

Master Power Purchase and Sale Agreement
For
CleanPowerSF Community Choice Aggregation
by and between
The City and County of San Francisco, acting by and through its Public
Utilities Commission, Power Enterprise
And
Exelon Generation Company, LLC.

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: January 12, 2016 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.1 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

City and County of San Francisco, acting by and through its Public Utilities Commission, Power Enterprise ("City" or "Party A")

**Exelon Generation Company, LLC
("Counterparty" or "Party B")**

All Notices:

All Notices:

Street: 525 Golden Gate Ave, 7th Floor

Street: 100 Constellation Way, Suite 500C

City: San Francisco, CA Zip: 94102

City/State: Baltimore, MD Zip: 21202

Attn: Contract Administration

Attn: Contract Administration

Phone: 415-554-4603

Phone: 410-470-3500

Facsimile: 415-554-3225

Facsimile: 443-213-3556

Duns: 19-674-8938

Federal Tax ID Number: 946000417

Federal Tax ID Number: 23-2990190

Invoices:

Attn: Angie Lee

Invoices:

Attn: Billing Group

Phone: 415-554-2451

Phone: 410-470-3737

Facsimile: 415-554-3280

Facsimile: 410-468-3540

Scheduling:

Attn: Jiayo Chiang

Scheduling:

Attn: Scheduling Desk

Phone: 415-554-0709

Phone: 410-468-3530

Facsimile: 415-554-3280

Facsimile: 410-468-3540

Email: jchiang@sfwater.org

Scheduling Desk: PowerScheduler@sfwater.org

Payments:

Attn: Angie Lee

Payments:

Attn: Payments Group

Phone: 415-554-2451

Phone: 410-470-3737

Facsimile: 415-554-3280

Facsimile: 410-468-3540

Wire Transfer:

BNK: Bank of America

Wire Transfer:

BNK: M&T Bank

ABA (ACH): 121-000-358

ABA: 022000046

ACCT: 14997-21926

ACCT: 19190078

Credit and Collections:

Attn: Michael Hyams

Credit and Collections:

Attn: Credit Risk Department

Phone: 415-554-1590

Phone: 410-470-6000

Facsimile: 415-554-3280

Facsimile: 443-213-3215

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Michael Hyams
Phone: 415-554-1590
Facsimile: 415-554-3280

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: General Counsel
Phone: 410-470-3500
Facsimile: 443-213-3556

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

City and County of San Francisco, acting by and through its Public Utilities Commission, Power Enterprise

By: 

Harlan L. Kelly, Jr.
General Manager,
San Francisco Public Utilities Commission

Exelon Generation Company, LLC

By: _____

Name: _____

Title: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Deputy City Attorney

Austin Yang

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Michael Hyams
Phone: 415-554-1590
Facsimile: 415-554-3280

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: General Counsel
Phone: 410-470-3500
Facsimile: 443-213-3556

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

City and County of San Francisco, acting by and through its Public Utilities Commission, Power Enterprise

By: _____

Harlan J. Kelly, Jr.
General Manager,
San Francisco Public Utilities Commission

Exelon Generation Company, LLC

By: *Vidyanand Swaminathan*

Name: **Vidyanand Swaminathan**

Title: **Senior Vice President
Portfolio Strategy**

pgw

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____

Deputy City Attorney

GENERAL TERMS AND CONDITIONS

CONDITIONS PRECEDENT

This Agreement shall not be effective until the date on which the following conditions have been satisfied (such conditions shall be referred to collectively as the "Conditions Precedent"):

A. For the City:

1. The General Manager of the San Francisco Public Utilities Commission has received all necessary San Francisco Public Utilities Commission and/or San Francisco Board of Supervisors approvals to execute this Master Agreement and has provided a copy of such approvals to Party B;
2. The Controller has certified in accordance with the City's Charter that sufficient unencumbered balances will be available in the fund described in Section 6.9 of this Master Agreement to meet payments under this Agreement as they become due.

B. From the Effective Date until such time as each of the Conditions Precedent the City is responsible for satisfying have been satisfied, waived by Party B, or the Agreement has been terminated in accordance with this Section B, the City shall take, or cause to be taken all commercially reasonable steps necessary or desirable and shall proceed diligently and in good faith to satisfy each Condition Precedent that the City is responsible for satisfying. The City shall advise Party B in writing as each Condition Precedent is satisfied. In the event that all Conditions Precedent have not been satisfied and Party B declines to waive in writing any unsatisfied Conditions Precedent following the expiration of sixty (60) days from the execution of the Agreement, Party B may at any time thereafter elect to terminate the Agreement by giving the City ten (10) days written notice, and upon such notice the Agreement shall terminate with no liability by either Party to the other Party.

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power. Notwithstanding the foregoing, with respect to Party B, Baltimore Gas & Electric Company, CNEGH Holdings, LLC, CNE Gas Holdings, Inc., CNEG Holdings, LLC, Constellation NewEnergy-Gas Division, LLC, CNE Gas Supply, LLC, PECO Energy Company, and Commonwealth Edison Company shall not be considered an Affiliate.

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 “Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or governmental authority of competent jurisdiction (“Governmental Authority”), or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties or the terms of the Agreement.

1.4 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

1.5 “Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or a City and County of San Francisco holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.6 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.7 “CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

1.8 “CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement Federal ERC Electric Tariff as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.9 “CEC” means the California Energy Commission or any successor government agency.

1.10 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.11 “City Facilities” means any electric generation facilities owned, operated, or under contract to the City.

1.12 “City’s Collateral Posting” has the meaning set forth in Section 8.2(c).

1.13 “City’s Collateral Requirement” has the meaning set forth in Section 8.2(c).

1.14 "Claiming Party" has the meaning set forth in Section 3.3.

1.15 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.16 "CleanPowerSF" means the City's Community Choice Aggregation Program.

1.17 "Confidential Information" has the meaning set forth in Section 10.14(b).

1.18 "Confirmation" has the meaning set forth in Section 2.1.

1.19 "Contract Price" means the price in \$U.S. to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.20 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.21 "CPUC" means the California Public Utilities Commission or any successor government agency.

1.22 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties "Defaulting Party" has the meaning set forth in Section 5.1.

1.23 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.24 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.25 "Downgrade Event" means a Party's credit rating falls below BBB- from S&P or Baa3 from Moody's.

1.26 "Early Termination Date" has the meaning set forth in Section 5.2.

1.27 "Effective Date" has the meaning set forth on the Cover Sheet.

1.28 "ERR" shall mean an Eligible Renewable Energy Resource as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16.

1.29 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.30 "Event of Default" has the meaning set forth in Section 5.1.

1.31 "Excluded Transaction" has the meaning set forth in Section 5.2.

1.32 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.33 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the two foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in the applicable Confirmation. Force Majeure does not include any action taken by the City in its governmental capacity.

1.34 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.35 "Governmental Charges" has the meaning set forth in Section 9.2.

1.36 "Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from a Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag

Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from a project, (ii) production tax credits associated with the construction or operation of a project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by a project for compliance with local, state, or federal operating and/or air quality permits. If a Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.37 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.38 "Investment Grade" means a Credit Rating of "Baa3" or better from Moody's or "BBB-" or better from S&P.

1.39 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having (i) a credit rating of at least from A3 from Moody's or A- from S&P (ii) and assets of at least \$10 Billion Dollars, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.40 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.41 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.42 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.43 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless

otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.44 “Non-Defaulting Party” has the meaning set forth in Section 5.2

1.45 “Nominal Value” means the value of a Transaction calculated as: (i) the undelivered Product volumes, as of the relevant point in time, multiplied by (ii) the applicable Contract Price.

1.46 “Obligations” means the payment obligations of the City under this Master Agreement.

1.47 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.48 “Party B Collateral Threshold” means (a) the amount calculated by multiplying (i) the percentage set forth below under the heading “Party B Collateral Threshold” opposite the Credit Rating for Party B on the relevant date of determination (and if Party B’s Credit Ratings shall not be equivalent, the lower Credit Rating shall govern) and (ii) the sum of the Nominal Values, calculated as of the date each Transaction was executed, for all outstanding Transactions (the calculated amount shall be the “Threshold Amount”) or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Event of Default (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party B Collateral Threshold (% of Nominal Value of all Transactions)	<u>S&P Credit Rating</u>	<u>Moody’s Credit Rating</u>
100%	A- to AAA (or above)	A3 to Aaa (or above)
50%	BBB+	Baa1
30%	BBB	Baa2
20%	BBB-	Baa3
0%	BB+ or below	Ba1 or below

The Parties agree that upon request from either Party, the Parties will discuss and consider any changes to the Party B Collateral Threshold proposed by either Party; provided, however, that neither Party shall be obligated to amend this agreement to incorporate any such change to the Party B Collateral Threshold that it disagrees with in its sole discretion.

1.49 “Party B Rounding Amount” means \$100,000.00.

1.50 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, a payment guarantee from a entity with an Investment Grade Credit Rating, or other security acceptable to the Requesting Party.

1.51 "Portfolio Content Category 1" or "PCC 1" means Renewable Energy products that satisfy the requirements of Section 399.16(b)(1) of the California Public Utilities Code.

1.52 "Portfolio Content Category 2" or "PCC2" means Renewable Energy products that satisfy the requirements of Section 399.16(b)(2) of the California Public Utilities Code.

1.53 "Portfolio Content Category 3" or "PCC3" means Renewable Energy products that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code.

1.54 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.55 "Product" means electric capacity, energy or other product(s) related thereto as specified by the Parties in the Transaction.

1.56 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.57 "Recording" has the meaning set forth in Section 2.4.

1.58 "Renewable Energy" means Energy generated from an ERR that is generated in the same calendar year that it is delivered to City.

1.59 "Renewable Energy Certificates" or "RECs" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC decision 08-08-028 as may be amended from time to time or as further defined or supplemented by Applicable Law.

1.60 "RPS" or "Renewables Portfolio Standard" means the California renewables portfolio standard, as set forth in California Public Utilities Code §§ 399.11 et seq. and California Public Resources Code §§ 25740-25751, as may be modified by subsequent legislation and as administered by the CEC, and the CPUC.

1.61 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, (provided Buyer shall use reasonable efforts to minimize any such additional transmission charges), or absent a purchase, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially

reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.62 "Resource Adequacy" or "RA" means the local and system resource adequacy capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions D.04-01-050, 04-10-035 and 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions or rulings addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, the flexible capacity standards under the CAISO Tariff or by any other Governmental Authority having jurisdiction.

1.63 "S&P" means the Standard & Poor's Financial Services LLC (a subsidiary of the McGraw-Hill Companies, Inc.) or its successor.

1.64 "SFPUC" means the San Francisco Public Utilities Commission.

1.65 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, (provided Seller shall use reasonable efforts to minimize any such additional transmission charges), or absent a sale, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.66 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.67 "Secured Party" has the meaning set forth in Section 8.3.

1.68 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.69 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.70 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.71 "Termination Payment" has the meaning set forth in Section 5.3.

1.72 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.73 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

1.74 "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties in writing, through the execution of a Confirmation mutually agreed to by the Parties. No Confirmation shall be binding until executed by the SFPUC on behalf of the City and by Party B. Neither Party is obligated to enter into any Transaction or Confirmation pursuant to this Master Agreement and no Party shall have any obligation to purchase or sell energy unless and until the Parties have executed a Confirmation.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Confirmations executed in accordance with Section 2.1 shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Confirmation shall be resolved in favor of the terms of such Confirmation.

2.3 Recording. Each Party to this Agreement: (i) acknowledges, consents and agrees that each Party may make a tape or electronic recording ("Recording") of all telephone conversations between its trading, marketing and scheduling officers, employees and representatives ("Personnel"); (ii) waives any further notice of such monitoring or recording; (iii) agrees to notify and obtain the consent of its Personnel to such monitoring and recording; and (iv) agrees that any such Recordings will be retained (subject to any applicable record retention policies of the recording Party unless one Party notifies the other that a particular Transaction is under review and the Recording warrants further retention) in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement or any actual or potential Transaction hereunder. To the extent that one Party records telephone conversations (the "Recording Party") and the other Party does not (the "Non-Recording Party"), the Recording Party shall, in the event of any dispute, make a complete and unedited copy of the Recording Party's tape(s) of all conversations with the Non-Recording Party's personnel relating to the relevant dispute available to the Non-Recording Party.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the

Contract Price. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

3.4 No Immunity Claim. City warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment. However, nothing in this Master Agreement shall affect either Party's rights and obligations pursuant to the California Tort Claims Act, California Government Code §§ 810 et. seq.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such deficiency equal to

the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and is not cured or remedied within thirty (30) days after written notice;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which, subject to Section 5.1(h), is provided in Article Four) if such failure is not remedied within thirty (30) Days after written notice; however, the Parties may mutually agree upon a longer period for cure if the Event of Default cannot reasonably be cured within thirty business days;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges 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 under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) with respect to such Party's guarantor, if any:
 - (i) if any representation or warranty made by a guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a guarantor becomes Bankrupt;

- (iv) the failure of a guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
 - (v) a guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.
- h. Party B fails to schedule and/or deliver, or City fails to schedule and receive, at least seventy percent (70%) of the Product for a period of six (6) consecutive months for reasons other than Force Majeure.

5.2 Remedies Upon Default; Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable) then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable), and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Excluded Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information.

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-

Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment"), provided that if the aggregation of Settlement Amounts results in a Termination Payment being owed to the Defaulting Party, the Termination Payment shall be deemed to be zero (\$0). Notwithstanding the foregoing, in no event shall:

- (a) the City's Termination Payment exceed thirty percent (30%) of the aggregate Nominal Value, for all Terminated Transactions; and
- (b) Party B's Termination Payment exceed fifty percent (50%) of the aggregate Nominal Value, for all Terminated Transactions.

For the purpose of this Section 5.3, the Nominal Value for a Terminated Transaction shall be recalculated yearly on each anniversary of the 1st day of the Delivery Term. However, after the end of the Delivery Term the Nominal Value calculated for the last year of the Delivery Term shall remain the same until all obligations under the relevant Transaction have been satisfied in full.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within fifteen (15) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

5.7 Termination for Convenience. City may terminate this Master Agreement and any Transactions for City's convenience and without cause at any time by giving Party B thirty (30) days' written notice of such termination. In the event of such termination, Party B will be paid for those deliveries made, pursuant to all Terminated Transactions, up to the date of termination out of the Designated Fund described in Section 6.9. In no event will City be liable for costs incurred by Party B after receipt of a notice of termination, other than those reasonably incurred costs authorized under this section, including, but not limited to the Termination Payment. Upon receipt of notice of termination under this Section, Party B, acting in a

commercially reasonable manner, shall liquidate all terminated Transactions, calculate the City's Termination Payment in accordance with Section 5.2 and 5.3 as of the date of termination under this section, and provide notice to City of the Termination Payment, if any, as set forth in Section 5.4. Provided, however, that if Party B's calculation of the Termination Payment would result in a payment being owed to City, the Termination Payment shall be deemed to be zero. The Termination Payment shall be made by City within fifteen (15) Business Days after the effective date of the notice of termination for convenience.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement. As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise specifically agreed upon by the Parties in a Transaction, all invoices shall be due and payable in accordance with each Party's invoice instructions on or before the forty-fifth (45) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amount not paid by the due date shall be subject to a late payment penalty equal to a daily rate of \$5.50 per \$100,000 for a maximum period of ninety (90) Days after such payment is due.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with a late payment penalty equal to a daily rate of \$5.50 per \$100,000 from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with a late payment penalty equal to a daily rate of \$5.50 per \$100,000 from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. 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 through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by written agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

6.8 Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse Party B for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6.9 Designated Fund.

- (a) Auto-Appropriating Designated Fund. The City's Obligations under this Agreement shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further City action and which shall be used solely for CleanPowerSF costs and expenses, including the Obligations. City agrees to set CleanPowerSF rates and charges that are sufficient to maintain revenues necessary to pay its Obligations and all of City's payment obligations under its other contracts for the purchase of energy for CleanPowerSF. City shall provide Party B with reasonable access to account balance information with respect to the SFPUC designated fund at all times during the Delivery Period of a Transaction.
- (b) The Obligations are special limited obligations of the City payable solely from the revenues of CleanPowerSF. The Obligations are not a charge upon the revenues or general fund of the SFPUC or the City or upon any non CleanPowerSF moneys or other property of the SFPUC or the City.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE; PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY

DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

7.2 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, THE COMPENSATION PROVIDED FOR IN ARTICLES 4, 5, AND 6 AND SECTIONS 9.2 AND 10.4.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 City Credit Protection.

- (a) Financial Information. If requested by City, Party B shall deliver, or make available on its website, (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.
- (b) Credit Assurances. If City has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, City may provide Party B with written notice requesting Performance Assurance in an amount determined by City in a commercially reasonable manner. Upon receipt of such notice Party B shall have ten (10) Business Days to respond to the notice with a commercially reasonable plan to provide Performance Assurance, a guaranty, or other credit assurance. The Parties shall negotiate a mutually acceptable time frame for the performance of the plan. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to City within the agreed upon time frame, then an Event of Default under Article Five will be deemed to have occurred and City will be entitled to the remedies set forth in Article Five of this Master Agreement.
- (c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to City, if any, exceeds the Party B Collateral Threshold, then City, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the

Termination Payment exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with City. Such Party B Performance Assurance shall be delivered to City within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and City will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by City as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to City, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

- (d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then City may require Party B to provide Performance Assurance in an amount determined by City in a commercially reasonable manner and in a time frame to be negotiated by the Parties. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to City within the agreed upon time frame, then an Event of Default shall be deemed to have occurred and City will be entitled to the remedies set forth in Article Five of this Master Agreement.
- (e) Notice of Downgrade. Party B shall notify City within three (3) business days in the event of any credit downgrade, regardless of whether the downgrade constitutes a Downgrade Event.

8.2 Party B Credit Protection.

- (a) Financial Information. If requested by Party B, City shall deliver (i) within 180 days following the end of each fiscal year, a copy of City's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited budgetary variance report for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

- (b) Credit Assurances. If the City Controller has determined during the annual budget review process that the account balance and the anticipated revenues of the fund described in Section 6.9 of this Master Agreement are inadequate to meet the City's Obligations and the City has failed to adjust CleanPowerSF rates to maintain the sufficiency of the fund revenues, Party B may provide City with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice City shall have ten (10) Business Days to respond to the notice with a commercially reasonable plan to provide Performance Assurance, a guaranty, or other credit assurance. The Parties shall negotiate a mutually acceptable time frame for the performance of the plan. In the event that City fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within the agreed upon time frame, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.
- (c) City's Collateral Posting. To secure the City's obligation to make a Termination Payment, City shall deliver to Party B concurrently with the execution and delivery of a Confirmation and maintain throughout the Delivery Period of such Transaction a Letter of Credit ("City's Collateral Posting") in an amount as set forth in such Confirmation ("City's Collateral Requirement"). City's Collateral Posting shall remain in full force and effect until such time as the City's Obligations are terminated. Party B shall arrange for the return of City's Collateral Posting promptly after each of the following has occurred: (i) all of City's Obligations under the Confirmation have been satisfied in full or (ii) an Early Termination Date has occurred and all Termination Payment obligations of City are paid in full (whether directly or indirectly such as through set-off or netting).
- (d) Additional Financial Information. No later than the fifteenth (15th) day after the end of each calendar quarter, City shall deliver to Party B a report in form and substance mutually agreed by the Parties containing (i) account balance information regarding the designated fund described in Section 6.9 of this Master Agreement and any reserves for energy payments and/or other operating expenses, (ii) the amount of payments made from such fund in the preceding quarter and the amount of payments anticipated to be made from such fund in the current quarter and (iii) the amount of revenues received into such fund in the preceding quarter and the amount of revenues anticipated to be received into such fund in the current quarter.
- (e) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of City, then Party B may require City to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner and in a time frame to be negotiated by the Parties. In the event City shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within the time frame negotiated by the Parties, then an Event of Default shall

be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

- (f) Notice of Downgrade. City shall notify Party B within three (3) business days in the event of any credit downgrade, regardless of whether the downgrade constitutes a Downgrade Event.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until ten (10) years from the Effective Date unless terminated early pursuant to Article 5; provided, however, that such expiration or termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such expiration or termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Article 5 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1) are within its powers, have been duly authorized by all necessary action and (including in the case of City, all necessary authorizations from the SFPUC and/or San Francisco Board of Supervisors) do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation executed in accordance with Section 2.1), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) 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 Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1);
- (vii) no Event of Default or Potential 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 Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1);

- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1), and as to whether this Master Agreement and each such Transaction (including any Confirmation executed in accordance with Section 2.1) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation executed in accordance with Section 2.1) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights, duties, or obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed. Without limiting the foregoing, either Party may transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement with the consent

of the other Party by providing advance written notice to the other Party; if the other Party does not object in writing within twenty (20) days of receipt of the notice of assignment in connection with any financing, approval to the assignment shall be deemed granted.

10.6 Dispute Resolution; Choice of Law; Venue; Waiver of Jury Trial.

- (a) Negotiation; Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of this Agreement by negotiation. The status of any dispute or controversy notwithstanding, each Party shall proceed diligently with the performance of its obligations under this Agreement in accordance with and subject to the terms of this Agreement. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither Party will be entitled to legal fees or costs for matters resolved under this section.
- (b) Choice of Law. This Agreement shall be deemed to be made in, and shall be construed, enforced and performed in accordance with the laws of the State of California.
- (c) Venue. Venue for all litigation shall be in the U.S. District Court for the Northern District of California, or if that court shall not have jurisdiction then a state court having jurisdiction, sitting in the State of California.
- (d) Waiver of Jury Trial. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General.

- (a) This Master Agreement (including the exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.1) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference.

- (b) This Master Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
- (d) This Master Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Master Agreement).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) If any provision of this Agreement is rendered unlawful by action by any Governmental Authority, or any change in Applicable Law (a "Change in Law") occurring after the Execution Date, the remaining lawful obligations that arise under this Agreement shall not be affected. If the Change in Law results in material changes to the Parties' obligations with regard to any Product sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Agreement or any Transaction so that the implementation of this Agreement becomes impossible or impracticable, or otherwise modifies the RPS or language required to conform to the RPS, the Parties shall work in good faith to revise this Master Agreement or the affected Transaction in a manner that maintains to the greatest extent practicable the original intent of the Parties under this Master Agreement and the affected Transaction so that the Parties may perform their obligations regarding the purchase and sale of Products. In the event the Parties cannot reach agreement on any such amendments to this Agreement within sixty (60) days following the Change in Law, to the extent practicable and lawful, the Parties shall perform their obligations hereunder with regard to any Product hereunder or compliance with RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, neither Party shall be obligated to perform any obligation hereunder to the extent that doing so would cause such Party to be materially adversely affected. If the Parties cannot reach a good faith agreement on amendments, the affected Transaction shall be terminated by mutual agreement without liability for either Party.
- (g) The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for

twelve (12) months. All rights pursuant to (i) Article 5 (Events of Default; Remedies), (ii) Article 7 (Limitations), (iii) Section 10.4 (Hold Harmless and Indemnification), (iv) Section 10.6 (Contract Interpretation; Choice of Law/Venue), and (v) Section 10.9 (Audit) shall also survive termination of this Master Agreement or any Transaction.

- (h) This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the rate of \$5.50 per \$100,000 per day from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived. Each Party shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

10.10 Forward Contract. The Parties (i) understand and intend that all Transactions with a maturity date more than two days after the date the Transaction is entered into constitutes a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code"); (ii) understand that certain Transactions may constitute "swap agreements" within the meaning of the Bankruptcy Code; (iii) agree that all payments made or to be made by one Party to the other Party pursuant to this Agreement are "settlement payments" within the meaning of the Bankruptcy Code; and (iv) agree that all transfers of "Performance Assurance" by one Party to the other Party under this Agreement are "margin payments" within the meaning of the Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort. Each Party further acknowledges and agrees that; (1) it is an "eligible contract participant" as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a)(18); and (2) it is an "eligible commercial entity" as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a)(17).

10.11 Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly

makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

10.12 Conflict of Interest. Through its execution of this Master Agreement, Party B acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

10.13 Proprietary or Confidential Information.

- (a) Party B understands and agrees that, in the performance of this Master Agreement or in contemplation thereof, Party B may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Party B agrees that all private and confidential information disclosed by City to Party B shall be held in confidence and used only in performance of the Agreement. Party B shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

- (b) City understands and agrees that, in the performance of this Master Agreement or in contemplation thereof, City may have access to private or confidential information which may be owned or controlled by Party B and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Party B. Party B acknowledges that City is a public agency subject to the disclosure requirements of the Public Records Laws. If documents or information submitted to City contain Party B's proprietary and confidential information that Party B wishes City to keep confidential, Party B must clearly mark such information "CONFIDENTIAL AND PROPRIETARY" and identify the specific lines containing such information (the "Confidential Information"). If City receives a request for disclosure of the Master Agreement or any other documentation executed pursuant to or that relates to the Master Agreement, the City shall provide prompt written notice to Party B and provide Party B a reasonable opportunity to seek a protective order or other similar remedy in order to maintain the confidentiality of such Confidential Information. If Party B is unsuccessful in obtaining a protective order or chooses not to seek a protective order, the City shall disclose only such Confidential Information to third parties to the extent required by California law (including, without limitation, the California Constitution, the Public Records Laws, and the California Open Meetings Act).

- (c) Notwithstanding the foregoing, nothing shall restrict either Party from using or disclosing information related to the Agreement if such information (i) is generally available to the public, (ii) is required to be disclosed in response to any summons, subpoena, request from a regulatory body, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule; provided, however, that the Party required to make such disclosure provides, to the extent permitted by applicable law, prompt written notice to the other Party and provides such Party a reasonable opportunity to seek a protective order or other similar remedy in order to maintain the confidentiality of such Confidential Information and, provided, further, that if such Party is unsuccessful in obtaining a protective order or chooses not to seek a protective order, the Party required to disclose such information shall disclose only such Confidential Information that it is required to disclose pursuant to applicable law, (iii) is obtained from a non-confidential source that disclosed such information in a manner that did not, to receiving Party's knowledge, violate its contractual, legal, or fiduciary obligations in making such disclosure, or (iv) is furnished to the non-disclosing Party's Affiliates, and to each of such person's auditors, attorneys, advisors or lenders which are required to keep the information that is disclosed in confidence. Notwithstanding the foregoing, a Party may disclose any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

In accordance with §67.24(e) of the S.F. Admin. Code, contracts, contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

10.14 Nondisclosure of Private Information. Each Party has read and agrees to the terms set forth in SF Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Each Party agrees that any failure to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to the Parties under equity or law, the City may terminate the Contract, bring a false claim action against Party B pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Party B.

10.15 Compliance with Americans with Disabilities Act. Party B acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities

provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Party B shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Party B agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Party B, its employees, agents or assigns will constitute a material breach of this Agreement.

10.16 Limitations on Contributions. Through execution of this Agreement, Party B acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

10.17 Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Party B may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, "Political Activity") in the performance of the services provided under this contract. Party B agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Party B violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit Party B from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor's use of profit as a violation of this section.

10.18 Use of City Opinion. Party B shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Party B or Party B's performance under this contract without prior written permission of the SFPUC.

10.19 Compliance with Laws. Party B shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of the Agreement, and must at all times materially comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. City shall provide notice to Party B of any such amendment to the City's Charter, codes, ordinances and regulations of which it becomes aware.

10.20 Compliance Reporting. Upon the request, Parties shall provide all information reasonably necessary for the other Party to timely comply with compliance reporting requirements, including but not limited to RPS, Power Content label disclosures, Resource Adequacy, and carbon emissions to the appropriate Governmental Entities, and as otherwise required by Applicable Law with respect to any Product.

10.21 FERC Standard of Review: Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. __ (2008) (the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).