafter be in effect, including but not limited to and without limiting the generality of the foregoing, the Clean Water Act also known as the Federal Water Pollution Control Act, 88 U.S.C. §§1251 et seq., the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq., the Clean Air Act, 42 U.S.C. §§7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§186 et seq., the Safe Drinking Water Act, 42 U.S.C. §§300 et seq., the Surface Mining Control and Reclamation Act, §1201 et seq., 80 U.S.C. §1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq., the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat. §1818, the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§1101 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 et seq., and the Occupational Safety and Health Act as amended ("OSHA"), 29 U.S.C. §655 and §657, together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof.

13.3 "Hazardous Material" shall mean (i) Any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purpose of) CERCLA, SARA, RCRA or any other Environmental Law as now or any time hereafter in effect; (ii) any other waste, substance or material that exhibits any of the characteristics enumerated in 40 C.F.R. §§261.20 through 261.24, inclusive, and those extremely hazardous substances listed under Section 902 of SARA that are present in threshold planning or reportable quantities as defined under SARA and toxic or hazardous chemical substances that are present in quantities that exceed exposure standards as those terms are defined under Section 6 and 8 of OSHA and 29 C.F.R. Part 1910; (iii) any asbestos or asbestos containing substances whether or not the same are defined as hazardous, toxic, dangerous waste, a dangerous substance or dangerous material in any Environmental Law; (iv) "Red Label" flammable materials, (v) all laboratory waste and by-products; and (vi) all biohazardous materials.

13.4. "Insurance Requirements" shall mean the rules, regulations, orders and other requirements of any insurance rating or regulatory organization having jurisdiction of, and which are applicable to, the Premises, Building and Property and of any liability, casualty, or other insurance policy which either Authority or Permittee is required hereunder to maintain or may maintain hereunder.

13.5. "Legal Requirements" shall mean the requirements of every statute, law, ordinance, regulation, rule, requirement, order or directive, now or hereafter made by any federal, state or local government or any department, political subdivision, bureau, agency, office or officer thereof, or any other governmental or quasi-governmental authority having jurisdiction with respect to and applicable to (i) the Premises, Building and Property and appurtenances thereto, and/or (ii) the condition, equipment, maintenance, use or occupation of the Premises, Building and Property including the making of an alteration or addition in or to any structure upon, connected with or appurtenant to the Premises, Building or Property.

14. **QUIET ENJOYMENT** Authority covenants that if Permittee timely pays the Consideration and Additional Consideration and performs all of Permittee's other obligations within the time periods specified under this permit, Permittee may peaceably and quietly hold and enjoy the Premises during the Term without hindrance or objection by the Authority or any person lawfully claiming through or under the Authority, subject to the terms, covenants and conditions of this permit. This covenant is a covenant running with the land.

15. **CONFIDENTIALITY** Permittee shall not disclose to a third party any of the details of this permit without the prior written approval of the Authority.

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

Date: _____ :
Vice President - Procurement & Real Estate

I AGREE TO AND ACCEPT THE CONDITIONS OF THIS PERMIT

Applicant _____

Date _____

EXHIBIT B

CENTROPLEX BUILDING

RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the exterior or interior Common Areas of the Building without the prior written consent of Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person chosen by or approved by Landlord.

2. No awning shall be permitted on any part of the Demised Premises. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Demised Premises.

3. Landlord shall retain the right to control and prevent access to the Building of all persons whose presence in the judgment of the Landlord would be prejudicial to the safety, character, reputation or interests of the Building and its tenants; provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No tenant and no employee or invitee of any tenant shall go upon the roof of the Building.

4. All cleaning, janitorial, HVAC, moving, carpentry, electrical and all other maintenance, repair and construction services for the Building and the Demised Premises shall be provided exclusively through Landlord, except with the written consent of Landlord, which shall not be unreasonably withheld or delayed. No person or persons other than those approved by Landlord shall be employed by Tenant or permitted to enter the Building for the purpose of cleaning, maintaining, repairing or remodeling the same. All approved persons engaging in such services shall first submit proof that they have secured and will maintain at their own expense the building contractor's minimum insurance requirements. Tenant and tenant's approved contractors shall also comply with the building's contractor code of conduct, which is available upon request. Failure to comply with the above will result in the stoppage and termination of work. Landlord shall not in any way be responsible to any Tenant for any resulting delays or loss of property on the Demised Premises, however occurring, or any damage to any Tenant's property by a janitor, maintenance mechanic, carpenter, electrician, or any other person.

5. Landlord will furnish Tenant, free of charge, a reasonable number of keys to each door lock in the Demised Premises. Landlord may charge a reasonable amount for any additional keys requested by Tenant. Tenant shall not alter any lock or install a new additional lock or bolt on any other door of its Demised Premises. Tenant, upon the termination of tenancy, shall deliver to Landlord the keys to all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished, shall pay Landlord therefore.

6. If Tenant requires telegraphic, telephonic, burglar alarm or similar services, it shall first obtain, and comply with, Landlord's instructions in their installation.

7. Any freight elevator shall be available for use by all tenants in the building, subject to such reasonable scheduling as Landlord in its discretion shall deem appropriate. No equipment, materials, furniture, packages, supplies, merchandise or other property will be received in the Building or carried in the elevators except between such hours and in such elevators as may be designated by Landlord.

8. Tenant shall not place a load upon any floor of the Demised Premises which exceed the load per square foot which such floor was designated to carry and which is allowed by law. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by the Landlord, stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration must be equipped with eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the Building must be acceptable to Landlord. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

9. Tenant shall not use or keep in the Demised Premises any kerosene, gasoline or inflammable or combustible fluid or material of any kind. Tenant shall not use or permit to be used in the Demised Premises any foul or noxious gas or substance, or permit or allow the Demised Premises to be occupied or used in any manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odor or vibrations, nor shall Tenant bring into or keep in or about the Demised Premises any birds or animals.

10. Tenant shall not use any method of heating or air-conditioning other than that supplied by Landlord.

11. Tenant shall cooperate fully with Landlord to assure the most effective operation of the Building's heating and air-conditioning and to comply with any governmental energy-saving rules, laws or regulations which Tenant has actual notice, and shall refrain from attempting to adjust controls other than room thermostats installed for Tenant's use. Tenant shall keep corridor doors closed, and shall close window coverings at the end of each business day.

12. Landlord reserves the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building.

13. Landlord reserves the right to exclude from the Building between the hours of 6 p.m. and 8 a.m. the following day, or such other hours as may be established from time to time by Landlord, and on Saturdays, Sundays and legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. Landlord reserves the right to inspect any or all packages or property entering or leaving the building. All property leaving the building shall be authorized by the Tenant with a properly executed property removal pass. Tenant shall be responsible for all persons from whom Landlord requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person or property. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.

14. Tenant shall close and lock the doors of the Demised Premises and entirely shut off all water faucets or other apparatus, and electricity, gas or all outlets before Tenant and its employeess leave the Demised Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or by Landlord for noncompliance with this rule

15. The toilet rooms, toilet, urinals, wash bowls and other apparatus shall not be used for any purpose other than that which they were constructed and no foreign substance of any kind whatsoever shall be thrown thereto. The expense of breakage, stoppage or damage resulting from the violation of the rule shall be borne by the tenant who, or whose employees or invitees shall have cause it

16. Tenant shall not sell, or permit sale of retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or on the Demised Premises. Tenant shall not make any room-to-room solicitation of business from other tenants in the building.

17. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

18. Tenant shall not in any way deface the Demised Premises or any part thereof. Landlord reserves the right to direct electricians as to where and how telephone and telegraph wires are to be introduced to the Demised Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Demised Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this or any other rule or from use of nails, screws, drills or other fasteners into the partitions, woodwork or plaster.

19. Canvassing, soliciting or distribution of handbills or any other written material, and peddling in the Building are prohibited, and each tenant shall cooperate to prevent same

20. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Building.

21. Tenant shall store all its trash and garbage within the Demised Premises. Tenant shall not place any trash box or any receptacle or any material which cannot be disposed of in the ordinary and customary manner or trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Demised Premises.

22. The Demised Premises shall not be used for storage of merchandise held for sale to the general public, or for lodging or for manufacturing of any kind, nor shall the Demised Premises be used for any improper, immoral or objectionable purpose. No cooking shall be done or permitted by any tenant on the Demised Premises, except that use by Tenant of Underwriters' laboratory-Approved equipment for brewing coffee, tea, hot chocolate and similar beverages and a microwave oven not to be used for food preparation shall be permitted, provided that such equipment and use is in accordance with any applicable federal, state, county and city laws, codes, ordinances, rules and regulations.

23. Tenant shall not use in any space or in the public halls of the Building any hand trucks except those equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicle of any kind into the Building.

24. Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address

25. Tenant shall comply with all safety fire protection and evacuation procedures and regulations established by Landlord or any governmental agency

26. Tenant shall not move in, move out, and accept large deliveries during the standard weekday Building operating hours 8:00 a.m. to 6:00 p.m. Move-ins, move-outs and large deliveries shall be performed on weekends or after hours. Tenant shall give 24 hours prior notice to the building manager of a move-in, move-out or large delivery and will reimburse Landlord for maintenance personnel's time to supervise the operation. Further, Tenant shall exercise caution not to damage the building. Protective blankets shall be utilized in the elevator and masonite panels shall be placed on the floors to prevent damage.

27. There will be no smoking within the building at any time

EXHIBIT C

CENTROPLEX BUILDING

LEASE PROVIDED TENANT CLEANING

1. GENERAL

- A. All flooring swept nightly.
- B. All public stairways swept nightly.
- C. Wastepaper baskets, ashtrays, receptacles, etc., emptied nightly.
- D. All furniture, fixtures and window sills dusted and wiped clean weekly.
- E. All glass furniture tops cleaned nightly.
- F. All baseboards, chair rails and trim dusted weekly.
- G. All public water fountains washed clean nightly.
- H. Slop sink rooms cleaned nightly.

2. PUBLIC LAVATORIES

- A. All flooring swept and washed nightly.
- B. All mirrors, powder shelves, bright work, etc., including flushometers, piping and toilet seat hinges washed and polished nightly.
- C. All basins, bowls, urinals, and toilet seats (both sides) washed nightly.
- D. All partitions, tile walls, dispensers and receptacles dusted nightly.
- E. Paper towel and sanitary disposal receptacles emptied and cleaned nightly.
- F. Toilet tissue holders, soap and paper towel dispensers to be filled nightly.

3. HIGH DUSTING - OFFICE AREAS

- A. Do all high dusting approximately once a month, including the following:
 - 1) Dust all pictures, frames, charts graphs, and panel wall hangings not reached in nightly cleaning.
 - 2) Dust all vertical surfaces such as walls, partitions, ventilating louvers, and other surfaces not reached in nightly cleaning
 - 3) Dust all lighting fixtures (exterior only).
 - 4) Dust all overhead pipes, sprinkler, etc.
 - 5) Dust all venetian blinds and window frames approximately quarterly.

4. PERIODIC CLEANING - OFFICE AREAS

- A. Dust all door louvers and other ventilating louvers within reach monthly
- B. Remove fingermarks from metal partitions and other surfaces when necessary.

5. PERIODIC CLEANING - PUBLIC LAVATORIES

- A. Machine scrub flooring when necessary.
- B. Wash all partitions, tile walls and enamel surfaces monthly with proper disinfectant when necessary.

6. WINDOWS

- A. Clean all windows inside and outside semi-annually.
- B. Clean all public area interior glass weekly.
- C. Clean all Lobby glass excluding Retail space daily, including doors and side lights.

Exhibit O-1
to
Purchase and Sale Agreement

**DECOMMISSIONING AGREEMENT
(FITZPATRICK)**

THIS DECOMMISSIONING AGREEMENT (the "Agreement") is entered into as of _____, 2000, by and among **POWER AUTHORITY OF THE STATE OF NEW YORK**, a corporate municipal instrumentality and political subdivision of the State of New York created by the Legislature of the State by Chapter 772 of the Laws of 1931, as amended ("Seller"), **ENERGY NUCLEAR FITZPATRICK, LLC**, a Delaware limited liability company ("Buyer") and **ENERGY NUCLEAR, INC.**, a Delaware corporation ("ENI").

W I T N E S S E T H:

WHEREAS, Seller, Buyer and Entergy Nuclear Indian Point 3, LLC ("ENIP," and together with Buyer, "Buyers") have entered into that certain Purchase and Sale Agreement dated as of March __, 2000 (the "P&S Agreement"), pursuant to which Seller is selling to Buyer certain Acquired Assets (the term "Acquired Assets" and all other capitalized terms not otherwise defined herein having the respective meanings assigned to them in the P&S Agreement), which includes all of the Acquired Assets Related to JAF; and

WHEREAS, the consummation of the transactions contemplated by the P&S Agreement is subject to the execution and delivery of this Agreement by Buyer and Seller,

NOW, THEREFORE, in consideration of the foregoing, Seller and Buyer hereby agree as follows:

1. Definitions.

1.1 "Affiliate" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

1.2 "Decommission" means the complete retirement and removal of JAF from service and the restoration of the JAF Site to a status that permits the JAF Site to be released for unrestricted use, as well as any planning and administrative activities incidental thereto, including, but not limited to, (a) the Dismantlement, decontamination, storage and/or entombment of JAF, in whole or in part, any reduction or removal, whether before or after termination of the NRC License for JAF, of radioactivity at the JAF Site, and (b) all activities necessary for the retirement, Dismantlement and

decontamination of JAF to comply with the applicable requirements of the Atomic Energy Act, the NRC's rules, regulations, orders and pronouncements thereunder, the NRC Licenses, any related decommissioning plan, Environmental Laws and other applicable Laws.

1.3 "Decommissioning Fund Amount" means, as of any date, the aggregate sum held by the Trustee in the FitzPatrick Unit Fund pursuant to the Decommissioning Trust Agreement.

1.4 "Decommissioning Trust" means the trust established pursuant to the Decommissioning Trust Agreement.

1.5 "Decommissioning Trust Agreement" means the Master Decommissioning Trust Agreement, dated July 25, 1990 between Seller and the Trustee, as amended by the First Amendment to Master Decommissioning Trust Agreement, dated _____, 2000.

1.6 "Dismantle" and its derivations means a method of Decommissioning in which the equipment, structures, and portions of JAF and the JAF Site containing radioactive contaminants are removed and safely buried in a low-level radioactive waste landfill or decontaminated to a level that permits the property to be released for unrestricted use.

1.7 "Effective Date" means the earlier of the date on which (a) the Decommissioning of JAF is completed or (b) the Decommissioning Fund Amount has been applied in full to pay for costs related to such Decommissioning.

1.8 "FitzPatrick Unit Fund" means the trust established under the Decommissioning Trust Agreement for the Decommissioning of JAF, which trust as of _____, 2000 was funded in the amount of \$ _____.

1.9 "Governmental Authority" means any federal, state, local or other governmental, regulatory or administrative agency, commission, department, board or other governmental subdivision, court, tribunal, arbitral body or other governmental authority, but excluding Seller or any subsequent owner of the JAF Site (if otherwise a Governmental Authority under this definition).

1.10 "Inflation Adjust Cost Amount" means \$[allocated portion of \$1.18 billion for JAF] as of the date hereof and thereafter such amount (or such amount as previously adjusted pursuant to this definition) as adjusted on January 1 of each year after the date hereof (prorated as of the License Expiration Date for the period from January 1, 2014 through and including the License Expiration Date, with the prorated amount to be added or subtracted being equal to the full amount for the year multiplied by 0.7945) upward or downward based on the change in the NRC minimum cost estimate adjustment factor for JAF, as established for such year by the NRC pursuant to 10 CFR Section 50.75(c) and

pursuant to NRC report NUREG - 1307 using the escalation factor for waste burial (referred to as "B" in the adjustment factor) assuming waste for burial is turned over to a waste vendor; provided, however, that (a) in the event that the adjustment factor (or any component thereof including the "waste vendor" methodology) is not published in any year, the parties shall negotiate in good faith an appropriate factor or factors to best approximate the intent of the factor determined pursuant to 10 CFR Section 50.75(c) and failing such agreement, shall submit the determination to a mutually acceptable arbitrator whose determination shall be binding; and (b) in the event Seller does not exercise its option to terminate its obligation to Decommission pursuant to Section 2.3 or Section 8 on or before the License Expiration Date, the Inflation Adjusted Cost Amount shall increase on January 1 of each year following the License Expiration Date by six and one-half percent (6½%), compounded annually, of the Inflation Adjusted Cost Amount (prorated, using a methodology analogous to that set forth above, for the period from and including the day after the License Expiration Date through and including December 31, 2014). If applicable, the Inflation Adjusted Cost Amount shall be adjusted further pursuant to Sections 3.1 and 3.2.

1.11 "Investment Manager" means the investment manager(s) referred to in the Decommissioning Trust Agreement.

1.12 "JAF" has the meaning specified in the P&S Agreement.

1.13 "License Expiration Date" means October 17, 2014.

1.14 "License Extension Period" means, in the event that the NRC extends the NRC License for JAF beyond the License Expiration Date, the period commencing on the day after the License Expiration Date through and including the earlier of the date (a) on which the NRC License for JAF expires after giving effect to such extension or (b) JAF ceases commercial operation; provided, that for purposes of this Agreement, the License Extension Period shall not exceed twenty (20) years.

1.15 "NM1" means the nuclear plant owned by Niagara Mohawk Power Corporation that is located in the State of New York and known as Nine Mile Point Nuclear Station Unit 1.

1.16 "NM1 Assets" means all of the assets necessary for Buyer or its Affiliate to own and Operate NM1 (including, without limitation, fee simple title to all necessary real estate).

1.17 "NM1 Operation Agreement" means an agreement between Buyer or its Affiliate and the owner of the NM1 Assets pursuant to which Buyer or its Affiliate agrees to Operate the NM1 Assets as the operator licensed by the NRC for the benefit of such owners. It is understood and agreed by the parties that the NM1 Operation Agreement and the NM2 Operation Agreement may be one agreement pursuant to which Buyer or its

Affiliate Operate the NM1 Assets and NM2 Assets as the operator licensed by the NRC for the benefit of the owners thereof.

1.18 "NM2" means the nuclear plant owned by one or more of Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, Long Island Lighting Company and Central Hudson Gas & Electric Corp. that is located in the State of New York and known as Nine Mile Point Nuclear Station Unit 2.

1.19 "NM2 Assets" means all of the assets necessary for Buyer or its Affiliate to own and Operate NM2 (including, without limitation, fee simple title to all necessary real estate).

1.20 "NM2 Operation Agreement" means an agreement between Buyer or its Affiliate and the owners of the NM2 Assets pursuant to which Buyer or its Affiliate agrees to Operate the NM2 Assets as the operator licensed by the NRC for the benefit of such owners. It is understood and agreed by the parties that the NM1 Operation Agreement and the NM2 Operation Agreement may be one agreement pursuant to which Buyer or its Affiliate Operate the NM1 Assets and NM2 Assets as the operator licensed by the NRC for the benefit of the owners thereof.

1.21 "NRC" means the United States Nuclear Regulatory Commission, as established by Section 201 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. Section 5841, or any successor commission, agency or officer.

1.22 "Operate" and its derivations means to possess, use, manage, control, maintain and repair.

1.23 "SAFSTOR" means a method of Decommissioning in which a nuclear facility is placed and maintained in such condition that such facility can be safely stored and subsequently decontaminated to levels that permit release for unrestricted use.

1.24 "Seller Payment" means an amount, not less than zero, determined as of the Termination Date or, for purposes of Section 2.2, the date of commencement of Decommissioning by Seller, equal to (a) the Decommissioning Fund Amount minus (b) the Inflation Adjusted Cost Amount then in effect.

1.25 "Termination Date" means the date on which Seller's obligation to Decommission JAF is terminated pursuant to Section 2.3 or Section 8, as applicable, or if Seller never exercises its right to terminate thereunder, the date JAF is Decommissioned.

1.26 "Treasury Note Rate" means the 10-year U.S. Treasury Note rate in effect on the Termination Date as published in the Wall Street Journal.

1.27 “Trustee” means The Bank of New York, in its capacity as trustee of the Decommissioning Trust, or any successor or replacement appointed pursuant to the Decommissioning Trust Agreement.

2. Seller’s Obligation to Decommission.

2.1 Pursuant to Section 2.4(j) of the P&S Agreement and subject to Seller’s rights under Section 2.3 and Section 8, Seller has retained the obligation to Decommission JAF, which obligation shall be limited to the lesser of (a) the Inflation Adjusted Cost Amount or (b) the Decommissioning Fund Amount. Seller’s obligations under this Section 2.1 shall be deemed satisfied if Seller expends in the aggregate the lesser of the following amounts for such Decommissioning: (a) the Inflation Adjusted Cost Amount or (b) the Decommissioning Fund Amount.

2.2 If any applicable Governmental Authority requires that JAF be Decommissioned and if notwithstanding the limitation contained in Section 2.1, Seller is required to spend all or a portion of the Seller Payment in connection with such Decommissioning, Buyer shall reimburse Seller for all or such portion of the Seller Payment as has been actually expended by Seller for costs related to the Decommissioning of JAF, at Buyer’s option either (a) in a lump sum payment on the Effective Date or (b) in ten (10) equal annual installments, together with interest at the Treasury Note Rate, compounded annually, commencing on the Effective Date and continuing on each anniversary of the Effective Date thereafter.

2.3 Seller may terminate its obligation to Decommission JAF pursuant to Section 2.1 at its option by providing written notice to Buyer: (a) on the License Expiration Date or any date thereafter, or (b) upon commencement of the Dismantling of JAF or at any time thereafter; provided, however, that if such Dismantlement is only partial in nature and is in conjunction with JAF being placed in SAFSTOR status, then Seller’s option under this clause (b) (which shall not affect Seller’s rights under clause (a) hereof) shall not become operative until the termination of such SAFSTOR status. Upon giving such notice and conditioned upon Seller assigning to Buyer all of Seller’s right, title and interest in the FitzPatrick Unit Fund, less the Seller Payment (if such amount is permitted to be withdrawn at such time), and the Decommissioning Trust Agreement to the extent relating to such fund, Seller’s obligation to Decommission JAF as provided in Section 2.1 above and in Section 2.4(j) of the P&S Agreement shall terminate and shall be assumed by Buyer.

2.4 If Seller Decommissions JAF for any reason, and such obligation has not been terminated pursuant to Section 2.3 or Section 8, Seller and ENI shall enter into a fixed price contract, in form and substance reasonably satisfactory to Seller and ENI and providing, among other things, that (a) ENI shall be required to Decommission JAF, (b) the price to be paid by Seller to ENI for such Decommissioning shall equal the lesser of (i) the Inflation Adjusted Cost Amount and (ii) the Decommissioning Fund Amount (both measured as of the Termination Date), (c) Buyer shall guarantee (i) the performance by

ENI of such Decommissioning work and (ii) the indemnity obligations of ENI described in clause (e) below, (d) such contract may be terminated by Seller without penalty if Seller's obligation to Decommission JAF terminates pursuant to Section 2.3 or Section 8, (e) ENI shall indemnify Seller (with customary limitations and exclusions) for claims arising from the Decommissioning work performed by ENI, (f) ENI may not assign its obligations under such contract without the prior consent of Seller, which consent shall not be unreasonably withheld or delayed and any purported assignment in contravention of such prohibition of assignment shall be null and void and without legal effect, and (g) ENI will provide or cause to be provided performance bond(s) in amounts and of scope standard in the industry issued by creditworthy bonding companies, such amounts, scope and creditworthiness to be acceptable to the Authority in its reasonable discretion, to assure completion of the Decommissioning work.

3. Adjustments to Inflation Adjusted Cost Amount.

3.1 (a) In the event the Buyer or its Affiliate either:

- (1) acquires infeasible title to all of the NM1 Assets or
- (2) (i) enters into the NM1 Operation Agreement and (ii) at any time prior to License Expiration Date, pursuant to the NM1 Operation Agreement, as it may be amended, (x) acquires the right to Decommission NM1 and (y) such right cannot be unilaterally terminated at any time by the counterparties to the NM1 Operation Agreement (notwithstanding the fact that by virtue of a subsequent amendment to the NM1 Operation Agreement, the circumstances set forth in clauses (x) and (y) may no longer be extant),

then the Inflation Adjusted Cost Amount shall be reduced by \$25,000,000 effective as of the License Expiration Date.

If, however, the events described in clauses (x) and (y) in the preceding paragraph occur prior to the License Expiration Date but after the Termination Date, then Buyer shall pay Seller the additional amount Buyer would have paid Seller had such events occurred on the Termination Date and the adjustments to the Inflation Adjusted Cost Amount had been made on the Termination Date in accordance with paragraph (c) below, with the amount to be paid to the Seller being such additional amount escalated at one half the Treasury Note Rate to the date (the "Payment Date") that the events described in clauses (x) and (y) in the preceding paragraph occur. The payment described in the previous sentence, if any, shall be made by Buyer, at its option, as either (i) a lump sum payment on the Payment Date or (ii) in ten (10) equal annual installments, together with interest at the Treasury Note Rate, compounded annually, with the first payment to be made on the first anniversary of the Payment Date and the remaining installment payments to be made on each anniversary of the Payment Date thereafter.

(b) In the event that Buyer or its Affiliate either:

(1) acquires indefeasible title to all of the NM2 Assets or (2) (i) enters into the NM2 Operation Agreement, and (ii) at any time prior to License Expiration Date, pursuant to the NM2 Operation Agreement, as it may be amended, (x) acquires the right to Decommission NM2 and (y) such right cannot be unilaterally terminated at any time by the counterparties to the NM2 Operation Agreement (notwithstanding the fact that by virtue of a subsequent amendment to the Agreement, the circumstances set forth in clauses (x) and (y) may no longer be extant),

then the Inflation Adjusted Cost Amount shall be reduced by \$25,000,000 effective as of the License Expiration Date.

If, however, the events described in clauses (x) and (y) in the preceding paragraph occur prior to the License Expiration Date but after the Termination Date, then Buyer shall pay Seller the additional amount Buyer would have paid Seller had such events occurred on the Termination Date and the adjustments to the Inflation Adjusted Cost Amount had been made on the Termination Date in accordance with paragraph (c) below, with the amount to be paid to the Seller being such additional amount escalated at one half the Treasury Note Rate to the date (the "Payment Date") that the events described in clauses (x) and (y) in the preceding paragraph occur. The payment described in the previous sentence, if any, shall be made by Buyer, at its option, as either (i) a lump sum payment on the Payment Date or (ii) in ten (10) equal annual installments, together with interest at the Treasury Note Rate, compounded annually, with the first payment to be made on the first anniversary of the Payment Date and the remaining installment payments to be made on each anniversary of the Payment Date thereafter.

(c) In the event Seller exercises its right to terminate its obligation to Decommission JAF pursuant to Section 2.3(b) above or Section 8 below prior to the License Expiration Date, the adjustments to the Inflation Adjusted Cost Amount pursuant to this Section 3.1, if any, shall be calculated as of the date Seller exercises such termination right with such reductions being prorated and with the applicable amount being equal to \$25,000,000 multiplied by a fraction, the numerator of which is the number of days from and including the Closing Date until and including the date of Seller's exercise of such termination right, and the denominator of which is the number of days from and including the Closing Date until and including the License Expiration Date.

3.2 In the event that any funds are disbursed from the Decommissioning Trust with respect to JAF prior to the License Expiration Date to pay for Decommissioning expenses, the Inflation Adjusted Cost Amount as of the Termination Date shall be reduced by an amount equal to (a) the aggregate amount of such disbursements and (b) the income which would have been earned on such disbursements if invested at the

internal rate of return equal to that earned by the Decommissioning Trust during the period from the first date such funds are disbursed through the Termination Date.

4. Amendment of the Decommissioning Trust Agreement. The obligations of Buyer and Seller hereunder are subject to the condition that on or before the date hereof, Seller and the Trustee shall have executed an amendment to the Decommissioning Trust Agreement substantially in the form of the Decommissioning Trust Amendment attached as Exhibit P to the P&S Agreement.

5. Payments by Buyer to Seller.

5.1 On the Termination Date, if such release is permitted under the terms of the Decommissioning Trust Agreement and by applicable law, Seller shall cause the Trustee to make the Seller Payment to Seller from the Decommissioning Trust or, if such payment cannot be made from the Decommissioning Trust at such time, then the Seller Payment shall be made by Buyer at its option either (a) in a lump sum payment paid on the Termination Date or (b) (i) if JAF is not then being Decommissioned, in ten (10) equal annual installments or (ii) if JAF is then being Decommissioned, in annual installments which are in the same proportion as withdrawals from the FitzPatrick Unit Fund in the previous calendar year for Decommissioning related expenses (i.e., if 40% of the FitzPatrick Unit Fund was withdrawn for such expenses in the previous calendar year, 40% of the Seller Payment shall be made in the current year), in each case together with interest at the Treasury Note Rate, compounded annually, such payments being payable on each anniversary of the Termination Date; provided, however, that if the Decommissioning of JAF commences during the ten-year period specified in clause (b)(i) above, then the remaining outstanding amount of the Seller Payment to be paid shall be paid in accordance with the methodology set forth in clause (b)(ii) above.

5.2 If the expiration date of the NRC License for JAF is extended beyond the License Expiration Date, Buyer shall pay to Seller \$2,500,000 on each anniversary of the License Expiration Date during the License Extension Period; provided, that if the License Extension Period does not terminate on an anniversary date of the License Expiration Date, the final payment owed by Buyer to Seller on the date the License Extension Period terminates shall equal the product of (a) \$2,500,000 multiplied by (b) a fraction, the numerator of which is the number of days from the preceding anniversary of the License Expiration Date through and including the date the License Extension Period terminates, and the denominator of which is 365. In the event Buyer has paid Seller amounts relating to periods after the License Extension Period, Seller shall promptly refund the same, such refund amount being calculated using a proration methodology analogous to that set forth in Section 1.10.

5.3 In no event shall Seller be required to cause the Trustee to make any distribution of the Decommissioning Fund Amount to Buyer if Seller has not received the full amount of (a) the Seller Payment as a lump sum payment on the date when due pursuant to this Agreement or if installment payments of the Seller Payment are to be

made pursuant to this Agreement, Seller has not received financial security from Buyer (satisfactory to Seller in its reasonable discretion) that the Seller Payment will be made in accordance with this Agreement, and (b) payments required pursuant to Section 5.4 hereof or if such payments have not been fully paid by the date of distribution of the Decommissioning Fund Amount to Buyer, Seller has not received financial security from Buyer for such unpaid amounts (satisfactory to Seller in its reasonable discretion). Upon satisfaction of the conditions set forth in clauses (a) and (b) of the preceding sentence, Seller shall promptly provide the Trustee notice thereof as contemplated under Section 4.01 or Section 6.02, as applicable, of the Decommissioning Trust Agreement.

5.4 In addition to the other payments provided for in this Section 5, Buyer shall pay to Seller eight (8) consecutive equal annual installments each in the amount of \$10 million, commencing on the eighth anniversary of the date hereof and continuing on each subsequent anniversary through and including the fifteenth anniversary of the date hereof. Such payment shall be evidenced by a promissory note (“Additional Facilities Note”), substantially in the form attached hereto as Appendix A to be executed and delivered at Closing in addition to Buyer’s deliveries under Section 2.11 of the Purchase and Sale Agreement. For the purposes hereof and of Sections 2.5(c) and (d) of the Purchase and Sale Agreement, the Additional Facilities Note shall be deemed a “Note” and a “Related Agreement.” In the event any payment due Seller is not made when due under the Additional Facilities Note, Seller may set off such amount due against any current amount due from Seller to Buyer under the Purchase and Sale Agreement, or any Related Agreement, provided if Buyer has remaining obligations under the Additional Facilities Note, together with the remaining obligations under the corresponding promissory note executed by Entergy Nuclear Fitzpatrick, LLC, which exceed the remaining payments that are due from Buyer to Seller under the Purchase and Sale Agreement or any Related Agreement, Buyer shall furnish Seller with financial security for the difference between such remaining obligations in form reasonably satisfactory to Seller.

5.5 Each of the payments required to be made by Buyer to Seller pursuant to this Agreement shall be made by wire transfer of immediately available funds to Seller no later than 5:00 p.m. on the date due in accordance with written instructions of Seller set forth on Schedule 2.5(a) of the P&S Agreement.

6. Increases in NRC Financial Requirements. In the event that after the date hereof the NRC requires that Buyer or its Affiliate must maintain funds for the Decommissioning of JAF in excess of the lesser of (a) the Inflation Adjusted Cost Amount or (b) Decommissioning Fund Amount at such time (such excess, the “Excess Amount”), Buyer or its Affiliate shall (a) establish a fund separate and apart from the Decommissioning Trust and (b) deposit an amount equal to the Excess Amount in such fund. Seller shall not be responsible for the Excess Amount under any circumstances.

7. Buyer Right to Cease Operations. Buyer, as the owner of JAF, reserves the right in its sole discretion at any time to shut down JAF and file with the NRC a Notice of

Permanent Cessation of Operations with respect to JAF pursuant to 10 C.F.R. Sec. 50.82(a)(1)(i).

8. Tax Provision. If as a result of changes in applicable tax law or otherwise, the Decommissioning Trust itself is required to pay taxes or Buyer is required to pay taxes on the Decommissioning Trust earnings, income or gain, Seller may, at its option, (a) terminate its obligation to Decommission JAF pursuant to Section 2.1, (b) assign to Buyer all of Seller's right, title and interest in the FitzPatrick Unit Fund and Decommissioning Trust Agreement to the extent relating to such fund, and (c) cause the Trustee to transfer the Seller Payment to Seller (less the amount of taxes required to be paid by the FitzPatrick Unit Fund or Buyer, as the case may be, as determined by the methodology set forth in Section 5.02 of the Decommissioning Trust Agreement); provided, that if such withdrawal of the Seller Payment is not possible, Section 5.1 shall be applicable.

9. Seller Covenants. Seller shall (a) cause the Trustee and Investment Manager to comply with the terms of the Decommissioning Trust Agreement and (b) promptly forward to Buyer copies of reports, letters, notices and other communications received by Seller from the Trustee or the Investment Manager under the Decommissioning Trust Agreement.

10. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Buyer, ENI and Seller, and their respective successors and assigns, and therefore is not intended to and shall not confer any rights or benefits upon any third party.

11. No Joint Venture. Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Buyer or ENI and Seller, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to Buyer, ENI or Seller.

12. Entire Agreement. This Agreement and Sections 2.1(o), 2.2(g), 2.3(e), 2.4(j) and 5.9 of the P&S Agreement constitutes the complete and exclusive agreement and understanding between Buyer, ENI and Seller as to its subject matter.

13. Assignment. None of Seller, Buyer or ENI may assign its rights or obligations under this Agreement without the consent of the non-assigning party (which consent shall not be unreasonably withheld or delayed), except that Buyer may assign this Agreement upon notice to Seller and ENI but without the consent of Seller or ENI to any successor owner of JAF which holds the NRC License for JAF. Any purported assignment in contravention of the preceding sentence shall be null and void and without legal effect.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

15. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

16. Notices. All notices, requests, demands, claims, and other communications hereunder shall be provided in accordance with Section 11.8 of the P& S Agreement.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

18. Consent to Jurisdiction. Seller, Buyer and ENI each consents to the exclusive jurisdiction of any local, state or federal court located within the City of New York, New York County, State of New York, for adjudication of any suit, claim, action or other proceeding at law or in equity relating to this Agreement. Seller, Buyer and ENI each accepts, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and waives any objection as to venue, and any defense of forum non conveniens.

19. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer, ENI and Seller. Any waiver by any party of any provisions of this Agreement must be made in writing, and shall apply only to the instance referred to in the writing, and shall not, on any other occasion, be construed as a bar to, or a waiver of, any right any party has under this Agreement.

20. Severability. Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision, provided enforcement of the Agreement as so modified shall not deprive a party of the material benefits of its original bargain.

21. Construction. Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof. The parties hereto acknowledge that they have been represented by counsel in connection with the review and execution of this Agreement, and, accordingly, there shall be no presumption that this Agreement or any provision hereof be construed against the party that drafted this Agreement.

22. Dispute Resolution. Prior to instituting any litigation or alternative dispute resolution mechanism, the parties hereto shall attempt in good faith to resolve any dispute or claim promptly by referring any such matter to their respective chief executive officers

for resolution. Any party may give any other party written notice of any dispute or claim. Within ten (10) days after delivery of said notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute or claim within thirty (30) days.

23. Confidentiality. Except as otherwise required by law, the parties hereto shall keep confidential the terms and conditions of this Agreement and the transactions undertaken pursuant hereto.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
Name: _____
Title: _____

ENERGY NUCLEAR FITZPATRICK, LLC

By: _____
Name: _____
Title: _____

ENERGY NUCLEAR, INC.

By: _____
Name: _____
Title: _____

WAS1 #809740 v3

APPENDIX A
TO
DECOMMISSIONING AGREEMENT
(FITZPATRICK)

PROMISSORY NOTE

THIS NOTE IS NONTRANSFERABLE AND HAS NOT BEEN
REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE
COMMISSION OR ANY STATE SECURITIES AUTHORITIES

\$80,000,000

[date]

Entergy Nuclear Fitzpatrick, LLC

Additional Facilities Note

Entergy Nuclear Fitzpatrick, LLC (the "Buyer"), a Delaware limited liability company, for value received, hereby unconditionally promises to pay to the Power Authority of the State of New York (the "Authority"), a corporate municipal instrumentality and political subdivision of the State of New York, the amount of EIGHTY MILLION AND NO/100 DOLLARS (\$80,000,000) in eight consecutive annual payments (the "Payments") representing principal and interest of TEN MILLION AND NO/100 DOLLARS (\$10,000,000) commencing on the eighth anniversary of the date hereof and continuing on each subsequent anniversary date thereof through and including the fifteenth anniversary of the date hereof as set forth on the attached Payment Schedule. Such payments reflect the Interest Rate on this Note of 0.00%. Payments shall be made in lawful money of the United States of America and in immediately available funds, to such wire address as is designated in writing by the Authority to the Buyer pursuant to Schedule 2.5(a) of the Purchase and Sale Agreement dated March 28, 2000, by and among the Buyer, Entergy Nuclear Indian Point 3, LLC and the Authority (the "Agreement"). Capitalized terms used in this Note and not defined herein shall have the meanings assigned to such terms in the Agreement. This Note constitutes the Additional Facilities Note referenced in the Decommissioning Agreement (FitzPatrick) among the Authority, ENF and Entergy Nuclear, Inc. (the "Decommissioning Agreement").

This Note represents a general obligation of the Buyer.

This Note is prepayable in whole or in part at any time without premium or penalty.

As provided in Section 5.4 of the Decommissioning Agreement, for purposes of Section 2.5(c) and (d) of the Agreement, this Note shall be deemed a "Note" and a "Related Agreement." In the event any payment due the Authority is not made when due hereunder, the Authority may set off such amount due against any current amount due from the Authority to the Buyer under the Agreement or any Related Agreement.

The Buyer (i) waives diligence, demand, presentment, protest and notice of any kind, and (ii) agrees that it will not be necessary for the Authority to first institute suit in order to enforce payment of this Note. No failure on the part of the Authority to exercise, and no delay in exercising, any right under this Note or the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

The validity, interpretation and enforcement of this Note and any dispute arising in connection herewith shall be governed by the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether or New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than New York.

The Buyer waives personal service of any and all process upon themselves and consent that all such service of process may be made by certified mail (return receipt requested) directed to them and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at the Authority's option, by service upon the Buyer in any other manner provided under the rules of the applicable courts referenced in Section 11.11 of the Agreement. Within thirty (30) days after such service, the Buyer shall appear in answer to such process, failing which the Buyer shall be deemed in default and judgment may be entered by the Authority against the Buyer for the amount of the claim and other relief requested.

This Note shall be binding upon the successors and assigns of the Buyer and inure to the benefit of the Authority and its successors and assigns. If any term or provision of this Note shall be held invalid, illegal or unenforceable, the validity of all other terms and provisions hereby shall in no way be affected thereby.

Attachment: Payment Schedule

ENERGY NUCLEAR FITZPATRICK, LLC

By: _____
Name:
Title:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
Name:
Title:

DOCSN 23457

Payment Schedule

Date of Payment, each being the
indicated anniversaries
of the date hereof

Payment

Eighth	\$10,000,000
Ninth	\$10,000,000
Tenth	\$10,000,000
Eleventh	\$10,000,000
Twelfth	\$10,000,000
Thirteenth	\$10,000,000
Fourteenth	\$10,000,000
Fifteenth	\$10,000,000

Exhibit O-2
to
Purchase and Sale Agreement

**DECOMMISSIONING AGREEMENT
(INDIAN POINT 3)**

THIS DECOMMISSIONING AGREEMENT (the "Agreement") is entered into as of _____, 2000, by and among **POWER AUTHORITY OF THE STATE OF NEW YORK**, a corporate municipal instrumentality and political subdivision of the State of New York created by the Legislature of the State by Chapter 772 of the Laws of 1931, as amended ("Seller"), **ENERGY NUCLEAR INDIAN POINT 3, LLC**, a Delaware limited liability company ("Buyer") and **ENERGY NUCLEAR, INC.**, a Delaware corporation ("ENT").

W I T N E S S E T H:

WHEREAS, Seller, Buyer and Entergy Nuclear Fitzpatrick, LLC ("ENF," and together with Buyer, "Buyers") have entered into that certain Purchase and Sale Agreement dated as of March __, 2000 (the "P&S Agreement"), pursuant to which Seller is selling to Buyer certain Acquired Assets (the term "Acquired Assets" and all other capitalized terms not otherwise defined herein having the respective meanings assigned to them in the P&S Agreement), which includes all of the Acquired Assets Related to IP3; and

WHEREAS, the consummation of the transactions contemplated by the P&S Agreement is subject to the execution and delivery of this Agreement by Buyer and Seller,

NOW, THEREFORE, in consideration of the foregoing, Seller and Buyer hereby agree as follows:

1. Definitions.

1.1 "Affiliate" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

1.2 "Decommission" means the complete retirement and removal of IP3 from service and the restoration of the IP3 Site to a status that permits the IP3 Site to be released for unrestricted use, as well as any planning and administrative activities incidental thereto, including, but not limited to, (a) the Dismantlement, decontamination, storage and/or entombment of IP3, in whole or in part, any reduction or removal, whether before or after termination of the NRC License for IP3, of radioactivity at the IP3 Site, and (b) all activities necessary for the retirement, Dismantlement and decontamination of IP3 to comply with the applicable requirements of the Atomic Energy Act, the NRC's

rules, regulations, orders and pronouncements thereunder, the NRC Licenses, any related decommissioning plan, Environmental Laws and other applicable Laws.

1.3 “Decommissioning Fund Amount” means, as of any date, the aggregate sum held by the Trustee in the IP3 Unit Fund pursuant to the Decommissioning Trust Agreement.

1.4 “Decommissioning Trust” means the trust established pursuant to the Decommissioning Trust Agreement.

1.5 “Decommissioning Trust Agreement” means the Master Decommissioning Trust Agreement, dated July 25, 1990 between Seller and the Trustee, as amended by the First Amendment to Master Decommissioning Trust Agreement, dated _____, 2000.

1.6 “Dismantle” and its derivations means a method of Decommissioning in which the equipment, structures, and portions of IP3 and the IP3 Site containing radioactive contaminants are removed and safely buried in a low-level radioactive waste landfill or decontaminated to a level that permits the property to be released for unrestricted use.

1.7 “Effective Date” means the earlier of the date on which (a) the Decommissioning of IP3 is completed or (b) the Decommissioning Fund Amount has been applied in full to pay for costs related to such Decommissioning.

1.8 “Governmental Authority” means any federal, state, local or other governmental, regulatory or administrative agency, commission, department, board or other governmental subdivision, court, tribunal, arbitral body or other governmental authority, but excluding Seller or any subsequent owner of the IP3 Site (if otherwise a Governmental Authority under this definition).

1.9 “Inflation Adjust Cost Amount” means \$[allocated portion of \$1.18 billion for IP3] as of the date hereof and thereafter such amount (or such amount as previously adjusted pursuant to this definition) as adjusted on January 1 of each year after the date hereof (prorated as of the License Expiration Date for the period from January 1, 2015 through and including the License Expiration Date, with the prorated amount to be added or subtracted being equal to the full amount for the year multiplied by 0.9479) upward or downward based on the change in the NRC minimum cost estimate adjustment factor for JAF, as established for such year by the NRC pursuant to 10 CFR Section 50.75(c) and pursuant to NRC report NUREG - 1307 using the escalation factor for waste burial (referred to as “B” in the adjustment factor) assuming waste for burial is turned over to a waste vendor; provided, however, that (a) in the event that the adjustment factor (or any component thereof, including the “waste vendor” methodology) is not published in any year, the parties shall negotiate in good faith an appropriate factor or factors to best approximate the intent of the factor determined pursuant to 10 CFR Section 50.75(c) and

failing such agreement, shall submit the determination to a mutually acceptable arbitrator whose determination shall be binding; and (b) in the event Seller does not exercise its option to terminate its obligation to Decommission pursuant to Section 2.3 or Section 8 on or before the License Expiration Date, the Inflation Adjusted Cost Amount shall increase on January 1 of each year following the License Expiration Date by six and one-half percent (6½%), compounded annually, of the Inflation Adjusted Cost Amount (prorated, using a methodology analogous to that set forth above, for the period from and including the day after the License Expiration Date through and including December 31, 2015). If applicable, the Inflation Adjusted Cost Amount shall be adjusted further pursuant to Sections 3.1 and 3.2.

1.10 "Investment Manager" means the investment manager(s) referred to in the Decommissioning Trust Agreement.

1.11 "IP2" means the nuclear plant owned by Consolidated Edison, Inc, that is located in the State of New York and known as Indian Point 2 Nuclear Power Station.

1.12 "IP2 Assets" means all of the assets necessary for Buyer or its Affiliate to own and Operate IP2 (including, without limitation, fee simple title to all necessary real estate).

1.13 "IP2 Operation Agreement" means an agreement between Buyer or its Affiliate and the owner of the IP2 Assets pursuant to which Buyer or its Affiliate agrees to Operate the IP2 Assets as the operator licensed by the NRC for the benefit of such owners.

1.14 "IP3" has the meaning specified in the P&S Agreement.

1.15 "IP3 Unit Fund" means the trust established under the Decommissioning Trust Agreement for the Decommissioning of IP3, which trust as of _____, 2000 was funded in the amount of \$ _____.

1.16 "License Expiration Date" means December 12, 2015.

1.17 "License Extension Period" means, in the event that the NRC extends the NRC License for IP3 beyond the License Expiration Date, the period commencing on the day after the License Expiration Date through and including the earlier of the date (a) on which the NRC License for IP3 expires after giving effect to such extension or (b) IP3 ceases commercial operation; provided, that for purposes of this Agreement, the License Extension Period shall not exceed twenty (20) years.

1.18 "NRC" means the United States Nuclear Regulatory Commission, as established by Section 201 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. Section 5841, or any successor commission, agency or officer.

1.19 "Operate" and its derivations means to possess, use, manage, control, maintain and repair.

1.20 "SAFSTOR" means a method of Decommissioning in which a nuclear facility is placed and maintained in such condition that such facility can be safely stored and subsequently decontaminated to levels that permit release for unrestricted use.

1.21 "Seller Payment" means an amount, not less than zero, determined as of the Termination Date or, for purposes of Section 2.2, the date of commencement of Decommissioning by Seller, equal to (a) the Decommissioning Fund Amount minus (b) the Inflation Adjusted Cost Amount then in effect.

1.22 "Termination Date" means the date on which Seller's obligation to Decommission IP3 is terminated pursuant to Section 2.3 or Section 8, as applicable, or if Seller never exercises its right to terminate thereunder, the date IP3 is Decommissioned.

1.23 "Treasury Note Rate" means the 10-year U.S. Treasury Note rate in effect on the Termination Date as published in the Wall Street Journal.

1.24 "Trustee" means The Bank of New York, in its capacity as trustee of the Decommissioning Trust, or any successor or replacement appointed pursuant to the Decommissioning Trust Agreement.

2. Seller's Obligation to Decommission.

2.1 Pursuant to Section 2.4(j) of the P&S Agreement and subject to Seller's rights under Section 2.3 and Section 8, Seller has retained the obligation to Decommission IP3, which obligation shall be limited to the lesser of (a) the Inflation Adjusted Cost Amount or (b) the Decommissioning Fund Amount. Seller's obligations under this Section 2.1 shall be deemed satisfied if Seller expends in the aggregate the lesser of the following amounts for such Decommissioning: (a) the Inflation Adjusted Cost Amount or (b) the Decommissioning Fund Amount.

2.2 If any applicable Governmental Authority requires that IP3 be Decommissioned and if notwithstanding the limitation contained in Section 2.1, Seller is required to spend all or a portion of the Seller Payment in connection with such Decommissioning, Buyer shall reimburse Seller for all or such portion of the Seller Payment as has been actually expended by Seller for costs related to the Decommissioning of IP3, at Buyer's option either (a) in a lump sum payment on the Effective Date or (b) in ten (10) equal annual installments, together with interest at the Treasury Note Rate, compounded annually, commencing on the Effective Date and continuing on each anniversary of the Effective Date thereafter.

2.3 Seller may terminate its obligation to Decommission IP3 pursuant to Section 2.1 at its option by providing written notice to Buyer: (a) on the License

Expiration Date or any date thereafter, or (b) upon commencement of the Dismantling of IP3 or at any time thereafter; provided, however, that if such Dismantlement is only partial in nature and is in conjunction with IP3 being placed in SAFSTOR status, then Seller's option under this clause (b) (which shall not affect Seller's rights under clause (a) hereof) shall not become operative until the termination of such SAFSTOR status. Upon giving such notice and conditioned upon Seller assigning to Buyer all of Seller's right, title and interest in the IP3 Unit Fund, less the Seller Payment (if such amount is permitted to be withdrawn at such time), and the Decommissioning Trust Agreement to the extent relating to such fund, Seller's obligation to Decommission IP3 as provided in Section 2.1 above and in Section 2.4(j) of the P&S Agreement shall terminate and shall be assumed by Buyer.

2.4 If Seller Decommissions IP3 for any reason, and such obligation has not been terminated pursuant to Section 2.3 or Section 8, Seller and ENI shall enter into a fixed price contract, in form and substance reasonably satisfactory to Seller and ENI and providing, among other things, that (a) ENI shall be required to Decommission IP3, (b) the price to be paid by Seller to ENI for such Decommissioning shall equal the lesser of (i) the Inflation Adjusted Cost Amount and (ii) the Decommissioning Fund Amount (both measured as of the Termination Date), (c) Buyer shall guarantee (i) the performance by ENI of such Decommissioning work and (ii) the indemnity obligations of ENI described in clause (e) below, (d) such contract may be terminated by Seller without penalty if Seller's obligation to Decommission IP3 terminates pursuant to Section 2.3 or Section 8, (e) ENI shall indemnify Seller (with customary limitations and exclusions) for claims arising from the Decommissioning work performed by ENI, (f) ENI may not assign its obligations under such contract without the prior consent of Seller, which consent shall not be unreasonably withheld or delayed and any purported assignment in contravention of such prohibition of assignment shall be null and void and without legal effect, , and (g) ENI will provide or cause to be provided performance bond(s) in amounts and of scope standard in the industry issued by creditworthy bonding companies, such amounts, scope and creditworthiness to be acceptable to the Authority in its reasonable discretion, to assure completion of the Decommissioning work.

3. Adjustments to Inflation Adjusted Cost Amount.

- 3.1 (a) In the event the Buyer or its Affiliate either
- (1) acquires indefeasible title to all of the IP2 Assets or
 - (2) (i) enters into the IP2 Operation Agreement and (ii) at any time prior to License Expiration Date, pursuant to the IP2 Operation Agreement, as it may be amended, (x) acquires the right to Decommission IP2 and (y) such right cannot be unilaterally terminated at any time by the counterparties to the IP2 Operation Agreement (notwithstanding the fact that by virtue of a subsequent amendment to the IP2 Operation Agreement, the circumstances set forth in clauses (x) and (y) may no longer be extant),

then the Inflation Adjusted Cost Amount shall be reduced by \$50,000,000 effective as of the License Expiration Date.

If, however, the events described in clauses (x) and (y) in the preceding paragraph occur prior to the License Expiration Date but after the Termination Date, then Buyer shall pay Seller the additional amount Buyer would have paid Seller had such events occurred on the Termination Date and the adjustments to the Inflation Adjusted Cost Amount had been made on the Termination Date in accordance with paragraph (b) below, with the amount to be paid to the Seller being such additional amount escalated at one half the Treasury Note Rate to the date (the "Payment Date") that the events described in clauses (x) and (y) in the preceding paragraph occur. The payment described in the previous sentence, if any, shall be made by Buyer, at its option, as either (i) a lump sum payment on the Payment Date or (ii) in ten (10) equal annual installments, together with interest at the Treasury Note Rate, compounded annually, with the first payment to be made on the first anniversary of the Payment Date and the remaining installment payments to be made on each anniversary of the Payment Date thereafter.

(b) In the event Seller exercises its right to terminate its obligation to Decommission IP3 pursuant to Section 2.3(b) above or Section 8 below prior to the License Expiration Date, the adjustments to the Inflation Adjusted Cost Amount pursuant to this Section 3.1, if any, shall be calculated as of the date Seller exercises such termination right with such reductions being prorated and with the applicable amount being equal to \$50,000,000 multiplied by a fraction, the numerator of which is the number of days from and including the Closing Date until and including the date of Seller's exercise of such termination right, and the denominator of which is the number of days from and including the Closing Date until and including the License Expiration Date.

3.2 In the event that any funds are disbursed from the Decommissioning Trust with respect to IP3 prior to the License Expiration Date to pay for Decommissioning expenses, the Inflation Adjusted Cost Amount as of the Termination Date shall be reduced by an amount equal to (a) the aggregate amount of such disbursements and (b) the income which would have been earned on such disbursements if invested at the internal rate of return equal to that earned by the Decommissioning Trust during the period from the first date such funds are disbursed through the Termination Date.

4. Amendment of the Decommissioning Trust Agreement. The obligations of Buyer and Seller hereunder are subject to the condition that on or before the date hereof, Seller and the Trustee shall have executed an amendment to the Decommissioning Trust Agreement substantially in the form of the Decommissioning Trust Amendment attached as Exhibit P to the P&S Agreement.

5. Payments by Buyer to Seller.

5.1 On the Termination Date, if such release is permitted under the terms of the Decommissioning Trust Agreement and by applicable law, Seller shall cause the Trustee to make the Seller Payment to Seller from the Decommissioning Trust or, if such payment cannot be made from the Decommissioning Trust at such time, then the Seller Payment shall be made by Buyer at its option either (a) in a lump sum payment paid on the Termination Date or (b) (i) if IP3 is not then being Decommissioned, in ten (10) equal annual installments or (ii) if IP3 is then being Decommissioned, in annual installments which are in the same proportion as withdrawals from the IP3 Unit Fund in the previous calendar year for Decommissioning related expenses (i.e., if 40% of the IP3 Unit Fund was withdrawn for such expenses in the previous calendar year, 40% of the Seller Payment shall be made in the current year), in each case together with interest at the Treasury Note Rate, compounded annually, such payments being payable on each anniversary of the Termination Date; provided, however, that if the Decommissioning of IP3 commences during the ten-year period specified in clause (b)(i) above, then the remaining outstanding amount of the Seller Payment to be paid shall be paid in accordance with the methodology set forth in clause (b)(ii) above.

5.2 If the expiration date of the NRC License for IP3 is extended beyond the License Expiration Date, Buyer shall pay to Seller \$2,500,000 on each anniversary of the License Expiration Date during the License Extension Period; provided, that if the License Extension Period does not terminate on an anniversary date of the License Expiration Date, the final payment owed by Buyer to Seller on the date the License Extension Period terminates shall equal the product of (a) \$2,500,000 multiplied by (b) a fraction, the numerator of which is the number of days from the preceding anniversary of the License Expiration Date through and including the date the License Extension Period terminates, and the denominator of which is 365. In the event Buyer has paid Seller amounts relating to periods after the License Extension Period, Seller shall promptly refund the same, such refund amount being calculated using a proration methodology analogous to that set forth in Section 1.10.

5.3 In no event shall Seller be required to cause the Trustee to make any distribution of the Decommissioning Fund Amount to Buyer if Seller has not received the full amount of (a) the Seller Payment as a lump sum payment on the date when due pursuant to this Agreement or if installment payments of the Seller Payment are to be made pursuant to this Agreement, Seller has not received financial security from Buyer (satisfactory to Seller in its reasonable discretion) that the Seller Payment will be made in accordance with this Agreement, and (b) payments required pursuant to Section 5.4 hereof or if such payments have not been fully paid by the date of distribution of the Decommissioning Fund Amount to Buyer, Seller has not received financial security from Buyer for such unpaid amounts (satisfactory to Seller in its reasonable discretion). Upon satisfaction of the conditions set forth in clauses (a) and (b) of the preceding sentence, Seller shall promptly provide the Trustee notice thereof as contemplated under Section 4.01 or Section 6.02, as applicable, of the Decommissioning Trust Agreement.

5.4 In addition to the other payments provided for in this Section 5, Buyer shall pay to Seller eight (8) consecutive equal annual installments each in the amount of \$10 million, commencing on the eighth anniversary of the date hereof and continuing on each subsequent anniversary through and including the fifteenth anniversary of the date hereof. Such payment shall be evidenced by a promissory note (“Additional Facilities Note”), substantially in the form attached hereto as Appendix A to be executed and delivered at Closing in addition to Buyer’s deliveries under Section 2.11 of the Purchase and Sale Agreement. For the purposes hereof and of Sections 2.5(c) and (d) of the Purchase and Sale Agreement, the Additional Facilities Note shall be deemed a “Note” and a “Related Agreement.” In the event any payment due Seller is not made when due under the Additional Facilities Note, Seller may set off such amount due against any current amount due from Seller to Buyer under the Purchase and Sale Agreement, or any Related Agreement, provided if Buyer has remaining obligations under the Additional Facilities Note which, together with the remaining obligations under the corresponding promissory note executed by Entergy Nuclear Indian Point 3, LLC, exceed the remaining payments that are due from Buyer to Seller under the Purchase and Sale Agreement or any Related Agreement, Buyer shall furnish Seller with financial security for the difference between such remaining obligations in form reasonably satisfactory to Seller.

5.5 Each of the payments required to be made by Buyer to Seller pursuant to this Agreement shall be made by wire transfer of immediately available funds to Seller no later than 5:00 p.m. on the date due in accordance with written instructions of Seller set forth on Schedule 2.5(a) of the P&S Agreement.

6. Increases in NRC Financial Requirements. In the event that after the date hereof the NRC requires that Buyer or its Affiliate must maintain funds for the Decommissioning of IP3 in excess of the lesser of (a) the Inflation Adjusted Cost Amount or (b) Decommissioning Fund Amount at such time (such excess, the “Excess Amount”), Buyer or its Affiliate shall (a) establish a fund separate and apart from the Decommissioning Trust and (b) deposit an amount equal to the Excess Amount in such fund. Seller shall not be responsible for the Excess Amount under any circumstances.

7. Buyer Right to Cease Operations. Buyer, as the owner of IP3, reserves the right in its sole discretion at any time to shut down IP3 and file with the NRC a Notice of Permanent Cessation of Operations with respect to IP3 pursuant to 10 C.F.R. Sec. 50.82(a)(1)(i).

8. Tax Provision. If as a result of changes in applicable tax law or otherwise, the Decommissioning Trust itself is required to pay taxes or Buyer is required to pay taxes on the Decommissioning Trust earnings, income or gain, Seller may, at its option, (a) terminate its obligation to Decommission IP3 pursuant to Section 2.1, (b) assign to Buyer all of Seller’s right, title and interest in the IP3 Unit Fund and Decommissioning Trust Agreement to the extent relating to such fund, and (c) cause the Trustee to transfer the Seller Payment to Seller; provided, that if such withdrawal of the Seller Payment is not possible, Section 5.1 shall be applicable.

9. Seller Covenants. Seller shall (a) cause the Trustee and Investment Manager to comply with the terms of the Decommissioning Trust Agreement and (b) promptly forward to Buyer copies of reports, letters, notices and other communications received by Seller from the Trustee or the Investment Manager under the Decommissioning Trust Agreement.

10. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Buyer, ENI and Seller, and their respective successors and assigns, and therefore is not intended to and shall not confer any rights or benefits upon any third party.

11. No Joint Venture. Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Buyer or ENI and Seller, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to Buyer, ENI or Seller.

12. Entire Agreement. This Agreement and Sections 2.1(o), 2.2(g), 2.3(e), 2.4(j) and 5.9 of the P&S Agreement constitutes the complete and exclusive agreement and understanding between Buyer, ENI and Seller as to its subject matter.

13. Assignment. None of Seller, Buyer or ENI may assign its rights or obligations under this Agreement without the consent of the non-assigning party (which consent shall not be unreasonably withheld or delayed), except that Buyer may assign this Agreement upon notice to Seller and ENI but without the consent of Seller or ENI to any successor owner of IP3 which holds the NRC License for IP3. Any purported assignment in contravention of the preceding sentence shall be null and void and without legal effect.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

15. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

16. Notices. All notices, requests, demands, claims, and other communications hereunder shall be provided in accordance with Section 11.8 of the P& S Agreement.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

18. Consent to Jurisdiction. Seller, Buyer and ENI each consents to the exclusive jurisdiction of any local, state or federal court located within the City of New York, New York County, State of New York, for adjudication of any suit, claim, action or other proceeding at law or in equity relating to this Agreement. Seller, Buyer and ENI each accepts, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and waives any objection as to venue, and any defense of forum non conveniens.

19. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer, ENI and Seller. Any waiver by any party of any provisions of this Agreement must be made in writing, and shall apply only to the instance referred to in the writing, and shall not, on any other occasion, be construed as a bar to, or a waiver of, any right any party has under this Agreement.

20. Severability. Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision, provided enforcement of the Agreement as so modified shall not deprive a party of the material benefits of its original bargain.

21. Construction. Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof. The parties hereto acknowledge that they have been represented by counsel in connection with the review and execution of this Agreement, and, accordingly, there shall be no presumption that this Agreement or any provision hereof be construed against the party that drafted this Agreement.

22. Dispute Resolution. Prior to instituting any litigation or alternative dispute resolution mechanism, the parties hereto shall attempt in good faith to resolve any dispute or claim promptly by referring any such matter to their respective chief executive officers for resolution. Any party may give any other party written notice of any dispute or claim. Within ten (10) days after delivery of said notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute or claim within thirty (30) days.

23. Confidentiality. Except as otherwise required by law, the parties hereto shall keep confidential the terms and conditions of this Agreement and the transactions undertaken pursuant hereto.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
Name: _____
Title: _____

ENERGY NUCLEAR INDIAN POINT 3, LLC

By: _____
Name: _____
Title: _____

ENERGY NUCLEAR, INC.

By: _____
Name: _____
Title: _____

WAS1 #809738 v3

APPENDIX A
TO
DECOMMISSIONING AGREEMENT
(INDIAN POINT 3)

PROMISSORY NOTE

THIS NOTE IS NONTRANSFERABLE AND HAS NOT BEEN
REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE
COMMISSION OR ANY STATE SECURITIES AUTHORITIES

\$80,000,000

[date]

Entergy Nuclear Indian Point 3, LLC

Additional Facilities Note

Entergy Nuclear Indian Point 3, LLC (the "Buyer"), a Delaware limited liability company, for value received, hereby unconditionally promises to pay to the Power Authority of the State of New York (the "Authority"), a corporate municipal instrumentality and political subdivision of the State of New York, the amount of EIGHTY MILLION AND NO/100 DOLLARS (\$80,000,000) in eight consecutive annual payments (the "Payments") representing principal and interest of TEN MILLION AND NO/100 DOLLARS (\$10,000,000) commencing on the eighth anniversary of the date hereof and continuing on each subsequent anniversary date thereof through and including the fifteenth anniversary of the date hereof as set forth on the attached Payment Schedule. Such payments reflect the Interest Rate on this Note of 0.00%. Payments shall be made in lawful money of the United States of America and in immediately available funds, to such wire address as is designated in writing by the Authority to the Buyer pursuant to Schedule 2.5(a) of the Purchase and Sale Agreement dated March 28, 2000, by and between the Buyer, Entergy Nuclear Fitzpatrick, LLC and the Authority (the "Agreement"). Capitalized terms used in this Note and not defined herein shall have the meanings assigned to such terms in the Agreement. This Note constitutes the Additional Facilities Note referenced in the Decommissioning Agreement (Indian Point 3) among the Authority, the Buyer and Entergy Nuclear, Inc. (the "Decommissioning Agreement").

This Note represents a general obligation of the Buyer.

This Note is prepayable in whole or in part at any time without premium or penalty.

As provided in Section 5.4 of the Decommissioning Agreement, for purposes of Section 2.5(c) and (d) of the Agreement, this Note shall be deemed a "Note" and a "Related Agreement." In the event any payment due the Authority is not made when due hereunder, the Authority may set off such amount due against any current amount due from the Authority to the Buyer under the Agreement or any Related Agreement.

The Buyer (i) waives diligence, demand, presentment, protest and notice of any kind, and (ii) agrees that it will not be necessary for the Authority to first institute suit in order to enforce payment of this Note. No failure on the part of the Authority to exercise, and no delay in exercising, any right under this Note or the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

The validity, interpretation and enforcement of this Note and any dispute arising in connection herewith shall be governed by the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether or New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than New York.

The Buyer waives personal service of any and all process upon themselves and consent that all such service of process may be made by certified mail (return receipt requested) directed to them and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at the Authority's option, by service upon the Buyer in any other manner provided under the rules of the applicable courts referenced in Section 11.11 of the Agreement. Within thirty (30) days after such service, the Buyer shall appear in answer to such process, failing which the Buyer shall be deemed in default and judgment may be entered by the Authority against the Buyer for the amount of the claim and other relief requested.

This Note shall be binding upon the successors and assigns of the Buyer and inure to the benefit of the Authority and its successors and assigns. If any term or provision of this Note shall be held invalid, illegal or unenforceable, the validity of all other terms and provisions hereby shall in no way be affected thereby.

Attachment: Payment Schedule

ENERGY NUCLEAR INDIAN POINT 3, LLC

By: _____
Name:
Title:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
Name:
Title:

DOCSN 23457

Payment Schedule

Date of Payment, each being the
indicated anniversaries
of the date hereof

Payment

Eighth	\$10,000,000
Ninth	\$10,000,000
Tenth	\$10,000,000
Eleventh	\$10,000,000
Twelfth	\$10,000,000
Thirteenth	\$10,000,000
Fourteenth	\$10,000,000
Fifteenth	\$10,000,000

NYC1 #249226 v1

Exhibit P
to
Purchase and Sale Agreement

FIRST AMENDMENT TO MASTER DECOMMISSIONING TRUST AGREEMENT

FIRST AMENDMENT TO MASTER DECOMMISSIONING TRUST AGREEMENT dated as of [on or before Closing Date] ("First Amendment") by and between the Power Authority of the State of New York, a corporate municipal instrumentality and political subdivision of the State of New York ("Authority") and The Bank of New York, as Trustee (the "Trustee"), a New York banking corporation having trust powers.

WHEREAS, with respect to the Decommissioning of the Indian Point 3 Nuclear Plant and the FitzPatrick Nuclear Plant, the Authority has a beneficial interest in the Master Decommissioning Trust (the "Master Trust") operating under the Master Decommissioning Trust Agreement dated as of July 25, 1990 between the Authority and the Trustee (the "Master Trust Agreement");

WHEREAS, the Authority and the Trustee desire to amend the Master Trust Agreement;

WHEREAS, Section 10.05 of the Master Trust Agreement provides that such Agreement may be amended, modified or altered for any purpose requested by the Authority so long as such amendment, modification or alteration does not affect the use of the assets of the Funds to pay the costs of Decommissioning;

WHEREAS, Section 10.05 of the Master Trust Agreement provides that any alteration, amendment or modification of the Master Trust Agreement or an exhibit thereto must be in writing and signed by the Authority and the Trustee; and

WHEREAS, Section 10.05 of the Master Trust Agreement provides that the Trustee shall execute such alteration, modification or amendment required to be executed by it but shall have no duty to inquire or make any investigation as to whether any amendment, modification or alteration is consistent with said Section 10.05.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Trustee and the Authority hereby agree as follows:

1. Defined terms used herein and not otherwise defined shall have the meanings ascribed to them in the Master Trust Agreement.

2. The Master Trust Agreement is amended as follows:

(a) The following definition is added to Section 1.01 and the definitions following are appropriately renumbered:

“(10) ‘Decommissioning Agreements’ shall mean the Decommissioning Agreement dated as of _____, 2000 among the Authority, Entergy Nuclear Fitzpatrick, LLC and Entergy Nuclear Inc., and the Decommissioning Agreement, dated as of _____, 2000, among the Authority, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Inc., relating to the Decommissioning of the Units.”

(b) Section 2.06 is amended in its entirety to read as follows:

“2.06 Designation of Funds. Upon (i) any Contribution to the Master Trust; or (ii) any withdrawal from the Master Trust, the Authority shall designate (in writing), in accordance with Articles IV or V, as applicable, the Fund(s), and the subaccount(s) thereunder, which is to be credited or debited for the amount of such Contribution or withdrawal, and the Trustee shall credit or debit the Fund(s), and the subaccount(s) thereunder, in accordance with such designation.” No transfers shall be made between the Funds.

(c) Section 2.09 is amended by adding the following sentence at the end:

“Nothing in this Section 2.09 shall limit the right to assign beneficial interest herein as provided in Section 3.01.”

(d) Section 3.01 is amended in its entirety to read as follows:

“3.01 Beneficiary. The beneficial ownership of the Funds shall, subject to the purpose of the Master Trust, be at all times in the Authority; provided, however, the Authority shall have the right by written notice to the Trustee to assign its beneficial interest hereunder to the owner(s) of the Units in accordance with the Decommissioning Agreements and after such assignment wherever the term “Authority” is used herein, it shall be deemed to refer to such assignee beneficiary as it relates to the IP3 Unit Fund or FitzPatrick Unit Fund, as the case may be.”

(e) Section 4.01 is modified by adding the following clause to the last sentence of Section 4.01 and adding the following sentence:

“, provided, however, that no such return of Contributions to the Authority shall be effectuated except simultaneously with the assignment of the beneficial interest in a Fund under the Master Trust to another entity by the Authority pursuant to the Decommissioning Agreements. If there is an assignment of the beneficial interest in a Fund under the Master Trust to another entity by the Authority pursuant to the Decommissioning Agreements, there shall be no release of any monies in such Fund to such entity pursuant to the preceding sentence unless the Trustee has received written consent to such release from the Authority.”

(f) Section 5.02 is amended by adding the following after the first sentence:

“Without limiting the provisions of this Section 5.02, taxes which the Trustee is required to pay or reimburse shall include taxes (including interest thereon, if any) payable by the Authority or any other party to whom the earnings, income and gain of the Master Trust (“Trust Income”) are taxable for federal, state or local income or franchise tax purposes (the Authority and such other party being referred to as a “Taxable Party”), in which case the Trustee shall remit from the Master Trust appropriate payments or deposits of such taxes directly to the taxing agencies or authorized depositories or shall reimburse the Taxable Party for taxes so paid. The amount of taxes to be paid to or on behalf of a Taxable Party shall equal taxes payable by the Taxable Party on the increase in income of the Taxable Party (determined as if the Taxable Party was a single taxpayer, not a member of a consolidated group and had no current operating or capital losses or operating or capital loss carryovers) due to the inclusion of the Trust Income relating to the IP3 Unit Fund or FitzPatrick Unit Fund, as the case may be, in the Taxable Party’s taxable income. The Trustee may reasonable rely upon a certificate provided by the Taxable Party as to the amount of taxes to be paid to the extent such certificate is provided substantially in the form as attached in Exhibit B.”

(g) Section 6.01 is amended in its entirety to read as follows:

“6.01 Termination of Funds and Master Trust in General. Each Fund established hereunder shall terminate only upon the earlier of (i) the completion of the Decommissioning of the Unit to which it relates (as evidenced by written notification of that fact to the Trustee by the Authorized Representative) in which case the provisions of Section 6.02 shall apply, if applicable, (ii) receipt by the Trustee of written instruction to so terminate from the Authority in accordance with an NRC Order, or (iii) twenty-one (21) years after the death of the last survivor of each person who was an officer or director of the Authority on the date of this Agreement and each of their descendants born on or prior to that date. This Master Trust shall terminate upon the termination of all of the Funds. Prior to its termination, this Master Trust shall be irrevocable.”

(h) Section 6.02 is modified by adding the following sentence:

“If there is an assignment of the beneficial interest in a Fund under the Master Trust to another entity by the Authority pursuant to the Decommissioning Agreements, there shall be no release of any monies in such Fund to such entity pursuant to the preceding sentence unless the Trustee has received written consent to such release from the Authority.

(i) The first sentence of the third paragraph of Section 7.05 is amended in its entirety to read as follows:

“All records and accounts maintained by the Trustee with respect to the Master Trust and the Funds shall be preserved for a period of at least three years.”

(j) Section 9.02 is hereby amended by adding the following sentence after the first sentence:

“Such Investment Manager(s) shall at all times be subject to the limitation on investments contained in Exhibit A hereto.”

(k) Section 9.03 is hereby amended by adding subsection (d) thereto as follows:

“(d) Nothing contained in this Section 9.03 shall limit or alter the obligation of the Investment Manager(s) to invest those assets designated for management by the Investment Manager subject to the limitations on investments contained in Exhibit A hereto.”

(l) Section 10.05 is amended by deleting the first two paragraphs thereof and substituting therefor the following:

“10.05 Alterations and Amendments. The Trustee and the Authority understand and agree that modifications or amendments may be required to this Agreement from time to time to comply with Applicable Law or any Order and that this Agreement, and the exhibits hereto, may be altered or amended to the extent necessary to comply with Applicable Law or such Order. Except as provided in the preceding sentence and except in connection with the assignment of beneficial ownership provided by Section 3.01, this Agreement may not be further amended while the Authority remains the beneficial owner of the Funds. Following any assignment of beneficial ownership pursuant to Section 3.01, this Agreement, and the exhibits hereto, may be amended from time to time to effectuate the purpose of the Master Trust, and to comply with Applicable Law, any Order, and any other changes in the laws applicable to the beneficial owner or the Units. Furthermore, following any assignment of beneficial ownership pursuant to Section 3.01, this Agreement, and the exhibits hereto, may be amended, modified, or altered for any purpose requested by the assignee beneficial owner so long as such amendment, modification, or alteration does not affect the use of the assets of the Funds to pay the costs of Decommissioning.”

(m) Section 10.06 is hereby amended in its entirety to read as follows:

“10.06 Successors and Assigns. Subject to the provisions of Sections 2.09, 3.01 and 7.01, this Agreement shall be binding upon and inure to the benefit of the Authority, the Trustee and their respective successors, and this Agreement may not be assigned by the Trustee or the Authority without the written consent of the other party.”

(n) Exhibit A is amended in its entirety and replaced by Exhibit A attached hereto.

3. This First Amendment shall bind and inure to the benefit of the Authority and the Trustee and their assigns, transferees and successors.

4. This First Amendment and all questions pertaining to its validity, construction and administration shall be determined in accordance with the internal substantive laws (and not the choice of law rules) of the State of New York to the extent not superseded by Federal law.

5. This First Amendment may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

6. The Authority and the Trustee hereby represent and warrant to the other that it has full authority to enter into this First Amendment on the terms and conditions hereof and that the individual executing this First Amendment on its behalf has the requisite authority to bind such party.

IN WITNESS WHEREOF, the Authority and the Trustee have executed this instrument under seal as of the date first above written.

THE BANK OF NEW YORK, AS TRUSTEE

BY: _____

Name:

Title:

Attest:

Name:

Title:

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

BY: _____

Name:

Title:

Attest:

Name:

Title:

EXHIBIT A

PERMITTED INVESTMENTS

Notes and Bonds

1. Fixed income securities must be managed to track the Lehman Brothers Aggregate Bond Index. The portfolio's duration should match the index by plus or minus 10%.
2. Obligations of the U.S. Government, and of an agency of the U.S. Government, directly guaranteed or insured by the U.S. or de facto guaranteed by the U.S. Government, including without limitation the Federal National Mortgage Association, acting without specific U.S. Government guarantees as obligors or as trustees for obligations of affiliation of subsidiary entities, and including notes insured by the Farmers Home Administration.
3. Obligations at the time of their purchase, rated A or higher by at least two nationally recognized credit rating agencies one of which must be S&P or Moody's; securities rated A are limited to 20% of the total fixed income portfolio, and payable in U.S. dollars of:
 - (a) U.S. transportation, utilities, industrial, commercial or financial companies, excluding securities of Entergy Corporation or its Affiliates
 - (b) U.S. Government agencies not included under (1) above
 - (c) Obligations of state and local governments
4. Mortgage Pass-Through Obligation Collateralized Mortgage and Corporate Mortgage Obligations rated AA or better.

Money Market Securities

5. (a) Commercial Paper rated A1 or P1.
 - (b) Certificates of Deposits, Eurodollar Certificates of Deposit and Banker's Acceptances of domestic banks with A + rating or better.
 - (c) Short-term pooled investment accounts or "sweep accounts".

Equity Securities

6. The equity allocation target is 35% and must be rebalanced at plus or minus 3%. Equity must be invested in a diversified portfolio of securities, managed to meet or exceed the overall market as measured by the S&P 500 Index. Up to 5% of the value of the Trust's equity position, or 1.75% of Trust, may be invested in S&P Index futures.

Portfolio Restrictions

Investments in the above-mentioned securities are limited by the following:

More than 5% of the portfolio may not be invested in the securities of any one issuer with the exception of U.S. government/agency securities. No more than 25% of the portfolio may be invested in securities of issuers in the same industry, no more than 20% of the portfolio may be invested in municipal securities, and no more than 20% in notes and bonds rated A, and the overall rating of the fixed income portion of the portion of the portfolio must be maintained at all times at AA.

EXHIBIT B

FORM OF CERTIFICATE

The undersigned, the [president/chief financial officer/treasurer] of [name of Taxable Party] refers to the Master Decommissioning Trust Agreement dated as of July 25, 1990, as amended by First Amendment to Master Decommissioning Trust Agreement, dated as of March __, 2000 (as amended, the "Master Trust"), between Power Authority of the State of new York and The Bank of New York, as Trustee. Capitalized terms used herein have the same meanings as specified in the Master Trust.

The undersigned hereby certifies to the Trustee, pursuant to Section 5.02 of the Master Trust, on the date hereof that the amount of taxes to be paid to or on behalf of the Taxable Party is \$ _____ which is the amount to be paid to the Taxable Party or on behalf of the Taxable Party pursuant to Section 5.02 of the Master Trust.

The Trustee may rely on this certificate in making the payments or deposits in accordance with Section 5.02 of the Master Trust.

IN WITNESS WHEREOF, the undersigned has signed this certificate on the ___ day of _____, _____.

[NAME OF TAXABLE PARTY]

By: _____

Name: _____

Title: _____

\\ODMA\PCDOCS\DOCSC\852333\3

NYC1 #248004 v2

Power Authority of the State of New York
Entergy Nuclear FitzPatrick, LLC
Entergy Nuclear Operations, Inc.

Docket 50-333
License No. DPR-59

ENCLOSURE 5

Master Decommissioning Trust

Power Authority of the State of New York
Entergy Nuclear Indian Point 3, LLC
Entergy Nuclear Operations, Inc.

Docket 50-286
License No. DPR-64

ENCLOSURE 5

Master Decommissioning Trust

MASTER DECOMMISSIONING TRUST AGREEMENT

Dated: July 25, 1990

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EXHIBIT A. PERMITTED INVESTMENTS

EXHIBIT B. CERTIFICATE

MASTER DECOMMISSIONING TRUST AGREEMENT

AGREEMENT made as of this 25th day of July, 1990, between POWER AUTHORITY OF THE STATE OF NEW YORK, a corporate municipal instrumentality and political subdivision of the State of New York (the "Authority"), and THE BANK OF NEW YORK, as Trustee (the "Trustee"), a New York banking corporation having trust powers.

WHEREAS, the Authority is the owner of the Indian Point 3 Nuclear Plant (the "IP3 Unit") located in Buchanan, New York, and the owner of the FitzPatrick Nuclear Plant (the "FitzPatrick Unit"), located in Oswego, New York (collectively, the "Units"); and

WHEREAS, the Units are nuclear fueled electric generating units which will require Decommissioning at the end of their useful lives; and

WHEREAS, pursuant to the requirements of the Nuclear Regulatory Commission ("NRC"), the Authority is required to create an external source of funding to provide for the costs associated with the Decommissioning of nuclear fueled electric generating units which it owns; and

WHEREAS, the Authority, in order to comply with the requirements of the NRC, wishes to establish two Trusts to hold amounts in trust for the future Decommissioning of each of the Units; and

WHEREAS, the Authority wishes to establish a Master Trust for the retention and investment of the assets of each Trust; and

WHEREAS, The Bank of New York is willing to serve as Trustee under the Master Trust on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Trustee hereby agrees to accept, from and after the date first above written, Contributions to the Master Trust delivered to it from time to time by or on behalf of the Authority;

TO HAVE AND TO HOLD such assets; and

TO INVEST AND REINVEST the same as provided herein;

IN TRUST NEVERTHELESS, for the uses and purposes and upon the terms and conditions, as hereinafter set forth; and

TO PAY OR DISTRIBUTE from the Master Trust as provided herein.

I. DEFINITIONS

1.01 Definitions. As used in this Master Decommissioning Trust Agreement, the following terms shall have the following meanings:

(1) "Agreement" shall mean this Master Decommissioning Trust Agreement as the same may be amended, modified, or supplemented from time to time.

(2) "Applicable Law" shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, orders, interpretations, licenses and permits of any Governmental Authority and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi-judicial tribunal of competent jurisdiction (including those pertaining to health, safety, the environment or otherwise).

(3) "Authority" shall have the meaning set forth in the opening paragraph of this Agreement.

(4) "Authorized Representative" shall mean the persons designated as such pursuant to Section 2.07 hereof.

(5) "Beneficiary" shall mean the Authority.

(6) "Business Day" shall mean a day that is not a Saturday or Sunday or a legal holiday in the State of New York.

(7) "Certificate" shall mean a document properly completed and executed by an Authorized Representative of the Authority and substantially in the form of Exhibit B hereto as it may from time to time be amended.

(8) "Contribution" shall mean any contribution, cash or otherwise, made to the Trustee for deposit in one or more of the Funds and in such subaccounts thereunder as provided in this Agreement. No contribution which consists of real property shall be permitted.

(9) "Decommissioning" shall mean the decommissioning of a nuclear generating Unit from service in accordance with Applicable Law and, as of the date of this Agreement, shall

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consist of the removal (as a facility) of a nuclear generating unit safely from service and the reduction of residual radioactivity at the site of such unit to a level that permits the release of the property for unrestricted use and termination of the NRC license relating to each such unit.

(10) "Decommissioning Costs" shall mean all costs and expenses relating or allocable to, or incurred in connection with Decommissioning, including, but not limited to, the removal of the equipment, structures and portions of a nuclear generating unit and its site containing radioactive contaminants or the decontamination of the same to a level that permits the property to be released for unrestrictive use after cessation of the operation of the unit, plus, in the case of decontamination, the cost of removal of such equipment structures and portions; provided, however, that if Applicable Law prohibits or limits the foregoing or imposes requirements that are more costly to implement than the removal or decontamination referred to above in this definition, the term "Decommissioning Costs" shall mean all costs and expenses relating or allocable to, or incurred in connection with, the requirements imposed by Applicable Law with respect to radioactive contaminants after a nuclear generating unit ceases operation.

(11) "FitzPatrick Unit" shall have the meaning ascribed thereto in the first WHEREAS clause of this Agreement.

(12) "FitzPatrick Unit Fund" shall mean the Trust established under this Agreement for the decommissioning of the FitzPatrick Unit.

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(13) "Funds" shall mean the IP3 Unit Fund and the FitzPatrick Unit Fund, collectively.

(14) "Governmental Authority" shall mean any Federal, state, county, municipal, foreign, international, regional or other governmental authority, agency, board, body, instrumentality or court, including, without limitation, the NRC.

(15) "IP3 Unit" shall have the meaning ascribed thereto by the first WHEREAS clause of this Agreement.

(16) "IP3 Unit Fund" shall mean the Trust established under this Agreement for the decommissioning of the IP3 Unit.

(17) "Investment Manager(s)" shall mean any person or entity appointed by the Authority (including, but not limited to, the Trustee, any affiliate company or subsidiary of the Trustee or any employee thereof), provided, however, that written notice of such appointment is received by the Trustee from the Authority.

(18) "NRC" shall have the meaning ascribed thereto in the third WHEREAS clause of this Agreement or any successor agency.

(19) "Order" shall mean any order relating to Decommissioning issued by a Governmental Authority and applicable to a Unit.

(20) "Regulation" shall mean any requirement having the force of law which is binding on the Authority.

(21) "Trustee" shall have the meaning ascribed thereto in the opening paragraph of this Agreement or any successor appointed pursuant to Section 7.01 hereof.

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(22) "Units" shall have the meaning set forth in the first WHEREAS clause of this Agreement.

II. MASTER TRUST PURPOSE, NAME AND FUNDS

2.01 Master Trust Purpose. The exclusive purpose of this Master Trust is to accumulate and hold funds for the contemplated Decommissioning of the Units and to expend funds for that purpose.

2.02 Establishment of Master Trust. By execution of this Agreement, the Authority:

(a) establishes the Master Trust for the retention and investment of the assets of the IP3 and FitzPatrick Unit Funds, which shall be effective on the date first above written;

(b) establishes a IP3 Unit Fund and a FitzPatrick Unit Fund ; and

(c) appoints The Bank of New York as Trustee of the Master Trust.

2.03 Acceptance of Appointment. Upon the terms and conditions herein set forth, The Bank of New York accepts the appointment as Trustee of this Master Trust. The Trustee declares that it will hold all estate, right, title and interest it may acquire hereunder exclusively for the purposes set forth in this Article II. The Trustee shall receive any Contributions deposited with it by the Authority in trust for the benefit of the Authority and shall deposit such Contributions in one or more of the Funds, and in such subaccounts thereunder, as provided in

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Section 2.05 hereof and otherwise as the Authority shall specify. The Trustee shall hold, manage, invest and administer such Contributions, together with earnings and appreciation thereon, in accordance with this Agreement.

2.04 Name of Master Trust. The Contributions received by the Trustee from the Authority together with the proceeds, reinvestments and appreciation thereof shall constitute the "Power Authority of the State of New York Master Decommissioning Trust."

2.05 Division of Master Trust. The Master Trust shall be divided by the Trustee into an IP3 Unit Fund and a FitzPatrick Unit Fund. Each Fund shall constitute a separate trust under the Master Trust for the purpose of Decommissioning the Unit to which the Fund relates.

The Trustee shall maintain such records as are necessary to reflect each Fund and each subaccount thereunder separately on its books from each other Fund and subaccount.

Until otherwise instructed in writing by the Authority, nothing in this Section 2.05 or elsewhere shall be deemed to require the Trustee to segregate or invest separately the assets of the IP3 Unit Fund or the FitzPatrick Unit Fund, it being intended, but not required, that the assets of the Funds may be commingled for investment and reinvestment, and the Trustee is hereby authorized to so commingle such assets for purposes of investment and reinvestment.

2.06 Designation of Funds. Upon (i) any Contribution to the Master Trust; or (ii) any withdrawal from the Master

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Trust; or (iii) any transfer between the Funds or subaccounts thereunder, the Authority shall designate (in writing), in accordance with Articles IV or V, as applicable, the Fund(s), and the subaccount(s) thereunder, which is to be credited or debited for the amount of such Contribution, withdrawal or transfer, and the Trustee shall credit or debit the Fund(s), and the subaccount(s) thereunder, in accordance with such designation.

2.07 Duties of Authorized Representatives. The

Authority has empowered the Authorized Representatives and their delegates to act for the Authority in all respects hereunder. The Authorized Representatives may act as a group or may designate one or more Authorized Representative(s) or delegate(s) to perform the duties described in the foregoing sentence. The Authority shall provide the Trustee with a written statement setting forth the names and specimen signatures of the Authorized Representatives. The Authorized Representatives shall provide the Trustee with a written statement setting forth the names and specimen signatures of any delegate of the Authorized Representatives. Until otherwise notified in writing by the Authority, the Trustee may rely upon any written notice, instruction, direction, certificate or other communication believed by it to be genuine and to be signed or certified by any one or more Authorized Representatives or their designated delegate(s), and the Trustee shall be under no duty to make any investigation or inquiry as to the truth or accuracy of any statement contained therein.

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2.08 No Authority to Conduct Business. The purpose of this Master Trust is limited specifically to the matters set forth in Section 2.01 hereof, and there is no objective to carry on any business unrelated to the Master Trust purpose set forth in Section 2.01 hereof, or divide the gains therefrom.

2.09 No Transferability of Master Trust. The interest of the Authority in the Master Trust is neither transferable, whether voluntarily or involuntarily, by the Authority nor subject to the payment of the claims of creditors of the Authority; provided, however, that any creditor of the Authority as to which a Certificate has been properly completed and submitted to the Trustee may assert a claim directly against the applicable Fund in the Master Trust in an amount not to exceed the amount specified in such Certificate.

III. BENEFICIARY OF MASTER TRUST

3.01 Authority to be Beneficiary. The beneficial ownership of the Funds shall, subject to the purpose of the Master Trust, be at all times in the Authority.

IV. CONTRIBUTIONS AND INCOME

4.01 Contributions. The Authority may make such Contributions to any Fund from time to time as it shall deem necessary or appropriate. The Trustee shall return Contributions to the Authority to the extent such Contributions are stated in a written opinion of legal counsel to the Authority, who may be an employee of the Authority, to be excessive in light of Applicable Law.

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4.02 Allocation of Net Income. The Trustee may pool the assets of the Funds or of any subaccounts thereunder for investment purposes in accordance with the written instructions of the Authority, subject to the limitations on investments contained in Exhibit A hereto, and, upon so doing, shall treat each Fund or subaccount so pooled as having received or accrued a pro rata portion (based on the principal balances of the Funds or subaccounts so pooled) of the net income of the Master Trust (including appreciation) related to such pooled assets in any accounting period of the Master Trust. Without limiting the requirements of Section 7.05 hereof, the Trustee shall maintain such separate records of each of the Funds and the subaccounts thereunder as are necessary to reflect the assets thereof and the allocation of income and losses among the Funds and subaccounts thereunder. The Trustee may rely upon the written opinion of legal counsel of the Authority, who may be an employee of the Authority, with respect to any question arising under this Section 4.02.

V. DISTRIBUTIONS

5.01 Payment of Decommissioning Costs and Administrative Costs. In addition to payments otherwise authorized by this Agreement, the Trustee shall make payments out of the Funds or any subaccounts thereunder upon presentation to the Trustee of a Certificate by the Authority instructing the Trustee to disburse amounts in the Funds or any subaccounts thereunder in a manner designated in such Certificate for

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purposes of paying costs, liabilities and expenses of Decommissioning or, if so specified, administrative costs related to services authorized by the Authority pursuant to Section 5.02. If the assets of any Fund or subaccount thereof are insufficient to permit the payment in full or amounts to be paid pursuant to a Certificate, the Trustee shall have no liability with respect to such insufficiency and no obligation to use its own funds to pay the same.

5.02 Payment of Administrative Expenses. In addition to the payment of administrative costs paid pursuant to Section 5.01 hereof, from time to time, the Trustee shall make payments of all administrative expenses (including taxes, out-of-pocket expenses, Investment Manager fees, and Trustee's fees as specified in the agreement referred to in Section 5.03 hereof) in connection with the operation of the Master Trust pursuant to this Agreement. All such administrative expenses and incidental expenses of the Master Trust shall be allocated proportionately among the Funds (based on the fair market value of each Fund immediately prior to any such payment) and within each Fund among the subaccounts in the proportion that the balance in each subaccount bears to the aggregate balance of all subaccounts in such Fund. The Trustee shall maintain such records as are necessary to reflect the allocation of administrative expenses and incidental expenses among the Funds in accordance with this Section 5.02. If the assets of any Fund or subaccount thereof are insufficient to permit the payment in full of amounts payable under this Section 5.02, the Trustee shall have no liability with

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respect to such insufficiency and no obligation to use its own funds to pay the same.

5.03 Fees. The Trustee shall receive as exclusive compensation for its services such amounts as may from time to time be agreed to by the Trustee and the Authority.

5.04 Liquidation of Investments. At the direction of the Authority, the Trustee shall sell or liquidate such investments of the Funds as may be specified. The proceeds of any such sale or liquidation shall be credited pro rata to the Fund or Funds and within each Fund to the subaccount or subaccounts thereunder to which such investments were credited prior to such sale or liquidation.

VI. TERMINATION

6.01 Termination of Funds and Master Trust in General. Each Fund established hereunder shall terminate only upon the earlier of (i) the completion of the Decommissioning of the Unit to which it relates (as evidenced by written notification of that fact to the Trustee by the Authorized Representative), (ii) receipt by the Trustee of written instructions to so terminate from the Authority in accordance with, and to the extent allowed by or provided under an NRC Order or Applicable Law, including, but not limited to, (a) upon disposition by the Authority of its interest in the plant to which the Fund relates or (b) upon termination of the NRC requirement that the Authority maintain a trust fund for the Decommissioning of the plant to which such Fund relates; or (iii) twenty-one (21) years after the death of

the last survivor of each person who was an officer or director of the Authority on the date of this Agreement and each of their descendants born on or prior to that date. This Master Trust shall terminate upon the termination of all of the Funds. Prior to its termination this Master Trust shall be irrevocable.

6.02 Distribution of Assets of Trusts Upon Termination. Upon termination of each Trust established hereunder, the Trustee shall liquidate the assets of the such Trust, and distribute them (including accrued, accumulated and undistributed net income), less all reasonable final administrative costs and expenses, to the Authority.

VII. TRUSTEES

7.01 Designation and Qualification of Successor Trustee(s). At any time during the term of this Master Trust, the Authority shall have the right to remove the Trustee (at the Authority's sole discretion) acting hereunder and appoint another qualified entity as a successor Trustee upon thirty (30) days' notice in writing to the Trustee, or upon such shorter notice as may be acceptable to the Trustee. In the event that the bank or trust company serving as Trustee or successor Trustee shall: (a) become insolvent or admit in writing its insolvency; (b) be unable or admit in writing its inability to pay its debts as such debts mature; (c) make a general assignment for the benefit of creditors; (d) have an involuntary petition in bankruptcy filed against it; (e) commence a case under or otherwise seek to take advantage of any bankruptcy, reorganization, insolvency,

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readjustment of debt, dissolution or liquidation law, statute, or proceeding or (f) resign, the Authority shall appoint a successor Trustee as soon as practicable. In the event of any such removal or resignation, the Trustee or successor Trustee shall have the right to have its accounts finalized as provided in Section 7.05 hereof. Any successor to the Authority, as provided herein, shall have the same right to remove and to appoint any Trustee or successor Trustee.

Any successor Trustee shall be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$50,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Trustee hereunder upon reasonable or customary terms.

Any successor Trustee shall qualify by a duly acknowledged acceptance of this Master Trust, delivered to the Authority. Upon acceptance of such appointment by the successor Trustee, the Trustee shall assign, transfer and pay over to such successor Trustee the assets then constituting the Master Trust. Any successor Trustee shall have all the rights, powers, duties and obligations herein granted to the original Trustee.

7.02 Exoneraton from Bond. No bond or other security shall be exacted or required of any Trustee or successor Trustee appointed pursuant to this Agreement.

7.03 Resignation. The Trustee or any successor Trustee hereof may resign and be relieved as Trustee at any time without prior application to or approval by or order of any court

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by a duly acknowledged instrument, which shall be delivered to the Authority by the Trustee no less than ninety (90) days prior to the effective date of the Trustee's resignation or upon such shorter notice as may be acceptable to the Authority. If for any reason the Authority cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee and the cost of making such application shall be an administrative expense.

7.04 Transactions With Third Parties. No person or organization dealing with the Trustee hereunder shall be required to inquire into or to investigate its authority for entering into any transaction or to see to the application of the proceeds of any such transaction.

7.05 Accounts and Reports. The Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder with respect to each Fund and each subaccount thereunder in accordance with specifications of the Authority, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Authority. The Trustee shall provide the Company with a letter, from the Trustee's independent accountants, which the Trustee normally provides to its customers, with respect to the Trustee's system of internal accounting controls. Within 15 days following the close of each month, the Trustee shall provide a written report of the estimated market value of each Fund and each subaccount

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thereunder, prepared on an accrual basis. Within 20 days following the close of each month, the Trustee shall file with the Authority a final written report setting forth all investments, receipts and disbursements and other transactions effected by it during the month and containing an exact description of all cash and securities contributed, purchased, sold or distributed and the cost or net proceeds of sale, and showing all cash, and securities and other investments held at the end of such month and the cost and fair market value of each item thereof as carried on the books of the Trustee. Such accounts and reports shall be based on the accrual method of reporting net income and expenses and shall show the portion of the assets applicable to each Fund and subaccount thereunder and shall also identify all disbursements from each Fund and subaccount thereunder.

Upon the expiration of 180 days from the date of filing such written reports with the Authority, the Trustee shall be forever released and discharged from all liability or accountability to anyone with respect to all acts and transactions shown in such written reports, except such acts or transactions as to which the Authority shall take exception by written notice to the Trustee within such 180 day period; provided, however, that nothing contained in this Section 7.05 shall be deemed to relieve the Trustee of any liability imposed pursuant to Section 7.07 hereof. In the event that any exception taken by the Authority cannot be amicably adjusted, the Authority may, within one year of the date of such exception, file the

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written report in a court having jurisdiction and upon the audit thereof any and all such exceptions which may not have been amicably settled shall be heard and adjudicated. Any exception not so filed within one year shall be deemed waived and any liability of the Trustee with respect thereto shall be deemed released.

All records and accounts maintained by the Trustee with respect to the Master Trust and the Funds shall be preserved for such period as the Authority shall specify and in the absence of any instructions from the Authority shall be preserved for a period of three years. Upon the expiration of any such required retention period, the Trustee shall have the right to destroy such records and accounts after first notifying the Authority in writing of its intention and transferring to the Authority any records and accounts requested by the Authority.

7.06 Tax Returns and Other Reports. To the extent required by Applicable Law, the Trustee shall prepare and file all federal, state and local income or franchise tax returns or other reports (including estimated tax returns and information returns) as may be required from time to time with respect to any Fund, and the Authority agrees to provide the Trustee in a timely manner with any information which is necessary to such filings which is not in the possession of the Trustee. The Trustee may employ independent certified public accountants or other tax counsel to prepare or review such returns and reports and the cost thereof shall be an administrative cost. The Trustee agrees to sign any tax returns or other reports where required by law to

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do so or arising out of the Trustee's responsibilities hereunder, and to remit from the Master Trust appropriate payments or deposits of federal, state and local income or franchise taxes directly to the taxing agencies or authorized depositories. Any interest or penalty charges assessed against the Master Trust pursuant to Applicable Law as a result of the Trustee's failure to comply with this Section 7.06 shall be an administrative expense unless caused by the Trustee's negligence or willful misconduct, in which case such interest or penalty charges shall be borne by the Trustee and not the Master Trust. To the extent Applicable Law requires the filing of any tax returns relating to any Fund, the Trustee agrees to notify the Authority in writing within 10 days of the commencement of the audit of any Fund's federal, state, or local tax returns, and to participate with the Authority on behalf of the Fund in such audits and related inquiries.

7.07 Liability. (a) The Trustee shall be liable only for its own acts or omissions occasioned by its willful misconduct or negligence. In no event shall the Trustee be liable (i) for acting in accordance with instructions from the Authority or any Investment Manager or pursuant to a legal opinion of counsel to the Authority, (ii) for special or consequential damages unless such special or consequential damages are the result of willful misconduct on the part of the Trustee, (iii) for acts or omissions of a Federal Reserve Bank, the Depository Trust Company, Participants Trust Company or a clearing agency governed by Section 17A of the Securities

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Exchange Act of 1934, Cedel, Euroclear or other non-U.S. depositaries or clearing agencies, or (iv) acts or omissions of sub - custodians which participate in the Trustee's Global Custody Network. For the purposes of this Section 7.07(a), the term "Trustee" shall mean the Trustee, its officers and employees, and any person or entity retained or authorized by the Trustee to carry out any duty or obligation of the Trustee under this Agreement.

(b) The Authority shall indemnify the Trustee and hold it harmless against any and all claims, losses, liabilities, excise taxes, damages or expenses (including reasonable attorneys' fees and expenses) howsoever arising from or in connection with this Agreement or the performance of its duties hereunder, together with any income taxes imposed on the Trustee as a result of any indemnity paid to it hereunder, provided that nothing contained herein shall require that the Trustee be indemnified for any liability imposed pursuant to clause (a) of this Section 7.07. Nothing contained herein shall limit or in any way impair the right of the Trustee to indemnification under any other provision of this Agreement.

(c) The Authority understands that when and if the Trustee delivers property against payment, it may deliver such property prior to receiving final payment and that, as a matter of bookkeeping convenience, the Trustee may credit one or more of the Funds with anticipated proceeds of sale prior to actual receipt of final payment. The risks of non-receipt of payment shall be the Authority's and the Trustee shall have no liability thereof.

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(d) The provisions of this Section 7.07 and the right of the Trustee to claim the benefit thereof shall survive any termination of this Agreement and any resignation or removal of the Trustee.

VIII. TRUSTEE'S GENERAL POWER

The Trustee shall have, with respect to the Master Trust, the following powers, all of which powers are fiduciary powers to be exercised in a fiduciary capacity and in the best interests of this Master Trust and the purposes hereof, namely:

8.01 Registration of Securities. To hold any bonds, securities, and/or other property in the name of a nominee, in a street name, or by other title-holding device, without indication of trust and generally to exercise the powers of an owner, including without limitation the power to vote in accordance with instructions provided by the Authority, with respect to any such property whether so held or held in its own name, as Trustee.

8.02 Borrowing. To borrow money in such amounts and upon such terms as the Authority may authorize in writing as necessary to carry out the purposes of this Master Trust, and to pledge any securities or other property for the repayment of any such loan as the Authority may direct.

8.03 Retention and Removal of Professional and Employee Services. To employ attorneys, accountants, custodians, engineers, contractors, clerks and agents to carry out the purposes of this Master Trust. The cost of any such employment shall be an administrative cost.

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8.04 Delegation of Ministerial Power. To delegate to other persons such ministerial powers and duties as the Trustee may deem to be advisable.

8.05 Powers of Trustee to Continue Until Final Distribution. To exercise any of such powers after the date on which the principal and income of the Funds under the Master Trust shall have become distributable and until such time as the entire principal of, and income from, the Master Trust shall have been actually distributed by the Trustee. It is intended that distribution of one or more of the Funds under the Master Trust will occur as soon as possible after termination of the Master Trust or any Fund.

8.06 Discretion in Exercise of Powers. To do any and all other acts which the Trustee shall deem proper to effectuate the powers specifically conferred upon it by this Agreement, provided, however, that the Trustee may not do any act or participate in any transaction which would:

- (a) Contravene any provision of this Agreement; or
- (b) Violate the terms and conditions of any instructions provided in a written statement of the Authority; or
- (c) Knowingly and intentionally cause any Trust held hereunder not to satisfy the requirements of Applicable Law.

8.07 Deposit of Funds. To deposit funds in interest bearing account deposits maintained by or savings certificates issued by The Bank of New York in its separate corporate capacity, or in any other banking institution affiliated with The Bank of New York.

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8.08 Temporary Investments. In the event assets of the Funds have not been invested by an Investment Manager at the end of the business day, to temporarily invest such uninvested assets in interest bearing account deposits maintained or savings certificates issued by The Bank of New York in its separate corporate capacity, in Master Notes of issuers which have entered into Master Note Agreements with The Bank of New York, or otherwise in accordance with Section 9.01 hereof.

IX. INVESTMENTS

9.01 Trustee's General Investment Powers. Subject to the provisions of Sections 9.02 and 9.03, the Trustee shall have the power to invest assets of the Funds in accordance with the written directions of the Authority, subject to the limitations on investments contained in Exhibit A hereto.

Nothing in this Agreement shall restrict the Trustee, in its individual capacity, from acting as an agent for, providing banking, investment advisory, investment management and other services to, and generally engaging in any kind of business with others (including, without limiting the generality of the foregoing, issuers of securities, of money market instruments or of other property purchased for or on behalf of the Master Trust or any of the Funds) to the same extent as if not the Trustee hereunder. Nothing in this Agreement shall in any way be deemed to restrict the right of the Trustee, in its individual capacity, to perform services for any other person or entity, and the performance of such services for others will not be deemed to violate or give rise to any duty or obligation to the Authority

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or the Master Trust not specifically undertaken by the Trustee hereunder. Nothing in this Agreement shall limit or restrict the Trustee, in its individual capacity, or any of its officers, affiliates or employees from buying, selling or trading in any securities for its or their own accounts. The Trustee, in its individual capacity, its officers, employees or affiliates, and its other clients may at any time have, acquire, increase, decrease or dispose of positions in investments which are at the same time being acquired or disposed of for the account of the Master Trust or one or more of the Funds. The Trustee shall have no obligation to acquire for the Master Trust or any of the Funds a position in any property which it acquires in its individual capacity, or which its officers, employees or affiliates may acquire for its or their own accounts or for the account of a client.

9.02 Appointment of Investment Manager(s). The Authority may appoint one or more Investment Managers to direct the investment of all or part of the Master Trust. The Authority shall also have the right to remove any such Investment Manager(s). Whenever such appointment is made, the Authority shall provide written notice of such appointment to the Trustee, shall specify the portion of the Master Trust with respect to which an Investment Manager has been designated, and shall instruct the Trustee to segregate into an Investment Account those assets designated for management by the Investment Manager. To the extent that assets are segregated into an Investment Account, the Trustee shall be released from and relieved of all

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investment duties, responsibilities and liabilities customarily or statutorily incident to a trustee with respect to the assets in Investment Account, and as to such Investment Account the Trustee shall act as custodian. An Investment Manager shall certify in writing to the Trustee the identity of the person or persons authorized to give instructions or directions to the Trustee on its behalf, including specimen signatures. The Trustee may continue to rely upon all such certifications unless otherwise notified in writing by the Authority or an Investment Manager, as the case may be.

9.03 Direction by Investment Manager(s). (a) An Investment Manager designated by the Authority to manage an Investment Account shall have authority to manage and to direct the acquisition and disposition of the assets of the Master Trust, or a portion thereof, as the case may be, and the Trustee shall exercise the powers set forth in Article IX hereof only when, if, and in the manner directed by the Authority in writing, and, subject to the requirements of paragraph (c) of this Section 9.03, shall not be under any obligation to invest or otherwise manage any assets in the Investment Account. An Investment Manager shall have the powers and authority, exercisable in its sole discretion at any time, and from time to time, to issue and place orders for the purchase or sale of portfolio securities directly with qualified brokers or dealers. The Trustee, upon proper notification from an Investment Manager, shall settle the transactions in accordance with the appropriate trading

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authorizations. Written notification of the issuance of each such authorization shall be given promptly to the Trustee by an Investment Manager, and such Investment Manager shall cause the settlement of such transaction to be confirmed in writing to the Trustee, and to the Authority, by the broker or dealer. Such notification shall be proper authority for the Trustee to pay for portfolio securities purchased against receipt thereof and to deliver portfolio securities sold against payment therefor, as the case may be. All directions to the Trustee by an Investment Manager shall be in writing and shall be signed by a person who has been certified by such Investment Manager pursuant to Section 9.02 hereof as authorized to give instructions or directions to the Trustee.

(b) Should an Investment Manager at any time elect to place security transactions directly with a broker or dealer, the Trustee shall not recognize such transactions unless and until it has received instruction or confirmation of such fact from an Investment Manager. Should an Investment Manager direct the Trustee to utilize the services of any person with regard to the assets under its management or control, such instruction shall be in writing and shall specifically set forth the actions to be taken by the Trustee as to such services. In the event that an Investment Manager places security transactions directly or directs the utilization of a service, such Investment Manager shall be solely responsible for the acts of such persons. Subject to the provisions of paragraph (c) of this Section 9.03,

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the sole duty of the Trustee as to such transactions shall be incident to its duties as custodian.

(c) The authority of an Investment Manager and the terms and conditions of the appointment and retention of an Investment Manager(s) shall be the responsibility solely of the Authority, and the Trustee shall not be deemed to be a party or to have any obligations under any agreement with an Investment Manager; provided, however, that the Trustee shall review the transactions in any Investment Account on a daily basis for the purpose of determining whether any assets acquired or to be acquired are permissible investments under the guidelines established for such Account and in the event that the Trustee determines, as a result of any such daily review, that an investment is not permitted under the guidelines established for such account, then it shall notify the Authority and the applicable Investment Manager within one business day of such determination by telephone, confirmed in writing. If the applicable Investment Manager does not dispose of the unpermitted investment within two business days of such oral notice, then the Trustee shall dispose of such unpermitted investments within four days of such oral notice.

X. MISCELLANEOUS

10.01 Headings. The section headings set forth in this Agreement and the Table of Contents are inserted for convenience of reference only and shall be disregarded in the

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construction or interpretation of any of the provisions of this Agreement.

10.02. Particular Words. Any word contained in the text of this Agreement shall be read as the singular or plural and as the masculine, feminine, or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated, the word "person" shall be taken to mean and include an individual, partnership, association, trust, company, or corporation.

10.03 Severability of Provisions. If any provision of this Agreement or its application to any person or entity or in any circumstances shall be invalid and unenforceable, the application of such provision to persons and in circumstances other than those as to which it is invalid or unenforceable and the other provisions of this Agreement, shall not be affected by such invalidity or unenforceability.

10.04 Delivery of Notices Under Agreement. Any notice, direction or instruction required by this Agreement to be given to the Authority or the Trustee shall be deemed to have been properly given when mailed, postage prepaid, by registered or certified mail, to the person to be notified as set forth below:

If to the Authority:

New York Power Authority
1633 Broadway
New York, New York 10019
Att: Corporate Finance Department

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If to the Trustee:

The Bank of New York
One Wall Street
New York, New York 10286
Attention: Institutional Investment Counsel

The Authority or the Trustee may change the above address by delivering notice thereof in writing to the other party.

10.05 Alterations and Amendments. The Trustee and the Authority understand and agree that modifications or amendments may be required to this Agreement, and to the exhibits hereto, from time to time to effectuate the purpose of the Master Trust and to comply with Applicable Law, any Order, and any other changes in the laws applicable to the Authority or the Units. This Agreement, and the exhibits hereto, may be altered or amended to the extent necessary or advisable to effectuate such purposes or to comply with such Applicable Law, Order or changes.

Otherwise, this Agreement, and the exhibits hereto, may be amended, modified, or altered for any purpose requested by the Authority so long as such amendment, modification, or alteration does not affect the use of the assets of the Funds to pay the costs of Decommissioning.

Any alteration or amendment to, or modification of, this Agreement or an exhibit hereto must be in writing and signed by the Authority and the Trustee. The Trustee shall execute any such alteration, modification or amendment required to be executed by it and shall accept and be governed by any amendment, modification or alteration to this Agreement delivered to it but shall have no duty to inquire or make any investigation as to

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whether any amendment, modification or alteration is consistent with this Section 10.05.

10.06 Successors and Assigns. Subject to the provisions of Sections 2.09 and 7.01, this Agreement shall be binding upon and inure to the benefit of the Authority, the Trustee and their respective successors, and this Agreement may not be assigned by the Trustee or the Authority without the written consent of the other party.

10.07 Governing Law; Jurisdiction; Certain Waivers.

(a) The Master Trust and all questions pertaining to its validity, construction, and administration shall be determined in accordance with the internal substantive laws (and not the choice of law rules) of the State of New York to the extent not superseded by Federal law. The Authority and the Trustee hereby waive the right to a trial by jury in any action or proceeding brought hereunder.

(b) To the extent that, in any jurisdiction, the Authority has or hereafter may acquire, or is or hereafter may be entitled to claim, for itself or its assets, immunity (sovereign or otherwise) from suit, execution, attachment (before or after judgment) or any other legal process brought by or on behalf of the Trustee and arising with respect to this Master Trust or the Trustee's functions hereunder, the Authority irrevocably agrees not to claim, and hereby waives, such immunity.

10.08 Accounting Year. The Master Trust shall operate on an accounting year which coincides with the calendar year, January 1 through December 31.

10.09 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

10.10 Decommissioning Liability. Nothing in this Agreement or in any exhibit hereto is intended to impose any responsibility on the Trustee for overseeing or paying the cost of the Decommissioning of the Units other than, in the case of the Trustee, the disbursement of funds in accordance with Article V hereof.

IN WITNESS WHEREOF, the Authority and the Trustee have set their hands ~~and seals~~ to this Agreement as of the day and year first above written.

THE BANK OF NEW YORK, as Trustee

By: Stephen P. Weiss
Name: STEPHEN P. WEISS
Title: VICE PRESIDENT

Attest: Daniel Grosack
Name: Daniel Grosack
Title: Assistant Vice President

POWER AUTHORITY OF THE STATE OF NEW YORK

By: Robert L. Tscheme
Name: Robert L. Tscheme
Title: Vice President-Corporate Finance

Attest: Vernadine Quah-Sook
Name: Vernadine Quah-Sook
Title: Assistant Secretary

*Exhibit A***PERMITTED INVESTMENTS****Notes and Bonds**

1. Obligations of the U. S. Government, and of an agency of the U. S. Government, directly guaranteed or insured by the U. S. Government or de facto guaranteed by the U. S. Government, including without limitation the Federal National Mortgage Association, acting without specific U. S. Government guarantees as obligors or as trustees for obligations of affiliation or subsidiary entities, and including notes insured by the Farmers Home Administration.
2. Direct obligations payable in U. S. dollars of the International Bank for Reconstruction and Development (World Bank), and obligations guaranteed by the IBRD and payable in U. S. dollars.
3. Bonds of the Inter-American Development Bank.
4. Obligations at the time of their purchase, rated AA or better, payable in U. S. dollars of:
 - (a) U. S. transportation, utilities, industrial, commercial, or financial companies.
 - (b) U. S. Government agencies not included under (1) above.
 - (c) Private placements
 - (d) Eurodollar obligations
5. Governments other than the United States, other foreign governmental and public sector agencies, international organizations and agencies (Yankee Bonds). Rated AA or better.
6. Mortgage Pass-Through obligation, Collateralized Mortgage obligations and Corporate Mortgage Obligations rated AA or better.

Money Market Securities

7.
 - (a) Commercial Paper rated A1 or P1.
 - (b) Certificates of Deposits, Eurodollar Certificates of Deposit and Banker's Acceptances of domestic banks with A+ rating or better.
 - (c) Certificates of Deposit, Eurodollar Certificates of Deposit, and Banker's Acceptances of foreign banks with a AA rating or better, denominated in dollars (Yankees).

- (d) Repurchase agreements, provided they are:
 - (1) Purchased from dealers on the Federal Reserve Reporting Dealer list.
 - (2) Fully collateralized by permitted investments, marked to market daily and are held in our custody.
- (e) Short-term pooled investment accounts or "sweep accounts".

Foreign Securities

- 8. Obligations of governments other than the United States, other foreign governmental and public sector agencies, international organizations and agencies rated AA or higher, and deemed by the investment manager to be of investment grade credit quality, denominated in currencies other than U. S. Dollars. No more than 20% of the market value of the portfolio may be invested in nondollar denominated Fixed-Income securities. No more than 5% of the market value of the portfolio may be exposed to foreign currency fluctuation, i.e. must be hedged into U. S. dollars.
- 9. Certificate of Deposit and Bankers Acceptances of foreign banks with net worth in excess of \$1 billion, denominated in currencies other than U. S. Dollars.

Future, Forwards and Options

- 10. Futures and options for fixed income securities, traded on public exchanges and over-the-counter with the 50 largest international and 25 largest U. S. banks in asset size and leading U. S. and foreign brokers and dealers. Forward transactions with these institutions are also permitted. Options and/or futures may not exceed 10% of the portfolio.

Portfolio Restrictions

Investments in the above-mentioned securities are limited by the following:

More than 5% of the portfolio may not be invested in the securities of any one issuer with the exception of U. S. government/agency securities. No more than 25% of the portfolio may be invested in securities of issuers in the same industry and all notes, bonds and foreign securities must be rated AA.

File Name: Trustee

EXHIBIT B

CERTIFICATE NO.

The undersigned Authorized Representative of POWER AUTHORITY OF THE STATE OF NEW YORK ("Authority"), being duly authorized and empowered to execute and deliver this Certificate, hereby certifies that payments in the amounts and to the payees listed below are for obligations duly incurred by the Authority during the Decommissioning of [insert name of Unit] under Applicable Law and hereby directs the Trustee of the POWER AUTHORITY OF THE STATE OF NEW YORK Master Decommissioning Trust (Master Trust), pursuant to Article V of the Master Decommissioning Trust Agreement to pay to each payee listed, including the Authority if so listed, (Payees) in Exhibit 1 hereto, the amounts set forth therein, and certifies that the payments requested are proper expenditures of the Master Trust.

Accordingly, request is hereby made that the Trustee provide for the withdrawal of \$_____ from the [insert name of Unit and Fund and Subaccount(s)] in order to permit payment of such sum to be made to the Payees. You are further requested to disburse such sum, once withdrawn, directly to such Payees in the following manner: [CHECK/WIRE TRANSFER/_____] on or before _____, 19__.

WITNESS MY HAND THIS ____ day of _____, 19__.

By: _____
 Name:
 Authorized Representative

Power Authority of the State of New York
Entergy Nuclear FitzPatrick, LLC
Entergy Nuclear Operations, Inc.

Docket 50-333
License No. DPR-59

ENCLOSURE 7

Organization Chart

NRC

