

File No. 191203

Committee Item No. A

Board Item No. 27

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 15, 2020

Board of Supervisors Meeting

Date January 28, 2020

Cmte Board

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Completed by: Linda Wong Date January 10, 2020

Completed by: Linda Wong Date January 17, 2020

1/15/2020

FILE NO. 191203

ORDINANCE NO.

1 [Authorizing Agreements - Purchase of Electricity and Related Products and Services for
2 CleanPowerSF - Public Utilities Commission - Waiver of Certain Administrative Code and
3 Environment Code Provisions]

4 **Ordinance delegating authority under Charter, Section 9.118, to the General Manager of**
5 **the Public Utilities Commission to enter into agreements with terms in excess of ten**
6 **years or requiring expenditures of \$10,000,000 or more for power and related products**
7 **and services required to supply San Francisco's community choice aggregation**
8 **program, CleanPowerSF, subject to specified conditions; authorizing the use of pro**
9 **forma agreements for the purchase and sale of power and related products; and**
10 **authorizing deviations from certain contract requirements in the Administrative Code**
11 **and the Environment Code.**

12 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
15 **Board amendment additions** are in Arial font.
16 **Board amendment deletions** are in ~~Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

19 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. General Background.

21 (a) State law allows cities and counties to develop Community Choice Aggregation
22 (CCA) programs, through which local governments supply electricity to serve the needs of
23 participating customers within their jurisdictions while the existing utility continues to provide
24 services such as customer billing, transmission, and distribution.

25 (b) The City has elected to implement a CCA program to provide San Francisco
residents and businesses the option to receive cleaner, more sustainable electricity at rates

1 comparable to PG&E's rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12, and
2 78-14; and Resolution Nos. 348-12, 331-13, and 75-15.

3 (c) In May 2016, the San Francisco Public Utilities Commission (PUC) launched
4 CleanPowerSF with initial service to almost 8,000 accounts. In July 2019, PUC completed the
5 final phase of customer enrollment. CleanPowerSF now serves over 400,000 accounts. As
6 required by State law for all CCA programs, customers are given several opportunities to opt
7 out of CleanPowerSF service.

8 (d) CleanPowerSF currently offers two levels of supply service: Green, the default
9 service taken by more than 98% of customers, which contains at least 40% renewable and
10 80% greenhouse-gas free energy; and SuperGreen, a premium option selected by 1.6% of
11 customers, which offers 100% renewable and greenhouse-gas free energy.

12 (e) The goals of CleanPowerSF are to provide affordable and reliable electricity
13 services, cleaner energy alternatives advancing the City's Greenhouse Gas reduction goals,
14 investment in local renewable energy projects and jobs, and long-term rate and financial
15 stability.

16 (f) City law requires standard contract provisions to protect the City's interests,
17 ensure accountability, and promote important social values. In Ordinance Nos. 75-15, 223-
18 15, and 8-18, the Board of Supervisors authorized the PUC to use certain pro forma contracts
19 for procurement of energy and energy-related products and deviate from certain otherwise
20 applicable contracting requirements, subject to specified conditions. The Board also
21 delegated authority to the PUC General Manager (General Manager) to enter into agreements
22 with terms in excess of ten years or requiring expenditures of \$10,000,000 or more, subject to
23 specified conditions.

1 Section 2. Background: Short-term Contracts for Electricity and Electricity-related
2 Products.

3 (a) To secure the best possible prices and terms, PUC needs to engage, in an
4 expedited time frame, in a continual process of procuring power and simultaneously
5 negotiating a mix of short-term contracts for a diverse supply of electricity and electricity-
6 related products with multiple suppliers.

7 (b) The wholesale energy markets are highly dynamic and complex with multiple
8 market participants competing for energy supplies. To be competitive and to obtain the lowest
9 cost supplies for their customers, participants must be able to execute contracts for supplies
10 in very short time frames, sometimes within days of receipt of the offer to purchase or sell the
11 energy supplies.

12 (c) All energy market participants use industry-standard pro forma contracts; many
13 public and private utilities and energy suppliers will not execute energy transactions with
14 terms under five years using any contract other than the industry-standard pro forma
15 contracts. Using these agreements facilitates negotiations by focusing the parties on the
16 elements that are most likely to differ from one transaction to another: price, quantity, location,
17 and duration. These pro forma contracts provide standard terms and conditions that address
18 common issues, but allow parties to determine which provisions to include in a particular
19 contract.

20
21 Section 3. Results of Solicitation for Long-term Renewable Energy Contracts for
22 CleanPowerSF.

23 (a) The PUC issued a Request for Offers in September 2019 (2019 RFO) seeking
24 bids for energy, environmental attributes, and capacity from new or existing eligible renewable
25 resources located in Northern California, for contracts of up to 25 years in duration. The RFO

1 stated a preference for projects located in the nine-county Bay Area and invited bidders to
2 propose energy storage projects that are stand-alone or co-located with a renewable energy
3 facility. A copy of the renewable energy RFO is on file with the Clerk of the Board of
4 Supervisors in File No. 191203.

5 (b) The PUC received more than 43 bids from 13 different companies, for supplies
6 from 16 different renewable energy generation and energy storage resources. After the
7 evaluation team reviewed the bids to determine compliance with minimum qualifications and
8 criteria specified in the RFO, the PUC shortlisted bidders for further consideration and
9 possible negotiations. The shortlisted bidders are: Candela Renewables, LLC; EDF
10 Renewables, Inc.; E.ON Climate & Renewables North America, LLC; Intersect Power; LS
11 Power Development; NextEra Energy Resources Development, LLC; Recurrent Energy
12 Development Holdings, LLC; Solar Frontier Americas, Inc.; and TGP Energy Management,
13 LLC.

14 (c) The RFO invited the bidders to submit proposals for community benefits to be
15 invested in San Francisco and/or the county in which the renewable project is or will be
16 located. Community Benefits are firm commitments on the part of the bidder to be delivered to
17 the community during the term of the contract in accordance with the PUC's 2011 Community
18 Benefits Policy and 2009 Environmental Justice Policy, which direct the PUC and its partner
19 firms to be a good neighbor to all who are directly impacted by its activities and investments.

20 (d) In its regular meeting of October 22, 2019, the PUC Commission approved the
21 pool of qualified bidders for energy supply contracts referenced in subsection (b) above, and
22 authorized the General Manager to negotiate energy supply contracts with one or more of
23 those bidders, and to execute one or more contracts, subject to the following conditions:

24 (1) the total cost of the executed contracts is consistent with the rate-setting
25 methodology adopted by the Commission in Resolution 15-0112;

1 (2) the renewable energy supplied under a contract pursuant to the
2 renewable energy RFO is from resources located in Northern California;

3 (3) the counterparties to any contract must maintain an acceptable credit
4 rating or provide equivalent credit support or performance assurance for the duration of the
5 contract through an acceptable credit mechanism;

6 (4) the total combined volume of power procured under contracts pursuant to
7 the renewable energy RFO shall not exceed 350 megawatts per year;

8 (5) the duration of any contract under the renewable energy RFO shall not
9 exceed 25 years, unless the Commission approves a contract extension; and

10 (6) the total cost of all energy supply contracts under the renewable energy
11 RFO shall not exceed \$35 million per year.

12 (e) PUC expects to negotiate contracts with one or more of the bidders identified in
13 subsection (b) above, for renewable energy and energy storage projects and to make
14 purchases under one or more of the contracts after approvals and final pricing. PUC
15 anticipates that delivery of energy from the executed contracts will begin in 2021. The
16 General Manager will not execute any contracts unless the conditions specified by the PUC
17 Commission have been satisfied, including requirements for program rates. Final program
18 rates will provide for program cost recovery, including energy procurement and administrative
19 and financial costs of program implementation.

20
21 Section 4. Grant of Authority to Use Industry Standard Pro Forma Power Contracts.

22 As approved in Ordinance Nos. 75-15, 223-15, and 8-18; and for the reasons stated
23 therein in addition to the reasons stated above, for purchases of energy and related products
24 and services necessary to provide service, the Board of Supervisors, as stated in subsection
25

1 (c) below, authorizes the use of the following standardized contracts that deviate from the
2 City's contract forms for the purchase of energy and energy-related products.

3 (a) Western System Power Pool (WSPP) Agreement. The WSPP is a group of
4 more than 300 publicly-owned and private utilities, CCAs, and energy traders, including
5 Alameda Municipal Power, the City of Palo Alto, the City of Roseville, the Sacramento
6 Municipal Utility District, and Silicon Valley Power, all of which operate publicly-owned utilities.
7 The City, through PUC, is a member of the WSPP. The WSPP has developed an agreement
8 that sets forth standard terms and conditions for the purchase and sale of power and related
9 products and services. A copy of the current WSPP agreement is on file with the Clerk of the
10 Board of Supervisors in File No. 191203, and is incorporated herein by reference as though
11 fully set forth. The WSPP agreement has been approved by the Federal Energy Regulatory
12 Commission (FERC). The WSPP agreement is periodically updated and modified subject to
13 the approval of FERC. The Board of Supervisors authorized the use of the WSPP agreement
14 to procure electricity and related products in Ordinance Nos. 75-15, 223-15, and 8-18.

15 (b) The Edison Electric Institute (EEI) Master Agreement. The EEI, in collaboration
16 with more than 80 member utilities, power marketers, power generators, and customer
17 representatives, developed an agreement that sets forth standard terms and conditions for the
18 purchase and sale of power and related products and services. The EEI agreement is
19 updated as needed to reflect market changes. A copy of the current EEI agreement is on file
20 with the Clerk of the Board of Supervisors in File No. 191203 and is incorporated herein by
21 reference as though fully set forth. The Board of Supervisors authorized the use of the EEI
22 agreement in Ordinance No. 75-15, 223-15, and 8-18.

23 (c) The Board of Supervisors authorizes the use of the WSPP agreement and the
24 EEI agreement for the purchase and sale of energy and related products and services that do
25

1 not exceed five years, notwithstanding that the terms of those agreements may deviate from
2 the City's standard contract terms; and the Board of Supervisors authorizes modifications to
3 the form agreements so long as such modifications, in the judgment of the General Manager
4 and the City Attorney, do not materially decrease the City's rights or materially increase its
5 liabilities.

6
7 Section 5. Grant of Authority to Use City Pro Forma Power Contracts.

8 (a) The PUC has developed its own standardized contract forms for short- and long-
9 term contracts for energy and related products and services, combining standard industry
10 terms with key City requirements. Ordinance Nos. 75-15, 223-15, and 8-18 authorized the
11 use of form agreements developed by PUC for CleanPowerSF purchases. Each of these
12 form agreements is on file with the Clerk of the Board of Supervisors in File No. 191203 and is
13 incorporated herein by reference as though fully set forth:

- 14 (1) Renewable Power Purchase Agreement; and
15 (2) Power Purchase and Sale Agreement.

16 (b) The Board of Supervisors approves the pro forma contracts referenced in
17 subsections (a)(1) and (2) above, developed by PUC for the purchase of power and related
18 products and services, notwithstanding that the terms of those agreements may deviate from
19 the City's standard contract terms; and the Board of Supervisors authorizes modifications to
20 the pro forma contracts so long as such modifications, in the judgment of the General
21 Manager and the City Attorney, do not materially decrease the City's rights or materially
22 increase its liabilities.

1 Section 6. Waiver of Certain Contract-Related Requirements in the Administrative
2 Code and the Environment Code.

3 (a) Where the General Manager finds and documents in writing both that the
4 transaction represents the best opportunity available to the City to obtain essential services
5 and products in a manner beneficial to the City, and that it is not feasible to add all standard
6 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of
7 the following standard contract provisions for transactions using the WSPP, EEI, or City pro
8 forma agreements to the extent found necessary by the General Manager, and provided the
9 General Manager finds such waivers to be reasonable and in the public interest:

10 (1) Implementing the MacBride Principles (Administrative Code Chapter
11 12F);

12 (2) Increased participation by small and micro local businesses in City
13 contracts (Administrative Code Chapter 14B);

14 (3) The competitive bidding requirement (Administrative Code Section 21.1);

15 (4) First source hiring requirements (Administrative Code Chapter 83); and

16 (5) The tropical hardwood and virgin redwood ban (Environment Code
17 Chapter 8).

18 (b) Where the General Manager finds and documents in writing both that the
19 agreement represents the best opportunity available to the City to obtain essential services
20 and products in a manner beneficial to the City, and that it is not feasible to add all standard
21 City contract provisions to the agreement, the Board of Supervisors waives the requirement to
22 include in the agreement references to the following City Code provisions to the extent found
23 necessary by the General Manager, and finds such waivers to be reasonable and in the public
24 interest:

1 (1) Public access to meeting and records of non-profit organizations
2 (Administrative Code Section 12L);

3 (2) Sweatfree Contracting (Administrative Code Section 12U.4); and

4 (3) Food service waste reduction (Environment Code Section 1605).

5 (c) The waivers specified in this Section 6 shall apply only to contracts which
6 include language requiring compliance with all applicable federal, state, and local laws.

7
8 Section 7. Community Benefits in 2019 RFO.

9 The Board of Supervisors finds that the community benefits component of the 2019
10 RFO for renewable energy supplies is reasonable and beneficial to the City and authorizes its
11 inclusion in contracts, where the General Manager deems feasible and appropriate, so long
12 as the PUC Commission finds, in a public meeting, that the community benefits component is
13 reasonable and serves a utility-related purpose.

14
15 Section 8. Delegation of Authority Under Charter Section 9.118 to the PUC General
16 Manager.

17 Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
18 delegates authority to the General Manager to enter into the following contracts:

19 (a) For renewable energy and energy storage supplies for CleanPowerSF from
20 bidders selected by competitive solicitation as described above in Section 3 of this ordinance,
21 using contracts with terms in excess of 10 years or requiring expenditures of \$10,000,000 or
22 more including amendments to such agreements with an impact of greater than \$500,000,
23 subject to the following conditions:

24 (1) The total cost of the contracts with terms from 1 to 25 years shall not
25 exceed \$35,000,000 per year.

1 (2) The City's payment obligations shall be special limited obligations of the
2 City payable solely from the revenues of CleanPowerSF.

3 (3) All conditions established by the PUC Commission shall be met, including
4 but not limited to requirements regarding program rates, program expansion, and electricity
5 portfolio content so long as the contract term does not exceed 25 years, inclusive of
6 extensions, and subject to the conditions specified above in Section 3.

7 (b) The PUC shall submit annual reports to the Board of Supervisors that include
8 annual costs for CleanPowerSF operations, the rates charged by the PUC to CleanPowerSF
9 customers to recover costs, and a comparison of CleanPowerSF rates to PG&E rates.

10
11 Section 9. Effective Date.

12 This ordinance shall become effective 30 days after enactment. Enactment occurs
13 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
14 sign the ordinance within 10 days of receiving it, or the Board of Supervisors overrides the
15 Mayor's veto of the ordinance.

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By:


20 THERESA CHO
21 Deputy City Attorney
22
23
24
25

LEGISLATIVE DIGEST

[Authorizing Agreements - Purchase of Electricity and Related Products and Services – Public Utilities Commission]

Ordinance delegating authority under Charter Section 9.118 to the General Manager of the Public Utilities Commission (PUC) to enter into agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for power and related products and services required to supply San Francisco's community choice aggregation program, CleanPowerSF, subject to specified conditions; authorizing the PUC to use pro forma agreements to purchase and sell electricity and related products and services; and authorizing the General Manager of the PUC in such agreements to deviate from certain otherwise applicable contract requirements under specified circumstances.

Existing Law

Section 9.118(b) of the Charter requires approval by the Board of Supervisors for agreements with an expected term longer than ten years or requiring expenditures of 10 million dollars or more.

The San Francisco municipal codes contain many contracting requirements for the procurement of goods and services. In certain instances, the Board of Supervisors may exempt contracts from these requirements via ordinance.

Amendments to Current Law

This ordinance would not amend current law.

Authority Granted

This ordinance would delegate authority to the General Manager of the Public Utilities Commission (PUC) to enter contracts for renewable energy and energy storage that exceed ten years in duration or cost \$10 million or more for the PUC's community choice aggregation program, CleanPowerSF. The ordinance makes this approval subject to several conditions, including the following: the total costs of the contracts is consistent with the PUC's rate setting methodology; the contracts are for renewable energy and energy storage resources; the total combined volume of power under the contracts does not exceed 350 megawatts per year; the duration of any individual contract does not exceed 25 years, inclusive of contract extensions, and; the total cost of the contracts does not exceed \$35,000,000 per year. The procurement authority granted in this ordinance is limited to renewable energy contracts resulting from an August 2019 request for offers issued by CleanPowerSF.

To support the PUC's municipal electric utility and CleanPowerSF, this ordinance also authorizes the PUC to use two industry standardized agreements – the Western Systems

AMENDED IN COMMITTEE
1/15/2020

FILE NO. 191203

Power Pool Agreement and the Edison Electric Institute Master Agreement – and the City's own pro forma power purchase agreements for the purchase and sale of electricity and related products and services. The ordinance would also allow the General Manager of the PUC to waive certain City contracting requirements for these pro forma agreements if it is not feasible to include those requirements in these pro forma agreements and subject to specified conditions.

Background Information

The City, acting through the San Francisco Public Utilities Commission (PUC), has implemented a program called CleanPowerSF. Under this program, the City provides electricity to participating customers at prices similar to PG&E's prices. PG&E continues to deliver the energy. In 2018, CleanPowerSF's Green product delivered 48 percent renewable energy and the Supergreen product delivered 100 percent renewable energy. This program is authorized by state law. See, e.g., Public Utilities Code § 366.2.

The PUC first launched CleanPowerSF service in 2016. To prepare for that initial launch and subsequent expansions of CleanPowerSF service, the Board of Supervisors approved similar ordinances granting purchasing authority. See Ordinance Nos. 75-15, 223-15, and 8-18. CleanPowerSF currently serves over 400,000 customers and offers service throughout all of San Francisco. The costs of CleanPowerSF contracts will be paid by revenues from the customers participating in the program.

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<p>Item 4 File 19-1203</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> The proposed ordinance would allow the SFPUC to (1) enter into contracts with up to nine providers of renewable energy products that have terms of up to 25 years and have a combined annual cost of up to \$35 million using standardized power contracts without further Board of Supervisors' approval and (2) waive certain standard contracting provisions required by the City's municipal codes for such contracts. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> In August 2019, the SFPUC released a Request for Offers (RFO) seeking proposals for sale and purchase of renewable energy sources to help it meet State and local energy mix goals. The SFPUC evaluated proposals and developed a short list of ten qualifying projects from nine contractors. Of the ten projects, eight are solar or solar and energy storage; one is wind, and one is for energy storage. The proposed ordinance only applies to contracts for proposals that were part of this RFO. According to Mr. Michael Hyams, Director of CleanPowerSF, delegating contract authority and using industry standard contracts provides CleanPowerSF with flexibility to allow it to obtain the best pricing for its customers as it competes with other energy providers to contract for a limited number of renewable energy projects. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> Under the proposed ordinance, the combined cost of the contract amounts cannot total more than \$35 million per year without further Board of Supervisors' approval. According to Mr. Hyams, the \$35 million annual cap is based on the expected cost of the contracts. Payment for all contract costs would be from CleanPowerSF rate payer revenues. 	
<p style="text-align: center;">Policy Consideration</p>	
<ul style="list-style-type: none"> Because the proposed ordinance waives (1) standard contracting provisions required by the City's municipal codes; and (2) the Board of Supervisors authority under Charter Section 9.118, authorizing the SFPUC to enter into contracts longer than ten years or in an amount of \$10,000,000 or more without further Board of Supervisors approval, approval of the proposed ordinance is a policy matter for the Board of Supervisors. 	
<p style="text-align: center;">Recommendations</p>	
<ul style="list-style-type: none"> Amend Sections 8 (a) (1) and 8 (a) (3) of the proposed ordinance to clarify that any contract modification extending the contract term in excess of 25 years requires Board of Supervisors' approval. Approval is of the proposed ordinance is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

State law allows local governments to form Community Choice Aggregators (CCA), which are government operated retail electricity programs that supply electricity to their customers. State law requires CCA customers to rely on investor owned utility distribution infrastructure.¹ The SFPUC's CleanPowerSF program is a CCA that provides electricity generation service to residents and businesses in San Francisco and relies on PG&E distribution infrastructure to deliver power to its customers. CleanPowerSF was launched by the SFPUC to provide affordable and reliable electricity service, cleaner electricity alternatives, local renewable projects and jobs, and long-term rate and financial stability.

According to the audited Annual Audited Financial Statement for FY 2018-19, CleanPowerSF revenues are sufficient to cover its operations.

State and Local Energy Mix Goals

The State's Renewable Portfolio Standard (RPS) requires retail electricity providers to maintain a minimum percent of electricity sourced from renewable sources. RPS-eligible renewable sources include solar, wind, biomass, geothermal and small hydroelectric generation. CleanPowerSF provides electricity from renewable resources and also from the SFPUC Hetch Hetchy project. Exhibit 1 below shows the City's current and expected energy source mix relative to the State's Renewable Portfolio Standard.

Exhibit 1: CleanPowerSF Renewable Sources

	2018	2030
State Requirement	33%	60%
CleanPowerSF	48%	>70%*

*SFPUC is planning for CleanPowerSF to have at least 70% RPS-eligible renewable resources and 100% greenhouse gas free energy by 2030.

Source: SFPUC

As shown above, CleanPowerSF's energy mix included 48 percent from RPS-eligible renewable sources, which exceeds the current State requirement of 33 percent. By 2030, the State will require electricity providers to source 60 percent of their electricity from RPS-eligible

¹ Distribution infrastructure refers to infrastructure connecting customers to electricity, such as utility poles, overhead wires, and underground connections to customers.

renewable resources. According to Mr. Michael Hyams, Director of CleanPowerSF, the enterprise is planning to achieve at least 70 percent of its electricity from RPS-eligible renewable sources and 100% from greenhouse gas free renewable resources by 2030. According to Mr. Hyams, the contracts that are subject of the proposed ordinance will help CleanPowerSF meet the City's renewable energy goals and to comply with State requirements.

2019 Request for Offers

In August 2019, the SFPUC released a Request for Offers (RFO) seeking proposals for sale and purchase of renewable energy sources, with a preference for projects within the nine counties that comprise the Bay Area. Projects must begin delivering energy between January 2021 and December 2024. The 2019 RFO also solicited community benefit projects as part of bidder proposals. The SFPUC evaluated² proposals from sixteen providers and developed a short list of ten qualifying projects from nine contractors. Of the ten projects, eight are solar or solar and energy storage, one is wind, and one is for energy storage. Nine of the ten short list proposals contain provisions for community benefit projects. The short list contractors are:

1. Candela Renewables, LLC
2. EDF Renewables, Inc.
3. E.ON Climate & Renewables North America, LLC
4. Intersect Power
5. LS Power Development
6. NextEra Energy Resources Development, LLC
7. Recurrent Energy Development Holdings, LLC
8. Solar Frontier Americas, Inc.
9. TGP Energy Management, LLC.

Prior Board of Supervisors' Authorization

In January 2018, the Board of Supervisors approved an ordinance that allowed the SFPUC to (1) enter into contracts of \$10,000,000 or more or 10 years or more using standardized power contracts; (2) enter into an agreement for credit and liquidity support with JPMorgan; and (3) waive certain standard contracting provisions required by the City's municipal codes, without further Board of Supervisors approval (File 17-1172).

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would delegate authority to the SFPUC to enter into contracts without further Board of Supervisors' approval for renewable energy and energy storage for proposals that were part of the 2019 RFO described above. Such contracts may have a term of up to 25 years and the total cost of the contracts may not exceed \$35 million per year in aggregate.

² The evaluation panel consisted of SFPUC Staff in the Origination and Power Supply and Capital Finance divisions. Community benefit proposals were assessed by the SFPUC Social Impact Partnership Coordinator, the SFPUC Manager of Policy & Community, the Deputy Director of the Strategic Growth Council (a State entity), and a Program Fellow at the San Francisco Foundation (a non-profit).

According to Mr. Hyams, requesting Board of Supervisors' approval of a pool of qualified projects provides CleanPowerSF with flexibility to allow it to obtain the best pricing for its customers as it competes with other energy providers to contract for a limited number of renewable energy projects. The proposed delegated contract authority will allow CleanPowerSF to contract for renewable energy more quickly and with more certainty relative to standard City processes.

SFPUC Commission Requirements

In October 2019, the SFPUC Commission similarly delegated contract authority to the SFPUC General Manager under the following conditions:

- a) the total cost of the executed contracts is consistent with the rate-setting methodology adopted by the Commission in Resolution 15-0112³
- b) the renewable energy is supplied under a contract pursuant to the 2019 RFO
- c) the counterparties to any contract must maintain an acceptable credit rating or provide equivalent credit support or performance assurance for the duration of the contract through an acceptable credit mechanism
- d) the total combined volume of power procured under contracts pursuant to the renewable energy RFO shall not exceed 350 megawatts per year
- e) the duration of any contract under the 2019 RFO shall not exceed 25 years, unless the SFPUC Commission approves a contract extension
- f) the total cost of all energy supply contracts under the renewable energy RFO shall not exceed \$35 million per year

Sections 8 (a) (1) and 8 (a) (3) of the proposed ordinance should be amended to clarify that any contract modification extending the contract term in excess of 25 years requires Board of Supervisors' approval.

Contract Attributes

The proposed ordinance would also allow SFPUC to enter into contracts for purchase and sale of power and related products and services with certain attributes that deviate from the City's contract forms. The contracts must be consistent with one of following standards:

- a. Western System Power Pool⁴ Agreement, approved by the Federal Energy Regulatory Commission (FERC) (contract may be up to five years)
- b. Edison Electric Institute⁵ Master Agreement (contract may be up to five years)
- c. Pro forma agreements developed by SFPUC for three types of energy supply, combining standard industry terms with City requirements

³ SFPUC Commission Resolution 15-0112 outlines the policy framework for CleanPowerSF rates.

⁴ SFPUC is a member of the Western System Power Pool, which is a group of more than 300 publicly-owned and private utilities.

⁵ Edison Electric Institute is the association that represents investor-owned electric companies in the U.S. They developed the master agreement in collaboration with 80 member utilities, power marketers, and customer representatives.

- i. Renewable Power Purchase Agreement
- ii. Power Purchase and Sale Agreement

According to Mr. Hyams, using industry standard contracts will allow CleanPowerSF to participate competitively in the market for renewable energy generation and storage.

Waiver of Standard City Contract Requirements

The proposed ordinance would also waive the following standard contract and City code provisions, upon the SFPUC finding and documenting that (1) the transaction/agreement represents the best opportunity available to the City to obtain essential services and products in a manner beneficial to the City, and (2) it is not feasible to add all standard City contract provisions to the agreement.

- a. Implementing the MacBride Principles (Administrative Code Chapter 12F)
- b. Increased participation by small and micro local businesses in City contracts (Administrative Code Chapter 14B)
- c. The competitive bidding requirement (Administrative Code Section 21.1)
- d. First source hiring requirements (Administrative Code Chapter 83)
- e. The tropical hardwood and virgin redwood ban (Environment Code Chapter 8)
- f. Public access to meeting and records of non-profit organizations (Administrative Code Section 12L)
- g. Sweatfree Contracting (Administrative Code Section 12U.4)
- h. Food service waste reduction (Environment Code Section 1605)

According to Mr. Hyams, the City's standard contract terms identified in the proposed ordinance are not standard electric industry terms and many energy sellers reject such standard terms or will mark up the cost of the energy to account for what they may consider a non-market condition and liability.

Reporting to the Board of Supervisors

As with the prior delegation of authority for contracting for renewable energy products, the proposed ordinance requires annual reports to the Board of Supervisors that include annual costs for CleanPowerSF operations, the rates charged by the PUC to CleanPowerSF customers to recover costs, and a comparison of CleanPowerSF rates to PG&E rates.

FISCAL IMPACT

Under the proposed ordinance, the total cost of the contract amounts cannot total more than \$35 million per year without further Board of Supervisors' approval. Payment for all contract costs would be from CleanPowerSF rate payer revenues.

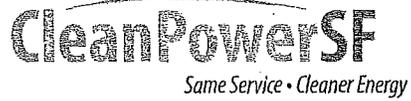
Under the proposed ordinance, the cost of the contracts must be consistent with SFPUC's rate setting methodology approved by the SFPUC Commission for CleanPowerSF. CleanPowerSF rates must be approved by the SFPUC Commission and the Board of Supervisors.

POLICY CONSIDERATION

Because the proposed ordinance waives (1) standard contracting provisions required by the City's municipal codes, and (2) the Board of Supervisors authority under Charter Section 9.118, authorizing the SFPUC to enter into contracts longer than ten years or in an amount of \$10,000,000 or more without further Board of Supervisors approval, approval of the proposed ordinance is a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. Amend Sections 8 (a) (1) and 8 (a) (3) of the proposed ordinance to clarify that any contract modification extending the contract term in excess of 25 years requires Board of Supervisors' approval.
2. Approval of the proposed ordinance is a policy matter for the Board of Supervisors.



RENEWABLE POWER PURCHASE AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO,
ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION
AND
[SELLER]

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1: DEFINITIONS	1
ARTICLE 2: ARTICLE 2: CONDITIONS PRECEDENT AND TERM.....	11
2.1 Conditions Precedent to Term of Agreement	11
2.2 Term, Delivery Term, and Extension	11
ARTICLE 3: PURCHASE AND SALE	13
3.1 Purchase and Sale of Product	13
3.2 Contract Price	13
3.3 Contract Quantity	14
3.4 Guaranteed Energy Production.....	14
3.5 Environmental Attributes	15
3.6 Resource Adequacy	16
3.7 Compliance Cost Cap.....	17
3.8 Tax Credits and Incentives	17
3.9 Expansion Facility and Expansion Facility Product.....	18
3.10 Refurbishment of the Facility	18
ARTICLE 4: BILLING, PAYMENT, AND CERTIFICATION.....	19
4.1 Billing and Payment	19
4.2 Designated Fund/Limited Obligations.....	20
4.3 Guaranteed Maximum Costs	20
ARTICLE 5: FACILITY DEVELOPMENT, OPERATION, AND MAINTENANCE	21
5.1 General Obligations.....	21
5.2 The Facility.....	21
5.3 Facility Construction and Milestones	22
5.4 Milestone Excused Delay and Liquidated Damages	23
5.5 Operation and Maintenance.....	25
5.6 Scheduling, Forecasts, and Outages	26
ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE	29
6.1 Grant of Security Interests/Remedies	29
6.2 Development Assurance and Performance Assurance	30
6.3 Letter of Credit	31

6.4	Guaranty	31
ARTICLE 7: FINANCIAL STATEMENT		32
7.1	Seller's Obligations	32
7.2	Buyer's Obligations	32
ARTICLE 8: FORCE MAJEURE		32
8.1	Remedial Action.....	32
8.2	Notice	32
8.3	Termination Due to Force Majeure Event.....	32
ARTICLE 9: DEFAULT, REMEDIES, AND TERMINATION		33
9.1	Events of Default.....	33
9.2	Termination for Default.....	33
9.3	Limitation of Liability/Liquidated Damages.....	35
ARTICLE 10: INDEMNIFICATION.....		36
10.1	Indemnification.....	36
ARTICLE 11: REPRESENTATIONS AND WARRANTIES.....		36
11.1	Seller's Representations and Warranties	36
11.2	Buyer's Representations and Warranties.....	37
11.3	Covenants	38
ARTICLE 12: MISCELLANEOUS		38
12.1	Assignment.....	38
12.2	Proprietary or Confidential Information.....	39
12.3	Dispute Resolution; Choice of Law.....	40
12.4	Audit.....	41
12.5	General	41
12.6	Mobile Sierra	43
12.7	Forward Contract.....	43
12.8	Notices.....	43
12.9	Counterparts	44

EXHIBITS

The follows Exhibits constitute a part of this Agreement and are incorporated into the Agreement by reference.

EXHIBIT A	SELLER DOCUMENTATION OF CONDITIONS PRECEDENT
EXHIBIT B	FACILITY DESCRIPTION AND SITE DRAWINGS
EXHIBIT C	CONTRACT QUANTITY
EXHIBIT D	INSURANCE COVERAGES
EXHIBIT E	CONSTRUCTION START CERTIFICATION
EXHIBIT F	QUARTERLY PROGRESS REPORT
EXHIBIT G-1	COMMERCIAL OPERATION CERTIFICATION PROCEDURE
EXHIBIT G-2	COMMERCIAL OPERATION CERTIFICATION
EXHIBIT H	DELIVERY START DATE CONFIRMATION
EXHIBIT I	FORM OF LETTER OF CREDIT
EXHIBIT J	CAISO CHARGE CODES
EXHIBIT K	BUYER AS SCHEDULING COORDINATOR

POWER PURCHASE AGREEMENT

COVER SHEET

This Renewable Power Purchase Agreement ("Agreement") is entered into between the City and County of San Francisco, acting by and through its Public Utilities Commission, Power Enterprise ("Buyer") and _____, a _____ ("Seller"), as of _____ (the "Execution Date"). The Agreement shall include the exhibits, attachments, any written and fully executed supplements hereto, and any designated collateral, credit support, or similar arrangement between the Parties.

A. Transaction

Product: Energy and associated Environmental Attributes and Capacity Attributes

Facility:

Address:

Expected Initial Capacity:

Contract Price:

Delivery Point:

Delivery Term:

Deliverability:

B. Milestones

Permitting Milestone:

Construction Milestone:

Major Equipment Milestone:

Commercial Operation Milestone:

C. Seller Collateral:

D. Notices

<p>Buyer: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF</p>	<p>Seller:</p>
<p>All Notices: 525 Golden Gate Ave, 7th Floor San Francisco, CA, 94102 Attn: Contract Administration Phone: 415-554-4603 Facsimile: 415-554-3225</p>	<p>All Notices: Phone: Facsimile: Email:</p>
<p>Federal Tax ID Number: 946000417</p>	<p>Federal Tax ID Number: DUNS Number:</p>
<p>Invoices: PowerInvoices@sfgwater.org Attn: Angie Lee Phone: (415) 554-2451 Facsimile: (415) 554-3280 Email: Alee@sfgwater.org Attn: Daisy Ngan Phone: (415) 551-4528 Facsimile: (415) 554-3280 Email: Dngan@sfgwater.org</p>	<p>Invoices: Attn: Phone: Facsimile: Email:</p>
<p>Scheduling: Attn: Sunita Jones Phone: (415) 554-1575 Email: SKJones@sfgwater.org PowerScheduler@sfgwater.org</p>	<p>Scheduling: Attn: Phone: Facsimile: Email:</p>
<p>Payments: PowerInvoices@sfgwater.org Attn: Angie Lee Phone: (415) 554-2451 Facsimile: (415) 554-3280 Email: Alee@sfgwater.org Attn: Daisy Ngan Phone: (415) 551-4528 Facsimile: (415) 554-3280 Email: Dngan@sfgwater.org</p>	<p>Payments: Attn: Phone: Facsimile: Email:</p>
<p>Wire Transfer: BNK: ABA (ACH): ACCT:</p>	<p>Wire Transfer: BNK: ABA: ACCT:</p>

<p>Credit and Collections: Attn: Rich Morales Phone: (415) 551-2973 Facsimile: (415) 487-5258 Email: Rmorales@sfgwater.org</p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Attn: Michael Hyams Phone: (415) 554-1590 Email: MHyams@sfgwater.org</p>	<p>Credit and Collections: Attn: Phone: Facsimile: Email:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Attn: Phone: Email:</p>
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RECITALS

1. Seller intends to develop, finance, build, own and operate a _____ powered generating facility located in _____; and,
2. Buyer operates CleanPowerSF, a community choice aggregator that serves retail customers in the City and County of San Francisco; and,
3. Buyer is willing to purchase, and Seller is willing to sell, the Product of the Facility, on the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of the recitals above and the following covenants, terms and conditions, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

AC: Alternating current.

Administrative CAISO Charges: Has the meaning set forth in Section 5.6(e)(i).

Affiliate: 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.

Agreement: Has the meaning set forth in the Cover Sheet.

Ancillary Services: Has the meaning set forth in the CAISO Tariff.

Annual Forecast: Has the meaning set forth in Section 5.6(e)(i).

Applicable Law: 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, including the CAISO, 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.

Automated Dispatch System: Has the meaning set forth in the CAISO Tariff.

Availability Standards: The program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder.

Bankrupt: With respect to any entity, such entity (a) 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 and such case filed against it is not dismissed within sixty (60) calendar days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.

Bid Cost Recovery: Has the meaning set forth in the CAISO Tariff.

Board of Supervisors: The Board of Supervisors for the City and County of San Francisco.

Business Day: Any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or a City and County of San Francisco holiday, between the hours of 8:00 a.m. and 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.

Buyer: The City and County of San Francisco, acting by and through its Public Utilities Commission.

Buyer Bid Curtailment: An event in which an Economic Bid or Self-Schedule for Energy or Ancillary Services submitted for a Settlement Interval in accordance with Section 5.6(b) results in a quantity of Delivered Energy than is less than the quantity of Energy in the Final Output Estimate for that Settlement Interval.

Buyer DAM Bid Price: The Buyer-determined price component of a bid that is used for an Economic Bid into the Day-Ahead Market, subject to adjustment pursuant to Section 5.6(b)(iii).

Buyer Indemnified Party: Has the meaning set forth in Section 10.1(a).

Buyer RTM Bid Price: The Buyer-determined price component of a bid that is used for an Economic Bid into the Real-Time Market, subject to adjustment pursuant to Section 5.6(b)(iii).

CAISO: The California Independent System Operator Corporation, or its functional successor.

CAISO Tariff: The California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

Calendar Quarter: Has the meaning set forth in Exhibit F.

Capacity Attributes: Any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the capacity of the Facility to produce energy, including any accounting construct, or any other measure by the CPUC, the CAISO, the FERC, or any other Governmental Authority with jurisdiction.

CEC: The California Energy Commission or any successor agency.

CEC Certification: Means that the CEC has certified, or pre-certified, that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Product produced by the Facility qualifies as generation from an ERR for purposes of the RPS.

CEQA: The California Environmental Quality Act, California Public Resources Code Sections 21000, et. seq., as it may be amended from time to time.

Change in Law: Has the meaning set forth in Section 12.5(f).

Charge Code: Has the meaning set forth in the CAISO Tariff.

City: The City and County of San Francisco.

CleanPowerSF: Buyer's Community Choice Aggregation Program.

COD Certification: Seller's certification of Commercial Operation in the form set forth as Exhibit G-2, duly executed by Seller and its Licensed Professional Engineer.

Commercial Operation: The condition of the Facility, whereupon it is certified by Seller to be operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

Commercial Operation Date: The date upon which Seller notifies Buyer that Commercial Operation has commenced by delivering to Buyer the COD Certification in accordance with Section 5.3(f).

Commercial Operation Milestone: Has the meaning set forth in Section 5.3(b)(iv).

Compliance Cost Cap: Has the meaning set forth in Section 3.7.

Compliance Costs: Has the meaning set forth in Section 3.7(a).

Confidential Information: Has the meaning set forth in Section 12.2(b).

Construction Milestone: Has the meaning set forth in Section 5.3(b)(ii).

Construction Start Date: The date on which Seller delivers to Buyer a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Facility.

Contract Price: Has the meaning set forth in Section 3.2.

Contract Quantity: The annual expected Energy production set forth in Exhibit C.

Contract Year: A period of twelve (12) consecutive months, commencing at 12:00 a.m. on the Delivery Start Date, and each subsequent Contract Year commencing on the twelve (12) month anniversary of the Delivery Start Date.

Controller: The Controller for the City and County of San Francisco.

Costs: With respect to a Non-Defaulting Party, (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

CPUC: The California Public Utilities Commission or any successor entity.

Credit Rating: 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 unsecured senior long-term debt, then the rating assigned to such entity as an issuer rating by Standard & Poor's Financial Services and/or Moody's Investors Service.

Curtailed Order: An order of the PTO, distribution provider, Reliability Coordinator, and/or CAISO (whether directly or through a Scheduling Coordinator or the PTO), for any reason, including, but not limited to, any System Emergency, any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or PTO's electric system integrity or the integrity of other systems to which the CAISO or the PTO is connected, including curtailment in accordance with Seller's obligations under its Interconnection Agreement with the PTO or distribution operator.

Customer Market Results Interface: Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

DA Percentage: An amount equal to zero percent (0%) of the Day-Ahead Forecast initially, subject to adjustment pursuant to Section 5.6(d).

Daily Liquidated Damages or Daily LD Amount: For each day or portion of a day for which delay liquidated damages are payable under Section 5.4(d), an amount equal to the total amount of Development Assurance required hereunder divided by 365.

Damage Payment: The dollar amount to be posted as Development Assurance pursuant to Section 6.2(a)(i).

Day-Ahead Forecast: Pursuant to CAISO Tariff Section 4.8.2, the forecast of the Facility's output for each Day-Ahead Market interval provided by the CAISO's independent forecast provider or by Seller if Seller is certified by CAISO to submit its own forecast.

Day-Ahead Market or DAM: Has the meaning set forth in the CAISO Tariff.

Deemed Delivered Energy: Has the meaning set forth in Section 5.6(b)(v).

Defaulting Party: The Party that has caused an Event of Default.

Delivered Energy: Has the meaning set forth in Section 4.1(a)(i)(A).

Delivery Point: _____

Delivery Start Date: Has the meaning set forth in Section 2.2(b)(i).

Delivery Term: Has the meaning set forth in Section 2.2(b)(i).

Development Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(a)(i) of this Agreement.

Economic Bid: Has the meaning set forth in the CAISO tariff.

Early Termination Date: Has the meaning set forth in Section 9.2(a)(i).

Effective Date: The date on which all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing by both Parties.

Electric System Upgrades: Any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Facility to the Participating Transmission Owner's electric system for receipt of Energy at the Point of Interconnection.

Eligible LC Bank: A U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a Credit Rating of at least A3 from Moody's or A- from S&P.

Eligible Renewable Energy Resource or ERR: Has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

Energy: Three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses.

Environmental Attributes: Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the sale of generation from the Facility or Expansion Facility(ies) to Buyer under this Agreement, and its avoided emission of pollutants. Environmental Attributes include, without limitation, Renewable Energy Credits as well as:

- (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;
- (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and
- (c) 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 Tag are accumulated on a MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of Energy.

Environmental Attributes do not include:

- (i) any Energy, capacity, reliability or other power attributes from the Facility,

- (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility 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 Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or biogas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

EPC Contract: The Seller’s engineering, procurement and construction contract with the EPC Contractor.

EPC Contractor: An engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement, and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of utility-scale renewable generating projects.

Event of Default: Has the meaning set forth in Section 9.1.

Excess Quantity: Has the meaning set forth in Section 3.2(b).

Execution Date: Has the meaning set forth in the Cover Sheet.

Expansion Facility: Any expansion of the Facility from its Initial Capacity, or any other electricity generating facility owned or controlled by Seller or its affiliates, located at the Site. Each such expansion of the Facility or additional facility shall be deemed to be an “Expansion Facility.”

Expansion Facility Product: All Product, associated Environmental Attributes, Ancillary Services, contributions towards Resource Adequacy or reserve requirements (if any) and any other reliability or power attributes produced by Seller at any Expansion Facility.

Expected Initial Capacity: Has the meaning set forth in Section 3.3(a)(i).

Extended Delivery Term: Has the meaning set forth in Section 2.2(c).

Facility: The power generation facilities to be constructed, owned and operated by Seller located on the Site for the generation and delivery of electricity as described in Exhibit B.

Facility Testing Completion: Has the meaning set forth in Exhibit G-1.

FERC: The Federal Energy Regulatory Commission and any successor organization.

Fifteen Minute Market or FMM: Has the meaning set forth in the CAISO Tariff.

Final Output Estimate: The final estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions. The Final Output Estimate shall be equal to the RTM Forecast initially and may be replaced pursuant to Section 5.6(e).

Fiscal Year: The period commencing on July 1 and ending on June 30 in the following calendar year.

FMM Price: The LMP for the CAISO Settlement Point for the relevant Settlement Interval in the FMM.

Force Majeure: An event or circumstance, including without limitation, a natural disaster, war, riot, act of terrorism, sabotage, destruction by a third party, or civil disturbance, which prevents one Party (“Claiming Party”) from performing its material obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the action or inaction 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. Neither Party may raise a claim of Force Majeure based in whole or in part on;

- (a) failures or delays by the PTO and/or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Agreement, including a failure to complete, or a delay in completing, interconnection or Electric System Upgrades by the Commercial Operation Milestone except to the extent that such delay is solely caused by a Force Majeure;
- (b) a strike, work stoppage or labor dispute;
- (c) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (d) Seller's inability to obtain Permits of any type, except where such failure is solely caused by a Force Majeure Event;
- (e) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;
- (f) a Curtailment Order; or
- (g) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic, including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy generated by the Facility at a higher price.

Forced Outage: Any unplanned reduction or suspension of the Energy from the Facility or unavailability of the Product in whole or in part from a unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

Forecast Fee: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status or FCDS: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status or FCDS Finding: A written or electronic confirmation from the CAISO that the Facility is eligible for FCDS.

GAAP: The standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant Securities Exchange Commission rule.

Gains: 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 the Agreement for the remainder of the Term, determined in a commercially reasonable manner, subject to Section 9.3. Factors used in determining economic benefit may include information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including the value of Environmental Attributes and Capacity Attributes.

GEP Period: Successive periods consisting of two (2) consecutive Contract Years with the first GEP Period commencing on the Delivery Start Date, and with each subsequent GEP Period commencing on the twelve (12) month anniversary of the commencement of the prior GEP Period.

GEP Shortfall: Has the meaning set forth in Section 3.4(a)(ii).

Good Utility Practice: Has the meaning set forth in the CAISO Tariff.

Governmental Authority: Any federal or state government, or political subdivision thereof, including, without limitation, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the CAISO.

Guaranteed Energy Production, or GEP: Has the meaning set forth in Section 3.4(a).

Guarantor: With respect to Seller, any Person that (a) is reasonably acceptable to Buyer, (b) has a Credit Rating of A- or better from Standard & Poor's Financial Services or a Credit Rating of A3 or better from Moody's Investor Service, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

Guaranty: A guaranty from a Guarantor provided for the benefit of Buyer as reasonably acceptable to Buyer.

Indemnified Party: Has the meaning set forth in Section 10.1(b).

Indemnifying Party: Has the meaning set forth in Section 10.1(b).

Installed Capacity: The actual generating capacity of the Facility, measured at the pNode for the Facility and adjusted for ambient conditions on the date of the performance test.

Interconnection Agreement: The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller, the PTO, and the CAISO governing the terms and conditions of the Facility's interconnection with the CAISO grid, including any description of the plan for interconnection of the Facility to the PTO's system.

Interconnection Facilities: Has the meaning set forth in the Interconnection Agreement.

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

Late Payment Penalty: Has the meaning set forth in Section 4.1(b).

Lender(s): Any Person(s) providing money or extending credit (including any capital lease) to Seller, including in the form of debt or tax equity, for (a) the construction of the Facility, (b) the term or permanent financing of the Facility, or (c) working capital or other ordinary business requirements for the Facility. "Lender(s)" shall not include any trade creditor(s) of Seller.

Letter of Credit: An irrevocable, non-transferable standby letter of credit issued by an Eligible LC Bank in a form that is substantially similar to the form contained in Exhibit J. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Licensed Professional Engineer: A Person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Facility, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

Locational Marginal Price, or LMP: Has the meaning set forth in the CAISO Tariff.

Losses: 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 the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner, subject to Section 9.3. Factors used in determining the loss of economic benefit may include reference to information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant

markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including Environmental Attributes and Capacity Attributes. "Losses" shall exclude any (1) associated loss of investment tax credits and other lost tax benefits and (2) any costs, penalties, fees, or charges associated with the termination of related financing agreements or similar obligations.

Major Equipment Milestone: Has the meaning set forth in Section 5.3(b)(iii).

Market Results Interface-Settlements: Has the meaning set forth in the CAISO BPM for Definitions and Acronyms.

Mechanical Completion: Has the meaning set forth in Exhibit G-1.

Monthly Forecast: Has the meaning set forth in Section 5.6(e)(ii).

Monthly Payment: Has the meaning set forth in Section 4.1(a)(i).

Milestones: The key development activities required for the construction and operation of the Facility, as set forth more particularly in Section 5.3(b).

Moody's: Moody's Investors Service, Inc.

MW: Megawatt.

MWh: Mega-watt hour.

NERC: Means the North American Electric Reliability Corporation or a successor organization.

Net Buyer CAISO Settlements: Has the meaning set forth in Section 5.6(c)(v).

Net Buyer CAISO Settlements Protocol: Has the meaning set forth in Section 5.6(c)(vii).

Net Qualifying Capacity or NQC: Has the meaning set forth in the CAISO Tariff.

Network Upgrades: Has the meaning set forth in the CAISO Tariff.

Non-Defaulting Party: Has the meaning set forth in Section 9.2(a).

Notice to Proceed: The full notice to proceed provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Facility without any delay or waiting periods.

Operational Limitations: Those limitations set forth in Exhibit B of this Agreement.

Participating Transmission Owner or PTO: Has the meaning set forth in the CAISO Tariff. The PTO is _____.

Parties: Buyer and Seller, and their respective successors and permitted assignees.

Party: Buyer or Seller, and each such Party's respective successors and permitted assignees.

Performance Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(a)(ii) of this Agreement.

Performance Liquidated Damages or Performance LDs: Has the meaning set forth in Section 3.4(a)(ii) and Section 3.4(b)(i)(B).

Permits: All material federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Facility, including any such permits or approvals required under CEQA or the National Environmental Policy Act, 42 U.S.C. Sections 4321 et. seq.

Permitted Extensions: Has the meaning set forth in Section 5.4(a).

Permitting Milestone: Has the meaning set forth in Section 5.3(b)(i).

Person: An individual, partnership, corporation, business trust, limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

Planned Outage: The removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller's sole discretion must be of the type that is necessary to reliably maintain the Facility, (b) cannot be reasonably conducted during Facility operations, and (c) causes the generation level of the Facility to be reduced by at least ten percent (10%) of the Installed Capacity.

PNode: Has the meaning set forth in the CAISO Tariff.

Point of Interconnection: The point on the electrical system where the Facility is physically interconnected with the PTO System as further described in the Interconnection Agreement.

Positive Uninstructed Deviation Credit: Has the meaning set forth in Section 5.6(b)(iv).

Product: The Energy, Environmental Attributes, Capacity Attributes, Ancillary Services, and any and all other reliability, power, or environmental attributes which are or can be produced by or associated with the Facility.

Product Content Category 1, or PCC 1 Energy: Means any Renewable Energy Credit and associated generation of electricity from an Eligible Renewable Energy Resource that meets the criteria set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Applicable Law.

PTO System: The transmission system owned by the Participating Transmission Owner.

Public Records Laws: The California Public Records Act, California Government Code Sections 6250 et seq., and the San Francisco Sunshine Ordinance, San Francisco Administrative Code, Chapter 67, the Ralph M. Brown Act, California Government Code Sections 54950, et seq., and any other applicable law regarding public records as may be amended from time to time.

Quarterly Progress Report: The report set forth in Exhibit F.

RA Capacity: Has the meaning set forth in the CAISO Tariff.

Real-Time Market or RTM: Has the meaning set forth in the CAISO Tariff.

Reliability Coordinator: Has the meaning set forth in the CAISO Tariff.

Renewable Energy Credit or REC: 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.

Replacement Price: In dollars per MWh (\$/MWh), Buyer's actual, reasonable and reasonably documented cost of Replacement Product, plus five percent (5%) of such cost for Replacement Product purchased by Buyer covering the period of Minimum Deliveries pursuant to Section 3.4(b); provided, however, that if Buyer did not purchase Replacement Product during such period, then the Replacement Price shall be calculated as the sum of (1) the price of Energy based on the hourly Day-Ahead Market price at the NP 15 EZ Gen Hub, plus five percent (5%) of such cost, for hours ending 7 through 22 during the applicable period, and (2) the price of Environmental Attributes and Capacity Attributes, if applicable, based on information either available to Buyer internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product.

Replacement Product: Energy produced from a facility other than the Facility that at the time of delivery to Buyer qualifies as an ERR and which (1) has the same or similar Environmental Attributes, including PCC 1 Renewable Energy Credits, that would have been generated by the Facility during the Contract Year for which the Replacement Product is provided, and (2) equivalent Capacity Attributes that would have been provided by the Facility during the Contract Year for which the Replacement Product is provided.

Resource Adequacy: The resource adequacy capacity requirements established for load serving entities by the CPUC pursuant to the CPUC's existing or subsequent decisions, resolutions or rulings addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other Resource Adequacy obligations established by any other Governmental Authority having jurisdiction, including the CAISO.

Resource Adequacy Costs: Has the meaning set forth in Section 3.6(c).

RPS: The California Renewable Portfolio Standard as set forth in California Public Utilities Code Sections 399.11 et. seq. and California Public Resources Code Sections 25740, et. seq., as such provisions are amended or supplemented from time to time.

RTD: Has the meaning set forth in the definition of CAISO Real Time Market in the CAISO Tariff.

RTD Price: The relevant LMP for the CAISO Settlement Point during the applicable RTD Settlement Interval.

RTM Forecast: The final forecast of the Energy to be produced by the Facility prepared by the CAISO or its designee in accordance with the Eligible Intermittent Resources Protocol (as defined in the CAISO Tariff) and communicated to the Scheduling Coordinator for the Facility for use in submitting bids in the Real-Time Market.

S&P: Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global, limited liability company).

Scheduled Energy: The Energy economically bid by the SC that clears the applicable CAISO market.

Scheduling Coordinator or SC: Has the meaning set forth in the CAISO Tariff.

Scheduling Infrastructure Business Rules: Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

Self-Schedule: Has the meaning set forth in the CAISO Tariff.

Seller: Has the meaning in the Preamble, and any successor or permitted assignee.

Seller Day-Ahead Forecast: Has the meaning set forth in Section 5.6(e)(iv).

Seller Excused Product: For any period of time, an amount of Energy expressed in MWh, equal to the Final Output Estimate, but which was not produced as a result of Curtailment Orders, Buyer Bid Curtailment, Force Majeure events, Buyer's breach or default hereunder or failure to accept delivered Product, or Forced Outages to the local transmission or distribution system.

Settlement Interval: Has the meaning set forth in the CAISO Tariff.

Settlement Point: Means the CAISO designated pNode for the Facility: _____

SFPUC: The San Francisco Public Utilities Commission.

Site: The location of the Facility as described on Exhibit B.

Site Drawings: Has the meaning set forth on Exhibit B.

Surplus Energy: Has the meaning set forth in Section 3.2(d).

System Emergency: Has the meaning set forth in the CAISO Tariff.

Term: Has the meaning set forth in Section 2.2(a).

Termination Payment: With respect to the Non-Defaulting Party, the sum of (a) the Losses and Costs, minus the Gains, which the Non-Defaulting Party incurs as a result of the termination of this Agreement, subject to Section 9.3, provided that if such amount is negative, then the amount determined pursuant to this clause (a) of the definition of Termination Payment will be deemed to be zero (0), plus (b) the net of all amounts then owed to the Non-Defaulting Party by the Defaulting Party, or to the Defaulting Party by the Non-Defaulting Party, determined as of the Early Termination Date.

Test Energy: Product (to the extent available) generated by the Facility and delivered to the Point of Interconnection prior to the Delivery Start Date.

Three-Month Shortfall: Has the meaning set forth in Section 3.4(b)(i)(A).

WECC: The Western Electricity Coordinating Council or successor agency.

Weekly Forecast: Has the meaning set forth in Section 5.6(e)(iii).

WREGIS: The Western Renewable Energy Generation Information System, or any successor renewable energy tracking program.

WREGIS Certificate: Has the meaning set forth in the WREGIS Operating Rules and are designated as eligible for compliance with the California RPS.

WREGIS Certificate Deficit: Any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month, after taking into account applicable delays in the issuance of WREGIS Certificates or otherwise arising under WREGIS Operating Rules.

WREGIS Operating Rules: Those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced from time to time.

ARTICLE 2: CONDITIONS PRECEDENT AND TERM

2.1 Conditions Precedent to Term of Agreement

- (a) Conditions Precedent. The Term of this Agreement shall not commence until the occurrence of all of the following:
 - (i) Buyer receives all necessary approvals from the SFPUC and the City Board of Supervisors;
 - (ii) Buyer receives from Seller the conditions precedent documentation listed in Part I of Exhibit A; and
 - (iii) Buyer receives from Seller the Development Assurance; and
 - (iv) The Controller has certified in accordance with the City's Charter that sufficient unencumbered balances are available in the proper fund.
- (b) Effective Date. The Effective Date of this Agreement shall be the date that all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing by both Parties. Buyer will notify Seller promptly in writing when the condition in Section 2.1(a)(i) has been met.
- (c) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Section 2.1(a) are not satisfied or waived in writing by both Parties within ninety (90) days of full execution of this Agreement, then either Party may terminate this Agreement effective upon receipt of notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, as a result of such termination and Buyer shall return all Development Assurance to Seller.

2.2 Term, Delivery Term, and Extension

- (a) Term. The term of this Agreement shall commence, and this Agreement shall be effective, upon the Effective Date and, unless earlier terminated pursuant to an express provision of this Agreement, shall remain in effect until delivery to Buyer of all of the Environmental Attributes associated with Energy delivered under this Agreement ("Term").
- (b) Delivery Term.

- (i) The Delivery Term shall commence on the first date that Buyer accepts delivery of Product under this Agreement (the "Delivery Start Date") and continuing for _____ years ("Delivery Term"), unless terminated as provided by the terms of this Agreement.
 - (ii) The Delivery Start Date shall occur as soon as practicable once all of the following have been satisfied, but no later than ninety (90) days after the COD:
 - (A) Seller notifies Buyer of the Commercial Operation Date by delivering to Buyer the COD Certification in substantially the form set forth at Exhibit G-1, the Licensed Professional Engineer's certificate or report as set forth in Section 2 of Exhibit G-1; and, if applicable, an updated Contract Quantity table in the form attached hereto as Exhibit C based on the Installed Capacity which updated Contract Quantity table shall automatically supersede the previous version of the Contract Quantity table set forth in Exhibit C without requiring an amendment of this Agreement;
 - (B) Seller notifies Buyer of the Delivery Start Date by delivering the Delivery Start Date Confirmation attached hereto as Exhibit H;
 - (C) Seller has obtained the precertification approval component of the CEC Certification requirement for the Facility;
 - (D) All of the applicable Conditions Precedent in Section 2.1(a) have been satisfied or waived in writing;
 - (E) Seller has demonstrated satisfaction of Seller's other obligations under this Agreement that commence prior to or as of the Delivery Term, including taking all necessary steps to allow the RECs from the Facility to be tracked in WREGIS and transferred to Buyer and all other similar requirements applicable to Seller to enable Buyer to use such RECs for its RPS requirements; and
 - (F) Seller has delivered Performance Assurance to Buyer.
 - (iii) If Seller is unable to commence deliveries of Product under this Agreement within ninety (90) days of COD, Seller may request an extension of the Delivery Start Date by providing written notice to Buyer of the reasons for the delay and the term of the proposed extension no later than ten (10) Business Days prior to the expected Delivery Start Date. Buyer may grant the extension request at its sole discretion.
 - (iv) Seller shall take all necessary actions to obtain final CEC Certification of the Facility and creation of retroactive WREGIS RECs within one hundred and eighty (180) calendar days of the COD.
- (c) Extension of End of Delivery Term. At its sole discretion, Buyer may provide notice to Seller no later than twenty-four (24) months prior to the end of Delivery Term of its intent to (i) extend the Delivery Term of this Agreement ("Extended Delivery Term"), or (ii) purchase the Facility. Buyer and Seller shall promptly enter into good faith negotiations on the price and other terms that will apply to any Extended Delivery Term or Facility purchase and sale. If the Parties have not reached agreement on such price and other terms within ninety (90) days after delivery of Buyer's notice under this Section 2.2(c) in the case of an Extended Delivery Term, or one-hundred and twenty (120) days in the case of a purchase and sale of the Facility, then neither Party shall have any further obligation to negotiate for an Extended Delivery Term or Facility purchase and sale, and Seller may enter into negotiations and definitive agreements with one or more third parties for the sale of the Product, the Facility, or any component thereof with respect to the period occurring after the end of the Delivery Term.

ARTICLE 3: PURCHASE AND SALE

3.1 Purchase and Sale of Product.

- (a) Transaction. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for delivered Product in accordance with the terms of this Agreement, unless specifically excused by the terms of this Agreement. Except for Replacement Product, in no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, or sell Product from the Facility to a third party (Subject to Sections 3.2(b), 3.2(c), 3.4(a), 3.4(b), and 3.9(b)). Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except for Test Energy.
- (b) Title and Risk of Loss. Title to and risk of loss as to all Product purchased by Buyer shall pass from Seller to Buyer at the Delivery Point. Subject to Section 5.6(c), Seller shall be responsible for any costs, fees, taxes, assessments, or charges associated with the Product or the delivery of the Product up to the Delivery Point and Buyer shall be responsible for any costs, or charges imposed on or associated with the Product or the delivery of the Product at and from the Delivery Point. Seller warrants that it shall deliver all Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto created by any Person other than Buyer.

3.2 Contract Price. Buyer shall pay Seller _____ per MWh (\$ /MWh) for Product delivered pursuant to this Agreement and Deemed Delivered Energy ("Contract Price"). The Contract Price shall be the total compensation owed by Buyer for the Product, adjusted as follows:

- (a) Test Energy Price. For all Test Energy, Seller's full compensation for Product sold to Buyer shall be the net amount resulting from (i) the credits and other payments received by Seller as the Scheduling Coordinator as a result of Test Energy from the Facility delivered by Seller prior to the COD, including revenues associated with CAISO dispatches and (ii) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Facility for, or attributable to, scheduling and deliveries from the Facility under this Agreement, which amount may be a negative or positive value.
- (b) Excess Quantity. Buyer has the right, but not the obligation, to purchase any Product in excess of one hundred and fifteen percent (105%) of the for the then-current Contract Year ("Excess Quantity"). Buyer shall pay Seller fifty percent (50%) of the Contract Price for Excess Quantity. In each Contract Year, if the Facility achieves ninety percent (90%) of the Contract Quantity, Seller shall (i) provide notice to Buyer and (ii) request written confirmation from Buyer that Buyer intends to purchase any Excess Quantity. If Buyer does not respond within ten (10) Business Days, Seller shall have the right to sell any Excess Quantity that Buyer does not elect to purchase to a third party; provided that if Buyer is SC and does not elect to purchase the Excess Quantity, the Parties shall cooperate on settlements such that Buyer passes through to Seller any applicable CAISO costs and revenues.
- (c) Pre-FCDS Energy Price. [IF APPLICABLE] For all Product delivered or tendered to Buyer prior to the date on which Seller has obtained a Full Capacity Deliverability Status Finding from the CAISO, Buyer shall pay Seller eighty percent (80%) of the Contract Price per MWh.
- (d) Surplus Energy Price. If during any Settlement Interval, Seller delivers Product amounts in excess of the quantity of Energy that would be delivered consistent with the power rating of the Installed Capacity ("Surplus Energy"), then the price applicable to all such excess

MWh in such Settlement Interval shall be zero dollars (\$0). If the Settlement Point LMP is less than the Buyer RTM Bid Price during such Settlement Interval, Seller shall pay to Buyer an amount equal to the positive difference between the Buyer RTM Bid Price and the Settlement Point LMP multiplied by the amount of the uninstructed Surplus Energy in MWh.

3.3 Contract Quantity. The Contract Quantity for Product is set forth in Exhibit C.

- (a) Capacity.
- (i) As of the Execution Date, the Expected Initial Capacity of the Facility as of the Commercial Operation Date is _____ MW AC, net of all auxiliary loads, station electrical uses, and electrical losses occurring on the Facility side of the Settlement Point (the "Expected Initial Capacity").
 - (ii) Seller shall use commercially reasonable efforts to ensure that the Installed Capacity of the Facility as of the Commercial Operation Date is same as the Expected Initial Capacity, but in no event shall be less than ___ MW AC or more than ___ MW AC, as measured at the Settlement Point. If applicable, Seller shall update the Contract Quantity table in Exhibit C to reflect the Facility's Installed Capacity pursuant to Section 2.2(b)(ii)(A).
- (b) Test Energy. For a period of up to ninety (90) days prior to the Commercial Operation Date and up to the commencement of the Delivery Term, Buyer shall purchase and accept from Seller at the Delivery Point, any Test Energy pursuant to the terms of this Agreement; provided that the decision to produce and deliver Test Energy hereunder shall be at the sole discretion of Seller. The scheduling and settlement requirements of Sections 5.6(b) – (c) shall not apply to Test Energy.

3.4 Guaranteed Energy Production and Minimum Deliveries.

- (a) Guaranteed Energy Production. For each GEP Period throughout the Term, Seller shall deliver no less than eighty (80%) of (i) the sum of the Contract Quantities for the GEP Period, minus (ii) the Seller Excused Product ("Guaranteed Energy Production" or "GEP").
- (i) Reporting. No less frequently than quarterly during each year, Seller shall calculate and provide notice to Buyer of the then-cumulative amount of the Seller Excused Product for such year, along with an explanation in reasonable detail of the calculation thereof based on historical Facility data, meteorological data, Product projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to Buyer's reasonable review and approval.
 - (ii) Performance LDs. If Seller fails to meet the GEP, then within sixty (60) days after the end of the relevant GEP Period, Buyer shall notify Seller of the quantity of the shortfall ("GEP Shortfall") and the amount of the performance liquidated damages. Within thirty (30) days after the receipt of notice of the shortfall, Seller shall either (1) provide notice of its election to provide Replacement Product in the amount of the GEP shortfall, or (2) pay Buyer Performance LDs calculated as: the positive difference obtained by subtracting the (i) Contract Price from (ii) the Replacement Price, multiplied by the GEP shortfall ("Performance LDs"). The Parties agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller's failure to meet the GEP would be difficult or impossible to predict with certainty and the Performance LD amount is a reasonable approximation of such damages.
 - (iii) Payment of LDs. If within ten (10) Business Days of receipt of notice of a GEP Shortfall, Seller does not either provide notice to Buyer of its election to provide Replacement Product or deliver payment of the Performance LD amount to Buyer, Buyer shall be entitled to collect Performance LDs by electing, in its sole discretion, one or more of the following payment methods:

- (A) drawing upon the Performance Assurance; and/or
 - (B) setting off against any amounts owed to Seller by Buyer under this Agreement.
- (iv) Replacement Product. Seller may, as an alternative to payment of Performance LDs pursuant to this section, provide Replacement Product within ninety (90) days after the conclusion of the applicable GEP Period but within the same calendar year as the conclusion of the applicable GEP Period. The Replacement Product shall be delivered to Buyer at the NP 15 EZ Gen Hub upon a schedule reasonably acceptable to Buyer. Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 3.4(a) at the lower of: (1) the Contract Price, or (2) the hourly Day-Ahead Market price at the NP 15 EZ Gen Hub for the Replacement Product.
- (b) Minimum Deliveries.
- (i) Notwithstanding any other provision of this Agreement, if in any consecutive three (3) calendar month period of the Delivery Term, the actual Product deliveries plus Seller Excused Product are less than fifty percent (50%) of the quantities for each month as set forth in the applicable Annual Forecasts for that three (3) month period, Seller shall either:
 - (A) provide Replacement Product as set forth in Section 3.4(a)(iv), in the amount of the cumulative three month shortfall for the applicable months calculated as: (A) fifty percent (50%) of the Annual Forecast, minus (A) actual Product deliveries plus Seller Excused Hours (“Three-Month Shortfall”). Seller shall provide any Replacement Product required under this Section 3.4(b) no later than ninety (90) calendar days after Buyer’s notice, or;
 - (B) pay Buyer Performance LDs, calculated as set forth in Section 3.4(a)(ii) and treating the Three-Month Shortfall as the GEP Shortfall for the purposes of such calculation.
 - (ii) As set forth in Section 9.1(b)(iii), Seller’s failure to deliver at least fifty percent (50%) of the expected monthly quantities as set forth in the Seller’s Annual Forecast, excluding Seller Excused Hours, for twelve (12) consecutive months (measured as of the end of each month during the Delivery Term) shall constitute a default of this Agreement
- (c) Cure. Buyer’s receipt of Replacement Product or Performance LDs (whether paid by Seller, drawn from the Performance Assurance or set off against amounts owed to Seller), as applicable, shall cure the performance issue that triggered such remedy. The MWhs of Replacement Product delivered and the MWhs used in the calculation of Performance LDs which were paid to Buyer pursuant to Section 3.4(a) or 3.4(b), shall be treated as actual deliveries in the most recent month in which the applicable shortfall occurred when assessing Seller’s compliance with its obligations under this Agreement including delivery obligations under Section 3.4(a). The quantities of energy for which Seller paid Performance LDs or delivered Replacement Product in the second Contract Year of a GEP Period shall be included in the calculation of the GEP Shortfall for the first Contract Year of the following GEP Period.

3.5 Environmental Attributes.

- (a) Purchase and Sale of Environmental Attributes. During the Term, Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Environmental Attributes associated with Delivered Energy, whether now existing or subsequently created by a Governmental Authority after the Execution

Date. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to transfer all rights, title, and interest in and to the Environmental Attributes, whether now existing or that come into existence in the future, associated with the Delivered Energy. Seller shall transfer and make such Environmental Attributes available to Buyer as soon as practicable upon Seller's production of the Environmental Attributes.

- (b) Buyer's Right to Report Ownership of Environmental Attributes. Seller shall not report to any Person or entity that the Environmental Attributes belong to anyone other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.
- (c) Renewable Energy Credits. Seller shall, at its sole expense take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the applicable requirements of the California RPS and transferred within three (3) months of creation to Buyer for Buyer's sole benefit. Seller shall comply with all Applicable Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer. In addition:
 - (i) Seller shall cause REC transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Any fractional MWh amounts shall be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
 - (ii) Due to the delay in the creation of WREGIS Certificates relative to the timing of the monthly invoice payment under this Agreement, Buyer may make an invoice payment for a given month before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller.
 - (iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in such calendar Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 4 and the Guaranteed Energy Production for the applicable GEP Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 4, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller.
 - (iv) Without limiting Seller's obligations, to the extent a WREGIS Certificate Deficit is caused by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
 - (v) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Agreement, the Parties shall promptly modify this Agreement as reasonably required (A) to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month, or (B) as may otherwise be reasonably appropriate to address such inconsistency.

3.6 Resource Adequacy.

- (a) Full Capacity Deliverability Status. [IF APPLICABLE] Seller shall be solely responsible for and take all necessary actions to obtain a FDCS Finding for the Facility prior to the Delivery Start Date
- (b) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Facility's Installed Capacity, including Capacity Attributes, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a supply plan or Resource Adequacy plan. From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments necessary to enable Buyer to use all of the Installed Capacity of the Facility, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy requirements during the Delivery Term.
- (c) Availability Standards. Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable ("Resource Adequacy Costs").
- (d) NQC. If Seller is the SC, Seller shall use commercially reasonable efforts to (a) to obtain a NQC determination for the Facility by September 1, XXXX, (b) cause the CAISO to establish a reasonable NQC value for the Facility, and (c) maintain a reasonable NQC value for the Facility. If Buyer is the SC, Seller shall take all commercially reasonable actions as necessary for Buyer to obtain and maintain a NQC value as set forth in this Section 3.6(d).

3.7 Compliance Cost Cap. If Seller establishes to Buyer's reasonable satisfaction that a change in Applicable Law has occurred after the Effective Date that results in Compliance Costs as defined in Section 3.7(a), then Seller's Compliance Costs during the Delivery Term shall be capped annually at ten thousand dollars (\$10,000.00) per MW of Installed Capacity and in the aggregate throughout the Delivery Term at twenty thousand dollars (\$20,000.00) per MW of Installed Capacity ("Compliance Cost Cap").

- (a) Compliance Costs. This Section shall apply to Seller's additional, reasonable out-of-pocket costs paid to third parties for obtaining, maintaining, conveying, or complying with: (i) CEC Certification, (ii) Environmental Attributes including WREGIS certificates, (iii) Capacity Attributes, and (iv) Sections 11.1(h)-11.1(k) ("Compliance Costs"). Compliance Costs includes only those new costs associated with the change in Applicable Law after the Execution Date that are in excess of the reasonably anticipated compliance costs as of the Execution Date.
- (b) Reimbursement. In the event that the Compliance Costs exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing those obligations that cause the Compliance Costs to exceed the Compliance Cost Cap.
- (c) Notice. Seller shall notify Buyer within sixty (60) calendar days after the change in Applicable Law if it anticipates that its Compliance Costs will exceed the Compliance Cost Cap and provide an estimate of the Compliance Costs. Buyer shall notify Seller within ninety (90) calendar days of receipt of the notice whether Buyer (i) agrees to reimburse Seller for the additional costs, or (ii) waives Seller's performance of such obligations.

3.8 Tax Credits and Incentives. Buyer acknowledges and agrees that all tax credits, deductions, and incentives related to the generation and sale of Energy or investments in the Facility shall be owned by Seller, including tax credits available under Section 45 of Subtitle A, Chapter 1A, Part IV and Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986 or any successor law.

Buyer agrees to cooperate with Seller, as may be necessary, to allow maximization of the value of, and realization of, all such tax credits and incentives; provided that Buyer shall not be required to incur additional costs or accept any diminution in value of its rights under this Agreement or of the Product purchased hereunder. In addition, Buyer shall not take any action (except as otherwise permitted under this Agreement), that would in any way reduce or eliminate the availability to Seller of any such tax credits and incentives. Notwithstanding the foregoing, Seller's rights under this section shall not include anything that qualifies as Product (including any Environmental Attributes).

3.9 Expansion Facility and Expansion Facility Product.

- (a) Buyer's Right of First Refusal. During the Term, Seller may, at its sole discretion, develop, finance, construct, and/or operate an Expansion Facility. Each time such a determination is made, Seller shall notify Buyer of such determination and shall offer, in writing, to sell the Expansion Facility Product to Buyer. The offer shall include the price to be paid by Buyer for the Expansion Facility Product, the term, and other principal terms and conditions of the proposed sale. If Buyer wishes to accept such offer to purchase all (but not less than all) of the Expansion Facility Product, Buyer shall so notify Seller within ninety (90) calendar days of its receipt of such offer. Buyer and Seller shall promptly thereafter enter into good faith negotiation of commercial modifications to this Agreement incorporating such Expansion Facility Product offer.
- (b) Buyer's Right to Purchase Expansion Facility Product. If Buyer does not accept Seller's offer to purchase the Expansion Facility Product within ninety (90) calendar days of receipt of Seller's offer, Seller shall be deemed authorized to offer to sell that portion of the Expansion Facility Product to one or more third parties at a price and on other terms and conditions which, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer. If Seller offers to disaggregate the Expansion Facility Product for the purpose of selling the same to multiple independent buyers, Seller shall notify Buyer, in writing, of the terms and conditions of such offers, and Buyer shall again have the right of first refusal consistent with the terms set forth above for each of the lesser amounts being offered to the third parties. If Buyer does not purchase the Expansion Facility Product and Seller sells such Expansion Facility Product to a third party, Seller shall promptly certify, in writing, to Buyer that the terms and conditions of sale of such Expansion Facility Product to such third party, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer, and, Seller shall provide the relevant final contract and any other supporting documentation for such certification by Buyer. Upon the sale of such Expansion Facility Product in compliance with this Agreement, Buyer shall have no further rights to be offered or to purchase such Expansion Facility Product. Buyer's refusal, in writing, of the Expansion Facility Product from one Expansion Facility shall not affect Buyer's right to purchase the Expansion Facility Product from a subsequently developed Expansion Facility under the terms of this Agreement. Notwithstanding any provision to the contrary herein, Seller shall not sell or provide the Expansion Facility Product to any third party, unless Seller can do so without compromising in any material way its ability to provide the Product or Expansion Facility Product, if any, to Buyer hereunder. The materiality of any such impact shall be determined by Buyer, acting in its reasonable discretion.

- 3.10 Refurbishment of the Facility.** During the Term, Seller may not refurbish the Facility, alter components of the Facility, or replace major components of the Facility where such action results in a total increased capacity higher than the Installed Capacity, without the prior written consent of Buyer. Buyer shall have the right, in its sole discretion, to accept or decline to permit any such refurbishment or alteration that may increase capacity of the Facility above the Installed Capacity. Nothing in this Section 3.10 is intended to limit Seller's ability to refurbish, repair, maintain, or replace any portion of the Facility where such actions will not increase the Facility's total generating capacity above the Installed Capacity.

ARTICLE 4: BILLING, PAYMENT, AND CERTIFICATION

4.1 Billing and Payment.

- (a) Monthly Invoices. Seller shall provide to Buyer no sooner than the tenth (10th) calendar day of each month an invoice for the Product and Deemed Delivered Energy for the prior month based upon meter data for Energy delivered in such calendar month, and for other amounts due to or from Seller hereunder. Except for Deemed Delivered Energy and Replacement Product, all Energy purchased under this Agreement must be measured by the Facility's CAISO revenue meter to be eligible for payment under this Agreement.
- (i) The "Monthly Payment" for each month will be an amount equal to the summation of the following for each Settlement Interval in such month:
- (A) the product of (I) the Energy delivered pursuant to this Agreement as measured by CAISO metering and settlement data ("Delivered Energy") for such Settlement Interval, multiplied by (II) the Contract Price, plus
 - (B) the product of (I) the Deemed Delivered Energy for such Settlement Interval, multiplied by (II) the Contract Price, minus
 - (C) the Net Buyer CAISO Settlements for such Settlement Interval, minus
- the Positive Uninstructed Deviation Credit. $Monthly\ Payment = \sum_{i=1}^n \{ [Delivered\ Energy\ MWh_i] \times [Contract\ Price_i\ \$] \} + \{ [Deemed\ Delivered\ Energy\ MWh_i] \times [Contract\ Price_i\ \$] \} - [Net\ Buyer\ CAISO\ Settlements_i] - [Positive\ Uninstructed\ Deviation\ Credit].$
- (ii) The Invoice shall include:
- (A) the hourly quantities of Delivered Energy delivered in the prior month;
 - (B) a calculation of the Monthly Payment as set forth in Section 4.1(a)(i);
 - (C) credits for WREGIS Certificate Deficits pursuant to Section 3.5(c)(iii), if any;
 - (D) The quantity of Replacement Product provided by Seller in such month;
 - (E) A calculation of the Deemed Delivered Energy for such month; and
 - (F) any other amounts due to or from Seller hereunder.
- (b) Payment. All invoices shall be due and payable on or before the thirtieth (30th) calendar day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day ("Due Date"). Any amount not paid by the Due Date shall be considered late and Buyer shall pay a Late Payment Penalty equal to a daily rate of five dollars and fifty cents (\$5.50) per one hundred thousand dollars (\$100,000) on the unpaid balance for a maximum period of ninety (90) days after the Due Date ("Late Payment Penalty").
- (c) City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City's vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges

that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.

- (d) 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 the Late Payment Penalty from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Buyer from subsequent payments. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.1(d) 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 delivery of Product occurred, the right to payment for such delivery is waived.
- (e) CAISO Adjustments. If the CAISO makes any adjustment to any CAISO meter data for a given time period, the Parties shall share information necessary to revise the monthly invoices pursuant to Section 4.1 and Seller agrees that it shall submit revised monthly invoices covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the Seller receives such binding adjustment to the meter data.
- (f) Meter Malfunction. If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility meter(s). The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced at Seller's cost.

4.2 Designated Fund/Limited Obligations.

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

4.3 Guaranteed Maximum Costs.

- (a) Controller Certification. The Buyer's obligations 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 Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Agreement scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer 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.

- (b) Biennial Budget Process. For each City biennial budget cycle during the term of this Agreement, Buyer agrees to take all necessary action to include the Buyer's payment obligations under this Agreement in its budget submitted to the Board of Supervisors for that budget cycle.

ARTICLE 5: FACILITY DEVELOPMENT, OPERATION, AND MAINTENANCE

5.1 General Obligations.

- (a) Records. Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required by any Governmental Authority or Good Utility Practice.
- (b) Further Development Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of the Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein shall limit Buyer's right to obtain such information upon agreeing to confidentiality or signing a confidentiality agreement with regard to such information.
- (c) CAISO Agreements. Seller shall enter into any agreements with the CAISO required by the CAISO for generators delivering power into the CAISO-controlled grid.
- (d) Insurance. Seller shall obtain and maintain the policies of insurance in the amounts and with the coverages as set forth on Exhibit D.
- (e) Vendor Certification. Seller shall obtain, renew, and maintain, all City required vendor certifications and requirements during the Term of this Agreement.

5.2 The Facility. Throughout the Term of this Agreement, Seller covenants that at its sole cost and expense, unless otherwise specifically stated in this Agreement, it shall:

- (a) Construction. Design, develop, finance, and construct the Facility.
- (b) Prevailing Wages. Pay any person performing labor in the construction of the Facility not less than the prevailing wage rate for the county in which the Facility will be located, as determined by the California Department of Industrial Relations. Seller shall require in any contract or subcontract related to the construction of the Facility the payment of the prevailing wage rate for the work to be performed.
- (c) Compliance with Laws. Seek, obtain, maintain, and comply with all Applicable Laws, Permits, certificates, agreements, or other authorizations or approvals, which are required for the ownership, construction, operation and maintenance of the Facility and the delivery and sale of the Product pursuant to this Agreement.
- (d) Interconnection and Transmission. Arrange and pay for any and all necessary Electric System Upgrades, obtain any required regulatory approvals, and execute all necessary agreements sufficient to allow Seller to interconnect the Facility to the CAISO grid and

deliver the Product to the Delivery Point by the Delivery Start Date in accordance with this Agreement. Seller shall comply with all applicable requirements, rules, contractual obligations, and Good Utility Practice to maintain any Interconnection Facilities and to cause delivery of the Product to Buyer.

- (e) FCDS. **[IF APPLICABLE]** Ensure that the interconnection, distribution and/or transmission arrangements for the Facility provide for Full Capacity Deliverability Status as of the Delivery Start Date.
- (f) Notice of Expected Initial Capacity. If applicable, within fifteen (15) calendar days of the later of (i) obtaining the authority to construct for the Facility from the applicable Governmental Authority or (ii) Seller's receipt of the system impact and facility cost studies from the PTO, Seller shall provide written notice to Buyer of any changes to the Initial Capacity of the Facility as set forth in Exhibit B (which shall be subject to the Capacity limits described in Section 3.3(a)(ii)) and specifying other material Facility design details.
- (g) RPS and Green-e® Certification. Prior to the Delivery Start Date and throughout the Delivery Term, take all actions necessary to obtain and maintain for the Facility (i) CEC Certification, (ii) tracking and transfer of RECs associated with the Product in WREGIS, and (iii) Green-e® Energy eligibility for renewable energy and greenhouse gas emissions as administered by the Center for Resource Solutions.
- (h) Battery Storage. At the request of Buyer at any time during the Term, Seller shall in good faith evaluate and consider proposals for adding a battery storage unit(s) to the Facility, provided that Seller shall not be required to add any such storage unit(s) to the Facility unless and until Seller, Buyer and any Lenders each (in their sole and absolute discretion) approves the technical details of such unit(s) and appropriate amendments to this Agreement related to such unit(s), including additional compensation related to such unit(s). Seller shall use commercially reasonable efforts to reserve land at the project substation and/or project site for the inclusion of up to _____ MWh of storage.

5.3 Facility Construction and Milestones.

- (a) Time is of the Essence. The Parties agree that time is of the essence in the performance of this Agreement. The Parties further agree that the Milestones must be achieved in accordance with Section 5.4 or Buyer shall suffer damages which are difficult to estimate with reasonable certainty. Seller shall provide Buyer with any requested information to support the achievement of Milestones within ten (10) Business Days of any request by Buyer.
- (b) Milestone Schedule. Seller covenants that it shall diligently pursue to completion each of the following Milestones:
 - (i) By _____, Seller shall have received all final, and non-appealable discretionary authorizations, approvals, waivers, exceptions, variances, filings, permits, orders, and licenses, including all actions and approvals required under applicable environmental laws, that are required for the construction, of the Facility (the "Permitting Milestone");
 - (ii) By _____, Seller shall have commenced construction of the Facility (the "Construction Milestone") as evidenced by mobilization at the Site by Seller or its agents, including site preparation at a sufficient level to reasonably demonstrate that Seller has commenced preparations for construction of the Facility, and provided a notice to Buyer substantially in the form and substance to that attached as Exhibit E;

- (iii) By _____, Seller shall have caused on-Site delivery of major components of the Facility, including but not limited to modules and inverters (“Major Equipment Milestone”); and,
 - (iv) By _____, Seller shall achieve Commercial Operation (the “Commercial Operation Milestone”).
- (c) Quarterly Progress Report. Seller shall provide to Buyer a Quarterly Progress Report concerning the progress towards construction and completion of each of the Milestones (including whether Seller has met or is on target to meet each of the Milestones), which shall be substantially similar in form and substance to that attached as Exhibit F, and include such additional information as reasonably required by Buyer. Seller shall also agree to meetings between representatives of Buyer and Seller to review such Progress Reports and discuss Seller’s construction progress, as Buyer may request from time to time.
- (d) Certification of Completion of Milestone. Except as provided in Section 5.3(f) below, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to Buyer (along with any relevant supporting documentation), stating Seller’s achievement or satisfaction of each such Milestone.
- (e) Notice of Failure to Achieve Milestone. Upon becoming aware that it shall, or is reasonably likely to, fail to achieve any Milestone by the required date for any reason including a Force Majeure event, Seller shall notify Buyer in writing as soon as is reasonably practical. Such notice shall provide information regarding the cause of the delay, provide a revised estimated date for achievement of the Milestone(s), and otherwise describe Seller’s plan for meeting the Milestone(s). Seller’s notice shall also explain any impact such delay may or shall have on any other Milestone, and measures to be taken to mitigate such impact.
- (f) Notice of Commercial Operation Date and COD Certification. Seller shall provide written notice to Buyer thirty (30) calendar days in advance of the anticipated Commercial Operation Date and shall provide Buyer with written weekly updates thereafter detailing the status of Seller’s progress in achieving Commercial Operation. On the Commercial Operation Date, Seller shall deliver to Buyer by electronic mail or facsimile, with originals to follow by hand-delivery, courier or mail service, the COD Certification in the form attached hereto as Exhibit G-2.

5.4 Milestone Excused Delay and Liquidated Damages.

- (a) Permitted Extensions to Milestones. The following events constitute “Permitted Extensions”:
- (i) In the event that a Force Majeure event causes a delay to the achievement of any Milestone, each Milestone deadline may be extended by that number of calendar days the applicable Force Majeure event actually delays completion of such Milestone, provided that Seller works diligently to resolve the effect of the Force Majeure event on the achievement of the Milestone. Notwithstanding the foregoing, in no event shall the combined extensions under this Section 5.4(a) for any individual Milestone arising from Force Majeure events exceed six (6) months in the aggregate.
 - (ii) If Seller has used commercially reasonable efforts (including Seller’s timely filing of required documents, payment of all applicable fees, and compliance with all applicable CAISO, PTO, FERC, CEC, or other requirements of a Governmental Authority, as applicable), including efforts to obtain Facility interconnection, to meet the Milestones, but such Milestones cannot be met and Seller has worked diligently to resolve the delay, Seller may request Milestone extensions for up to six (6) months in the aggregate, which Buyer may grant in its reasonable discretion.

- (b) Notice. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days' notice prior to the applicable Milestone, which shall clearly identify the grounds for the requested extensions and include information necessary for Buyer to verify the length of and grounds for the extension. If the delay is due to Force Majeure and sixty (60) days' notice is impracticable or impossible, Seller shall provide notice as soon as possible after the occurrence of the Force Majeure event.
- (c) Maximum Delay.
- (i) In no event shall the combined Permitted Extensions under this Section 5.4 for all Milestones combined exceed twelve (12) months in the aggregate.
 - (ii) If on any given day two or more events cause delay to a Milestone at the same time (i.e., occur concurrently), Seller shall only be entitled to one (1) day of delay for such day.
- (d) Daily LD Amount. Seller shall be liable to Buyer for liquidated damages for each day or portion of a day of unexcused delay in a Milestone in an amount equal to the Daily LD Amount. Buyer shall promptly provide invoices to Seller for Daily LD Amounts for the relevant number of unexcused days of delay on a monthly basis. If Buyer does not receive payment of the invoice from Seller within five (5) Business Days after Seller's receipt of the invoice from Buyer, at Buyer's sole discretion, Buyer shall be entitled to collect the Daily LD Amount by one or more of the following:
- (i) drawing upon the Development Assurance; and/or
 - (ii) setting off against any amounts owed to Seller by Buyer under this Agreement.
- (e) No Limitation of Damages. The Parties agree that Buyer's receipt of the Daily LD Amount shall (i) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Article 9, and (ii) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's termination right pursuant to Section 5.4(g) or Article 9. The Parties further agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller's failure to meet the Milestone(s) would be difficult or impossible to predict with certainty and the Daily LD Amount is a reasonable approximation of such damages.
- (f) Refund of Daily LD Amounts. If Seller achieves Commercial Operation by the Commercial Operation Milestone, all Daily LD Amounts paid by Seller shall be refunded to Seller. Seller shall include a request for refund with the first invoice to Buyer.
- (g) Termination of Agreement. Buyer may terminate this Agreement by written notice to Seller if:
- (i) the combined Permitted Extensions for all Milestones exceed twelve (12) months in the aggregate, or
 - (ii) Seller fails to pay, or discontinues paying, any or all of the Daily LD Amount when due and Buyer cannot obtain such amounts by drawing upon the Development Assurance and/or setting off against any amounts owed to Seller by Buyer under this Agreement, or
 - (iii) Seller continues to timely pay Daily LD Amounts, but unexcused delays and Permitted Extensions exceed twelve (12) months in the aggregate.
- (h) Damage Payment. Upon termination of this Agreement under Section 5.4(g), Buyer shall be entitled to collect the Damage Payment within ten (10) days of Seller's receipt of an invoice from Buyer by one or more of the following:
- (i) drawing upon the Development Assurance;

- (ii) receiving payments from Seller within ten (10) days of receipt of an invoice from Buyer;
- (iii) setting off against any amounts owed to Seller by Buyer under this Agreement.

Receipt of the Damage Payment shall be Buyer's sole and exclusive remedy in the event of a Buyer termination under Section 5.4(g).

- (i) Additional Extension. Notwithstanding the foregoing, the Parties may mutually agree in writing to an extension of the Commercial Operation Milestone of up to thirty (30) days beyond the maximum twelve (12) month period for Permitted Extensions with payment of the Daily LD Amount by Seller. Buyer may not terminate this Agreement for failure to achieve the Commercial Operation Milestone during the mutually agreed upon extension period so long as Seller continues to pay the Daily LD Amount.

5.5 Operation and Maintenance.

- (a) Operation and Maintenance. Seller shall be solely responsible for the ownership, operation, maintenance, and repair of the Facility in accordance with this Agreement, all Applicable Laws, the requirements of the CAISO, NERC and WECC, all applicable contractual obligations and Permits, and in accordance with Good Utility Practice, and shall be solely responsible for all associated costs and expenses. In the event Seller requires any data or information from Buyer in order to comply with any Applicable Law, including the requirements of CAISO, NERC and WECC, relating to the Facility, then Seller shall request in writing such data from Buyer no less than forty-five (45) days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.
- (b) CAISO and WECC Requirements and Good Utility Practice. Each Party shall perform in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs, and protocols of the CAISO, (ii) WECC scheduling practices, and (iii) Good Utility Practice.
- (c) Start-ups and Shut-downs. Seller shall coordinate all Facility start-ups and shut-downs, in whole or in part, with Buyer in accordance with CAISO scheduling protocols and the reasonable protocols established by Buyer that are not inconsistent with the CAISO Tariff and CAISO procedures.
- (d) Metering. All Energy from the Facility must be delivered through a CAISO revenue meter dedicated solely to the Facility. The meter data will account for transformer losses and will be programmed to reflect losses to the Delivery Point, consistent with CAISO requirements. Seller shall (subject to Section 4.1(f)) bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant Buyer read-only rights to retrieve the meter reads from the Customer Market Results Interface, via website and direct download, and directly from the CAISO meter(s) at the Facility site through both (i) physical access and (ii) remote electronic read-only access. Seller shall maintain an updated record of programmed meter parameters (such as channel configuration and other relevant settings) that is accessible and reasonably acceptable to Buyer. In addition, Seller shall provide all meter data to Buyer in a form reasonably acceptable to Buyer.
- (e) Facility Data. Seller shall take all steps necessary to authorize Buyer to obtain read-only access to (i) all Customer Market Results Interface data for the Facility, including market awards, expected energy and energy forecasts, (ii) all Scheduling Infrastructure Business Rules energy bids for the Facility, and (iii) all Market Results Interface-Settlements meter data for the Facility. If requested by Buyer, Seller shall provide access to Automated

Dispatch System data for the Facility through the Seller's Scheduling Coordinator or scheduling agent in a format reasonably acceptable to Buyer.

5.6 Scheduling, Forecasts, and Outages.

(a) Scheduling Coordinator Services.

- (i) Seller shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility.
- (ii) Upon ninety (90) days prior written notice to Seller, Buyer may elect to become the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services for the Facility and for the delivery of Product to and from the Delivery Point. Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents reasonably necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility. The Parties agree that, as of the date that Buyer assumes Scheduling Coordinator responsibilities pursuant to this Section, the amendments to this Agreement set forth in Exhibit K shall automatically take effect without further action of the Parties.
- (iii) Each Party shall use commercially reasonable efforts as necessary to facilitate the other Party's efforts to meet its obligations under applicable CAISO, PTO, FERC, CEC, or other Governmental Authority requirements.

(b) Scheduling.

- (i) Day-Ahead Scheduling. For any period of time for which the DA Percentage is greater than zero percent (0%), Seller shall submit Economic Bids at the Settlement Point in the Day-Ahead Market for volumes equal to the DA Percentage multiplied by the Day-Ahead Forecast for the applicable period and specifying a bid price equal to the Buyer DAM Bid Price. For any period of time for which the DA Percentage is zero percent (0%), Seller shall not submit Economic Bids at the Settlement Point in the Day-Ahead Market. Notwithstanding anything to the contrary in this Agreement, the DA Percentage shall be consistent with any applicable Resource Adequacy obligations incurred on behalf of the Facility.
- (ii) Real-Time Market Scheduling. Seller shall submit Economic Bids or Self-Schedules at the Settlement Point into the Real-Time Market (including both the FMM and the RTM) at the Buyer RTM Bid Price and specifying volumes equal to the Final Output Estimate for the applicable Real-Time Market period.
- (iii) Changes to DA Percentage, the Buyer RTM Bid Price, and/or the Buyer DAM Bid Price. Buyer may change the DA Percentage, the Buyer RTM Bid Price, and/or the Buyer DAM Bid Price once every thirty (30) days by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new value(s) and the effective date for the change; provided, however, the DA Percentage must be greater than or equal to zero percent (0%) and less than or equal to one-hundred percent (100%).
- (iv) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility in excess of the CAISO dispatch instruction (positive uninstructed deviations) for that Settlement Interval ("Positive Uninstructed Deviation Credit").
- (v) Deemed Delivered Energy.

- (A) If a Buyer Bid Curtailment occurs, in Seller's monthly invoice Seller will reasonably calculate, consistent with Good Utility Practice, the difference in MWh between the Final Output Estimate and actual Delivered Energy attributable to such Buyer Bid Curtailment ("Deemed Delivered Energy"). The Parties shall share any documentation necessary to create or support such calculation. Seller shall include supporting documentation and calculations for the determination of Deemed Delivered Energy with the monthly invoice.
 - (B) If either Party believes that the Final Output Estimate is an inaccurate estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions, the Parties will mutually agree upon the use of (1) the Day-Ahead Forecast, (2) the Seller Day-Ahead Forecast, (3) the third-party version of the Seller Day-Ahead Forecast, or (4) another mutually agreed upon methodology to determine the Final Output Estimate.
 - (C) In the event of an overlapping Buyer Bid Curtailment and a Curtailment Order, Seller shall exclude Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy.
 - (D) In addition to paying Seller for all Delivered Energy hereunder; Buyer shall pay Seller the Contract Price for Deemed Delivered Energy.
- (c) CAISO Costs and Revenues.
- (i) Seller shall be responsible for "Administrative CAISO Charges", which are defined as:
 - (A) the Forecast Fee assessed to the Facility;
 - (B) the CAISO Resource Adequacy Costs associated with the Facility, including the cost of providing Buyer with replacement Capacity Attributes in the event that Seller is deficient meeting its Capacity Attribute obligations under this Agreement due to Facility outages or derates or fails to comply with its obligations under Section 3.6(b);
 - (C) all CAISO costs, penalties and other charges (such as the Scheduling Coordinator ID Charge) that are assessed to the Facility or the Scheduling Coordinator for the Facility that are not related to the:
 - (1) generation, operation, or dispatch of the Facility;
 - (2) scheduling in the CAISO markets; and
 - (3) delivery of the Product to the Delivery Point.
 - (D) all CAISO costs related to participation in CAISO variable or intermittent energy resource programs.
 - (ii) Seller shall be responsible for CAISO charges, costs, and penalties resulting from (A) the unavailability of the Facility, (B) Seller's failure to notify CAISO of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (C) any other failure by Seller to comply with the CAISO Tariff, this Agreement, or with any Buyer Bid Curtailment, CAISO dispatch instruction or Curtailment Order, or the Forced Outages notice provision in Section 5.6(g), and (D) penalties related to non-performance with respect to Ancillary Services and Residual Unit Commitment awards due to conditions within Seller's control.

Notwithstanding the foregoing, Buyer shall be responsible for any non-performance penalties due solely to decreases in solar irradiance.

- (iii) If during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon Seller or the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be Seller's responsibility.
- (iv) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD Scheduled Energy and Delivered Energy during any Settlement Interval, except for those charges due solely to real-time uninstructed Energy caused by decreases in solar irradiance.
- (v) Buyer shall receive all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility for each Settlement Period and shall be responsible for all other CAISO costs, fees, and charges but excluding those set forth in Section 5.6(c)(i)-(iv)), ("Net Buyer CAISO Settlements") and as identified in Exhibit J.
- (vi) CAISO Charges. Each Party shall use commercially reasonable efforts to cooperate with the other Party to allow that Party to comply with any obligations, and minimize any potential liability, it may have under the CAISO Tariff in relation to Product under this Agreement.
- (vii) Exhibit J sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 5.6(c). Following the Execution Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "Net Buyer CAISO Settlements Protocol") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 5.6(c). In the event that the Charge Codes agreed to by the Parties in the Net Buyer CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, the Party who is the SC at the time that Charge Codes are amended, deleted, or added shall promptly notify the other Party and the Parties shall mutually agree upon adjustments to the Net Buyer CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 5.6(c).
- (d) Variable or Intermittent Energy Resource Programs. During the Term, Buyer may direct Seller to participate in any CAISO program for scheduling variable or intermittent energy resources at Seller's sole cost to the extent that such participation is consistent with Seller's obligations under this Agreement and the CAISO Tariff. Buyer shall use commercially reasonable efforts to facilitate Seller's participation in such programs.
- (e) Forecasts. Seller shall use generally accepted industry standards to produce the forecasts described hereunder. All forecasts shall be based on P-90 values. If Seller does not follow Section 4.8.2 of the CAISO Tariff with respect to forecasting, then upon Buyer's written request, Seller shall also retain, at Seller's expense, a third-party forecasting service reasonably acceptable to Buyer to produce such forecasts, in addition to those forecasts produced by Seller. Seller shall provide identical input data to such third-party service provider as are used to produce Seller's own forecast. Such forecast(s) shall be provided to Buyer in a manner reasonably acceptable to Buyer. If, during any given calendar month, the forecast error of such third-party service is larger than the forecast error of the forecasts produced by the Seller, determined as the sum of squared errors between the Seller Day-Ahead Forecast, for each respective forecast, and actual hourly production, then Buyer shall reimburse Seller for such third-party forecasting service costs.

- (i) No later than thirty (30) calendar days prior to the end of each Contract Year, Seller will provide a forecast of available capacity and production ("Annual Forecast") detailing hourly expected available generation and monthly capacity and all proposed Planned Outages for the next Contract Year. Within five (5) Business Days following any change to the Planned Outage schedule for such Contract Year, Seller will provide notice to Buyer with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year. During the Delivery Term of this Agreement, Seller shall not schedule Planned Outages of more than twenty-four (24) hours during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes at Buyer's discretion in order to conform to the CAISO's Availability Assessment procedures).
- (ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, Seller shall provide an electronic update, in a format specified by Buyer, to the Annual Forecast for that calendar month ("Monthly Forecast"). The Monthly Forecast shall include hourly available capacity and expected generation and all Planned Outages.
- (iii) No later than seven (7) calendar days prior to the first day of each week of the Delivery Term, Seller shall provide a weekly forecast of available capacity and production and any changes in Planned Outages ("Weekly Forecast"). The Weekly Forecast shall include hourly available capacity and generation and all Planned Outages.
- (iv) By 5:30 PM Pacific Time on the Business Day immediately preceding the date of delivery, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery ("Seller Day-Ahead Forecast"). The Seller Day-Ahead Forecast shall include hourly available capacity and generation and all Planned Outages.
- (f) Planned Outages. If Buyer requests a change to the scheduled date of any Planned Outage, Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) calendar days of receipt of Buyer's request.
- (g) Forced Outages. Forced Outages shall be reported by Seller to Buyer verbally as soon as practicable and in writing no more than twenty-four (24) hours thereafter. Written notice of a Forced Outage lasting longer than one (1) hour shall include the type of outage, start date and start time of outage, estimated or actual end date and end time of the outage, a text description of the cause of the outage and any other information the Seller deems necessary for the Buyer to understand the causes and impact of the outage. Seller shall notify Buyer as soon as practicable, whenever the Facility is returned to service.
- (h) Curtailement. Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, or any successor thereto pursuant to a Curtailment Order. Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailment Order.

ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE

6.1 Grant of Security Interests/Remedies.

- (a) To secure its obligations under this Agreement hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Development Assurance and Performance Assurance posted with Buyer in the form of cash collateral or 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, Buyer. Within thirty (30) calendar days of the delivery of the Development Assurance or Performance Assurance, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Development Assurance or Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof, respectively.

- (b) Upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as 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 Development Assurance or Performance Assurance, as applicable, including any such rights and remedies under the law then in effect;
 - (ii) draw on any outstanding Letter of Credit or Guaranty issued for its benefit and retain any cash held by Buyer as Development Assurance or Performance Assurance; and
 - (iii) liquidate all Development Assurance or Performance Assurance, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.
- (c) Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

6.2 Development Assurance and Performance Assurance.

- (a) Provision of Security by Seller. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:
 - (i) Development Assurance. Development Assurance in the amount of sixty dollars (\$60) per kW AC multiplied by the Expected Initial Capacity. Seller shall post Development Assurance in the form of cash, a Letter of Credit, or Guaranty within ten (10) calendar days following the Execution Date until such time as Seller posts the Performance Assurance pursuant to Section 6.2(a)(ii) below with Buyer.
 - (ii) Performance Assurance. Performance Assurance in the amount equal to five percent (5%) of the product of (A) the Contract Quantity, multiplied by (B) the Contract Price, multiplied by (C) the number of Contract Years remaining in the Delivery Term. Seller shall post Performance Assurance in the form of cash, a Letter of Credit, or a Guaranty from the Commercial Operation Date and ending at the expiration of the Delivery Term; provided that, with Buyer's consent, Seller may elect to apply a portion of the Development Assurance toward the Performance Assurance. The amount of the Performance Assurance shall be adjusted on the first day of each Contract Year to reflect the remaining revenue to Seller under this Agreement.
- (b) No Limitation of Damages. The amount of Development Assurance and Performance Assurance required under this Agreement shall not be deemed a limitation of damages.
- (c) Use of Development Assurance. Buyer shall be entitled to draw upon the Development Assurance posted by Seller for any reason permitted under this Agreement until the Development Assurance is exhausted. Buyer shall also be entitled to draw upon the

Development Assurance for any Damage Payment arising upon Buyer's declaration of an Early Termination Date prior to the Commercial Operation Date.

- (d) Termination of Development Assurance. Buyer shall return the Development Assurance to Seller less any amounts drawn in accordance with this Agreement: (i) within thirty (30) days after Seller posts Performance Assurance with Buyer or (ii) within sixty (60) days after early termination of the Agreement pursuant to Section 2.1(c), Section 5.4(g), or Article 9. The Development Assurance (or portion thereof) shall be returned unless, with Buyer's consent, Seller elects to apply the Development Assurance (or a portion thereof) toward the Performance Assurance.
- (e) Use of Performance Assurance. Buyer shall be entitled to draw upon the Performance Assurance posted by Seller for any reason permitted under this Agreement, including Buyer's declaration of an Early Termination Date after the Commercial Operation Date.
- (f) Return of Performance Assurance. Buyer shall return the unused portion of Performance Assurance to Seller within thirty (30) days after the following has occurred: (i) the Term of the Agreement has ended, or an Early Termination Date has occurred; and (ii) all payment obligations of the Seller arising under this Agreement, including payments pursuant to a Damage Payment, Termination Payment, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

6.3 Letter of Credit. Development Assurance or Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Exhibit I-1, or another form reasonably acceptable to Buyer, subject to the following provisions:

- (a) Renewal of Letter of Credit. If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 6, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis.
- (b) Failure of Letter of Credit and Cure. In the event the issuer of such Letter of Credit at any time: fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, becomes Bankrupt, indicates its intent not to renew such Letter of Credit, or fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (i) or (ii) below in an amount equal to the outstanding Letter of Credit, and by completing the action within ten (10) Business Days after the date of Buyer's notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (i), (ii), or (iii) below is considered the "Cure"):
 - (i) providing a substitute Letter of Credit that is issued by an Eligible LC Bank other than the bank which is the subject of Buyer's notice to Seller in this Section 6.3(b);
 - (ii) providing a Guaranty; or
 - (iii) posting cash.
- (c) Failure to Cure. If Seller fails to cure, or if such Letter of Credit expires or terminates without a full draw thereon by Buyer or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall be deemed to have failed to meet the collateral requirements of Section 6.2 and Buyer may declare an Event of Default as set forth in Article 9.
- (d) Letter of Credit Costs. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

6.4 Guaranty. Seller shall replace the Guaranty in the event that Seller Guarantor fails to meet the required criteria for a Guarantor under this Agreement within five (5) Business Days following Buyer's written request for replacement of the Guaranty. Seller shall provide for the benefit of the Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria

set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit. If Seller fails to provide replacement Development or Performance Assurance as required in this Section 6.4, then Buyer may declare an Event of Default as set forth in Article 9.

ARTICLE 7: FINANCIAL STATEMENT

- 7.1 Seller's Obligations.** If requested by Buyer, Seller shall deliver to Buyer (i) within six (6) months following the end of each fiscal year, a copy of Seller's and Seller's Parent's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year), and (ii) within sixty (60) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Seller's and Seller's Parent'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 shall be prepared in accordance with GAAP and shall be certified by the Chief Financial Officer or equivalent officer of Seller on behalf of Seller and of Seller's Parent on behalf of Seller's Parent; 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 constitute an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.
- 7.2 Buyer's Obligations.** If requested by Seller, Buyer shall deliver to Seller (i) within six (6) months following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year), (ii) within sixty (60) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, and (iii) on a timely basis, such other financial and operational information as may be reasonably requested by the Seller's financing parties. In all cases, the audited statements shall be for the most recent accounting period and shall be prepared in accordance with GAAP, provided, however, that should any statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

ARTICLE 8: FORCE MAJEURE

- 8.1 Remedial Action.** Subject to the limitation on extensions of Milestones set forth in Sections 5.4(a) and (c), a Party shall not be liable to the other Party if the Party is prevented from performing its obligations hereunder due to a Force Majeure Event. The Party rendered unable to fulfill an obligation by reason of a Force Majeure Event shall take all action necessary to remove such inability with all due speed and diligence. The non-performing Party shall be prompt and diligent in attempting to mitigate the effects of and to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any Party from its obligations to make payment of amounts due hereunder.
- 8.2 Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall, as soon as practicable under the circumstances, notify the other Party, in writing, of the nature, cause, date of commencement, and the anticipated extent of any delay or interruption in performance.
- 8.3 Termination Due to Force Majeure Event.** Subject to the provisions of Section 5.4(a) and (c) on extensions of Milestones, if a Party is prevented in any material respect from performing any material obligations under this Agreement solely due to a Force Majeure Event lasting for a period of twelve (12) consecutive months or longer, either Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) calendar days' prior written notice at any time following expiration of such period of twelve (12) consecutive months. In such event, Buyer shall

promptly return to Seller all Development Assurance or Performance Assurance, as applicable, less any LD amount paid by or due and payable by Seller prior to the date of such termination for reasons unrelated to this Section 8.3. This Section 8.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

ARTICLE 9: DEFAULT, REMEDIES, AND TERMINATION

9.1 Events of Default.

- (a) Events of Default. The occurrence of any of the following shall constitute an Event of Default by a Party:
- (i) the breach of any material obligation or covenant of this Agreement and such Party fails to cure such breach within sixty (60) days after written notification of default by the other Party; however, the Parties may mutually agree upon a longer period for cure if the breach cannot reasonably be cured within sixty (60) days, provided that the extended cure period will only continue for so long as the Party in breach is pursuing a cure with reasonable diligence;
 - (ii) subject to Sections 4.1(c) and (d), failure to make any payment when due under this Agreement within fifteen (15) Business Days after written notice that such payment is due;
 - (iii) 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 neither such circumstance nor the adverse effects of such circumstance are cured or remedied within thirty (30) days after written notice;
 - (iv) such Party becomes Bankrupt;
 - (v) subject to Section 12.1(d), 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.
- (b) Seller Events of Default. The following shall constitute additional Events of Default by Seller:
- (i) Subject to Section 2.2(b)(iii), Seller fails, for any reason other than an unauthorized act or omission by Buyer, to achieve the Delivery Start Date;
 - (ii) Subject to Section 5.4(a), the occurrence of any of the events set forth in Section 5.4(g);
 - (iii) Notwithstanding any other provision of this Agreement and subject to Section 3.4(c), Seller's failures to deliver at least fifty percent (50%) of the expected monthly quantities as set forth in the Annual Forecast minus Seller Excused Hours for any consecutive twelve (12) month period shall constitute an Event of Default; or
 - (iv) Seller fails to satisfy any of the credit requirements of Article 6.

9.2 Termination for Default.

- (a) Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred, is continuing and has not been cured, the other Party (the "Non-Defaulting Party") shall have the right to:

- (i) send notice, designating a day, no earlier than ten (10) calendar days and no later than sixty (60) days after the day such notice is deemed to be received, as the date on which this Agreement will terminate (the "Early Termination Date");
 - (ii) accelerate all amounts owing between the Parties, terminate this Agreement and end the Delivery Term effective as of the Early Termination Date;
 - (iii) collect as of the Early Termination Date, (A) the Damage Payment in the case of a Seller Event of Default arising at any time prior to the Commercial Operation Date, including an Event of Default pursuant to Section 9.1, or (B) the Termination Payment if any Event of Default by either Party arose after the Commercial Operation Date or in the case of a Buyer Event of Default arising prior to the Commercial Operation Date;
 - (iv) withhold any payments due to the Defaulting Party under this Agreement;
 - (v) suspend performance;
 - (vi) exercise its rights pursuant to Article 6 of this Agreement to draw upon and retain Development Assurance or Performance Assurance, as applicable; and
 - (vii) exercise any other right or remedy available at law or in equity to the extent otherwise permitted under this Agreement.
- (b) Calculation of Termination Payment.
- (i) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date.
 - (ii) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such termination of this Agreement, the amount of the Termination Payment shall be limited to the amounts set forth in clause (b) of the definition of Termination Payment.
 - (iii) The Non-Defaulting Party is not required to enter into replacement transactions to establish a Termination Payment.
 - (iv) The Termination Payment shall be the sole and exclusive remedy available to the Non-Defaulting Party in connection with its termination of this Agreement if any Event of Default arose after the Commercial Operation Date, and shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.
 - (v) Section 4.3 of this Agreement is not a limitation on Buyer's liability for a Termination Payment.
- (c) Notice of Termination Payment. As soon as practicable after declaration of an Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment due to or from the Defaulting Party to the Non-Defaulting Party, as applicable. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party fifteen (15) Business Days after such termination payment notice is effective.
- (d) Disputes Regarding 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 the 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. Following delivery of such a notice, disputes regarding the Termination Payment shall be resolved in accordance with Section 12.3.

- (e) Liquidated Damages. The Parties agree that the Damage Payment to be paid by Seller shall be considered liquidated damages and not a penalty, in accordance with Section 9.3(b).

9.3 Limitation of Liability/Liquidated Damages.

- (a) **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**
- (b) **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, UNLESS THE PROVISION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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 SUCH OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF REVENUES, LOSS OF PROFIT, OR OTHER BUSINESS INTERRUPTION DAMAGES, INTEREST CHARGES, OR COST OF CAPITAL, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO EXPRESS REMEDIES OR MEASURE OF DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIQUIDATED DAMAGES AND DAMAGE PAYMENTS SET FORTH IN SECTIONS 3.4(a)(ii), 3.4(b)(ii)(A), 5.4(d), 5.4(h), AND 9.2(a)(iii) ARE EACH REASONABLE AND REPRESENT A FAIR AND GENUINE ESTIMATE OF THE DAMAGES THAT WOULD OCCUR RELATED TO THE EVENTS DESCRIBED THEREIN. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE DAMAGES FOR THE CIRCUMSTANCES SET FORTH ABOVE WOULD BE IMPOSSIBLE OR DIFFICULT TO MEASURE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS IMPRACTICABLE. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNTS SHALL BE AS AND FOR LIQUIDATED DAMAGES AND NOT AS A PENALTY AND ARE THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671.**
- (c) **BUYER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE COMPENSATION PROVIDED FOR IN ARTICLES 3 AND 4, AND SECTIONS 5.6 and 9.2.**
- (d) **EXCEPT AS OTHERWISE PROVIDED HEREIN, THE RIGHTS AND REMEDIES OF A PARTY PURSUANT TO THIS ARTICLE 9 SHALL BE**

CUMULATIVE AND IN ADDITION TO THE RIGHTS OF THE PARTIES OTHERWISE PROVIDED IN THIS AGREEMENT.

ARTICLE 10: INDEMNIFICATION

10.1 Indemnification.

- (a) Seller Indemnification Prior to Commercial Operation Date. Up to and including the Commercial Operation Date, Seller shall indemnify, defend, and hold harmless Buyer, and its officials, directors, agents and employees (“Buyer Indemnified Party”), from any claim, liability, loss, injury or damage arising out of, or in connection with, the negligence, willful misconduct or violation of Applicable Law by Seller and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the active negligence, willful misconduct or violation of Applicable Law by a Buyer Indemnified Party.
- (b) Seller and Buyer Indemnification after Commercial Operation Date. After the Commercial Operation Date, each Party (“Indemnifying Party”) shall defend, indemnify and hold harmless the other Party and its elected officials, officers, directors, employees, agents, affiliates and representatives (each, an “Indemnified Party”) from and against any and all losses, including but not limited to losses arising from personal injury or death, or damage to property, but only to the extent such losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by the Indemnifying Party.
- (c) Notice. If an Indemnified Party or Buyer Indemnified Party determines that it is entitled to defense and indemnification under this Section 10.1, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority, to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party’s prior written consent.

ARTICLE 11: REPRESENTATIONS AND WARRANTIES

11.1 **Seller’s Representations and Warranties.** In addition to the representations and warranties set forth in other sections of this Agreement, Seller represents and warrants to Buyer that as of the Execution Date:

- (a) Seller is duly organized and validly existing as a _____ under the laws of the State of _____, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and Seller is duly qualified in California and each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform all of its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Seller shall not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing, against Seller or any of its affiliates, at law or in equity, before

any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;

- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or any of its affiliates, or, to its knowledge, threatened against it or its affiliates which would result in it being or becoming Bankrupt;
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement);
- (h) Subject to Section 2.2(b)(iv), throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- (i) Throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- (j) All necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this Agreement;
- (k) It will provide and convey all Environmental Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered, it holds the rights to all Environmental Attributes from the Facility, and it agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Facility;
- (l) It will pay prevailing wages as set forth in Section 5.2(b).

11.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that as of the Execution Date:

- (a) Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement;
- (b) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Buyer shall not conflict with its governing documents, any Applicable Laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be

limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened, in writing, against Buyer, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement;
- (f) 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; and
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

11.3 Covenants. In addition to other covenants contained in this Agreement, each Party covenants that throughout the Term:

- (a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (b) It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (c) It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law.

ARTICLE 12: MISCELLANEOUS

12.1 Assignment.

- (a) General Assignment. Except as provided in Sections 12.1(b) and (d), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed so long as among other things, (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers financial statements, information and other evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.
- (b) Assignment to Financing Providers. Notwithstanding any provision to the contrary in this Section 12.1, Buyer hereby consents to assignment of this Agreement by Seller as collateral for any financing or refinancing of the Facility to a Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the Seller's interest under this Agreement has been assigned. The notice shall include the names of the Lender's primary contact(s) to whom all communications may be addressed. Seller shall promptly notify Buyer of any changes to the information contained in the notice. As a condition to Buyer's consent to assignment, the following provisions shall apply to any assignment under this Section 12.1(b):

- (i) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by the Seller and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.
 - (ii) Buyer shall cooperate with Seller or a Lender to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments, and other documents reasonably requested by Seller or Lender in order to complete any financing or refinancing and shall enter into reasonable agreements as necessary to provide for recognition by Buyer of the Lender's security interest in this Agreement and such other provisions as may be reasonably requested by Seller or any Lender, so long as the terms and conditions of such agreements are consistent with this Agreement and such amendments or agreements are reasonably acceptable to both Parties. All costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection with an assignment of this Agreement to a Lender shall be borne by Seller.
 - (iii) In the event of a Default under this Agreement, Buyer shall provide a copy of the notice of Default to the Lender pursuant to Section 9.2(a) at the same time as the notice is provided to Seller. Buyer shall accept a cure performed by a Lender and shall negotiate in good faith with the Lender as to the cure period(s) allowed for the Lender to cure any Event of Default. Buyer shall accept a cure by Lender so long as the cure is accomplished within the applicable cure period. Notwithstanding any Lender cure, Seller shall not be released and discharged from, and shall remain liable for, any and all obligations to the Buyer arising or accruing hereunder.
 - (iv) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must (i) assume all of Seller's obligations arising under this Agreement, and (ii) shall cure all defaults under this Agreement existing as of the date of change of title or control as required under this Agreement.
- (c) Assignment in Connection with a Change in Control. Notwithstanding any provision to the contrary in this Section 12.1, any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall not require the prior written consent of Buyer. Seller shall promptly notify Buyer of any direct or indirect change in control and shall provide any information reasonably requested by Buyer regarding the change in control, provided that this obligation does not apply to any direct or indirect owners of Seller's Parent. Seller acknowledges that its obligations under this Agreement remain in full force and effect notwithstanding such change in control and that Seller is solely responsible for ensuring that all required changes to its vendor certifications are promptly implemented.
- (d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 12.1 is void.

12.2 Proprietary or Confidential Information.

- (a) Confidential Information. Each Party understands and agrees that, in the performance of this Agreement or in contemplation thereof, the other Party may have access to private or confidential information and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Party that owns or controls the Confidential Information. Each Party agrees that all private and confidential information disclosed by one Party to the other Party shall be held in confidence and used only in performance of the Agreement; however, a Party may disclose the Confidential Information of the other Party to its officers, employees, agents, consultants, and contractors as necessary for the performance of its obligations under this Agreement. Each

Party shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary data.

- (b) Public Records Act and Sunshine Ordinance. Seller acknowledges that Buyer is a public agency subject to the disclosure requirements of the Public Records Laws. If documents or information submitted to Buyer contain Seller's proprietary and confidential information and Seller claims that such information falls within one or more Public Records Laws exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY", and identify the specific lines containing such information (the "Confidential Information"). Buyer shall disclose such Confidential Information to third parties only to the extent required by California law (including, without limitation, the California Constitution, the Public Records Laws, and other Applicable Law).
- (c) Disclosure of Confidential Information by Buyer. In the event of a third-party request for Buyer to disclose such Confidential Information, Buyer shall make reasonable efforts to provide notice to Seller prior to disclosure. If Seller contends that any Confidential Information is exempt from the Public Records Laws and wishes to prevent disclosure, Seller shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in San Francisco County before Buyer's deadline for responding to the disclosure request. If Seller fails to obtain such remedy prior to Buyer's deadline for responding to the request, Seller agrees that Buyer may disclose the requested Confidential Information. Seller further agrees that Buyer shall have no liability to Seller arising out of any disclosure by Buyer of any Seller Confidential Information before Seller has timely obtained an order, injunctive relief or other appropriate remedy to prevent Buyer from making the requested third-party disclosure.
- (d) Non-Confidential Information. Notwithstanding anything to the contrary in this Section 12.2 nothing shall restrict any Party from using or disclosing information related to this Agreement, including Confidential Information if such information (i) is generally available to the public; (ii) was within the using or disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; (iv) is legally required to be disclosed by judicial or other governmental action as determined by such Party's attorney acting in good faith; or (v) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, the disclosing Party; or (vi) is furnished to the non-disclosing Party's Affiliates, or to the auditors, attorneys, advisors, or actual or potential lenders or investors of the non-disclosing Party and/or its Affiliates which are required to keep the information that is disclosed in confidence.
- (e) Nondisclosure of Private Information. If this Agreement requires Buyer to disclose "Private Information" to Seller within the meaning of San Francisco Administrative Code Chapter 12M, Seller shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing this Agreement. Seller is subject to the enforcement and penalty provisions in Chapter 12M.

12.3 Dispute Resolution; Choice of Law.

- (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) Governing Law; Venue. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. Venue shall be in the County of San Francisco, California.

12.4 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 Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not fewer than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

12.5 General.

- (a) Entire Agreement. This Agreement, the exhibits, attachments, and any written and fully executed supplements hereto, any designated collateral, credit support, or similar arrangement between the Parties constitute the entire agreement between the Parties relating to the subject matter.
- (b) Construction. This 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) Amendments. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.
- (d) No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) Change in Law. 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 so that the implementation of this Agreement becomes impossible or impracticable, the Parties shall work in good faith to revise this Agreement in a manner that maintains to the greatest extent practicable the original intent of the Parties under this Agreement so that the Parties may perform their obligations regarding the purchase and sale of Product. If the Parties cannot reach a good faith agreement on amendments, the Agreement shall be terminated by mutual agreement without liability for either Party.
- (g) Headings. The headings used herein are for convenience and reference purposes only.
- (h) Assigns. This Agreement shall be binding on each Party's successors and assigns.
- (i) No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect Seller as an independent entity and not a public utility.
- (j) Relationship of the Parties. The duties, obligations and liabilities of the Parties are independent of one another and shall be limited to those expressly set forth herein. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power or authority to enter into any agreement

or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party. Seller and Buyer intend to act as energy supplier and energy purchaser, respectively, and do not intend to act as, or to be treated as, partners in, co-venturers in, or lessor/lessee with respect to the Facility or any business related to the Facility.

- (k) Limitations on Contributions. Through execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services or for the furnishing of any material, supplies or equipment to City, whenever such transaction would require approval by City's elective officer of the board on which that 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 this Agreement is approved by the City's elective officer or the board on which that elective officer serves.
- (l) Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.
- (m) Nondiscrimination Requirements.
- (i) Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.
- (ii) Seller represents that it does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.
- (n) Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to Buyer for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to Buyer if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of Buyer 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 Buyer; (c) conspires to defraud Buyer by getting a false claim allowed or paid by Buyer; (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 Buyer; or (e) is a beneficiary of an inadvertent submission of a false claim to Buyer, subsequently discovers the falsity of the claim, and fails to disclose the false claim to Buyer within a reasonable time after discovery of the false claim.

- (o) Use of City Opinion. Seller shall not quote, paraphrase, or otherwise refer to or use any opinion of Buyer, its officers or agents, regarding Seller or Seller's performance under this contract without prior written permission of the Buyer.
- (p) Compliance with Laws. Seller shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of 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. Buyer shall use best efforts to provide notice to Seller of any such amendment to the City's Charter, codes, ordinances and regulations of which it becomes aware; however, Seller's obligations under this Section shall not be contingent on notice from Buyer.
- (q) Conflict of Interest. Through its execution of this Agreement, Seller 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 Buyer if it becomes aware of any such fact during the term of this Agreement.
- (r) Severability. Should any provision of the Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force and effect. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision.
- (s) Survival. All rights pursuant to (i) Section 3.5 (Environmental Attributes); Section 4.1(d) (Disputes and Adjustment of Invoices); Article 9 (Default; Remedies; and Termination), (iii) Article 10 (Indemnification), (iv) Section 12.2 (Proprietary or Confidential Information); (v) Section 12.3 (Dispute Resolution; Choice of Law), and (vi) Section 12.4 (Audit); (vii) Section 12.5(I) (Prohibition on Political Activity with City Funds); and (viii) Section 12.5(o) (City Opinion) shall also survive termination of this Agreement.

12.6 Mobile Sierra. Absent the prior written agreement of all Parties, the standard of review for changes to any rate, charge, term, or condition of service of this Agreement, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" 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).

12.7 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

12.8 Notices. Unless otherwise stated in this Agreement, any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, electronic mail, overnight courier or mailed by certified mail, return receipt requested with postage prepaid, to the contacts set forth in the Cover Sheet. Either Party may change any information listed in the Notice section of the Cover Sheet, by written notice as provided in this Section. Any such notice, demand, request, or communication shall be deemed received on the Business Day on which the notice was transmitted if delivery was made by hand, facsimile or electronic mail, or (ii) upon receipt by the receiving Party if sent by overnight courier or mailed by certified mail, return receipt requested with postage prepaid.

12.9 Counterparts. This Agreement may be executed in one or more counterparts and by different Parties on separate counterparts, all of which shall be deemed one and the same agreement and each of which shall be deemed an original. Delivery of an executed counterpart of this Agreement by fax or other electronic means shall be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile or other electronic means shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.

[Signature page follows on next page.]

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be duly executed as of the Execution Date.

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

Seller

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

By: _____
Name: _____
Title: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

SELLER DOCUMENTATION OF CONDITIONS PRECEDENT

Part I:

Seller shall provide to Buyer all of the following documentation at least five (5) Business Days prior to the Execution Date:

1. A copy of each of (a) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (b) the by-laws or other similar document of Seller as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
3. Evidence of Site control (e.g. lease with redacted price terms).
4. Evidence of CEC Certification or pre-certification received, as applicable.
5. A copy of the Interconnection Agreement, if any.
6. Insurance documentation as required in Exhibit D.
7. A copy of the most recent financial statements (which may be unaudited) from Seller's Parent.

Part II:

Seller shall provide to Buyer all of the following documentation in a timely manner following the Execution Date:

1. Evidence of all Permits received, as applicable, including but not limited to, any copies of all final environmental review documents.
2. A copy of the Project Labor Agreement, if any, for the Facility.

EXHIBIT B

FACILITY DESCRIPTION AND SITE DRAWINGS

I. Facility Description

Facility name:

Facility physical address:

Technology type (including any applicable model):

Expected Initial Capacity:

Interconnection Point of Facility:

Interconnection Agreement:

Assessor's Parcel No:

II. Operational Characteristics / Limitations

PMax of the Facility:

Minimum operating capacity:

III. Site Drawings

A. Site Map

B. Single Line Diagram.

EXHIBIT C
CONTRACT QUANTITY

Contract Year	Contract Quantity (in MWh)
1	
2	
3	
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_____ Dated as of Seller Execution.

_____ Dated as of Commercial Operation Date.

EXHIBIT D

INSURANCE COVERAGES

1. **Liability Coverages.** Without in any way limiting Seller's liability pursuant to the "Indemnification" section of this Agreement, Seller must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance:
 - (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and include a blanket waiver of subrogation; and
 - (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
2. **Additional Coverages**
 - (a) Property insurance, on an all-risk form, including earthquake and flood; for one hundred percent (100%) of the full replacement value of the Site and Facility or 125% of the Loss Limit of the 1/500 year earthquake/flood event as established by a Maximum Foreseeable Loss earthquake and flood study prepared by the applicable insurer in accordance with current industry standard. Such insurance shall, include Business Interruption coverage in an amount equal to twelve months of revenue from this Agreement.
3. **Endorsements.**
 - (a) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide include blanket endorsements:
 - (i) Name as Additional Insured, the City and County of San Francisco, its Officers, Agents, and Employees.
 - (ii) The certificate of insurance shall state that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
 - (b) All policies shall provide thirty (30) days' advance written notice of cancellation for any reason, intended non-renewal, or reduction in coverages, except ten (10) days' notice for non-payment of premiums.
4. **Length of Coverage.** Should any of the required insurance be provided under a claims-made form, Seller shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
5. **Maintenance of Coverage.** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Buyer receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Buyer may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

Certificates. Prior to commencement of the Term, Seller shall furnish to Buyer certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A- , VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Buyer, in form evidencing all coverages set forth above. Approval of the insurance by Buyer shall not relieve or decrease Seller's liability hereunder.

EXHIBIT E

**CONSTRUCTION START
CERTIFICATION**

(Date)

This certification ("Certification") of the Construction Start Date is delivered by _____ ("Seller") to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer all of the following:

- a) the EPC Contract related to the Facility was executed on _____ with [EPC Contractor name];
- b) [permitting agency name] _ issued grading permits to the Seller on _____;
- c) the Notice to Proceed was issued on _____ (attached), and;
- d) mobilization at the Facility Site commenced on _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of the Seller as of the ____ day of _____.

Seller:

[Licensed Professional Engineer]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

License Number and LPE Stamp: _____

EXHIBIT F

QUARTERLY PROGRESS REPORT

INSTRUCTIONS.

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Renewable Power Purchase Agreement by and between _____, ("Seller") and the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, ("Buyer") dated _____ (the "Agreement").

Commencing in the calendar month of the effective date of the Agreement, and every three months thereafter ("Calendar Quarter"), Seller shall prepare and submit to Buyer a Progress Report containing the information set forth in this Exhibit G ("Progress Report"). The Progress Report shall review the status of each Milestone of the construction schedule for the Facility and Seller shall identify any issue which in Seller's reasonable judgment are expected to adversely affect the schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

1. Any material matter or issue arising in connection with a Permit, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of an Applicable Law, actual or threatened opposition to the granting of a necessary Permit, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Milestone, or obtaining any contemplated agreements with other Persons which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Milestone.
2. Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Milestone;
3. A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Milestone;
4. Any material change in the Seller's schedule for initiating or completing any material aspect of the Facility;
5. The status of any matter or issue identified as outstanding in any prior Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

Each overview subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each "recent activities" subsection shall include details of activities during the previous month. Each "expected activities" subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to _____, together with all attachments and exhibits.

A. Executive Summary.

Provide an overview of the Facility, including technology, size, location, and ownership, and a brief chronological cumulative summary of the major activities completed at the Facility. Include the date each item was added to the summary.

B. Financing Activities.

1. **Overview of financing activities.** Provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.
2. **Recent financing activities.** Describe in detail the financing activities that occurred during the previous Calendar Quarter.
3. **Expected financing activities.** List the financing activities that are expected to be performed during the current Calendar Quarter.

C. Major Equipment Procurement.

1. **Overview of major equipment procurement activities.** For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item to be procured or delivered in each Calendar Quarter.
2. **Recent major equipment procurement activities.** Describe in detail the major equipment procurement activities that occurred during the previous Calendar Quarter.
3. **Expected major equipment procurement activities.** List the major equipment procurement activities that are expected to be performed during the current Calendar Quarter.

D. Construction Activities. Include information on the status of any construction-related factors that may affect the ability of the Facility to deliver Product to the Buyer. Include information on the Facility infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other Interconnection Facilities that are the direct responsibility of the Facility.

1. **Overview of major construction activities.** Provide a summary of the status and progress of each major construction activity for all portions of the Facility, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each Calendar Quarter.
2. **Look-ahead construction schedule.** Provide a look-ahead construction schedule covering the following Calendar Quarter.

E. Interconnection Activities. Include information on interconnection-related factors that may affect the ability of the Facility to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Facility construction information), Network Upgrades, and grid outage and/or interconnection schedules.

1. **Overview of interconnection activities.** Provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.
2. **Recent interconnection activities.** Describe in detail the interconnection activities that occurred during the previous Calendar Quarter.
3. **Expected interconnection activities.** List the interconnection activities that are expected to be performed during the current Calendar Quarter.

F. Startup. Include information on the status of activities related to preparation for Commercial Operation, including progress towards the items set forth in Exhibit H-2, the requirements and

notifications of the grid operator and PTO, and any other activities that must be conducted before the Facility may deliver Energy to the grid and/or declare Commercial Operation.

1. **Overview of startup activities.** Provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.
2. **Recent startup activities.** Describe in detail the startup activities that occurred during the previous Calendar Quarter.
3. **Expected startup activities.** List the startup activities that are expected to be performed during the current Calendar Quarter.

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that the information contained in this Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G-1

COMMERCIAL OPERATION CERTIFICATION

In accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (the "Agreement") by and between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF ("Buyer") and _____ ("Seller") to declare and recognize the Commercial Operation Date of the Facility, Seller shall provide all of the documents set forth herein to Buyer as of the Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

1. A certification from an authorized officer of Seller, substantially in the form of Exhibit G-2 dated as of the Commercial Operation Date; and
2. A certificate or report from a Licensed Professional Engineer containing all of the following:
 - (a) A statement that the Facility has achieved Mechanical Completion and the date on which it was achieved;
 - (b) A statement that the Facility has successfully achieved Facility Testing Completion and the dates on which Seller has accepted the test results;
 - (c) A statement that the electrical collection system for the Facility comprising the total installed power capacity referenced in (b) is substantially complete, functional, and energized for the Facility;
 - (d) A statement that the Facility performance test under Seller's EPC contract demonstrated peak Facility electrical output of ___MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("Installed Capacity"); and
 - (e) A statement that the Facility has achieved Substantial Completion and the date on which it was achieved.
3. Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the applicable requirements for the interconnection of the Facility to the CAISO Grid and delivery of Product to the Delivery Point.
4. Seller has provided final Site Drawings to Buyer.
5. Definitions.
 - (a) "Mechanical Completion" means that (i) all components and systems of the Facility have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (ii) the Facility is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.
 - (b) "Facility Testing Completion" means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as "Facility Testing") as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Facility has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) verify peak electrical output of no less than ninety percent (90%) of the Contract Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the performance test; and (iii) to assure warranty coverage for equipment and systems over their warranty periods.

- (c) "Substantial Completion" means when the following has occurred: (i) the Facility is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Facility in the use for which it is intended; (ii) the Facility has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Facility is fully and properly interconnected and synchronized with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

EXHIBIT G-2
COMMERCIAL OPERATION CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____ ("Seller") to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

2. Mechanical Completion of the Facility was achieved on ____ [DATE] ____.
3. Facility Testing Completion successfully occurred on: [Seller to indicate each type of Facility Testing and date completed]
 - a. NAME OF TEST [DATE]
 - b. NAME OF TEST [DATE]
 - c. NAME OF TEST [DATE]
4. Substantial Completion of the Facility was achieved on ____ [DATE] ____.
5. Pre-parallel inspection of the Facility was successfully completed on ____ [DATE] ____.
6. Authorization to parallel the Facility was obtained on ____ [DATE] ____.
7. Telemetry / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Facility on ____ [DATE] ____.
8. Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Facility on ____ [DATE] ____.
9. Power system stabilizer testing and calibration was obtained for the Facility on ____ [DATE] ____
or, was not required.
10. Full Capacity Deliverability Status Finding from CAISO was obtained for the Facility on ____ [DATE] ____ or, was not required because the Facility is Energy Only.
11. The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on ____ [DATE] ____.
12. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on ____ [DATE] ____.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Facility to provide Product and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this _____ day of _____, 20__.

Seller:

Signature: _____

Name: _____

Title: _____

EXHIBIT H

DELIVERY START DATE CONFIRMATION LETTER

In accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“Agreement”) by and between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) and _____ (“Seller”), this letter (“Delivery Start Date Confirmation Letter”) serves to document Seller’s notice that (i) the requirements for the occurrence of the Delivery Start Date have been satisfied as specified in the Agreement, as of this _____ day of _____, _____ (the “Delivery Start Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an Exempt Wholesale Generator. In addition, Seller provides the following FERC Tariff information for reference purposes only.

Tariff:

Dated:

Docket Number:

IN WITNESS WHEREOF, Seller has caused this Delivery Start Date Confirmation Letter to be duly executed by its authorized representative as of the date provided below.

By: _____

Name: _____

Title: _____

Date: _____

ADDED TO Exhibit G

EXHIBIT I-1

LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [Insert issue date]

Beneficiary: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF
525 Golden Gate Avenue
San Francisco, CA 94102
Attn:

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert Amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of [insert name of Applicant] ("Applicant"), we hereby issue in favor of the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (the "Beneficiary") our irrevocable standby letter of credit No. [insert number of letter of credit] ("Letter of Credit"), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ [insert amount in figures followed by (amount in words)] ("Letter of Credit Amount"). This Letter of Credit is available with [insert name of issuing bank, and the city and state in which it is located] by sight payment, at our offices located at the address stated below, effective immediately, and it shall expire at our close of business on [insert expiry date] (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary's signed and dated sight draft in the form of Exhibit J-2 hereto, referencing this Letter of Credit No. [insert number] and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. Pursuant to the terms of that certain [insert name of the agreement] (the "Agreement"), dated [insert date of the Agreement], between Beneficiary and [insert name of Seller under the Agreement], Beneficiary is entitled to draw under Letter of Credit No. [insert number] amounts owed by [insert name of Seller under the Agreement] under the Agreement; or
 - B. "Letter of Credit No. [insert number] shall expire in thirty (30) days or less and [insert name of Seller under the Agreement] has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below); at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit shall be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we shall honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly. The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

**EXHIBIT I-2
SIGHT DRAFT**

TO: [INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$

DATE:

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF _____ THE AMOUNT
OF U.S.\$ _____ U.S. DOLLARS) DRAWN
UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

By: _____

Name and Title

EXHIBIT J

CAISO CHARGE CODES

The following table sets forth an initial allocation of Charge Codes, which may represent credits as well as charges, between Buyer and Seller as they exist as of the Effective Date of this Agreement with the objective of implementing cost and revenue allocations pursuant to Section 5.6. The Parties shall mutually agree upon a final allocation in the Net Buyer Settlements Protocol.

Charge Code	Charge Code Description	PPA Section	Net Buyer CAISO Settlements	Net Seller CAISO Settlements
701	Forecasting Service Fee	5.6(e)(i)(A)	Excluded	Included
1487	Emergency Energy Exchange Program Neutrality Adjustment	5.6(e)(iii)	Excluded	Included
1591	EP Penalty Charge due CAISO Trustee	5.6(e)(ii)	Excluded	Included
1592	EP Penalty Allocation Payment	5.6(e)(vi)	Included	Excluded
4515	GMC Bid Transaction Fee	5.6(e)(i)(C)	Excluded	Included
4560	GMC Market Services Charge	5.6(e)(i)(C)	Excluded	Included
4561	GMC System Operations Charge	5.6(e)(i)(C)	Excluded	Included
4575	GMC – Scheduling Coordinator Identification Charge	5.6(e)(i)(C)	Excluded	Included
6011	Day Ahead Energy, Congestion, Loss Settlement	5.6(e)(vi)	Included	Excluded
6100	Day Ahead Spinning Reserve Capacity Settlement	5.6(e)(vi)	Included	Excluded
6124	No Pay Spinning Reserve Settlement	5.6(e)(ii)	Excluded	Included
6170	Real Time Spinning Reserve Capacity Settlement	5.6(e)(vi)	Included	Excluded
6200	Day Ahead Non-Spinning Reserve Capacity Settlement	5.6(e)(vi)	Included	Excluded
6224	No Pay Non-Spinning Reserve Settlement	5.6(e)(ii)	Excluded	Included
6270	Real Time Non-Spinning Reserve Capacity Settlement	5.6(e)(vi)	Included	Excluded
6460	FMM Instructed Imbalance Energy	5.6(e)(vi)	Included	Excluded
6470	Real Time Instructed Imbalance Energy Settlement	5.6(e)(vi)	Included	Excluded
6475	Real Time Uninstructed Imbalance Energy Settlement	5.6(e)(vi)	Included*	Excluded*
6482	Real Time Excess Cost for Instructed Energy Settlement	5.6(e)(vi)	Included	Excluded
6486	Real Time Excess Cost for Instructed Energy Allocation	5.6(e)(iii)	Excluded	Included
6488	Exceptional Dispatch Uplift Settlement	5.6(e)(vi)	Included	Excluded
6500	Day Ahead Regulation Up Capacity Settlement	5.6(e)(vi)	Included	Excluded
6524	Non Compliance Regulation Up Settlement	5.6(e)(ii)	Excluded	Included
6570	Real Time Regulation Up Capacity Settlement	5.6(e)(vi)	Included	Excluded
6600	Day Ahead Regulation Down Capacity Settlement	5.6(e)(vi)	Included	Excluded
6620	RUC and RTM Bid Cost Recovery Settlement	5.6(e)(vi)	Included	Excluded
6624	Non Compliance Regulation Down Settlement	5.6(e)(ii)	Excluded	Included
6630	IFM Bid Cost Recovery Settlement	5.6(e)(vi)	Included	Excluded

6636	IFM Bid Cost Recovery Tier 1 Allocation	5.6(e)(vi)	Included	Excluded
6670	Real Time Regulation Down Capacity Settlement	5.6(e)(vi)	Included	Excluded
6800	Day Ahead Residual Unit Commitment (RUC) Availability Settlement	5.6(e)(vi)	Included	Excluded
6824	No Pay Residual Unit Commitment (RUC) Settlement	5.6(e)(ii)	Excluded	Included
7070	Flexible Ramp Forecast Movement Settlement	5.6(e)(vi)	Included	Excluded
7071	Daily Flexible Ramp Up Uncertainty Capacity Settlement	5.6(e)(vi)	Included	Excluded
7077	Daily Flexible Ramp Up Uncertainty Award Allocation	5.6(e)(iii)	Excluded	Included
7078	Monthly Flexible Ramp Up Uncertainty Award Allocation	5.6(e)(iii)	Excluded	Included
7081	Daily Flexible Ramp Down Uncertainty Capacity Settlement	5.6(e)(vi)	Included	Excluded
7087	Daily Flexible Ramp Down Uncertainty Award Allocation	5.6(e)(iii)	Excluded	Included
7088	Monthly Flexible Ramp Down Uncertainty Award Allocation	5.6(e)(iii)	Excluded	Included
7251	Regulation Up Mileage Payment	5.6(e)(vi)	Included	Excluded
7261	Regulation Down Mileage Payment	5.6(e)(vi)	Included	Excluded
7891	Monthly CPM Settlement	5.6(e)(vi)	Included	Excluded
7989	Invoice Deviation Interest Distribution	5.6(e)(i)(C)	Included	Excluded
7999	Invoice Deviation Interest Allocation	5.6(e)(i)(C)	Included	Excluded
8526	GIP Forfeited Deposit Allocation	5.6(e)(vi)	Included	Excluded
8830	Monthly Resource Adequacy Availability Incentive Mechanism Settlement	5.6(e)(i)(B)	Excluded	Included
8831	Monthly Resource Adequacy Availability Incentive Mechanism Allocation	5.6(e)(i)(B)	Excluded	Included

* Note that while CC6475 is the responsibility of the Buyer, Seller shall credit Buyer for certain related adverse settlements from uninstructed Delivered Energy in excess of the Dispatch Instruction, per Section 5.6(b)(iv).

EXHIBIT K
BUYER AS SCHEDULING COORDINATOR

A. Transfer of SC Obligations.

- (1) Upon transfer of Scheduling Coordinator obligations from Seller to Buyer pursuant to Section 5.6(a)(ii) of the Agreement, Seller shall not (i) authorize or designate any other party to act as Scheduling Coordinator for the Facility, or (ii) revoke Buyer's authorization to act as Seller's Scheduling Coordinator for the Facility unless agreed to in writing by Buyer.
- (2) At least ninety (90) days prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or Buyer's designee as Seller's SC. These actions shall include (i) submission of a designation of a new SC for Seller to the CAISO, (ii) causing the newly designated SC to submit a letter to the CAISO accepting the designation, and (iii) informing Buyer and/or its designee of the last date on which Buyer or its designee will be Seller's SC.

B. Amendments to the Agreement. As of the date that Buyer or its designee assumes Scheduling Coordinator responsibilities, the following amendments to the Agreement shall take effect.

- (1) Amendments to Article 1 – Definitions.
 - (i) The following definitions shall be deleted from Article 1:
 - Buyer DAM Bid Price**
 - Customer Market Results Interface**
 - DA Percentage**
 - Net Buyer CAISO Settlements**
 - Net Buyer CAISO Settlements Protocol**
 - Scheduling Infrastructure Business Rules**
 - (ii) The following definitions shall be added to Article 1:
 - Net Seller CAISO Settlements: has the meaning set forth in Section 5.6(f)(v).**
 - Net Seller CAISO Settlements Protocol: Has the meaning set forth in Section 5.6(e)(vi).**
- (2) Section 4.1(a), Monthly Invoices, shall read as follows:

Seller shall provide to Buyer no sooner than the tenth (10th) calendar day of each month an invoice for the Product and Deemed Delivered Energy for the prior month based upon meter data for Energy delivered in such calendar month, and for other amounts due to or from Seller hereunder. Buyer or its Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following receipt of the settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller. Except for Deemed Delivered Energy and

Replacement Product, all Energy purchased under this Agreement must be measured by the Facility's CAISO revenue meter to be eligible for payment under this Agreement.

- (i) The "Monthly Payment" for each month will be an amount equal to the summation of the following for each Settlement Interval in such month:
 - (A) the product of (I) the Energy delivered pursuant to this Agreement as measured by CAISO metering and settlement data ("Delivered Energy") for such Settlement Interval, multiplied by (II) the Contract Price, plus
 - (B) the product of (I) the Deemed Delivered Energy for such Settlement Interval, times (II) the Contract Price, [plus/minus]
 - (C) the Net Seller CAISO Settlements for such Settlement Interval

$$\text{Monthly Payment} = \sum_{i=1}^n \{[\text{Delivered Energy MWh}_i] \times [\text{Contract Price}_i \$]\} + \{[\text{Deemed Delivered Energy MWh}_i] \times [\text{Contract Price}_i \$]\} +/ - [\text{Net Buyer CAISO Settlements}_i]$$

- (ii) The Invoice shall include:
 - (A) the hourly quantities of Delivered Energy delivered in the prior month;
 - (B) a calculation of the Monthly Payment as set forth in Section 4.1(a)(i);
 - (C) credits for WREGIS Certificate Deficits pursuant to Section 3.5(c)(iii), if any;
 - (D) The quantity of Replacement Product provided by Seller in such month;
 - (E) A calculation of the Deemed Delivered Energy for such month; and
 - (F) any other amounts due to or from Seller hereunder.

- (3) Section 5.5(d) Metering, is deleted in its entirety and replaced with the following:

Metering. All Energy from the Facility must be delivered through a CAISO revenue meter dedicated solely to the Facility. The meter data will account for transformer losses and will be programmed to reflect losses to the Delivery Point, consistent with CAISO requirements. Seller shall (subject to Section 4.1(f)) bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant to the Scheduling Coordinator (whether Buyer or Buyer's designee) rights to retrieve the meter reads directly from the CAISO meter at the Facility site through both (i) physical access and (ii) remote electronic access as necessary for the Scheduling Coordinator to meet its obligations under the CAISO Tariff and other applicable rules. Seller shall maintain an updated record of programmed meter parameters (such as channel configuration and other relevant settings) that is accessible and reasonably acceptable to Buyer. In addition, Seller shall provide all meter data in a form reasonably acceptable to Buyer.

- (4) Section 5.5(e) Facility Data, is deleted in its entirety.

(5) Section 5.6, Scheduling, Forecasts, and Outages, shall be deleted in its entirety and replaced with the following:

(a) Scheduling Coordinator Services.

(i) Buyer shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility. Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents reasonably necessary to authorize, designate, or re-designate Buyer or Buyer's designee as Scheduling Coordinator for the Facility.

(ii) Seller shall not (A) authorize or designate any other party to act as Scheduling Coordinator for the Facility, or (B) revoke Buyer's authorization to act as Seller's Scheduling Coordinator for the Facility unless agreed to in writing by Buyer.

(iii) At least ninety (90) days prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or Buyer's designee as Scheduling Coordinator for the Facility. These actions shall include (A) submitting a designation of a new Scheduling Coordinator for Seller to the CAISO, (B) causing the newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation, and (C) informing Buyer and/or its designee of the last date on which Buyer or its designee will be Scheduling Coordinator for the Facility.

(iv) Each Party shall use commercially reasonable efforts to facilitate the other Party to meet its respective obligations under applicable CAISO, PTO, FERC, CEC, or other requirements of a Governmental Authority.

(v) CAISO Notices and Data.

(A) Buyer shall provide Seller with access to a remotely-accessible system through which Seller shall submit to Buyer all notices and updates required under the CAISO Tariff regarding the Facility's status including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the system is not accessible, Seller shall promptly submit such information to Buyer telephonically or electronically to the personnel designated in the Cover Sheet to receive such information.

(B) Seller shall provide information to Buyer that is required for the CAISO's Master Data File and Resource Data Template (or successor systems) for the Facility consistent with this Agreement and the CAISO Tariff. Neither Party shall change such data without the other Party's prior written consent.

(b) Real-Time Market Scheduling. Buyer will submit Economic Bids or Self-Schedules at the CAISO Settlement Point into the Real-Time Market (including both the FMM and the RTD).

(i) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility in excess of the CAISO dispatch instruction (positive deviations) for that Settlement Interval ("Positive Uninstructed Deviation Credit").

- (ii) Deemed Delivered Energy.
 - (A) If a Bid Curtailment occurs, Seller will reasonably calculate consistent with Good Utility Practices the difference in MWh between the Final Output Estimate for the Facility and actual Delivered Energy attributable to such Bid Curtailment ("Deemed Delivered Energy"). Parties shall share documentation necessary to create or support such calculation. Seller shall include supporting documentation and calculations related to such Deemed Delivered Energy with the monthly invoice.
 - (B) If either Party believes that the Final Output Estimate is an inaccurate estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions, the Parties will agree upon the use of (1) the Day-Ahead Forecast, (2) the Seller Day-Ahead Forecast, (3) the third-party version of the Seller Day-Ahead Forecast, or (4) another mutually agreed upon methodology to determine the Final Output Estimate.
 - (C) In the event of an overlapping Bid Curtailment and a Curtailment Order, Seller shall exclude Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy.
 - (D) In addition to paying Seller for all Delivered Energy hereunder, Buyer shall pay Seller the Contract Price for Deemed Delivered Energy.

(c) CAISO Costs and Revenues.

- (i) Seller shall be responsible for "Administrative CAISO Charges" or amounts payable to the CAISO by the Facility's Scheduling Coordinator, defined as:
 - (A) the Forecast Fee assessed to the Facility;
 - (B) the CAISO Resource Adequacy Costs associated with the Facility;
 - (C) all CAISO costs, penalties and other charges (such as the Scheduling Coordinator ID Charge) that are assessed to the Facility or the Scheduling Coordinator for the Facility that are not related to the:
 - (1) generation, operation, or dispatch of the Facility;
 - (2) scheduling in the CAISO markets; and
 - (3) delivery of the Product to the Delivery Point.
 - (D) all CAISO costs related to participation in CAISO variable or intermittent energy resource programs.
- (ii) Seller shall be responsible for CAISO charges, costs, and penalties resulting from (A) the unavailability of the Facility, (B) Seller's failure to notify Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), or (C) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO dispatch instruction or Curtailment Order, or the Forced Outages notice provision in Section 5.6(k), (D) any Seller actions or inactions that cause Buyer or Buyer's SC to fail to comply with the CAISO Tariff, including any notice

requirement for outages or Forced Outages, or any CAISO dispatch instruction or Curtailment Order, or (E) penalties related to non-performance with respect to an Ancillary Services and Residual Unit Commitment awards due to conditions within Seller's control. Notwithstanding the foregoing, Buyer shall be responsible for any non-performance penalties due solely to decreases in solar irradiance.

- (iii) If during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer or Buyer's SC due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.
 - (iv) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD Scheduled Energy and Delivered Energy during any Settlement Interval except for those charges due solely to real-time uninstructed Energy caused by decreases in solar irradiance.
 - (v) Charges, costs, penalties, and other amounts described in subsections 5.6(c)(i)-(iv) for each Settlement Period are collectively the responsibility of the Seller ("Net Seller CAISO Settlements"). Positive Net Seller CAISO Settlements will be added as a charge on the monthly invoice and negative Net Seller CAISO Settlements will be credited to Buyer on the monthly invoice.
 - (vi) Buyer shall retain all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility, other than Net Seller CAISO Settlements.
 - (vi) Exhibit K sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 5.6(c). Following the Execution Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "Net Seller CAISO Settlements Protocol") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 5.6(c). In the event that the Charge Codes agreed to by the Parties in the Net Seller CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, the Party who is the SC at the time that Charge Codes are amended, deleted, or added shall promptly notify the other Party and the Parties shall mutually agree upon adjustments to the Net Seller CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 5.6(e).
- (d) Variable or Intermittent Energy Resource Programs. During the Term, Buyer may direct Seller to participate in any CAISO program for scheduling variable or intermittent energy resources at Seller's sole cost, as described in Section 5.6(e)(i)(D), and discretion to the extent that such participation is consistent with Seller's obligations under this Agreement and the CAISO Tariff. Buyer shall use commercially reasonable efforts to facilitate Seller's participation in such programs.
- (e) Forecasts. Seller shall use generally accepted industry standards to produce the forecasts described hereunder. All forecasts shall be based on P-90 values. If Seller

does not follow Section 4.8.2 of the CAISO Tariff with respect to forecasting, then upon Buyer's written request, Seller shall also retain, at Seller's expense, a third-party forecasting service reasonably acceptable to Buyer to produce such forecasts, in addition to those forecasts produced by Seller. Seller shall provide identical input data to such third-party service provider as are used to produce Seller's own forecast. Such forecast(s) shall be provided to Buyer in a manner reasonably acceptable to Buyer. If, during any given calendar month, the forecast error of such third-party service is larger than the forecast error of the forecasts produced by the Seller, determined as the sum of squared errors between the Day-Ahead Seller Forecast, for each respective forecast, and actual hourly production, then Buyer shall reimburse Seller for such third-party forecasting service costs.

- (i) No later than thirty (30) calendar days prior to the end of each Contract Year, Seller will provide a forecast of available capacity and production ("Annual Forecast") detailing hourly expected available generation and monthly capacity and all proposed Planned Outages for the next Contract Year. No later than five (5) Business Days prior to any change to the Planned Outage schedule for such Contract Year, or such other time designated by Buyer as necessary to meet its obligations to the CAISO as SC for the Facility, Seller will provide notice to Buyer with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year. During the Delivery Term of this Agreement, Seller shall not schedule Planned Outages of more than twenty-four (24) hours during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes at Buyer's discretion in order to conform to the CAISO's Availability Assessment procedures).
- (ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, or such other time designated by Buyer as necessary to meet its obligations to the CAISO as SC for the Facility, Seller shall provide an electronic update, in a format specified by Buyer, to the Annual Forecast for that calendar month ("Monthly Forecast"). The Monthly Forecast shall include hourly available capacity and expected generation and all Planned Outages.
- (iii) No later than seven (7) calendar days prior to the first day of each week of the Delivery Term, or such other time designated by Buyer as necessary to meet its obligations to the CAISO as SC for the Facility, Seller shall provide a weekly forecast of available capacity and production and any changes in Planned Outages ("Weekly Forecast"). The Weekly Forecast shall include hourly available capacity and generation and all Planned Outages.
- (iv) By 5:30 PM Pacific Time on the Business Day immediately preceding the date of delivery, or such other time designated by Buyer as necessary to meet its obligations to the CAISO as SC for the Facility, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery ("Day-Ahead Seller Forecast"). The Day-Ahead Seller Forecast shall include hourly available capacity and generation and all Planned Outages.
- (j) Planned Outages. If Buyer requests a change to the scheduled date of any Planned Outage, Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) calendar days of receipt of Buyer's request.

(k) Forced Outages. Forced Outages shall be reported by Seller to Buyer verbally as soon as practicable and in writing no later than such time as is necessary for Buyer to meet its obligations to the CAISO as Scheduling Coordinator for the Facility. Written notice of a Forced Outage lasting longer than one (1) hour shall include the type of outage, start date and start time of outage, estimated or actual end date and end time of the outage, a text description of the cause of the outage and any other information the Seller deems necessary for the Buyer to understand the causes and impact of the outage. Seller shall notify Buyer as soon as practicable, and no later than such time as is necessary for Buyer to meet its obligations to the CAISO as Scheduling Coordinator for the Facility, whenever the Facility is returned to service.

(l) Curtailement.

(i) Mandatory Curtailement Periods. Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, or any successor thereto pursuant to a Curtailement Order. Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailement Order.

WSPP Agreement Changes Effective August 12, 2019

This version includes all revisions approved by the Federal Energy Regulatory Commission (FERC) in orders issued through September 24, 2019. The most recent revisions are to the List of Members within the Agreement, per the unpublished letter order dated September 24, 2019 (Docket No. ER19-2614-000). The FERC accepted the revisions effective August 12, 2019 for metadata and, for each change in the Member List, on the applicable date of the change as stated in its order.

This version of the WSPP Agreement is prepared for the convenience of WSPP Members. The WSPP Agreement as filed with the FERC is available at www.FERC.gov and specifically <http://etariff.ferc.gov/TariffList.aspx>.

This explanatory page is not part of the WSPP Agreement and is not filed with the FERC.

WSPP AGREEMENT

WSPP INC.
FIRST REVISED RATE SCHEDULE FERC NO. 6
Superseding
Rate Schedule FERC No. 6

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TABLE OF CONTENTS

1. PARTIES
2. RECITALS
3. AGREEMENT
4. DEFINITIONS
5. TERM, TERMINATION AND WITHDRAWAL
6. SERVICE SCHEDULES AND WSPP DEFAULT TRANSMISSION TARIFF
7. ADMINISTRATION
8. EXECUTIVE AND OPERATING COMMITTEES
9. PAYMENTS
10. UNCONTROLLABLE FORCES
11. WAIVERS
12. NOTICES
13. APPROVALS AND EFFECTIVENESS
14. TRANSFER OF INTEREST IN AGREEMENT
15. SEVERABILITY
16. MEMBERSHIP
17. RELATIONSHIP OF PARTIES
18. NO DEDICATION OF FACILITIES
19. NO RETAIL SERVICES
20. THIRD PARTY BENEFICIARIES
21. LIABILITY AND DAMAGES
22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND CONFIRMATIONS

- 22A. DEFAULT IN PAYMENT OF WSPP OPERATING COSTS
- 23. OTHER AGREEMENTS
- 24. GOVERNING LAW
- 25. JUDGMENTS AND DETERMINATIONS
- 26. COMPLETE AGREEMENT
- 27. CREDITWORTHINESS
- 28. NETTING
- 29. TAXES
- 30. CONFIDENTIALITY
- 31. TRANSMISSION TARIFF
- 32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS
- 33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES
- 34. DISPUTE RESOLUTION
- 35. FORWARD CONTRACTS
- 36. TRADE OPTION EXEMPTION
- 37. ADDITIONAL REPRESENTATIONS AND WARRANTIES
- 38. FLOATING PRICES
- 39. AMENDMENT
- 40. EXECUTION BY COUNTERPARTS
- 41. WITNESS

EXHIBIT A: NETTING

EXHIBIT B: FORM OF COUNTERPARTY GUARANTEE AGREEMENT

EXHIBIT C: SAMPLE FORM FOR CONFIRMATION

EXHIBIT D: WSPP MEDIATION AND ARBITRATION PROCEDURES

SERVICE SCHEDULES

- A. ECONOMY ENERGY SERVICE
- B. UNIT COMMITMENT SERVICE
- C. FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE
- D. OPERATING RESERVE – SPINNING AND OPERATING RESERVE –
SUPPLEMENTAL
- E. ENERGY IMBALANCE AND GENERATOR IMBALANCE POWER
- R. RENEWABLE ENERGY CERTIFICATE TRANSACTIONS WITH AND
WITHOUT ENERGY

SCHEDULE Q: FERC ACCEPTED SELLER-SPECIFIC COST-BASED RATE SCHEDULES

LIST OF MEMBERS

1. PARTIES:

The Parties to this WSPP Agreement (hereinafter referred to as "Agreement") are those entities that have executed this Agreement, hereinafter sometimes referred to individually as "Party" and collectively as "Parties," but excluding any such entity that withdraws its participation in the Agreement. An entity shall become a Party on the date specified in Section 16.6.

2. RECITALS

- 2.1 Through this Agreement, the WSPP administers a multi-lateral, standardized agreement applicable to capacity and/or energy transactions between members and is available to entities (which qualify for membership under Section 16) throughout the entire continental United States, Canada, and Mexico.
- 2.2 This Agreement serves two functions. First, it sets out the rules applicable to the operation of the WSPP. Second, it sets out the terms for the standardized agreement used for capacity and/or energy transactions between members.
- 2.3 This Agreement facilitates physical transactions in capacity and/or energy under a FERC accepted or approved rate schedule (this Rate Schedule FERC No. 6).
- 2.4 Through the standardization of terms for transactions in capacity and/or energy which facilitates such transactions, the public interest has been and will continue to be served.

3. AGREEMENT:

In consideration of the mutual covenants and promises herein set forth, the Parties agree as follows:

4. **DEFINITIONS:**

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified:

Agreement: This WSPP Agreement, including the Service Schedules and Exhibits attached hereto, as amended; provided, however, that Confirmation(s) are not included within this definition.

Administrative Committee: A sub-committee of the Executive Committee in accordance with Section 8.1.2.

Broker: An entity or person that arranges trades or brings together Purchasers and Sellers without taking title to the power.

Business Day(s): Any day other than a Saturday or Sunday or a national (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where both the Seller and the Purchaser have their principal place of business in the United States, Canadian holidays shall not apply. Similarly, where both the Seller and the Purchaser have their principal places of business in Canada, Canadian holidays shall apply and United States holidays shall not apply. In situations where one Party has its principal place of business within the United States and the other Party's principal place of business is within Canada, both United States and Canadian holidays shall apply.

California ISO: The California Independent System Operator Corporation or any successor organization.

Confirmation(s): The confirmations for transactions developed and made effective in accordance with Section 32 or Electronic Platform Confirmations.

Contract Price: The price agreed to between the Seller and the Purchaser for a transaction under the Agreement and Confirmation.

Contract Quantity: The amount of capacity and/or energy to be supplied for a transaction under the Agreement.

Control Area: An electric system capable of regulating its generation in order to maintain its interchange schedule with other electric systems and to contribute its frequency bias obligation to the interconnection as specified in the North American Electric Reliability Council (NERC) Operating Guidelines.

Costs: As defined in Section 22.3 of this Agreement.

Damages Settlement Transaction: A transaction where, after non-performance under a Confirmation, the Parties enter into a second transaction for the purpose of finally settling damages incurred by the Performing Party due to non-performance of such Confirmation.

Dealer: An entity or person that buys or sells power and takes title to the power at some point.

Defaulting Party: As defined in Section 22.1 of this Agreement.

Determination Period: As defined in Section 38.2 of this Agreement.

Documentary Writing: A document which is physically delivered by courier or U.S. mail, or a copy of which is transmitted by telefacsimile or other electronic means.

Economy Energy Service: Non-firm energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange energy that is

subject to immediate interruption upon notification, in accordance with the Agreement, including Service Schedule A, and any applicable Confirmation.

Electric Utility: An entity or lawful association which (i) is a public utility, Independent Power Producer, or Power Marketer regulated under applicable state law or the Federal Power Act, or (ii) is exempted from such regulation under the Federal Power Act because it is the United States, a State or any political subdivision thereof or an agency of any of the foregoing, or a Rural Utilities Service cooperative, or (iii) is a public utility, Independent Power Producer, or Power Marketer located in Canada or Mexico that is similarly regulated.

Electronic Platform Confirmation: agreed terms and conditions of a transaction, which agreement (a) was made through electronic entry of information and terms on, and in a manner that complies with the procedures of, the applicable electronic trading platform or exchange, (b) includes, at a minimum, the Standard Confirmation Provisions, and (c) is available to either Party for retrieval from the applicable electronic trading platform or exchange in printable or electronic form.

Electronic Writing:

- (1) Recorded oral conversation; or
- (2) electronic communications, including but not limited to e-mail, if the Parties to the transaction use such method to create an electronic writing for the Confirmation for such transaction and, except with respect to e-mail, specifically agree to the method of electronic communication.

Electronic Writings shall not include the transmittal of a copy of a document by electronic means, which is considered a Documentary Writing.

ERCOT: Electric Reliability Council of Texas, Inc., and any successor organization.

Event of Default: As defined in Section 22.1 of this Agreement.

Executive Committee: The committee established pursuant to Section 8 of this Agreement.

FERC: The Federal Energy Regulatory Commission or its regulatory successor.

Firm Capacity/Energy Sale or Exchange Service: Firm capacity and/or energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange for a specified period available capacity with or without associated energy which may include a Physically-Settled Option and a capacity transaction in accordance with the Agreement, including Service Schedule C, and any applicable Confirmation.

First Party: As defined in Section 27 of this Agreement.

Floating Price: As defined in Section 38.1 of this Agreement.

Gains: As defined in Section 22.3 of this Agreement.

Guarantee Agreement: An agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for obligations arising under this Agreement and Confirmation. A sample form of Guarantee Agreement is provided in Exhibit B.

Guarantor: The entity providing a guarantee pursuant to a Guarantee Agreement.

Hub: An electronic communication center that functions as a central point to electronically receive and assemble data for offers to buy or sell power or transmission service from each Party and make that data electronically available concurrently to all Parties.

Incremental Cost: The forecasted expense incurred by the Seller in providing an additional increment of energy or capacity during a given hour.

Independent Power Producer: An entity which is a non-traditional public utility that produces and sells electricity but which does not have a retail service franchise.

Letter of Credit: An irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Party requiring the Letter of Credit.

Losses: As defined in Section 22.3 of this Agreement.

Market Disruption Event: As defined in Section 38.2 of this Agreement.

NERC: North American Electric Reliability Council or any successor organization.

Non-Defaulting Party: As defined in Section 22.1(a) of this Agreement.

Non-Performing Party: As defined in Section 21.3(a) of this Agreement.

Non-Standard Confirmation Provisions: Provisions other than Standard Confirmation Provisions.

NYMEX: New York Mercantile Exchange and any successor organization.

Operating Agent: An agent of the WSPP as may be designated by the Executive Committee from time to time.

Operating Committee: That committee established pursuant to Section 8 of this Agreement.

Party or Parties: As defined in Section 1 of this Agreement.

Performing Party: As defined in Section 21.3(a) of this Agreement.

Power Marketer: An entity which buys, sells, and takes title to electric energy, transmission and/or other services from traditional utilities and other suppliers.

Physically-Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to sell an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation.

Premium: The amount paid by the Purchaser of a Physically-Settled Option to the Seller of such option by the date agreed to by the Parties in the Confirmation.

Present Value Rate: As defined in Section 22.3(b) of this Agreement.

Purchaser: Any Party which agrees to buy or receive from one or more of the other Parties any service pursuant to the Agreement and any applicable Confirmation.

Qualifying Facility: A facility which is a qualifying small power production facility or a qualifying cogeneration facility as these terms are defined in Federal Power Act Sections 3(17)(A), 3(17)(C), 3(18)(A), and 3(18)(B); which meets the requirements set forth in 18 C.F.R. §§ 292.203-292.209; or a facility in Canada or Mexico that complies with similar requirements.

Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute capacity and/or energy in place of the capacity and/or energy not delivered (for energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, at the delivery point specified for the transaction in the Confirmation.

Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of capacity and/or energy, as determined by the Seller in a commercially reasonable manner at the delivery point specified for the transaction in a Confirmation.

Retail Entity: A retail aggregator or supplier or retail customer; provided, however, only those Retail Entities eligible for transmission service under the FERC's pro forma open access transmission tariff are eligible to become members of the WSPP.

Second Party: As defined in Section 27 of this Agreement.

Seller: Any Party which agrees to sell or provide to one or more of the other Parties any service pursuant to the Agreement and the applicable Confirmation.

Service Schedule: A schedule of services established pursuant to Section 6 of this Agreement on file with FERC as part of this Agreement.

Standard Confirmation Provisions: Provisions setting forth: Seller, Purchaser, period of delivery, schedule, delivery rate, delivery points, type of service (e.g. Service Schedule A, B, C or other), contract quantity, price, transmission path (if any), date, and certain additional information for physically settled options (option type, option style, exercise date or period, premium, premium payout date, and method for providing notice of exercise).

Successor in Operation: The successor entity which takes over the wholesale electric trading operations of the first entity either through a merger or restructuring. A Successor in Operation shall not include an entity which merely acquires power

sales contracts from the first entity either through a purchase or other means without taking over the wholesale electric trading operations of the first entity.

Terminated Transaction: As defined in Section 22.2 of this Agreement.

Termination Payment: As defined in Section 22.2 of this Agreement.

Trading Day: As defined in Section 38.2 of this Agreement.

Uncontrollable Forces: As defined in Section 10 of this Agreement or in a Confirmation.

Unit Commitment Service: A capacity and/or associated scheduled energy transaction or a Physically-Settled Option under which the Seller has agreed to sell and the Purchaser has agreed to buy from a specified unit(s) for a specified period, in accordance with the Agreement, including Service Schedule B, and any applicable Confirmation.

WSPP: WSPP Inc., a corporation organized in 1995 and duly existing under the Utah Revised Nonprofit Corporation Act.

WSPP Default Transmission Tariff: The transmission tariff filed on behalf of WSPP members with FERC as it may be amended from time to time.

WSPP Homepage: WSPP's internet web site, www.wspp.org.

5. TERM, TERMINATION AND WITHDRAWAL:

- 5.1 This Agreement shall remain in effect until the Executive Committee, consistent with the voting provisions of Section 8.3, votes to terminate this Agreement and FERC accepts that termination, or FERC otherwise terminates the Agreement.
- 5.2 Any Party may withdraw its participation as a member of the WSPP and as a Party to this Agreement by providing thirty (30) days prior written notice to the Operating Agent and to the WSPP Homepage, and to all of its counterparties to outstanding transactions. As of the effective date of any withdrawal, the withdrawing Party shall have no further rights or obligations under this Agreement or as a member of the WSPP, except with respect to each outstanding Confirmation, all outstanding rights and obligations arising under any such Confirmation and this Agreement shall remain in full force and effect as if the withdrawal had not occurred. No Party shall oppose, before any court or regulatory agencies having jurisdiction, any other Party's withdrawal as provided in this Section.
- 5.3 Except as provided for in Section 5.2, after termination, or withdrawal with respect to the withdrawing Party, all rights to services provided under this Agreement shall cease, and no Party shall claim or assert any continuing right to such services thereunder. Except as provided in Section 5.2, no Party shall be required to provide services based in whole or in part on the existence of this Agreement or on the provision of services under this Agreement beyond the termination date, or date of withdrawal with respect to the withdrawing Party. If the Parties have entered into a master confirmation agreement only for WSPP transactions as that term is defined in Section 32.10, the withdrawing Party shall have no further rights under that

master confirmation agreement except for transactions that were outstanding at the time of the withdrawal.

- 5.4 The Parties subject to FERC jurisdiction under the Federal Power Act shall have the right to terminate their participation as a Member of the WSPP and as Party to this Agreement and any Confirmation without the necessity of filing with or approval by FERC, provided that such Parties comply with the requirements of Section 5.2.

6. SERVICE SCHEDULES AND WSPP DEFAULT TRANSMISSION TARIFF:

6.1 The Parties contemplate that they may, from time to time, add or remove Service Schedules under this Agreement. The attached Service Schedules A through E for Economy Energy Service, Unit Commitment Service, Firm Capacity/Energy Sale or Exchange Service, Operating Reserve – Spinning and Operating Reserve – Supplemental, and Energy Imbalance and Generator Imbalance Power, and Service Schedule R for Renewable Energy Certificate Transactions With And Without Energy, are incorporated into and made a part of this Agreement. Nothing contained herein shall be construed as affecting in any way the right of the Parties to jointly make application to FERC for a change in the rates and charges, classification, service, terms, or conditions affecting WSPP transactions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. Additional Service Schedules or amendments to existing Service Schedules, if any, shall be adopted only by amendment of this Agreement approved by the Executive Committee pursuant to Section 8.3 and shall become effective on the effective date allowed or accepted by FERC consistent with Section 39.

6.2 [RESERVED]

6.3 When the WSPP Default Transmission Tariff applies as specified in the preamble to such Default Transmission Tariff, Transmission Service under it shall be available both to Parties and non-Parties under this Agreement; provided, however, each Party or non-Party must be an eligible customer under the WSPP Default Transmission Tariff in order to receive service.

7. ADMINISTRATION:

- 7.1 The WSPP shall perform the administrative tasks necessary and appropriate to implement this Agreement. All authority to direct, manage and administer the WSPP shall reside in the Executive Committee. All duties assigned under this Agreement, or otherwise, to the Operating Committee, sub-committees, officers, Administrative Committee, or Operating Agent, are delegated powers of the Executive Committee and are subject to the Executive Committee's direction and control. The WSPP may engage the services of an Operating Agent, from time to time, to perform tasks in furtherance of this Agreement.
- 7.2 At least sixty (60) days prior to each calendar year that this Agreement is in effect, the Administrative Committee shall submit a budget for said year of operation to the Operating Committee for review. The proposed budget shall then be submitted, with the Operating Committee's recommendations, to the Executive Committee. The Executive Committee may approve the budget as submitted or with revisions. The Administrative Committee, Operating Committee, and Executive Committee shall address any appropriate revisions of the budget in the same manner.
- 7.3 The WSPP shall, as necessary, bill the Parties for costs incurred under this Agreement on an estimated basis reasonably in advance of when due, and such billings shall be paid by the Parties when due. Such billings shall be adjusted in the following month(s) to reflect recorded costs. Billing and payment of WSPP costs shall otherwise be implemented in accordance with the provisions of Section 9.

- 7.4 The WSPP shall maintain the WSPP Homepage and, as it deems appropriate, may engage a contractor for this purpose.
- 7.5 Each Party shall maintain a link to the WSPP Homepage and shall be responsible for expenses related thereto.
- 7.6 The WSPP, at reasonable times and places, shall make available its books of account, and records and documentation supporting expenditures under this Agreement, for the inspection of any Party for a period of time not to exceed two (2) years from the time such expenditures were incurred. A Party requesting review of the WSPP's records shall give the WSPP sufficient notice of its intent, but in no event less than thirty (30) days. The requesting Party may perform this review using personnel from its own staff or designate a certified public accounting firm for the purpose of this review. All costs incurred to perform this review shall be at the requesting Party's own expense. The Party performing the review shall not voluntarily release the WSPP's records or disclose any information contained therein to any third party unless the written consent of the WSPP and the Executive Committee has been obtained, except as required by law.
- 7.7 Upon the termination of this Agreement, in accordance with applicable law, the WSPP shall dispose of any and all of its assets and wind up its affairs as the Executive Committee may direct.

8. EXECUTIVE AND OPERATING COMMITTEES:

As a means of securing effective and timely cooperation within the activities hereunder and as a means of dealing on a prompt and orderly basis with various problems which may arise in connection with system coordination and operation under changing conditions, the Parties hereby establish an Executive Committee and an Operating Committee.

8.1 Executive Committee:

The Executive Committee shall consist of one representative and an alternate from each Party designated pursuant to Section 8.5 herein. The responsibilities of the Executive Committee are as follows:

8.1.1 To establish and amend bylaws of the WSPP consistent with this Agreement and to serve as the Board of Directors of the WSPP in accordance with applicable law.

8.1.2 To establish standing or ad hoc sub-committees as it may from time to time deem necessary or appropriate and appoint or elect members thereto. Such sub-committees shall include an Administrative Committee, as a standing committee, to administer the affairs of the WSPP as the Executive Committee may direct or approve. The Administrative Committee shall be comprised of the Chairman, Vice-Chairman, Secretary and Treasurer of the WSPP and the Chairman, and Vice-Chairman, and Secretary of the Operating Committee.

8.1.3 To review at least annually the service activities hereunder to ensure that such activities are consistent with the spirit and intent of this Agreement.

- 8.1.4 To review any unresolved issues which may arise hereunder and endeavor to resolve the issues.
- 8.1.5 To review and approve the WSPP's annual budget under this Agreement, and any revision thereto, in accordance with Section 7.2 of this Agreement or otherwise as the Executive Committee deems necessary or appropriate.
- 8.1.6 To amend this Agreement, from time to time, provided that no such amendment or restatement shall be effective unless approved or accepted by the FERC and subject to terms and conditions of such approval or acceptance. The effectiveness of any amendment also shall be consistent with Section 39.
- 8.1.7 To review and act on the application of an entity to become a Party to this Agreement, or to delegate such authority as the Executive Committee deems appropriate.
- 8.1.8 To do such other things and carry out such duties as specifically required or authorized by this Agreement.
- 8.1.9 To notify any Party of the rescission of its interest in this Agreement due to its failure to continue to meet the requirements of Section 16.1, or to delegate such authority to the Chairman of the Executive Committee, the Chairman of the Operating Committee, or the Administrative Committee.
- 8.1.10 To arrange for legal representation of the WSPP.

8.2 Operating Committee:

The Operating Committee shall consist of one representative and an alternate from each Party designated pursuant to Section 8.5. The responsibilities of the Operating Committee are as follows:

- 8.2.1 To establish, review, approve, or modify procedures and standard practices, consistent with the provisions hereof, for the guidance of operating employees in the Parties' electric systems as to matters affecting transactions under this Agreement.
- 8.2.2 To submit to the Executive Committee any proposed revisions to the Service Schedules or proposed additional Service Schedules.
- 8.2.3 To submit to the Executive Committee proposed amendments to this Agreement, provided that the Operating Committee shall have no authority to amend this Agreement, and further provided that the Executive Committee may amend this Agreement under Section 8.1.6 without having first received recommendations from the Operating Committee.
- 8.2.4 To establish, review, approve, or modify any scheduling or operating procedures required in connection with transactions under this Agreement.
- 8.2.5 To review and make recommendations to the Executive Committee for approval of the annual budget of the WSPP under this Agreement, including any proposed revisions thereto.
- 8.2.6 To review and recommend as necessary the types and arrangement of equipment for intersystem communication facilities to enhance transactions and benefits under this Agreement.
- 8.2.7 To monitor the administration and costs of the WSPP Homepage.
- 8.2.8 If the Executive Committee so directs, to review new member applications for membership in the WSPP under this Agreement and make

recommendations on said applications to the Executive Committee, or to delegate such authority as the Operating Committee deems appropriate.

8.2.9 To establish standing or ad hoc sub-committees and appoint or elect members of the Operating Committee thereto, provided that such sub-committees shall make recommendations to the Operating Committee and shall not be authorized to take any action or exercise any power reserved to the Operating Committee. Each sub-committee may elect a chairman, vice chairman, and secretary as it deems appropriate.

8.2.10 To do such other things and carry out such duties as specifically required or authorized by this Agreement or as directed by the Executive Committee; provided, however, that the Operating Committee shall have no authority to amend this Agreement.

8.3 All matters which require Operating Committee or Executive Committee approval as provided in this Agreement shall be by no less than ninety percent (90%) affirmative agreement of the committee members present or voting by proxy.

8.4 Unless otherwise agreed by all committee members of the Executive Committee or Operating Committee, as applicable, the Chairman of the Executive Committee and the Chairman of the Operating Committee shall cause all members of the applicable committee to receive notice of a committee meeting at least ten (10) Business Days prior to the date of the meeting. Such notice shall include an agenda of matters to be discussed and voted on at the meeting. All material issues to be submitted to a vote of the committee shall appear on the agenda.

- 8.5 In accordance with Section 16.5.1, each Party shall give notice to the WSPP of the name of its designated representative and alternate representative (to act in the absence of the designated representative) on each of the Executive Committee and Operating Committee, and of any changes thereto, and WSPP shall publish a listing of all such representatives on the WSPP Homepage. Each Party's designated representatives shall be authorized to act on its behalf with respect to votes taken of members of each committee and other activities of the committee.
- 8.6 The Executive Committee shall meet no less than once annually and otherwise as determined by its Chairman in his discretion. The Operating Committee shall meet as necessary, as determined by its Chairman in his discretion. A Chairman shall call a meeting of such committee upon the written request of not less than ten (10) members of the applicable committee.
- 8.7 The Executive Committee shall elect a Chairman, Vice-Chairman, Secretary and Treasurer. The Operating Committee shall elect a Chairman, Vice-Chairman, and Secretary. These officers shall serve terms of two-years duration, which terms shall commence on January 1 of the year following the election and expire on December 31 of the subsequent year, provided, that despite the expiration of an officer's term, the officer shall continue to serve until the officer's successor is elected and commences to serve, and further provided that with or without cause, the Executive Committee or Operating Committee, as applicable, may elect a substitute officer prior to the expiration of a term.
- 8.7.1 The Chairman of the Executive Committee shall be the Chairman of the WSPP. The Chairman shall preside over meetings of the Executive

Committee and, when the Executive Committee is not in session, exercise day to day management and control of the business and affairs of the WSPP, subject at all times to this Agreement and the direction of the Executive Committee.

8.7.2 The Vice-Chairman of the Executive Committee shall be the Vice-Chairman of the WSPP. The Vice-Chairman, in the absence or disability of the Chairman, shall exercise the powers and perform the duties of the Chairman and such other duties as the Executive Committee or the Chairman may prescribe, subject at all times to this Agreement and the direction of the Executive Committee.

8.7.3 The Secretary of the Executive Committee shall be the Secretary of the WSPP. The Secretary, or his designee, shall record minutes of meetings and actions of the Executive Committee, perform the customary duties of a secretary of a non-profit corporation, and attend to the giving and serving of all notices required by law or under this Agreement as the Chairman may direct.

8.7.4 The Treasurer of the Executive Committee shall be the Treasurer of the WSPP. The Treasurer shall have custody of all funds, securities, and evidences of indebtedness of the Corporation. The Treasurer shall receive and give receipts for moneys paid in on account of the Corporation and shall pay out of the funds on hand any bills, payrolls and other just debts of the Corporation of whatever nature upon maturity. The Treasurer shall maintain full and accurate accounts of all moneys received and paid out on account of the Corporation. The Treasurer shall deposit all moneys and other valuables

in the name and to the credit of the Corporation in such depositories as may be designated by the Executive Committee. The Treasurer shall adhere to budgets determined by the Executive Committee, including the annual budget under section 8.1.4 of this Agreement, and shall perform such other duties as are customary for a treasurer of a non-profit corporation.

8.7.5. The Chairman of the Operating Committee shall preside over Operating Committee meetings. The Vice Chairman of the Operating Committee shall serve in the absence of the Chairman and perform such other duties as the Operating Committee may assign. The Secretary of the Operating Committee, or his designee, shall record minutes of meetings and actions of the Operating Committee, and shall give notice of meetings as the Chairman may direct.

9. PAYMENTS:

- 9.1 The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to any Party shall be sent to the appropriate billing address as set forth on the WSPP homepage or as otherwise specified by such Party.
- 9.2 Payments for amounts billed under this Agreement and any Confirmation shall be received by the Party to be paid on the 20th day of the month in which the invoice was received or the tenth (10) day after receipt of the bill, whichever is later. Notwithstanding the foregoing, Premiums shall be paid within three (3) Business Days of receipt of the invoice. Payment shall be made at the location designated by the Party to which payment is due. Payment shall be considered received when payment is received by the Party to which Payment is due at the location designated by that Party. If the due date falls on a non-Business Day of either Party, then the payment shall be due on the next following Business Day.
- 9.3 Amounts not paid on or before the due date shall be payable with interest calculated daily, at a rate equal to 200 basis points above the per annum Prime Rate reported daily in the Wall Street Journal for the period beginning on the day after the due date and ending on the day of payment, provided that such interest shall not exceed the amount permitted by law.
- 9.4 In order to dispute a bill in whole or in part, a Party must provide written notice of the dispute to the other Party to the transaction. Such written notice shall specify the amount in dispute and state the basis for the dispute. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills

which, through inadvertent errors or as a result of a dispute, may have been overpaid shall be returned by the owing Party upon determination of the correct amount, with interest calculated in the manner set forth in Section 9.3. A Party shall have the right to dispute the accuracy of any bill or payment only for a period of two (2) years from the date on which the bill was initially delivered.

9.5 If a Party's records reveal that a bill was not delivered, then the Party may deliver to the appropriate Party a bill within two (2) years from the date on which the bill would have been delivered under Section 9.1 of this Agreement. The right to payment is waived with respect to any amounts not billed within such two (2) year period.

9.6 Each Party, or any third party representative of a Party, shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or statements of charges submitted hereunder for a period of two (2) years from the date the bill was delivered under this Agreement and/or Confirmation.

Within a two (2) year period from the date on which the bill was initially delivered, any Party to the applicable transaction may request in writing copies of the records of the other Party for that transaction to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall provide all reasonably requested documents and data within a reasonable time period.

10. UNCONTROLLABLE FORCES:

No Party shall be considered to be in breach of this Agreement or any applicable Confirmation to the extent that a failure to perform its obligations under this Agreement or any such Confirmation is due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance 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 avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, an "Uncontrollable Force" may include and is not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority.

The following shall not be considered "Uncontrollable Forces": (i) Seller's cost of obtaining capacity and/or energy; or (ii) Purchaser's inability due to the price of the capacity and/or energy, to use or resell such capacity and/or energy. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due

diligence, as provided above, to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice.

Where the entity providing transmission services for transactions under this Agreement and Confirmation interrupts such transmission service, the interruption in transmission service shall be considered an Uncontrollable Force under this Section 10 only in the following two sets of circumstances:

- (1) An interruption in transmission service shall be considered an Uncontrollable Force if (a) the Parties agreed on a transmission path for that transaction in the Confirmation (b) firm transmission involving that transmission path was obtained pursuant to a transmission tariff or contract to effectuate the transaction under this Agreement and Confirmation, and (c) the entity providing transmission service curtailed or interrupted such firm transmission pursuant to the applicable transmission tariff or contract. There shall be no due diligence obligation associated with interruptions under this subparagraph (1).
- (2) If the Parties did not agree on the transmission path for a transaction in the Confirmation, an interruption in transmission service shall be considered an Uncontrollable Force only if (a) the Party contracting for transmission services shall have made arrangements with the entity providing transmission service for firm transmission to effectuate the transaction under the Agreement and Confirmation, (b) the entity providing transmission service curtailed or interrupted such transmission service, and (c) the Party which contracted for such firm transmission services could not obtain alternate energy at the delivery point, alternate

transmission services, or alternate means of delivering energy after exercising due diligence.

No Party shall be relieved by operation of this Section 10 of any liability to pay for power delivered to the Purchaser or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

11. WAIVERS:

Any waiver at any time by any Party of its rights with respect to a default under this Agreement or any Confirmation, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

12. NOTICES:

12.1 Except for the oral notice provided for in Section 10 of this Agreement, any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail (postage prepaid), prepaid telegram, fax, or overnight delivery (with record of receipt).

12.2 Notices and requests of a routine nature applicable to delivery or receipt of capacity and/or energy shall be given in such manner as the Parties to a transaction shall prescribe in a Confirmation or otherwise; provided, however, if the Parties have not prescribed a method of providing such routine notices, then the procedures in Section 12.1 shall apply.

13. EFFECT OF APPROVALS:

- 13.1 This Agreement and all Confirmations are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction. Nothing contained in this Agreement or any Confirmation shall give FERC jurisdiction over those Parties not otherwise subject to such jurisdiction or be construed as a grant of jurisdiction over any Party by any state or federal agency not otherwise having jurisdiction by law.
- 13.2 Nothing in this Agreement or any Confirmation is intended to restrict the authority of the Bonneville Power Administration (BPA) pursuant to applicable statutory authority to use its existing wholesale power and transmission rates or to adopt new rates, rate schedules, or general rate schedule provisions for application under this Agreement and obtain interim or final approval of those rates from FERC pursuant to Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. Sec. 839e, provided such rates do not exceed the maximum rates in the applicable Service Schedule and are consistent with the terms and conditions of said Service Schedule.
- 13.3 Nothing contained in this Agreement or any Confirmation shall be construed to establish any precedent for any other agreement or to grant any rights to or impose any obligations on any Party beyond the scope and term of this Agreement or any Confirmation.

14. TRANSFER OF INTEREST IN AGREEMENT:

No Party shall voluntarily transfer its membership in the WSPP under this Agreement without the written consent and approval of all other Parties except to a Successor in Operation of such Party. With regard to the transfer of the rights and obligations of any Party associated with transactions under this Agreement and Confirmation(s), neither Party to such transactions may assign such rights or obligations unless (a) the other Party provides its prior written consent which shall not be unreasonably withheld; or (b) the assignment is to a Successor in Operation which provides reasonable creditworthiness assurances (see Section 27 for examples of such assurances) if required by the non-assigning Party based upon its reasonably exercised discretion. Any successor or assignee of the rights of any Party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement and Confirmation(s) (where applicable) to the same extent as though such successor or assignee were the original Party under this Agreement or the Confirmation(s), and no assignment or transfer of any rights under this Agreement or any Confirmation(s) shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement and any Confirmation(s) (where applicable). The execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 14.

15. SEVERABILITY:

In the event that any of the terms, covenants or conditions of this Agreement or any Confirmation, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and the Confirmation and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement or such Confirmation(s).

16. MEMBERSHIP:

- 16.1 Any Electric Utility, Retail Entity or Qualifying Facility may become a Party to this Agreement. The Executive Committee shall notify such Electric Utility, Retail Entity or Qualifying Facility of its decision within sixty (60) days of a request to become a Party to this Agreement, and any acceptable entity shall become a Party hereto by the execution of this Agreement or a counterpart hereof, payment of costs pursuant to Section 16.4, and concluding any necessary acceptance or approval referred to in Section 13. Any such Party, if it is subject to the ratemaking jurisdiction of FERC, shall be responsible for any FERC filing necessary for it to implement its performance under this Agreement.
- 16.2 Each Party shall continue to meet the requirements of Section 16.1 in order to remain a Party to this Agreement
- 16.3 Being a Party to this Agreement shall not serve as a substitute for contractual arrangements that may be needed between any Party which operates a Control Area and any other Party which operates within that Control Area.
- 16.4 Any entity that becomes a Party to this Agreement which was not a party to the experimental Western Systems Power Pool Agreement shall pay a one time fee of \$25,000 under this Agreement in recognition of prior efforts and costs incurred by the parties to the experimental Western Systems Power Pool Agreement, which efforts greatly facilitated development of this Agreement. Such fee shall be credited to future costs of the WSPP incurred hereunder.

16.5 In addition to requirements set forth elsewhere in this Agreement imposed on Parties as part of their membership in the WSPP, each Party shall abide by the following requirements:

16.5.1 Each Party shall maintain updated information regarding its Executive Committee and Operating Committee representatives on the WSPP Homepage and shall submit changes within a reasonable time period.

16.5.2 With regard to disputes involving transactions under this Agreement or other agreements, no Party shall seek to conduct discovery of the WSPP or issue or seek to obtain the issuance of any subpoena to the WSPP or WSPP officers acting in their capacities as officers of the WSPP or of the WSPP's attorneys or consultants with regard to their work for the WSPP or their opinions regarding the construction or interpretation of any clause of the Agreement, provided that the foregoing prohibition shall not apply in proceedings brought against the WSPP. In the event a Party seeks to compel discovery or testimony in violation of this Section, that Party shall be deemed to have consented to the quashing of the subpoena or other process providing therefor. Notwithstanding any other provision in this Agreement, a Party that seeks to conduct discovery or issue or seek to obtain the issuance of any subpoena in breach of this provision shall compensate the WSPP and its officers, attorneys, and consultants, as applicable, for all out-of-pocket costs incurred.

16.6 An entity shall become a Party to this Agreement and a member of the WSPP upon satisfaction of the requirements in this Section 16 and on the date allowed by FERC

if it is a FERC public utility or upon the date of satisfaction of the requirements in this Section 16 if it is not a FERC public utility.

17. RELATIONSHIP OF PARTIES:

- 17.1 Nothing contained in this Agreement or in any Confirmation shall be construed to create an association, joint venture, trust, or partnership, or agency relationship between or among the Parties, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and under any applicable Confirmation.
- 17.2 All rights and obligations of the Parties under this Agreement are several and are not joint.

18. NO DEDICATION OF FACILITIES:

Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

19. NO RETAIL SERVICES:

Nothing contained in this Agreement shall grant any rights to or obligate any Party to provide any services hereunder directly to or for retail customers of any Party.

20. THIRD PARTY BENEFICIARIES:

This Agreement shall not be construed to create rights, in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 14.

21. LIABILITY AND DAMAGES:

21.1 This Agreement contains express remedies and measures of damages in Sections 21.3 and 22 for non-performance or default. This Agreement also contains additional remedies to enforce payment of monies due and to enforce terms of the Agreement and applicable Confirmations in Section 21.2.

ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED.

Therefore, except as provided in Sections 21.3 and 22, no Party or its directors, members of its governing bodies, officers or employees shall be liable to any other Party or Parties for any loss or damage to property, loss of earnings, or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement (including any applicable Confirmation), including any negligence arising hereunder. Any liability or damages incurred by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

21.2 Any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding monies, (i) shall have the right to seek payment of such monies in any forum having competent jurisdiction and (ii) shall possess the right to seek relief directly from that forum without first utilizing the mediation or arbitration provisions of this Agreement and without exercising termination and liquidation rights under Section 22.

In addition, each Party shall possess the right to seek specific performance (injunctive relief) of the non-delivery related terms of this Agreement and any

Confirmation in any forum having competent jurisdiction. In seeking to enforce the terms of this Agreement, however, consistent with Section 21.1, no Party is entitled to receive or recover monetary damages except as provided in Sections 21.3 and 22.

21.3 The following damages provision shall apply to all transactions under this Agreement. For transactions under Service Schedule A, however, this damages provision or some other damages provision will apply only if such a damages provision is agreed to through a Confirmation. The damages under this Section 21.3 apply to a Party's failure to deliver or receive (or make available in the case of capacity) capacity and/or energy in violation of the terms of the Agreement and any Confirmation. The Contract Quantity and Contract Price referred to in this Section 21.3 are part of the agreement between the Parties for which damages are being calculated under this Section.

(a) If either Party fails to deliver or receive (or make available in the case of capacity), as the case may be, the quantities of capacity and/or energy due under the Agreement and any Confirmation (thereby becoming a "Non-Performing Party" for the purposes of this Section 21.3), the other party (the "Performing Party") shall be entitled to receive from the Non-Performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces as provided in Section 10, the applicable Service Schedule, or by the Performing Party):

(1) If the amount the Purchaser scheduled or received in any hour is less than the applicable hourly Contract Quantity, then the Purchaser

shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Contract Price differed from the Resale Price (Contract Price - Resale Price) and the amount by which the quantity provided to the Purchaser was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which the Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Purchaser's schedule or receipt of electric energy (based on Seller's reasonable commercial efforts to achieve such reduction). If the total amounts for all hours calculated under this paragraph (1) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(1).

- (2) If the amount the Seller scheduled or delivered (or made available in the case of capacity) in any hour is less than the applicable hourly Contract Quantity, then the Seller shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Replacement Price differed from the Contract Price (Replacement Price - Contract Price) and the amount by which the quantity provided by the Seller was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which the Purchaser incurred to achieve the Replacement Price, less the

reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Seller's schedule or delivery (based on Purchaser's reasonable commercial effort to achieve such reduction). If the total amounts for all hours calculated under this paragraph (2) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(2).

- (3) The Non-Performing Party also shall reimburse the Performing Party for any charges imposed on the Performing Party under open access transmission or FERC accepted or approved tariffs for regional organizations due to the non-performance.
- (4) The Non-Performing Party shall pay any amount due from it under this section within the billing period as specified in Section 9 of this Agreement or agreed to in the applicable Confirmation if the Parties agreed to revise the billing period in Section 9.
- (5) In the event (a) two Parties entered into two or more Confirmations in which the same Party is the Purchaser and the other Party is the Seller, (b) deliveries under two or more of such Confirmations are to occur, in whole or in part, on the same date and hour, and at the same delivery point, and (c) as to such date, hour, and delivery point, and with respect to one or more of such Confirmations, a Party is a Non-Performing Party (for purposes of this Section 21.3(a)(5), each such instance of non-performance, a "non-performed transaction"), then, as set out in this Section 21.3(a)(5), each non-performed

transaction shall be identified to a Confirmation, and the Contract Price of the Confirmation to which the non-performed transaction is identified, and the Contract Quantity of the non-performed transaction, shall be applied to the calculation of amounts due under Section 21.3(a)(1) through (3), as applicable.

The Parties in good faith shall seek to agree to the identification of each non-performed transaction to a Confirmation.

Each non-performed transaction not identified to a Confirmation by agreement, and any megawatt hours that are not fully accounted for by such identification, shall be identified to Confirmation(s) as follows:

- (i) The Performing Party in good faith shall determine whether each Confirmation is real-time, day-ahead, or forward; all Confirmations that are not real-time or day-ahead shall be deemed forward Confirmations.
- (ii) The Performing Party in good faith shall determine whether each non-performed transaction is real-time, day-ahead, or forward; all non-performed transactions that are not real-time or day-ahead shall be deemed forward non-performed transactions.
- (iii) The Performing Party shall:
 - (x) identify real-time non-performed transactions to real-time Confirmations, provided, that if the megawatt hours of real-time non-performed transactions exceed the

megawatt hours of real-time Confirmations, then such excess megawatt hours shall be identified to day-ahead Confirmations and any excess megawatt hours remaining after such identification to day-ahead Confirmations shall be identified to forward Confirmations.

(y) identify day-ahead non-performed transactions to day-ahead Confirmations, provided, that if the megawatt hours of day-ahead non-performed transactions exceed the megawatt hours of day-ahead Confirmations, then such excess megawatt hours shall be identified to forward Confirmations.

(z) identify all remaining non-performed transactions to forward Confirmations.

The Performing Party, in its billing for amounts due under Section 21.3(a)(1) through (3), shall set out a detailed explanation of each applicable determination under parts (i), (ii), and (iii) of this Section 21.3(a)(5), and state the resulting Contract Quantity and Contract Price, and any amounts associated with each such determination under Section 21.3(a)(3).

(b) The Parties agree that the amounts recoverable under this Section 21.3 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for the Performing Party. Such amounts are payable for the loss of bargain and the loss of protection against future risks.

- (c) Each Party agrees that it has a duty to mitigate damages in a commercially reasonable manner to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.
- (d) In the event the Non-Performing Party disputes the calculation of the damages under this Section 21.3, the Non-Performing Party shall pay the full amount of the damages as required by Section 9 of this Agreement to the Performing Party. After informal dispute resolution as required by Section 34.1, any remaining dispute involving the calculation of the damages shall be referred to binding dispute resolution as provided by Section 34.2 of this Agreement. If resolution or agreement results in refunds or the need for refunds to the Non-Performing Party, such refunds shall be calculated in accordance with Section 9.4 of this Agreement.
- (e) In the event non-performance of a transaction is accounted for by means of a Damages Settlement Transaction and the Damages Settlement Transaction is performed, then no damages shall be calculated or due under § 21.3(a) with respect to the non-performed transaction. Neither Party shall be required to enter into a Damages Settlement Transaction.

**22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND
CONFIRMATIONS:**

22.1 EVENTS OF DEFAULT

An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):

- (a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement or Confirmation if such failure is not remedied within two (2) Business Days after written notice of such failure is given to the Defaulting Party by the other Party ("the Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (b) the failure by the Defaulting Party to provide clear and good title as required by Section 33.3, or to have made accurate representations and warranties as required by Section 37 and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-Defaulting Party under the Agreement or any Confirmation pursuant to

Section 27 of this Agreement or any substitute or modified provision in any Confirmation.

- (e) With respect to its Guarantor, if any:
 - (i) if a material representation or warranty made by a Guarantor in connection with this Agreement, or any transaction entered into hereunder, is false or misleading in any material respect when made or when deemed made or repeated; or
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement, including any transaction entered into hereunder, and such failure shall not be remedied within three (3) Business Days after written notice; or
 - (iii) the institution, with respect to the Guarantor, by the Guarantor or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
 - (iv) the failure, without written consent of the other Party, of a Guarantor's guarantee 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 guarantee shall relate; or

- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, any guarantee.

22.2 REMEDIES FOR EVENTS OF DEFAULT

22.2(a) If an 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 of transactions under this Agreement; provided, however, (i) in no event shall any such suspension continue for longer than ten (10) Business Days; (ii) such suspension must include all transactions under this Agreement in effect as of the date of the suspension between the Defaulting Party and the Non-Defaulting Party; and (iii) such suspension is available only once for each default. This ten (10) day suspension period shall not affect in any way the thirty (30) day period for exercising a right of termination under Section 22.2(b). The Non-Defaulting Party shall have the unilateral right to exercise its rights under this Agreement including its termination rights at any time within the suspension period. The Defaulting Party shall have no suspension rights. In no event shall the suspension continue beyond the cure of or waiver by the Non-Defaulting Party of the applicable Event of Default. If the Non-Defaulting Party seeks to terminate the suspension period such that the suspension shall be terminated prior to the end of the ten (10) Business Day period specified above, it may do so only by providing at least twenty-four (24) hours written notice to the Defaulting Party before the suspension may be terminated.

22.2(b) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate all transactions between the Parties under this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. If the Non-Defaulting Party fails to exercise this right of termination within thirty (30) days following the time when the Event of Default becomes known (or more than thirty days if the Non-Defaulting and Defaulting Parties agree to an extension), then such right of termination shall no longer be available to the Non-Defaulting Party as a remedy for the Event(s) of Default; provided, however, this thirty day requirement for exercising termination rights shall not apply to defaults pursuant to Sections 22.1(c) and 22.1(e)(iii). The Non-Defaulting Party terminating transaction(s) under this Section 22.2 may do so without making a filing at FERC.

If the Non-Defaulting Party elects to terminate under this Section, it shall be required to terminate all transactions between the Parties under the Agreement at the same time. Upon termination, the Non-Defaulting Party shall liquidate all transactions as soon as practicable, provided that in no event will the Non-Defaulting Party be allowed to liquidate Service Schedule A transactions. The payment associated with termination ("Termination Payment") shall be calculated in accordance with this Section 22.2 and Section 22.3. The Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for each terminated

transaction ("Terminated Transaction") for the time period beginning at the time notice of termination under this Section 22 is received. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it under Section 21.3 of this Agreement or Confirmation(s), and any other remedies available to it at law or otherwise.

Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement or Confirmation(s) until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party. The Non-Defaulting Party shall possess the right to set-off the amount due it under this Section 22 by any such payments due the Defaulting Party as provided in Section 22.3(d).

22.3 LIQUIDATION CALCULATION OPTIONS

The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) The Gains and Losses shall be determined by comparing the value of the remaining term, transaction quantities, and transaction prices under each Terminated Transaction had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each Terminated Transaction. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations

from Dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts (or NYMEX power options contracts in the case of Physically-Settled Options) and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.

- (b) The Gains and Losses calculated under paragraph (a) shall be discounted to present value using the Present Value Rate as of the time of termination (to take account to the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of the Terminated Transactions; and
- (c) The Non-Defaulting Party shall set off or aggregate, as appropriate, the Gains and Losses (as calculated in Section 22.3(a)) and Costs and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within three (3) Business Days of receipt of such notice, pay the Termination Payment to

the Non-Defaulting Party, which amount shall bear interest at the Present Value rate from the time notice of termination was received until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party, after any set-off as provided in paragraph (d), shall pay the remaining amount to the Defaulting Party within three (3) Business Days of the date notice of termination was received including interest at the Present Value from the time notice of termination was received until the Defaulting Party receives payment.

- (d) The Non-Defaulting Party shall aggregate or set off, as appropriate, at its election, any or all other amounts owing between the Parties (discounted at the Present Value Rate) under this Agreement and any Confirmation against the Termination Payment so that all such amounts are aggregated and/or netted to a single liquidated amount. The net amount due from any such liquidation shall be paid within three (3) Business Days following the date notice of termination is received.
- (e) (i) If the Non-Defaulting Party owes the Defaulting Party monies under this Section 22.3, then notwithstanding the three Business Day payment requirement detailed above, the Non-Defaulting Party may elect to pay the Defaulting Party the monies owed under this Section 22.3 over the remaining life of the contract(s) being terminated. The Non-Defaulting Party may make this election by providing written notice to the Defaulting Party within three Business Days of the notice being provided to terminate and liquidate under this Section

22.3. The Non-Defaulting Party shall provide the Defaulting Party with the details on the method for recovering the monies owed over the remaining life of the contract(s). That method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each contract which allows it to receive the monies which would have been due it under Sections 22.3(c) and (d) in total (to be recovered over the term of the contract(s) to replicate as closely as possible the payment streams under such contract(s)) provided that the discounting using the Present Value Rate referenced in Section 22.3 (b) shall not be reflected in determining the amounts to be recovered under this provision. Any disputes as to the methodology shall be resolved pursuant to the dispute resolution procedures in Section 34, with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful.

- (ii) This Section 22.3(e) and the rights and obligations under it shall survive termination of any applicable transactions or agreements.
- (iii) The Party owed monies under this Section 22.3(e) shall have the right to request credit assurances consistent with Section 27 even after termination of any contract or transaction.
- (iv) If the Party owing money defaults on its payment obligations consistent with Section 22.1(a) or defaults with regard to providing credit assurances consistent with Section 22.1(d), then the other

Party shall have the right (by written notice) at any time after the Party owing money defaults to require that Party to pay all monies owed under all of the contracts subject to this Section 22.3(e) within three Business Days of receipt of the written notice. The monies to be paid under this accelerated payment provision shall be the remaining amounts to be paid under the contract(s) reflecting a discount using the Present Value Rate from the date of the written notice.

- (f) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal dispute resolution as provided in Section 34.1 of this Agreement and thereafter binding dispute resolution pursuant to Section 34.2 if the informal dispute resolution does not succeed in resolving the dispute. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within three (3) Business Days (except if the option under 22.3(e) has been invoked in which case the payment times in that provision would apply) of receipt of notice as set forth in Sections 22.3(c) and (d) subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 9.4, any amounts determined to have been overpaid.
- (g) For purposes of this Section 22.3:

- (i) "Gains" means the economic benefit (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
- (ii) "Losses" means the economic loss (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
- (iii) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements which replace a Terminated Transaction, transmission and ancillary service costs associated with Terminated Transactions, and reasonable attorneys' fees, if any, incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the Terminated Transactions. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.
- (iv) In no event, however, shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

22A. DEFAULT IN PAYMENT OF WSPP OPERATING COSTS:

22A.1 A Party shall be deemed to be in default in payment of its share of WSPP operating costs pursuant to Section 7 of this Agreement, if any, when payment is not received within ten (10) days after receipt of written notice. A default by any Party in such payment obligations shall be cured by payment of all overdue amounts together with interest accrued at the rate of one percent (1%) per month, or the maximum interest rate permitted by law, if any, whichever is less, prorated by days from the due date to the date the payment curing the default is made unless and until the Executive Committee shall determine another rate.

22A.2 A defaulting Party, which is in default under Section 22.A1, shall be liable for all costs, including costs of collection and reasonable attorney fees, plus interest as provided in Section 22.A1 hereof.

22A.3 The rights under this Agreement of a Party which is in default of its obligation to pay operating costs under this Agreement for a period of three (3) months or more may be revoked by a vote of the non-defaulting Parties' representatives on the Executive Committee consistent with Section 8.3. The defaulting Party's rights shall not be revoked, however, unless said Party has received at least thirty (30) days written notice of the non-defaulting Parties' intent to revoke such rights. Said notice shall state the date on which the revocation of rights shall become effective if the default is not cured and shall state all actions which must be taken or amounts which must be paid to cure the default. This provision allowing the non-defaulting Parties to revoke such rights is in addition to any other remedies provided in this Agreement or at law and shall in no way limit the non-defaulting Parties' ability to

seek judicial enforcement of the defaulting Party's obligations to pay its share of the operating costs under this Agreement. Upon the effective date of such revocation of rights, the defaulting party shall not be allowed to enter into any new transactions under this Agreement. The defaulting party under the Agreement and Confirmation(s) shall be required to carry out all obligations that existed prior to the effective date of such revocation. If a defaulting Party's rights under this Agreement have been revoked, the Executive Committee may restore that Party's rights upon the defaulting Party paying all amounts due and owing under this Agreement.

22A.4 Upon revocation of the rights of a defaulting Party under this Agreement, costs of the WSPP hereunder shall be equally shared among the remaining Parties. Cost allocation adjustments shall be retroactive to the date of the default.

23. OTHER AGREEMENTS:

No provision of this Agreement shall preclude any Party from entering into other agreements or conducting transactions under existing agreements with other Parties or third parties. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among any of the Parties.

24. GOVERNING LAW:

This Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of Utah, without regard to the conflicts of laws rules thereof. The foregoing notwithstanding, (1) if both the Seller and Purchaser are organized under the laws of Canada, then the laws of the province of the Seller shall govern, or (2) if the Seller or Purchaser is an agency of or part of the United States Government, then the laws of the United States of America shall govern.

25. JUDGMENTS AND DETERMINATIONS:

Whenever it is provided in this Agreement that a Party shall be the sole judge of whether, to what extent, or under what conditions it will provide a given service, its exercise of its judgment shall be final and not subject to challenge. Whenever it is provided that (i) a service under a given transaction may be curtailed under certain conditions or circumstances, the existence of which are determined by or in the judgment of a Party, or (ii) the existence of qualifications for membership shall be determined by the Executive Committee pursuant to Section 16, that Party's or the Executive Committee's determination or exercise of judgment shall be final and not subject to challenge if it is made in good faith and not made arbitrarily or capriciously.

26. COMPLETE AGREEMENT:

This Agreement and the Confirmation(s), shall constitute the full and complete agreement of the Parties with respect to a transaction, except as provided under Section 32.4.

27. CREDITWORTHINESS:

Should a Party's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the other Party in such other Party's reasonably exercised discretion with regard to any transaction pursuant to this Agreement and any Confirmation, the dissatisfied Party (the "First Party") may require the other Party (the "Second Party") to provide, at the Second Party's option (but subject to the First Party's acceptance based upon reasonably exercised discretion), either (1) the posting of a Letter of Credit, (2) a cash prepayment, (3) the posting of other acceptable collateral or security by the Second Party, (4) a Guarantee Agreement executed by a creditworthy entity; or (5) some other mutually agreeable method of satisfying the First Party. The Second Party's obligations under this Section 27 shall be limited to a reasonable estimate of the damages to the First Party (consistent with Section 22.3 of this Agreement) if the Second Party were to fail to perform its obligations. Events which may trigger the First Party questioning the Second Party's creditworthiness, financial responsibility, or performance viability include, but are not limited to, the following:

- (1) The First Party has knowledge that the Second Party (or its Guarantor if applicable) are failing to perform or defaulting under other contracts.
- (2) The Second Party has exceeded any credit or trading limit set out in any Confirmation or other agreement between the Parties.
- (3) The Second Party or its Guarantor has debt which is rated as investment grade and that debt falls below the investment grade rating by at least one rating agency or is below investment grade and the rating of that debt is downgraded further by at least one rating agency.

- (4) Other material adverse changes in the Second Party's financial condition occur.
- (5) Substantial changes in market prices which materially and adversely impact the Second Party's ability to perform under this Agreement or any Confirmation occur.

If the Second Party fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within three (3) Business Days of demand therefore, that will be considered an Event of Default under Section 22 of this Agreement and the First Party shall have the right to exercise any of the remedies provided for under that Section 22. Nothing contained in this Section 27 shall affect any credit agreement or arrangement, if any, between the Parties.

28. NETTING:

- 28.1 Parties shall net payments (associated with transactions under this Agreement and Confirmation(s)) in accordance with Exhibit A, if such Parties have executed the form attached as Exhibit A. The Parties' obligations to net shall include the netting of all payments received by the Parties in the same calendar month. Parties that have executed Exhibit A shall provide a signed copy of Exhibit A to a representative of the WSPP and to any Party that requests a copy and indicate on the WSPP Homepage that they have executed Exhibit A. If a Party indicated its election to net payments on the WSPP Homepage and that Party desires to withdraw its agreement to net, that Party shall provide at least 30 days notice on the WSPP Homepage of the change in its election to net and also shall provide, concurrent with its withdrawal notice, written notice to all Parties with which it has ongoing transactions or with which it has committed to future transactions under the Agreement at the time of the notice. Any such changes in netting status shall apply beginning at least 30 days after notice required by this Section 28.2 is provided and only shall apply to transactions agreed to beginning on or after the date the change in netting status becomes effective.
- 28.2 The Parties may by separate agreement either through a Confirmation or some other agreement set out specific terms relating to the implementation of the netting in addition to or in lieu of Exhibit A.
- 28.3 Each Party reserves to itself all rights, set offs, counterclaims, and other remedies and defenses (to the extent not expressly herein waived or denied) which such Party

has or may be entitled to arising from or out of this Agreement and any applicable Confirmation.

29. TAXES:

The Contract Price for all transactions under this Agreement shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Purchaser for if the Purchaser has paid, all taxes applicable to a transaction that arise prior to the delivery point. If the Purchaser is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Seller shall indemnify, defend, and hold harmless the Purchaser from any claims for such taxes. The Contract Price does not include reimbursement for, and the Purchaser is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to a transaction arising at and from the delivery point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Purchaser. The Purchaser shall indemnify, defend, and hold harmless the Seller from any claims for such taxes. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority associated with the transaction.

30. CONFIDENTIALITY:

- 30.1 The terms of any transaction under this Agreement or any other information exchanged by the Purchaser and Seller relating to the transaction shall not be disclosed to any person not employed or retained by the Purchaser or the Seller or their affiliates, except to the extent disclosure is (1) required by law, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency); (5) required to comply with North American Electric Reliability Organization, regional reliability council, or successor organization requirements; (6) necessary to obtain transmission service; or (7) to a developer of an index of electric power prices in accordance with Section 30.2. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).
- 30.2 A Party may disclose the terms of transactions under this Agreement, excluding the identities of parties, to any developer of any index of electric power prices without

violation of the confidentiality obligations under Section 30.1 if: (1) the disclosing Party and the index developer have entered into a written agreement, prior to the disclosure, under which the developer has agreed to use the information solely for the development of an index of electric power prices for publication and not for any other purpose; and (2) the index with respect to which disclosure is made is an aggregation of terms of transactions and does not identify terms of single transactions or the identities of parties to transactions.

31. TRANSMISSION TARIFF:

Pursuant to FERC Order No. 888, issued on April 24, 1996, and FERC orders where applicable, the WSPP Default Transmission Tariff has been filed and has become effective. The Parties agree to be bound by the terms of that Tariff for so long as they are WSPP members.

32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS:

32.1 General

32.1.1 A Confirmation shall include, at a minimum, the Standard Confirmation Provisions. (See Exhibit C for a sample). Subject to the limitations in Section 32.2 (Standard Confirmation Provisions) and Section 32.3 (Non-Standard Confirmation Provisions), the Confirmation shall be made in writing by a Documentary Writing or an Electronic Writing, or shall be an Electronic Platform Confirmation.

32.1.2 Pursuant to the provisions of this Section 32, the Parties to a transaction under this Agreement may agree to modify any term of this Agreement (other than provisions regarding the operation of the WSPP as an organization including Sections 7 and 8) which applies to such transaction, such agreement to be stated in a Confirmation or Confirmations.

32.1.3 Sections 32.2 and 32.3 shall not apply to an Electronic Platform Confirmation. Parties may amend an Electronic Platform Confirmation in accordance with the procedures, if any, of the applicable platform or exchange or in any other manner this Agreement permits. Each Electronic Platform Confirmation between WSPP members shall be subject to this Agreement, unless the transaction specified in the Electronic Platform Confirmation is subject to another agreement between the Parties other than a master Confirmation applicable to the Parties' WSPP Confirmations.

32.2 Process For Confirming Standard Confirmation Provisions.

32.2.1 Confirmation of Standard Confirmation Provisions For Transactions of Less Than One Week in Duration.

Confirmation for Standard Confirmation Provisions applicable to transactions of less than one week in duration may be through:

- (i) a Documentary Writing (including a Confirmation which is not executed by both Parties but which is binding under Section 32.2.3)

or

- (ii) an Electronic Writing.

Notwithstanding the foregoing sentence, with respect to a transaction of less than one week in duration as agreed in an Electronic Writing and that is to commence within one week of that agreement, a subsequent proposed confirming Documentary Writing under Section 32.2.3 shall not vary the terms of the Electronic Writing unless the Documentary Writing is executed by both Parties.

32.2.2 Standard Confirmation Provisions For Transactions of One Week or More in Duration.

Written confirmation shall be required for all Standard Confirmation Provisions for transactions of one week or more in duration. Such written confirmation may be made by a Documentary Writing executed by both Parties or a Documentary Writing not executed by both Parties but which is binding under Section 32.2.3.

32.2.3 Written Confirmation Process for Standard Confirmation Provisions.

The Seller shall provide a proposed Documentary Writing containing the proposed Standard Confirmation Provisions which must be received by the Purchaser within five Business Days of the date of the agreement to the transaction. The Purchaser shall have five Business Days from date of receipt to accept or propose modifications to the proposed Documentary Writing. If the Purchaser does not respond within that time period, the Seller's proposed Documentary Writing shall be considered as accepted and shall be the final Confirmation. If the Seller fails to provide a proposed Documentary Writing within the five Business Days period, then, within the immediately subsequent five Business Days, the Purchaser may submit a proposed Documentary Writing to the Seller. The Seller shall then have five Business Days from date of receipt to accept or propose modifications to the proposed Documentary Writing. If the Seller does not respond within that time period, the Purchaser's proposed Documentary Writing shall be considered as accepted and shall be the final Confirmation.

32.3 Process for Confirming Non-Standard Confirmation Provisions.

32.3.1 Non-Standard Confirmation Provisions for Transactions of Less Than One Week in Duration. Confirmation for Non-Standard Confirmation Provisions for a transaction of less than one week in duration only may be through: (i) an Electronic Writing; or (ii) in a Documentary Writing executed by both Parties.

32.3.2 Non-Standard Confirmation Provisions for Transactions of One Week or More in Duration. Confirmation for Non-Standard Confirmation

Provisions for transactions of one week or more only shall be through a Documentary Writing executed by both Parties.

32.3.3 WSPP Agreement is a Default Agreement.

If the Parties to a transaction (i) do not reach agreement on any proposed Non-Standard Confirmation Provision and (ii) do not confirm it under Section 32.3.1 or 32.3.2, as applicable, then the term or terms of the Agreement, which the Parties could not reach agreement to modify or change or which are not considered modified pursuant to this Section 32.3, shall apply to the transaction.

32.4 Prior Discussions And Statements

32.4.1 A Confirmation under Section 32.2 and/or 32.3, shall, together with this Agreement, be an integrated contract with respect to the transaction, shall supersede all discussions and negotiations with respect thereto, and are intended by the Parties as a final expression of their agreement with respect to such terms as are included therein and may not be contradicted by evidence of any prior agreement unless there is clear and convincing evidence of a mutual mistake in the Confirmation.

32.4.2 Notwithstanding any provision in this Agreement (including Sections 32.3.2 and 32.4.1), until the Confirmation has become final in accordance with Sections 32.2 and/or 32.3 for a transaction, any oral agreement or electronic communication establishing agreement of the Parties relating to such transaction shall remain valid and binding.

- 32.5 The Parties agree not to contest, or assert any defense with respect to, the validity or enforceability of any agreement to the terms concerning a specific transaction, on the basis that documentation of such terms fails to comply with the requirements of any statute that agreements be written or signed. Each Party consents to the recording by the other Party, without any further notice, of telephone conversations between representatives of the Parties, which contain agreements to or discussion concerning the terms of a specific transaction. All such recordings may be introduced and admitted into evidence for the purpose of proving agreements to terms, and any objection to such introduction or admission for such purpose is hereby expressly waived.
- 32.6 In the event of a conflict between a binding and effective Confirmation and this Agreement, the Confirmation shall govern.
- 32.7 The Seller shall not be required to file any Confirmation with FERC except as provided in the Service Schedules.
- 32.8 Other Products and Service Levels: The Parties may apply this Agreement and make a Confirmation with respect to a product/service level defined under any other document or form of agreement (e.g., the California ISO tariff, the ERCOT agreement or the EEI agreement). The confirmation process set forth in Section 32.3 shall apply to any such Confirmation. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such transaction consistent with Section 32.3, the transaction shall be subject to all the terms of this Agreement, except that (1) all service level/product definitions, (2) force majeure/uncontrollable force definitions, and (3) other terms as mutually

agreed shall have the meaning ascribed to them in the different agreement or in the applicable Confirmation.

32.9 Reserved.

32.10 The Parties may agree to modify terms of this Agreement for more than one transaction pursuant to a separate written agreement (a “master confirmation agreement”), which agreement shall be considered part of each Confirmation between the Parties and shall apply to all transactions entered into between the two Parties unless the Parties specifically agree to override such changes for a particular transaction consistent with the procedure in Section 32.2 or 32.3, whichever is applicable.

33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES:

33.1 Performance

33.1.1 The Seller shall deliver to the delivery point(s) as agreed to in the applicable Confirmation and sell to the Purchaser in accordance with the terms of the Agreement and such Confirmation.

33.1.2 The Purchaser shall receive and purchase the Contract Quantity, as agreed to by the Parties in the applicable Confirmation, at the delivery point(s) and purchase from the Seller in accordance with the terms of the Agreement and such Confirmation.

33.2 Title and Risk of Loss

Title to and risk of loss of the electric energy shall pass from the Seller to the Purchaser at the delivery point agreed to in the Confirmation; provided, however, with regard to federal agencies or parts of the United States Government, title to and risk of loss shall pass to Purchaser to the extent permitted by and consistent with applicable law.

33.3 Warranties

The Seller warrants that it will transfer to the Purchaser good title to the electric energy sold under the Agreement and any Confirmation, free and clear of all liens, claims, and encumbrances arising or attaching prior to the delivery point and that Seller's sale is in compliance with all applicable laws and regulations.

THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES,

**EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF
MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

34. DISPUTE RESOLUTION:

34.1 INFORMAL DISPUTE RESOLUTION

Before binding dispute resolution or any other form of litigation may proceed, any dispute between the Parties to a transaction under this Agreement first shall be referred to nonbinding mediation except for actions taken pursuant to Section 21.2. The Parties shall attempt to agree upon a mediator from a list of ten (10) candidates provided by the Chairman of the WSPP Operating Committee or his or her designee. If the Parties are unable to agree, then the Chairman or the designee shall appoint a mediator for the dispute. Neither the mediator nor the person involved on behalf of the WSPP in developing a list of mediators for the Parties to choose from or in selecting the mediator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the mediation. The WSPP shall establish procedures for the appointment of mediators and the conduct of mediation and those procedures shall apply to the mediation.

34.2 BINDING DISPUTE RESOLUTION

The Parties to a dispute may elect binding dispute resolution using the following process unless binding arbitration of certain disputes is required under this Agreement in which event the Parties shall use the process set forth in this Section 34.2 to resolve such disputes, unless the Parties otherwise agree:

- (a) **WSPP Dispute Resolution:** A Party to a dispute (if binding dispute resolution is required) or all Parties to a dispute (if agreement of the Parties is required for binding dispute resolution) may initiate binding dispute

resolution under WSPP procedures by notifying the Chairman of the WSPP Operating Committee or his or her designee. The Chairman or his or her designee shall provide the Parties with a list of ten (10) eligible arbitrators. Within ten (10) days of receiving the list, the Parties shall agree on a single arbitrator from the list to conduct the arbitration, or notify the Chairman of the Operating Committee or the designee of their inability to reach agreement. If notified of the Parties inability to reach agreement, then the Chairman or the designee shall choose the arbitrator from the list within five (5) days. Neither the arbitrator nor the person involved on behalf of the WSPP in developing a list of arbitrators for the Parties to choose from or in selecting the arbitrator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the arbitration. The Procedures to be used for this arbitration shall follow the arbitration procedures which shall be developed and maintained by the WSPP and the procedures will be generally consistent with the commercial arbitration rules of the American Arbitration Association though not involving the Association.

If the Parties agree to binding dispute resolution under this Section 34.2, each Party understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by this arbitration provision. Notwithstanding the foregoing, nothing herein is intended to waive any provision of the Federal Arbitration Act, 9 U.S.C. § 1, et. seq., or any right under state statute

or common law to challenge an arbitration award or to prevent any action to enforce any arbitration award.

A Party's liability and damages under any arbitration award resulting from the process set forth in this Section 34.2 shall be limited as provided in this Agreement or in any Confirmation.

34.3 COSTS

Each Party shall be responsible for its own costs and those of its counsel and representatives. The Parties shall equally divide the costs of the arbitrator or mediator and the hearing.

34.4 CONFIDENTIALITY

Any arbitration or mediation under this Section 34 shall be conducted on a confidential basis and not disclosed, including any documents or results which shall be considered confidential, unless the Parties otherwise agree or such disclosure is required by law.

35. FORWARD CONTRACTS:

The Parties acknowledge and agree that all transactions under the Agreement and Confirmation(s) are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The Parties acknowledge and agree that all of their transactions, together with this Agreement and the related Confirmation(s) form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.

36. TRADE OPTION EXEMPTION

The Parties intend that any Physically Settled Option under this Agreement shall qualify under the trade option exemption, 17 C.F.R. § 32.3. Accordingly, each Party buying or selling a Physically Settled Option agrees and warrants that any such option shall be offered only to a provider, user, or merchant and that the entities entering into the options are doing so solely for purposes related to their business.

37. ADDITIONAL REPRESENTATIONS AND WARRANTIES:

Each Party warrants and represents to the other(s) that it possesses the necessary corporate, governmental and legal authority, right and power to enter into and agree to the applicable Confirmation for a transaction or transactions and to perform each and every duty imposed, and that the Parties' agreement to buy and sell power under this Agreement and the Confirmation represents a contract. Each Party also warrants and represents to the other(s) that each of its representatives executing or agreeing through a Confirmation to a transaction under this Agreement is authorized to act on its behalf.

Each Party further warrants and represents that entering into this Agreement and any applicable Confirmation does not violate or conflict with its Charter, By-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement and applicable Confirmation, constitute a legal, valid and binding obligation enforceable against such Party in accordance with the terms of such agreements.

Each Party also represents that it is solvent and that on each delivery this representation shall be deemed renewed unless notice to the contrary is given in writing by the Purchaser to the Seller before delivery.

38. FLOATING PRICES:

38.1 In the event the Parties intend that the price for a transaction is to be based on an index, exchange or any other kind of variable reference price (such price being a "Floating Price"), the Parties shall specify the "Floating Price" to be used to calculate the amounts in a Confirmation due Seller for that transaction.

38.2 Market Disruption. If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined as follows. The Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price) for the affected Trading Day. If the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by the Parties based upon (1) quotes from Dealers in energy contracts; and/or (2) quotes from Brokers in energy contracts. Each Party may obtain up to a maximum of four quotes which must be provided to the other Party no later than twenty-two Business Days following the first Business Day on which the Market Disruption Event occurred or existed. These quotes shall reflect transacted prices. The Floating Price for the affected Trading Day shall equal a simple average of the quotes obtained and provided by the Parties consistent with the provisions of this Section 38. Each Party providing quote(s) to the other Party also shall identify to that other Party the Dealer(s) and/or the Broker(s) who provided each of the quotes to allow verification.

“Determination Period” means each calendar month during the term of the relevant transaction; provided that if the term of the transaction is less than one calendar month the Determination Period shall be the term of the transaction.

“Market Disruption Event” means, with respect to an index, any of the following events (the existence of which shall be determined in good faith by the Parties): (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

“Trading Day” means a day in respect of which the relevant price source published the relevant price or would have published the relevant price but for the Market Disruption Event.

38.3 Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

38.4 Corrections. For the purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine the relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either

Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will pay such amount consistent with the provisions of this Section 38.4. The amount that is payable as a result of the correction shall be included in the billing cycle in which the notice of the correction is provided.

39. AMENDMENT:

- 39.1 This Agreement may be amended upon the submission to FERC and acceptance by FERC of that amendment. The effective date of the amendment shall be the date on which FERC allows the amendment to become effective; provided, however, if the FERC orders a hearing on a filing under Section 205 of the Federal Power Act proposing an amendment to this Agreement, the amendment as it may be revised by the FERC shall not become effective until the FERC issues its final order (i.e. its order on rehearing before any judicial review) on the amendment. The Parties through the Executive Committee shall direct the filing of any amendments. The Parties to this Agreement agree to bound by this Agreement as it may be amended, provided that the Parties possess the right to challenge any amendments at FERC and to exercise any applicable withdrawal rights under this Agreement.
- 39.2 Unless otherwise stated in the amendment, all amendments shall apply only to new transactions entered into or agreed to on or after the effective date of the amendment. Preexisting agreements and transactions shall operate under the version of the WSPP Agreement effective at the time of the agreement for the transaction unless the Parties to a transaction or transactions mutually agree otherwise.
- 39.3 An agreement modifying this Agreement or a Confirmation for a transaction needs no consideration to be binding.

40. EXECUTION BY COUNTERPARTS:

This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

41. WITNESS:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the 27th day of July, 1991 (or as of the date of execution of this Agreement by each Party's duly authorized representation, in the case of any Party that becomes a signatory to this Agreement subsequent to July 27, 1991).

By: _____
Name of signing official:
Title:
Name of Member:
Date:

EXHIBIT A

NETTING

Each Party that executes this Exhibit A to the Agreement agrees to net payments for transactions under the WSPP Agreement and the applicable Confirmation(s) with any other Party or Parties which also have agreed to net payments by executing a copy of this Exhibit A. The Party executing this Exhibit A shall indicate below when it desires that its agreement to net becomes effective. A Party agreeing to net under this Exhibit A shall comply with the provisions of Section 28.2 of the Agreement. Defined terms used herein are as defined in the WSPP Agreement. Netting shall be done in accordance with the following provision:

If the Purchaser and Seller are each required to pay an amount on the payment due date in the same month for transactions under the Agreement and Confirmation(s), then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other party the difference between the amounts owed consistent with the payment times in Section 9.2 of the Agreement, unless the Parties have otherwise agreed to a different payment time as allowed by the Agreement. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of the Agreement. All outstanding payments between the Parties which are to be netted pursuant to this Exhibit A for transactions under WSPP Agreement and the applicable Confirmation(s) shall be offset against each other or set off or recouped therefrom.

Name of Authorized Representative

Effective Date for Netting

Name of WSPP Member

Signature of Authorized
Representative

Date of Execution

[WSPP SAMPLE FORM – PARTIES ARE FREE TO USE THIS OR DISREGARD IT.]

EXHIBIT B

FORM OF COUNTERPARTY GUARANTEE AGREEMENT

This Guarantee Agreement (this "Guarantee"), dated, as of [____], 199[___], is made and entered into by [____], a [____] corporation ("Guarantor").

WITNESSETH:

WHEREAS, [____] (the "Company") may enter into transactions involving power sales under the WSPP Agreement ("WSPP Agreement") and related Confirmation(s)¹ (collectively "Agreements") with [Company Name] ("Guaranteed Party"); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreements.

NOW THEREFORE, in consideration of the Guaranteed Party agreeing to conduct business with Company, Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Company (the "Obligations") to the Guaranteed Party in accordance with the Agreements. If Company fails to pay any Obligations, Guarantor shall promptly pay to the Guaranteed Party no later than the next Business Day (as defined in the WSPP Agreement), after notification, the amount due in the same currency and manner provided for in the Agreements. This Guarantee shall constitute a guarantee of payment and not of collection. Guarantor shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Obligations of Company to the Guaranteed Party are paid in full. The liability of Guarantor under the Guarantee shall be subject to the following:

(a) Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the Agreements (even if such payments are deemed to be damages) and, except to the extent specifically provided in the Agreements, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort, or any other even if such fees together with the payments exceed the cap in Section 1(b), damages, costs, except that Guarantor shall be required to pay reasonable attorney fees.

(b) The aggregate liability of the Guarantor shall not exceed [____] Million U.S. Dollars [_____].

2. DEMANDS AND NOTICE. If Company fails or refuses to pay any Obligations, the Guaranteed Party may make a demand upon Guarantor (hereinafter referred to as a "Payment

1

Demand"). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Company has failed to pay and an explanation of why such payment is due, with a specific statement that the Guaranteed Party is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until Company or Guarantor has cured such default, and additional Payment Demands concerning such default shall not be required until such default is cured.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of [] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guarantee; and

(c) this Guarantee constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. EFFECT OF BANKRUPTCY BY COMPANY. The Guarantor's obligation to pay under this Guarantee shall not be affected in any way by the institution with respect to the Company of a bankruptcy, reorganization, moratorium or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition for the Company's winding-up or liquidation.

5. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and Guaranteed Party hereto.

6. WAIVERS: Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that the Guaranteed Party seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of the Guaranteed Party in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreements.

Guarantor may terminate this Guarantee by providing written notice of such termination to the Guaranteed Party and upon the effectiveness of such termination, Guarantor shall have no further liability hereunder, except as provided in the last sentence of this paragraph. No such termination shall be effective until fifteen (15) Business Days after receipt by the Guaranteed Party of such termination notice. No such termination shall affect Guarantor's liability with respect to any obligations arising under any transaction entered into prior to the time the termination is effective, which transaction shall remain guaranteed pursuant to the terms of this Guarantee.

7. ASSIGNMENT. The Guarantor shall not assign this Guarantee without the express written consent of the Guaranteed Party. The Guaranteed Party shall be entitled to assign its rights under this Agreement in its sole discretion.

8. NOTICE. Any Payment Demand, to the Guaranteed Party or the Guarantor notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

To [Name of Guaranteed Party] _____

Attn: _____
Fax No.: (____) _____

To Guarantor: _____

Attn: _____
Fax No.: (____) _____

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. MISCELLANEOUS. THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF [State], WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. This Guarantee shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by the Guaranteed Party, its successors and assigns. The Guarantee embodies the entire agreement and understanding between Guarantor and the Guaranteed Party and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof. This Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

[_____] _____
By: _____
Name: _____
Title: _____

EXHIBIT C
SAMPLE FORM FOR CONFIRMATION

1. Transaction Specific Agreements

The undersigned Parties agree to sell and purchase electric energy, or a Physically-Settled Option, pursuant to the WSPP Agreement as it is supplemented and modified below:

- (a) Seller: _____
- (b) Purchaser: _____
- (c) Period of Delivery: From ______ To ______
- (d) Schedule (Days and Hours): _____
- (e) Delivery Rate: _____
- (f) Delivery Point(s): _____
- (g) Type of Service (Check as Applicable)
 - Service Schedule A _____
 - Service Schedule B _____
 - Service Schedule C _____
 - Physically-Settled Option Service Schedule B _____
 - Physically-Settled Option Service Schedule C _____
 - Other products per Section 32.6 _____ **[Describe Product]**
- (h) Contract Quantity: _____ Total MWhrs.
- (i) Contract or Strike Price: _____
- (j) Transmission Path for the Transaction (If Applicable): _____
- (k) Date of Agreement if different: _____
- (l) Additional Information for Physically-Settled Options
 - (i) Option Type: *Put* _____ *Call* _____
 - (ii) Option Style: _____
 - (iii) Exercise Date or Period: _____
 - (iv) Premium: _____
 - (v) Premium Payment Date: _____
 - (vi) Method for providing notice of exercise _____
- (m) Special Terms and Exceptions:
See Attachment A

[Special Terms and Exceptions shall be shown on an Attachment to this Confirmation.]

Name of Trader for Purchaser

Name of Trader for Seller

Authorized Signature
for Purchaser

Authorized Signature
for Seller

Date

Date

EXHIBIT D

WSPP MEDIATION AND ARBITRATION PROCEDURES

I. MEDIATION

- A. **Informal Mediation.** WSPP members with a dispute or a potential dispute involving transactions under the WSPP Agreement may request non-binding, informal mediation by contacting the WSPP's General Counsel and by providing a brief explanation in writing of the dispute and the remedy being sought. All parties to the dispute must request this Informal Mediation for it to become effective. After this contact, a telephonic conference call will be arranged among the affected WSPP members and the WSPP's General Counsel, the Chairman of the Operating Committee, and/or some other independent and knowledgeable person requested by the Chairman of the Operating Committee to participate. The purpose of the conference call will be to discuss the issues and to have an independent person or persons state their views. Best efforts will be made to set up this conference call within five Business Days after the WSPP's General Counsel is contacted subject to accommodating the schedules of all involved. This Informal Mediation shall be considered as satisfying the Mediation requirements of Section 34.1 of the WSPP Agreement.
- B. **Initiating Formal Mediation.** A WSPP member which believes that it possesses a claim against another WSPP member relating to a WSPP transaction, which is unable to resolve the dispute through agreement with the other member to the transaction, and which desires to pursue that claim shall initiate non-binding formal mediation pursuant to Section 34.1 of the WSPP Agreement. The member

initiating such mediation shall do so by Serving written notice to the Chairman of the WSPP Operating Committee, the WSPP's General Counsel, and the other members against which the claim is directed. Such notice shall state the nature of the dispute, the remedy sought, and support the claim.

- C. **Response to Document Initiating Formal Mediation.** Within eight days, the member or members against which the claim is directed may provide a response to the notice which shall be Served on the member which initiated the Mediation, the Chairman of the WSPP's Operating Committee, and the WSPP's General Counsel.
- D. **Choosing the Mediator.** The Mediator shall be chosen in accordance with the procedures set forth in Section 34.1 of the WSPP Agreement. Each Party may suggest persons to be included on the list of Mediators to be presented to the Parties provided that these suggested persons shall be provided to the WSPP Representative together with relevant personal histories within two Business Days of the date by which time the list of Mediators is to be sent out. The WSPP Representative shall allow at least one person suggested by each Party to be added to the list of Mediators. A brief personal history of each person on the list of potential mediators shall be provided to the Parties, with that history showing the person's employment over the last five years and any other relevant facts. The WSPP Representative shall provide the Parties with the list of Mediators within five days of receipt of notice of the dispute. The Parties then shall have five days in which to reach agreement on a Mediator or inform the WSPP Representative that they were unable to reach agreement in which event the WSPP Representative shall appoint the Mediator consistent with Section 34.1 of the WSPP Agreement. Upon

request of the Parties for expedition, the WSPP Representative shall use best efforts to expedite this process.

- E. **Location for the Formal Mediation.** The Parties shall agree on a location for the Mediation. If the Parties fail to reach agreement, then the WSPP Representative shall set the location which shall be convenient for the Parties and the Mediator.
- F. **Time for the Formal Mediation.** The Parties shall agree on the time for the Mediation after consultation with the Mediator if one has been appointed. If the Parties fail to reach agreement, then the WSPP Representative shall set the time which shall not be more than twenty-one days after the notice initiating the Mediation is received after consultation with the Parties and any Mediator.
- G. **Conduct of the Formal Mediation.** The Mediator shall have the ability to conduct the Mediation in any manner which the Mediator believes is appropriate to facilitate resolution of the dispute. Each Party shall have at least one representative with the authority to settle the dispute present at the Mediation. The Mediation shall be private and confidential and the Mediator shall have the authority to exclude any person not directly involved unless the Parties agree otherwise in writing. At the Mediation, each Party shall have the right to make a brief presentation of its case and to question the other Party. Each Party also may be represented by counsel.
- H. **Replacement of the Mediator.** If the Mediator resigns, withdraws or is no longer able to serve, then the Parties shall have two Business Days in which to agree on a new Mediator. If the Parties are unable to agree within such time, the WSPP Representative shall appoint a replacement Mediator from the list used to select the first Mediator within two Business Days after being notified that the Parties are

unable to agree. The dates and deadlines in this section may require modification if the mediator is replaced. Any extensions shall be as limited as possible.

II. ARBITRATION

- A. **Initiating Arbitration.** A WSPP member which initiates Arbitration pursuant to Section 34.2 of the WSPP Agreement shall do so by Serving the Chairman of the WSPP Operating Committee, the WSPP General Counsel and the members against which the claim is directed with written notice of its demand for arbitration. Such notice shall state the nature of the dispute, the remedy sought, and support the claim.
- B. **Response.** Within ten days of receipt of the notice, any member or members against which the claim is directed may provide a response to the notice. Such response must include any counterclaims which the member believes are appropriate. If a counterclaim is submitted, then the member which submitted the notice may respond to the counterclaim within ten days of receipt. All such responses shall be Served on the Parties, the Chairman of the WSPP Operating Committee, and the WSPP General Counsel.
- C. **Choosing the Arbitrator.** The Arbitrator shall be chosen in accordance with the procedures set forth in Section 34.2 of the WSPP Agreement. Each Party may suggest persons to be included on the list of Arbitrators to be presented to the Parties provided that these suggested persons are provided to the WSPP Representative together with relevant personal histories within two business days of the date by which time the list of Arbitrators is to be sent out. The WSPP Representative shall allow at least one person suggested by each Party to be added to the list of potential Arbitrators. A brief personal history of each person on the list of potential

Arbitrators shall be provided to the Parties, with that history showing the person's employment over the last five years and any other relevant facts. The WSPP Representative shall provide the Parties with the list of Arbitrators within seven days of receipt of notice of the request for Arbitration. The Parties then shall have ten days in which to reach agreement on the Arbitrator or to inform the WSPP Representative that they were unable to reach agreement in which event the WSPP Representative shall appoint the Arbitrator consistent with Section 34.2 of the Agreement. Upon request of the Parties for expedition, the WSPP Representative shall use best efforts to cause this process to be expedited.

- D. **Location for the Arbitration.** The Parties shall agree on a location for the Arbitration. If the Parties fail to reach agreement, then the WSPP Representative shall set the location which shall be convenient for the Parties and the Arbitrator.
- E. **Time for the Arbitration.** The Parties shall agree on the time for the Arbitration and coordinate that time with the Arbitrator if one has been agreed to or appointed. If the Parties fail to reach agreement, then the WSPP Representative shall set the time which shall not be more than 60 days after the notice is received. The WSPP Representative shall set a time after consultation with the Parties and the Arbitrator to check their schedules.
- F. **Discovery.** After appointment of the Arbitrator, each Party shall be entitled to obtain relevant documents from the other Parties and to take depositions. Each Party shall respond to such a document request within seven days of receipt of the request and make its employees or consultants available for depositions to the extent that the employee or consultant possesses knowledge and information

relevant to the dispute. Each Party shall disclose documents that are confidential or commercially sensitive subject to a reasonable protective order. Any disputes concerning discovery shall be promptly referred to the Arbitrator who shall have authority to resolve such disputes, including the authority to require attendance of witnesses at depositions. The Federal Rules of Civil Procedure shall apply to discovery under these procedures.

G. **Conduct of Arbitration if the Parties Agree to Waive an Oral Hearing.** If the Parties agree to waive an oral hearing, then the Parties shall Serve Initial Briefs no later than 35 days after the notice is received or notify the Arbitrator that they do not wish to submit any additional documents. Parties shall Serve any Reply Briefs no later than ten days after the date for Service of Initial Briefs.

H. **Conduct of the Arbitration Hearing.** No later than fifteen days before any hearing, any Party may Serve an Initial Brief or notify the Arbitrator that they do not wish to submit any additional documents. A Party shall Serve any Reply Brief no later than five Business Days before any hearing. The Arbitrator shall preside over any hearing and rule on all objections including objections as to the admissibility of evidence or whether the questioning is proper. All testimony shall be submitted under oath. The Arbitrator is not bound to follow any particular rules governing the conduct of the proceeding. The Arbitrator may rely on legal advice provided through the WSPP. The Arbitrator may require any person employed by a Party to attend and testify at the hearing. Each Party shall possess the right to present evidence, including witnesses, and to cross-examine other Parties' witnesses. The Arbitration shall be private and the Arbitrator shall have the

authority to exclude any person not directly involved unless the Parties otherwise agree. Each Party may be represented by counsel. A stenographic record of the Arbitration shall be kept.

I. **Decision.** Within ten Business Days after the end of the Arbitration hearing, the Arbitrator shall issue his award in writing. If the Parties waived the right to an oral hearing, then the Arbitrator shall issue the award within ten Business Days of the last date Briefs were to be submitted. The Arbitrator is not limited in the remedies he may order so long as any arbitration award is consistent with the provisions and limitations of the WSPP Agreement and any applicable Confirmation with respect to the liability and damages of any Party; provided, however, upon agreement of the Parties to the dispute, the Arbitrator's choice of remedies may be limited.

J. **Replacement of the Arbitrator.** If the Arbitrator resigns, withdraws, or is no longer able to serve then the Parties shall have two Business Days in which to agree on a new Arbitrator. If the Parties are unable to agree within such time, the WSPP Representative shall appoint a replacement Arbitrator from the list used to select the first Arbitrator within two Business Days after being notified that the Parties are unable to agree. The dates and deadlines in this section may require modification if the mediator is replaced. Any extensions shall be as limited as possible.

III. MISCELLANEOUS

A. **Confidentiality.** Any Arbitration or Mediation shall be confidential as provided in Section 34.4 of the WSPP Agreement.

- B. **Costs.** Costs shall be borne by Parties as provided in Section 34.3 of the WSPP Agreement.
- C. **Restrictions on Lawsuits.** Each Party shall be subject to the restrictions provided in Section 34.2 of the WSPP Agreement.
- D. **Attorney-Client/Attorney Workproduct.** The Arbitrator or Mediator shall not take any action which would result in disclosure of information in violation of the attorney-client privilege or attorney workproduct doctrine.

IV. DEFINITIONS

- A. **Arbitrator or Arbitration.** The Arbitrator appointed pursuant to these procedures and Section 34.2 of the WSPP Agreement and the Arbitration pursuant to these procedures and the WSPP Agreement.
- B. **Initial or Reply Briefs.** Written documents submitted by the Parties to support their positions and respond to each others positions. Such documents shall be limited to 25 pages.
- C. **Business Days.** Defined as in the WSPP Agreement.
- D. **Mediator or Mediation.** The Mediator appointed pursuant to these procedures and Section 34.1 of the WSPP Agreement and the Mediation pursuant to these procedures and the WSPP Agreement.
- E. **Parties.** The WSPP members involved in the Mediation or Arbitration which have a direct interest in the dispute.
- F. **Service, Serving, or Served.** The method of service shall be by fax, unless impracticable because of the size of the document. In all events, the document should be delivered to the Party by overnight mail. Parties also should attempt to

send the document out by email if possible. Service will be accomplished to a Party if sent to the Party's contact person for the disputed transaction. If there are multiple contact persons for one Party, service to one such person shall suffice. Service shall be to those individuals or entities specified in this procedures, but must include service to the Parties, the Mediator or Arbitrator (if either has been appointed), and to the WSPP General Counsel.

- G. **WSPP Representative.** The Chairman of the WSPP Operating Committee or his or her designee for the purposes of the Arbitration or Mediation.

SERVICE SCHEDULE A
ECONOMY ENERGY SERVICE

A-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

A-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms and conditions for requesting and providing Economy Energy Service.

A-3 TERMS:

A-3.1 A Party may schedule Economy Energy Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation.

A-3.2 Scheduling of Economy Energy Service hereunder shall be a responsibility of the Parties involved.

A-3.3 Each Seller/Purchaser may prepare a daily estimate of the amount of Economy Energy Service that it is willing and able to sell/buy each hour and the associated hourly sale/purchase price for the next Business Day, plus the weekend and holidays, and communicate this information to all other Parties via the Hub.

A-3.4 Purchasers shall arrange purchases directly with Sellers, and shall be responsible for transmission arrangements.

A-3.5 Unless otherwise mutually agreed between the Purchaser and the Seller, all Economy Energy Service transactions shall be pre-scheduled, and billings shall be based on

amounts and prices agreed to in advance by schedulers, subject to Paragraphs A-3.6 and 3.7 and subject to change by mutual agreement between dispatchers or schedulers due to system changes.

A-3.6 The price for Economy Energy Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section A-3.7 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

A-3.7 Except as provided for in Section A-3.6, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/ month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/ day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. In lieu of payment, such Parties may mutually agree to exchange economy energy at a ratio not to exceed that ratio provided for in Section C-3.6 of Service Schedule C. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or

ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary services charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including the exchange of economy energy. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. Any such transmission services (and ancillary service provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

A-3.8 Unless otherwise agreed, the Purchaser shall be responsible for maintaining operating reserve requirements as back-up for Economy Energy Service purchased and the Seller shall not be required to maintain such operating reserve.

A-3.9 Each Party that is a FERC regulated public utility as defined in A-3.6 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

SERVICE SCHEDULE B
UNIT COMMITMENT SERVICE

B-1 PARTIES:

This Service Schedule is agreed upon as part of this Agreement by the Parties.

B-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Unit Commitment Service.

B-3 TERMS:

B-3.1 A Party may schedule Unit Commitment Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Unit Commitment Service becomes a firm commitment, for both Parties, for the agreed capacity and terms.

B-3.2 Unless otherwise mutually agreed by the Parties involved in a Unit Commitment Service transaction, the terms set forth in this Service Schedule B shall govern such transaction.

B-3.3 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers, for a specified unit for a specified period of time.

B-3.4 Purchasers shall arrange purchases directly with Sellers.

B-3.5 The price for Unit Commitment Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in

Section B-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

B-3.6 Except as provided for in Section B-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC,

and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

B-3.7 Start-up costs and no-load costs if included by the Seller shall be stated separately in the price.

B-3.8 Energy schedules for the Purchaser's share of a unit may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the change is to take place, unless otherwise mutually agreed or unforeseen system operating conditions occur.

B-3.9 Unit Commitment Service is intended to have assured availability; however, scheduled energy deliveries may be interrupted or curtailed as follows:

- (a) By the Seller by giving proper recall notice to the Purchaser if the Seller and the Purchaser have mutually agreed to recall provisions,
- (b) By the Seller when all or a portion of the output of the unit is unavailable, by an amount in proportion to the amount of the reduction in the output of the unit, unless otherwise agreed by the schedulers,
- (c) By the Seller to prevent system separation during an emergency, provided the Seller has exercised all prudent operating alternatives prior to the interruption or curtailment,
- (d) Where applicable, by the Seller to meet its public utility or statutory obligations to its customers, or
- (e) By either the Seller or the Purchaser due to the unavailability of transmission

capacity necessary for the delivery of scheduled energy.

B-3.10 Each Party that is a FERC regulated public utility as defined above in B-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

B-4 BILLING AND PAYMENT PROVISIONS:

B-4.1 Except as provided in Sections B-4.2 and B-5, billing for Unit Commitment Service shall be computed based upon the agreed upon prices.

B-4.2 In the event the Seller requests recall of Unit Commitment Service in a shorter time frame than was mutually agreed pursuant to Section B-3.9(a) and the Purchaser agrees to allow such recall, the Purchaser shall be relieved of any obligation to pay start-up costs.

B-5 TERMINATION PROVISION:

In the event Unit Commitment Service is curtailed or interrupted except as provided in Section B-3.9(a), the Purchaser shall have the option to cancel the Unit Commitment Service at any time by paying the Seller for (i) all energy deliveries scheduled up to the notice of termination and (ii) all separately stated start-up and no-load costs.

SERVICE SCHEDULE C
FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE

C-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

C-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Firm Capacity/Energy Sale or Exchange Service.

C-3 TERMS:

C-3.1 A Party may schedule Firm Capacity/Energy Sale or Exchange Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Firm Capacity/Energy Sale or Exchange Service becomes a firm commitment, for both Parties, for the agreed service and terms.

C-3.2 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers.

C-3.3 Firm capacity transactions shall include buying, selling, or exchanging capacity between Parties with or without associated energy. A firm capacity sale or exchange is a commitment, in accordance with the terms and conditions specified in the Confirmation, of capacity resources.

C-3.4 Firm energy transactions shall include buying, selling, or exchanging firm energy

between Parties in accordance with the terms and conditions specified in the Confirmation.

C-3.5 The price for Firm Capacity/Energy Sale or Exchange Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section C-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

C-3.6 Except as provided for in Section C-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges

shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

C-3.7 Firm Capacity/Energy Sale or Exchange Service shall be interruptible only if the interruption is: (a) within any recall time or allowed by other applicable provisions governing interruptions of service under this Service Schedule, as may be mutually agreed to by the Seller and the Purchaser, (b) due to an Uncontrollable Force as provided in Section 10 of this Agreement; or (c) where applicable, to meet Seller's public utility or statutory obligations to its customers; provided, however, this paragraph (c) shall not be used to allow interruptions for reasons other than reliability of service to native load. If service under this Service Schedule is interrupted under Section C-3.7(a) or (b), neither Seller nor Purchaser shall be obligated to pay any damages under this Agreement or Confirmation. If service under

this Service Schedule is interrupted for any reason other than pursuant to Section C-3.7(a) or (b), the Non-Performing Party shall be responsible for payment of damages as provided in Section 21.3 of this Agreement or in any Confirmation.

C-3.8 Each Party that is a FERC regulated public utility as defined in Section C-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

C-3.9 Seller shall be responsible for ensuring that Service Schedule C transactions are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council.

SERVICE SCHEDULE D
OPERATING RESERVE – SPINNING
AND
OPERATING RESERVE – SUPPLEMENTAL

D-1 PURPOSE

This Service Schedule specifies procedures, terms and conditions pursuant to which the Seller provides Operating Reserve – Spinning and/or Operating Reserve – Supplemental, as specified in the Confirmation, to enable the Designated Authority to meet a reserve obligation or to resell as ancillary services under an OATT.

D-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE

D-2.1 Terms used in this Service Schedule with initial capitalization which are not defined in the Agreement or this Service Schedule shall have the meanings given to them in the NERC Glossary and Applicable Standards. In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule.

D-2.1.1 “Applicable Standards” means the NERC Reliability Standards and the respective reliability standards and criteria of NERC, and of any Regional Reliability Organization, Balancing Authority, and Reserve Sharing Group applicable to the Seller’s provision and the Designated Authority’s use of Operating Reserve – Spinning or Operating Reserve – Supplemental, in force as of the date of the Confirmation.

D-2.1.2 “Demand Response Resource(s)” has the meaning given in 18 C.F.R. §35.28(b)(5).

D-2.1.3 “Designated Authority” means the Regional Reliability Organization, Balancing Authority, Reserve Sharing Group or other entity designated in the Confirmation,

which shall have a right to apply the applicable Reserve to the quantity of Reserve it is required to maintain, and to use such Reserve in accordance with the Applicable Standards. The Designated Authority and the Purchaser may be the same entity or two different entities. If the Designated Authority and the Purchaser are the same entity, then the Designated Authority shall also be the Purchaser for all purposes under the Agreement.

D-2.1.4 "Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the applicable time period in the applicable region, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was made, could have been expected to accomplish the desired result in a manner that: (a) is consistent with the Applicable Standards; (b) gives due consideration to reliability, safety and protection of equipment and the public welfare; and (c) is consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, or the exclusion of all other practices, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

D-2.1.5 "NERC Glossary" means the NERC Glossary of Terms Used in Reliability Standards.

D-2.1.6 "Non-Performance" with respect to Seller shall have the meaning given in Section D-4.1, and with respect to Purchaser, the meaning given in Section D-4.2.

D-2.1.7 "OATT" refers to the Open Access Transmission Tariff of the Designated

Authority or, if the Designated Authority has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

D-2.1.8 "OATT Schedule" refers to schedule 5 or 6 of the OATT for sale of ancillary services, or any other schedule under an OATT for sale of Operating Reserve – Spinning or Operating Reserve – Supplemental.

D-2.1.9 "Operating Reserve – Spinning" shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 5 or similar schedule under an OATT.

D-2.1.10 "Operating Reserve – Supplemental" shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 6 or similar schedule under an OATT.

D-2.2 The following rules apply to this Service Schedule.

D-2.2.1 In the event of inconsistency between the definition in the NERC Glossary of Terms and the Applicable Standards, the Applicable Standards shall control.

D-2.2.2 No product sold or transferred under this Service Schedule D shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

D-2.2.3 The OATT, OATT Schedules, regulations of the FERC, the NERC Glossary, and Applicable Standards shall be applied in their forms as of the date of the Confirmation.

D-3 TERMS OF SERVICE

D-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Operating Reserve – Spinning and/or Operating Reserve – Supplemental, to which the Confirmation applies;
- (b) Identification of the Designated Authority and if the Designated Authority is not a Regional Reliability Organization, the Regional Reliability Organization within which the Designated Authority is electrically located;
- (c) The Standard Confirmation Provisions, as applicable;
- (d) Any additional attributes of the Operating Reserve – Spinning or Operating Reserve – Supplemental, as the Parties may agree;
- (e) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (f) Any conditions to the effectiveness of the Confirmation, including, for example, the completion of any arrangements or agreements between the Seller and the Designated Authority or among the Seller, Designated Authority, and Purchaser.

D-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

D-3.3 Seller shall provide Operating Reserve – Spinning or Operating Reserve – Supplemental, as applicable, to the Designated Authority in conformity with the Applicable Standards and any additional attributes specified in the Confirmation as are consistent with the Applicable Standards. Seller shall provide such service from one or more generation resources or Demand Response Resources. Such resources must be physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, prescribed by, the Applicable Standards for the applicable service, and

as required to conform to any additional attributes stated in the Confirmation.

D-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

D-3.4.1 Seller shall provide capacity and deliver energy associated with Operating Reserve – Spinning or Operating Reserve – Supplemental, in quantities up to the applicable capacity(ies) specified in the Confirmation for the applicable hour(s), as and when the Designated Authority requests such delivery in the manner of request specified in the Confirmation and in accordance with Section D-3.4.2.

D-3.4.2 The Designated Authority shall use the capacity and energy provided by Seller under this Service Schedule for the sole purpose of satisfying the Designated Authority's own obligations pertaining to Operating Reserve – Spinning and Operating Reserve – Supplemental, as specified in the Applicable Standards or the Confirmation. Purchaser shall ensure that the Designated Authority shall not require Seller to deliver energy under this Service Schedule except as and when the Designated Authority determines, in its good faith discretion reasonably exercised in accordance with Good Utility Practice or such other criteria as may be stated in the Confirmation, that such energy is required to enable it to respond to a contingency or other event for which the service specified in the Confirmation is permitted to be utilized under the Applicable Standards or as otherwise stated in the Confirmation.

D-3.5 Inspection and Audit. The Purchaser and Designated Authority shall have the right, to conduct such inspections and audits of Seller's records as are reasonable to assure that the Seller's provision of services under this Service Schedule and Confirmation conforms to the Applicable Standards and the Confirmation. The Seller shall have the right to conduct

inspections and audits of the Designated Authority's records as reasonably required to assure that any use by the Designated Authority of the services under this Service Schedule and Confirmation conformed to Section D-3.4.2 and the Confirmation. The Parties may state further details and conditions in the Confirmation concerning these rights, including, for example, provisions concerning confidentiality or limiting inspection to an agreed third-party auditor.

D-3.6 Regulatory Matters – Rate Caps

D-3.6.1 The price for Operating Reserve – Spinning or Operating Reserve – Supplemental shall not be subject to the rate caps specified in Section D-3.6.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

D-3.6.2 Except as provided for in Section D-3.6.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange

ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

D-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

D-4.1 Seller Non-Performance. "Non-Performance" with respect to Seller means Seller's failure to provide capacity or deliver energy to the Designated Authority as this Service Schedule

and the Confirmation require.

D-4.1.1 Purchaser Entitlement to Damages. In the event of Non-Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

D-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller's Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided, that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.1.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section D-4.1.1, or to avail itself of remedies for other Events of Default.

D-4.2 Purchaser Non-Performance. "Non-Performance" with respect to the Purchaser means the Designated Authority's failure to receive capacity and/or energy, or the Designated Authority's use of capacity and/or energy under this Service Schedule which use does not conform to Section D-3.4.2 (such capacity and/or energy, the "unauthorized energy").

D-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall compensate Seller in an amount equal to the quantity of unauthorized energy Seller was required to deliver during each hour, multiplied by the energy charge for the applicable hour.

D-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section D-4.2 an Event of Default under the

Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (but not Section 22.2(a)), provided that the right to terminate all transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section D-4.2.1, or to avail itself of remedies for other Events of Default under the Agreement.

D-4.3 Termination under Section D-4.1.2 or D-4.4.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section D-4.1.2 or D-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

D-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

SERVICE SCHEDULE E

ENERGY IMBALANCE AND GENERATOR IMBALANCE POWER

E-1 PURPOSE

This Service Schedule states procedures, terms and conditions pursuant to which the Seller provides Energy Imbalance Power and Generation Imbalance Power to the Purchaser, as specified in the Confirmation, and the Purchaser receives such service to meet a reliability obligation or to resell as ancillary services under an OATT.

E-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE

E-2.1 In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule E.

E-2.1.1 "Balancing Power" means a service or product that can be resold as Energy Imbalance Power or Generator Imbalance Power under Schedules 4 and 9, respectively, of the OATT or other schedule under an OATT for sale of imbalance power.

E-2.1.2 "Demand Response Resource(s)" has the meaning given in 18 C.F.R. §35.28(b)(5).

E-2.1.3 "Non-Performance" with respect to Seller shall have the meaning given in Section E-4.1 and with respect to Purchaser the meaning given in Section E-4.2.

E-2.1.4 "OATT" refers to the Purchaser's Open Access Transmission Tariff approved by the FERC or, if the Purchaser has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

E-2.1.5 "OATT Schedule" refers to schedule 4 or 9 of the OATT for sale of ancillary services, or any other schedule for sale of imbalance power under an OATT.

E-2.2 The following rules apply to this Service Schedule.

E-2.2.1 No product sold or transferred under this Service Schedule E shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

E-2.2.2 The OATT and OATT Schedules shall be applied in their forms as of the date of the Confirmation.

E-3 TERMS OF SERVICE

E-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Energy Imbalance and Generator Imbalance Power, to which the Confirmation applies;
- (b) The Standard Confirmation Provisions, as applicable;
- (c) Any additional attributes of the Balancing Power, as the Parties may agree;
- (d) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (e) Any conditions to the effectiveness of the Confirmation.

E-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

E-3.3 Seller shall provide Balancing Power from one or more generation resources or Demand Response Resources. Such resources must be physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, as may be stated in the Confirmation.

E-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

E-3.4.1 Upon the requests of the Purchaser, Seller shall provide capacity and deliver energy associated with Balancing Power to the Purchaser at any rate of flow up to and including the applicable capacity(ies) and at such intervals as are specified in the Confirmation for the applicable hour(s).

E-3.4.2 Transmission must be available intra-hour, and may be arranged and scheduled in any manner that meets the requirements of the Parties.

E-3.5 Regulatory Matters – Rate Caps

E-3.5.1 The price for Balancing Power shall not be subject to the rate caps specified in Section E-3.5.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

E-3.5.2 Except as provided for in Section E-3.5.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and

the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

E-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

E-4.1 Seller Non-Performance. "Non-Performance" with respect to Seller means Seller's failure to provide capacity or deliver energy to the Purchaser as this Service Schedule and the Confirmation require.

E-4.1.1 Purchaser Entitlement to Damages. In the event of Non- Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller's Non-Performance under Section E-4.1 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.1.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.1.1, or to avail itself of remedies for other Events of Default.

E-4.2 Purchaser Non-Performance. "Non-Performance" with respect to Purchaser means Purchaser's failure to receive energy that it had scheduled for receipt under this Service Schedule and the Confirmation.

E-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall pay damages to Seller calculated in accordance with Section 21.3 of the Agreement.

E-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section E-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions

under this Service Schedule E. Exercise of the termination option under this Section E-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.2.1, or to avail itself of remedies for other Events of Default.

E-4.3 Termination under Section E-4.1.2 or E-4.2.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section E-4.1.2 or E-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

E-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

SERVICE SCHEDULE R
RENEWABLE ENERGY CERTIFICATE TRANSACTIONS
WITH AND WITHOUT ENERGY

R-1 Introduction; Transaction Documentation; and Rules of Construction. This Service Schedule R states terms and conditions applicable to REC Transactions entered into by Parties under the Agreement.

R-1.1 Documentation. Each REC Transaction shall be documented in a Confirmation.

Annex 2 is a Confirmation template, which the Parties may modify and make subject to any other agreement between them. A Confirmation for a REC Transaction will be given legal effect only if a Documentary Writing.

R-1.2 Contract Documents. The Agreement, Service Schedule R, and the fully executed Confirmation comprise a contract for a REC Transaction. Any conflicts between or among the Agreement, Service Schedule R, and the Confirmation shall be resolved in the following order of control: first, the Confirmation; second, Service Schedule R; and third, the Agreement.

R-1.3 Definitions. Definitions contained in the Agreement and Annex 1 apply to this Service Schedule R. Any conflicts among definitions contained in these documents shall be resolved in accordance with Section R-1.2.

R-1.4 Rules of Construction.

R-1.4.1 The Annexes of Service Schedule R are incorporated into and made a part of this Service Schedule R, as though set forth fully herein.

R-1.4.2 The word “including” shall mean “including but not limited to.” Unless otherwise specified, the word “Section” refers to a section of this Service Schedule R and includes all subparts of the specified section.

R-1.4.3 Subject to any legal restrictions applicable to a Party, the Parties to a REC Transaction may vary any term or condition of this Service Schedule R for that REC Transaction. Provisions in this Service Schedule R concerning such variance of terms, such as “unless otherwise agreed,” shall not prejudice the generality of the preceding sentence, provided, that the Parties shall not vary Section C-3.6 of Service Schedule C, Section B-3.6 of Service Schedule B, and Section A-3.7 of Service Schedule A.

R-1.4.4 An Applicable Program shall be applicable to a REC Transaction only if designated expressly in the Confirmation. No rule of contract construction or interpretation, and no inference or implication, shall cause an Applicable Program that is not designated expressly in the Confirmation to be applicable to a REC Transaction.

R-2 Confirmations; REC Products.

R-2.1 REC Transaction. A “REC Transaction” is a purchase and sale of a REC separately from or bundled with Energy. A REC Transaction may be for the purchase and sale of any REC Product defined in Section R-2.3 or another REC Product the Parties may define.

R-2.2 Confirmations. In addition to other terms and conditions to which the Parties may agree, the Confirmation:

R-2.2.1 must include the following terms: REC Product, Contract Quantity, Contract Price, Vintage, and Transfer Date, and whether the Environmental Attributes covered by the REC are All Attributes, Program Attributes, or other coverage the Parties may specify;

R-2.2.2 for a bundled REC Transaction (Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC), may include a single Contract Price which may be allocated between the REC and the Energy;

R-2.2.3 must identify the Renewable Energy Facility or Renewable Energy Source if the REC Transaction is All Attributes (Section R-2.4.1) or Program Attributes (Section R-2.4.2), if a designated Applicable Program requires such identification, or if the REC Product is Resource Contingent Bundled REC or Facility As-Run Bundled REC;

R-2.2.4 must designate an Applicable Program if the REC Transaction is Program Attributes, the Seller is to assure compliance with an Applicable Program (Sections R-5.2.1, 6.3, and 6.4), or to recover penalties and alternative compliance payments (Section R-9.1), and if the REC Transaction is All Attributes, may designate an Applicable Program (Section 2.4.1).

R-2.3 REC Products. A “REC Product” is any of the following defined products or other product specified in the Confirmation.

R-2.3.1 Firm REC. A “Firm REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of energy. The Seller has a firm obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force.

R-2.3.2 Firm Bundled REC. A “Firm Bundled REC” is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The

Seller has a firm obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force. The terms and conditions of Service Schedule C apply to the purchase and sale of Energy associated with a Firm Bundled REC as the Parties may modify such terms and conditions in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section C-3.6 of Service Schedule C shall apply, except (1) where the Seller is a FERC regulated "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule C at market-based rates; or (2) where the Seller is not such a FERC regulated "public utility." When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price.

R-2.3.3 Resource Contingent REC. A "Resource Contingent REC" is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller has a resource contingent obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable Force; (ii) the Renewable Energy

Facility identified in the Confirmation was not on line to produce energy required for the REC due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties may have agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

R-2.3.4 Resource Contingent Bundled REC.

- (a) A "Resource Contingent Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a resource contingent obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery, due to Forced Outage, Scheduled

Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC or Delivery. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

- (b) The terms and conditions of Service Schedule B apply to the purchase and sale of Energy associated with a Resource Contingent Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section B-3.6 of Service Schedule B shall apply, except (1) where the Seller is a FERC regulated "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule B at market-based rates; or (2) where the Seller

is not such a FERC regulated "public utility." When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule B Section B-3.8 is modified to state the following:

Energy schedules for the Purchaser's share of a Renewable Energy Facility may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions. Seller shall timely notify the Purchaser of Scheduled Maintenance.

The following is added at the end of Section B-3.9:

(f) By the Seller when all or a portion of the unit is unavailable due to Fuel Impediment, unless otherwise agreed by the schedulers.

R-2.3.5 Facility As-Run REC. A “Facility As-Run REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller is obligated to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers’ contract quantities under contracts with Seller.

R-2.3.6 Facility As-Run Bundled REC.

(a) A “Facility As-Run Bundled REC” is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has an obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is

available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

- (b) The terms and conditions of Service Schedule A apply to the purchase and sale of Energy associated with a Facility As-Run Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section A-3.7 of Service Schedule A shall apply, except (1) where the Seller is a FERC regulated "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule A at market-based rates; or (2) where the Seller is not

such a FERC regulated "public utility." When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule A Section A-3.3 is modified to state the following:

Energy schedules may be modified by the Purchaser or Seller with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions.

R-2.4 Environmental Attributes Contained In The REC. The Confirmation may describe the Environmental Attributes covered by the REC as All Attributes, Program Attributes, or as the Parties otherwise may agree. If the Confirmation does

not designate a REC Transaction as Program Attributes or otherwise limit the Environmental Attributes conveyed, and if a Renewable Energy Facility or Renewable Energy Source is specified, the REC Transaction shall be All Attributes. A designation of All Attributes will not be effective unless a Renewable Energy Facility or Renewable Energy Source is designated in the Confirmation.

R-2.4.1 All Attributes. An “All Attributes” REC conveys all of the Environmental Attributes the Renewable Energy Facility or Renewable Energy Source designated in the Confirmation is capable of producing, whether known or unknown on the Effective Date, including, at a minimum, all Environmental Attributes required by any Applicable Program designated in the Confirmation. Seller disclaims any warranty that Environmental Attributes other than those required by an Applicable Program designated in the Confirmation fulfill the requirements of any other Applicable Program. To establish the Environmental Attributes conveyed, the Confirmation may include a specification thereof.

R-2.4.2 Program Attributes. A “Program Attributes” REC conveys the Environmental Attributes required by an Applicable Program designated in the Confirmation. It conveys no other Environmental Attributes, the rights to which are retained by the Seller. The Parties should verify that a designated Tracking System will recognize a Program Attributes REC. (Note, WREGIS does not recognize a Program Attributes limitation upon conveyed Environmental Attributes.)

R-3 Delivery and Title.

R-3.1 Unbundled REC Transactions. This Section R-3.1 applies if the REC Product is a Firm REC, Resource Contingent REC, or Facility As-Run REC.

R-3.1.1 Delivery. “Deliver(y)(ed)” occurs upon completion of Seller’s transfer of the Contract Quantity to Purchaser. If a Tracking System is designated in the Confirmation, Seller shall cause transfer in accordance with the rules and procedures of the Tracking System. If the Tracking System does not state such rules or procedures, then Delivery shall occur upon the Tracking System’s transfer of the REC into Purchaser’s account. If a Tracking System is not designated in the Confirmation, Delivery is completed upon Seller’s delivery to Purchaser of an Attestation.

R-3.1.2 Acceptance. “Accept(ance)(ed)” means Purchaser’s receipt of Delivery of the REC from Seller, without Purchaser’s rejection. If a Tracking System is designated in the Confirmation, Purchaser shall receive a transfer in accordance with the rules and procedures of the Tracking System, and Acceptance (or rejection) shall be made within five (5) Business Days following the date the Tracking System gives electronic notice to Purchaser that it has initiated transfer (this deadline applies regardless of any different period stated in the Tracking System’s rules and procedures) and if timely rejection is not made, then the Delivery is Accepted. If a Tracking System is not designated in the Confirmation, Acceptance occurs upon Purchaser’s Acceptance,

without rejection within five (5) Business Days of delivery, of the Attestation delivered by Seller.

R-3.1.3 Passage of Title. Title to the REC shall pass from Seller to Purchaser upon Delivery and Acceptance.

R-3.2 Bundled REC Transactions. This Section R-3.2 applies if the REC Product is a Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC.

R-3.2.1 Delivery. “Delivery(y)(ed)” occurs upon completion of Seller’s transfer to Purchaser of the Contract Quantity of the REC and the Contract Quantity of the Energy. Delivery of the REC shall be completed in accordance with Section R-3.1.1. Delivery of Energy shall be completed in accordance with the terms and conditions of the Confirmation and the Agreement.

R-3.2.2 Acceptance. “Acceptance” of the REC occurs in the manner specified in Section R-3.1.2, and of the Energy upon receipt at the delivery point in accordance with the Confirmation.

R-3.2.3 Passage of Title. If the Vintage of the REC is prior to the Effective Date, title to the REC passes from Seller to Purchaser on the Effective Date or other date to which the Parties agree. If the REC is to be generated on or after the Effective Date, title to the REC passes upon the generation of each megawatt hour of energy required for production of the REC, and Seller shall hold the REC in trust for Purchaser until Delivery. Passage of title to Energy occurs pursuant to the Agreement.

R-3.3 Actions Required of Parties to Assure Delivery.

R-3.3.1 Provision of Generation Information; Required Actions. No less than monthly, Seller shall provide Purchaser with a written statement setting forth for applicable periods the quantities of Seller's generation of energy for production of the REC. Seller shall promptly take all actions and do all things necessary and appropriate to cause the designated Tracking System, if any, to transfer the REC to Purchaser, including promptly providing all required information and documents in the required forms, and paying any and all fees the Tracking System imposes on Seller. If the Confirmation provides for a designated Tracking System to expedite issuance of certificates (for example, forward transfer certificates in WREGIS), Seller shall promptly take all actions required to cause such expedition. If no Tracking System is designated in the Confirmation, then upon creation of the REC Seller shall promptly deliver the Attestation to Purchaser.

R-3.3.2 Failure to Issue REC. Seller is responsible for transfer and issuance of RECs by the Tracking System; Purchaser's sole responsibilities are maintenance of an account with the Tracking System and Acceptance of conforming RECs pursuant to Section R-3.1.2. Without prejudice to the immediately preceding sentence, in the event a Tracking System designated in the Confirmation declines to issue an electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of a REC, each Party will provide the other Party with all documents, communications, and information sent to or received from the Tracking System that pertain thereto. The Parties will cooperate,

and each Party will complete any uncompleted items for which it is responsible, each at its own expense. If following such efforts, and due to no failure of Seller to take all required actions, the Tracking System does not issue the electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of the REC, Seller may, upon Purchaser's agreement (which Purchaser may decline in its discretion), provide an Attestation to Purchaser to effect Delivery. The obligations under this Section R-3.3.2 shall not be construed to diminish the Seller or the Purchaser's respective rights and obligations under the Agreement, Service Schedule R, and the Confirmation.

R-3.4 Conveyance and Transfer. As of both Delivery and passage of title, Seller shall transfer and convey to Purchaser all right, title, and interest in and to the REC and all Environmental Attributes underlying the REC pursuant to the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and the Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

R-4 Charges; Credit. The charge shall be an amount equal to the Contract Price multiplied by the Delivered and Accepted quantity, without prejudice to the right to recover damages owed in accordance with Section R-9. The Parties may state any credit terms and conditions to which they agree in the Confirmation; Section 27 of the Agreement applies unless otherwise agreed.

R-5 Governing Law; Change in Law.

R-5.1 Governing Law. Section 24 of the Agreement applies except as follows. If an Applicable Program is designated in the Confirmation, all performance obligations

pursuant to the REC Transaction concerning the creation, issuance, transfer, tracking and retirement of the REC shall be governed as follows:

R-5.1.1 If the Applicable Program was created by the laws of a Governmental Authority, then by the laws, rules, regulations, orders, and judicial precedent of such Governmental Authority;

R-5.1.2 If the Applicable Program was not created by the laws of a Governmental Authority, but is a voluntary program, then Section 24 of the Agreement applies without modification, and the Parties shall be bound contractually to comply with the standards and criteria of the voluntary Applicable Program.

R-5.2 Change in Law.

R-5.2.1 Applicability. Section R-5.2 applies only to REC Transactions for which an Applicable Program is designated in the Confirmation. In a REC Transaction for which no Applicable Program is designated, Seller makes no representation or warranty concerning compliance with any particular Applicable Program and any such representation or warranty is expressly disclaimed.

R-5.2.2 Definitions.

- (a) "Change in Law" means any addition or amendment, by a Governmental Authority, to any laws, rules, regulations, orders, or judicial precedent, that applies to an Applicable Program designated in the Confirmation, that is enacted or issued after the Effective Date and nullifies compliance of the REC with the Applicable Program. An addition or amendment that is enacted

or issued before the Effective Date but effective on or after the Effective Date is not a Change in Law.

(b) “Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date and the Transfer Date, including requirements modified or added by a Change in Law.

(c) “Not Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date only, and the REC and Environmental Attributes are not required to conform to requirements modified or added by a Change in Law.

R-5.2.3 Default Designation as Regulatorily Continuing. A REC Transaction as to which an Applicable Program is designated in the Confirmation shall be Regulatorily Continuing unless the Parties specify in the Confirmation that the REC Transaction is Not Regulatorily Continuing.

R-5.2.4 Effect of Change In Law in Regulatorily Continuing REC Transaction.

(a) If a Change in Law occurs in a Regulatorily Continuing REC Transaction, Seller shall be obligated to make reasonable efforts to attain compliance with the designated Applicable Program,

the costs of which shall not be required to exceed any cost cap specified in the Confirmation. If despite such efforts to attain compliance, including reasonable expenditures, Seller cannot obtain compliance and Purchaser refuses to accept Delivery of the REC due to the Change in Law, Seller shall not be liable for damages under Section R-9.

- (b) In the event Purchaser refuses to accept Delivery of the REC under Section 5.2.4(a), and Seller has Delivered energy to Purchaser in the REC Transaction, Purchaser shall not be relieved of its obligation to pay for such energy, which payment shall be either at the price allocated to energy in the Confirmation, if any, and if no allocation is made, then at an amount equal to the Replacement Price.

R-5.2.5 Amendment to Address Change In Law. Nothing in this Section R-5.2 shall be construed to preclude the Parties from agreeing to amend the Confirmation to permit a Seller to perform its obligations in a REC Transaction as to which a Change in Law has occurred.

R-6 Seller Representations and Warranties. In each REC Transaction, Seller represents and warrants to Purchaser the following:

R-6.1 As of both Delivery and passage of title, Seller has and conveys to Purchaser all right, title, interest in and to the REC and all Environmental Attributes underlying the REC as required by the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

R-6.2 As of both Delivery and passage of title, the REC and Environmental Attributes conform to the requirements of the REC Transaction.

R-6.3 If the REC Transaction is Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), subject to any limits upon Seller's obligations under Section R-5.2.4, as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date and the Transfer Date.

R-6.4 If the REC Transaction is Not Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date.

R-6.5 With respect to deliveries of Energy in REC Transactions for Firm Bundled REC, Contingent Resource Bundled REC, and Facility As-Run Bundled REC, that Seller has complied with the representations and warranties stated in Section 33 of the Agreement.

SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

R-7 Records; Confidentiality

R-7.1 Correction of Records. If any statement, charge or computation concerning a REC Transaction is inaccurate, the Parties promptly shall make any adjustments to records as reasonably necessary to correct such inaccuracy, and make any adjustment of payments required to correspond to the corrected records, provided,

that Purchaser shall not be required to pay a higher Contract Price or accept a lower Contract Quantity than the Confirmation requires.

R-7.2 Exception to Confidentiality. Purchaser has the right to disclose to any Governmental Authority having jurisdiction over Purchaser, or to any voluntary Applicable Program and the person or entity specified by the rules of procedures of the voluntary Applicable Program to perform certification, any information necessary to demonstrate Purchaser's compliance with an Applicable Program (whether or not designated in the Confirmation); provided, however, that Purchaser shall use reasonable efforts to minimize the scope of any such disclosure and shall require, as may be feasible, that the recipient maintain the confidentiality of any documents or confidential information governed by the provisions of Section 30.1 of the Agreement, including, if permitted under applicable procedures of the Governmental Authority or such administrator, and subject to any applicable public records laws, seeking a protective order or similar protective mechanism in connection with any disclosure. With respect to a REC, Purchaser also has the right to disclose the following to any customer or affiliate of Purchaser that is participating in any voluntary or mandatory Applicable Program: the Renewable Energy Source, the location of any Renewable Energy Facility designated in the Confirmation, and monthly generation quantities of energy underlying the REC.

R-8 Uncontrollable Force. The following is substituted for the first sentence of the second paragraph of Section 10 of the Agreement:

The following shall not be considered "Uncontrollable Forces": (i) Seller's cost of producing or obtaining the REC or energy (or ability to sell the REC or energy at a price exceeding the Contract Price); (ii) the loss or failure of Seller's supply,

including materials or equipment; or (iii) Purchaser's inability economically to use or resell the REC or energy.

The following is added at the end of the second paragraph of Section 10 of the Agreement:

If production of energy at a Renewable Energy Facility designated in the Confirmation is curtailed due to an Uncontrollable Force, any production during the period of such curtailment shall be allocated as follows: first, among all purchasers of Firm RECs, Firm Bundled RECs, Resource Contingent RECs, Resource Contingent Bundled RECs, and energy purchased under Service Schedules B and C, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation, and second, to all purchasers of Facility As-Run RECs, Facility As-Run Bundled RECs and energy purchased under Service Schedule A, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation.

R-9 Remedies for Non-Performance.

R-9.1 Damages. Section 21.3 of the Agreement, as modified in this Section 9, applies to REC Transactions.

R-9.1.1 Failure to Receive or Deliver in Unbundled REC Transactions. This Section R-9.1.1 applies to REC Transactions for Firm REC, Resource Contingent REC, and Facility As-Run REC. Section 21.3(a)(3) and (5) of the Agreement are inapplicable. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery of RECs Delivered by Seller in accordance with the Confirmation, then Purchaser shall

be liable to Seller for the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price and (ii) is the amount by which the quantity of RECs Purchaser refused to Accept was less than the Contract Quantity, subject to any limitations stated in the Confirmation.

21.3(a)(2) is modified as follows:

If Seller fails to Deliver RECs to Purchaser in accordance with the Confirmation, then Seller shall be liable to Purchaser for: (a) the product of (i) and (ii) where (i) is the amount, if any, by which the Replacement Price exceeded the Contract Price and (ii) is the amount by which the quantity of RECs Seller Delivered was less than the Contract Quantity; plus (b) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations stated in the Confirmation.

R-9.1.2 Failure to Receive or Deliver in Bundled REC Transactions.

- (a) **Price Not Allocated between REC and Energy.** This Section R-9.1.2(a) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run Bundled REC, and in which the Confirmation does not allocate

the Contract Price between the REC and Energy. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery from Seller in accordance with the Confirmation, then Purchaser shall be liable to Seller for: (a) the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price, and (ii) is the amount by which the quantity of RECs and Energy Purchaser refused to Accept was less than the Contract Quantity, plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Purchaser's schedule or receipt of Energy (based on Seller's commercially reasonable efforts to achieve such reduction), subject to any limitations stated in the Confirmation. If the Purchaser refused to Accept Delivery of RECs but Accepted Delivery of Energy, then Purchaser shall pay Seller for such received Energy at the Resale Price of the Energy; if the Purchaser refused to Accept Delivery of Energy but Accepted Delivery of RECs, the Purchaser shall pay Seller for Accepted RECs at an amount equal to the Contract Price less the Resale Price of the Energy.

Section 21.3(a)(2) of the Agreement is modified as follows:

If Seller fails to Deliver to Purchaser in accordance with the Confirmation, then Seller shall be liable to the Purchaser for:

(a) the product of (i) and (ii) where (i) is the amount, if any, by which the Replacement Price exceeded the Contract Price, and (ii) is the amount by which the quantity of RECs and Energy Delivered was less than the Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Seller's schedule or delivery of Energy (based on Purchaser's commercially reasonable efforts to achieve such reduction), plus (c) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations on such amounts stated in the Confirmation. In the event Seller Delivers Energy but not RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

(b) **Price Allocated between REC and Energy.** This Section R-9.1.2(b) applies to REC Transactions for Firm Bundled REC,

Resource Contingent Bundled REC, and Facility As-Run Bundled REC, in which the Confirmation sets forth an allocation of the Contract Price between the REC and energy.

- (i) If Purchaser refuses to Accept Delivery of RECs in accordance with the Confirmation, then Purchaser shall be liable to Seller as set forth in Section R-9.1.1.
- (ii) Subject to part (v) of this Section, if Seller fails to Deliver RECs in accordance with the Confirmation, then the Seller shall be liable to Purchaser as set forth in Section R-9.1.1.
- (iii) If Purchaser refuses to receive Delivery of Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (iv) If Seller fails to Deliver Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (v) In the event Seller Delivers Energy but fails to Deliver RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

R-10 Other Modifications of the Agreement for REC Transactions.

R-10.1 Revised Agreement Definitions. For purposes of REC Transactions, the following revisions to definitions contained in Section 4 of the Agreement shall apply:

R-10.1.1 Contract Quantity: The amount of RECs and, if applicable, Energy, to be supplied for a transaction under the Agreement.

R-10.1.2 Power Marketer: An entity which buys, sells, and takes title to RECS, electric energy, transmission and/or other services from traditional utilities and other suppliers.

R-10.1.3 Physically Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying REC and/or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to sell an underlying REC or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation.

R-10.1.4 Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute REC(s), capacity and/or energy in place of the REC(s), capacity and/or energy not Delivered (for REC(s) and/or energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, for Energy at the delivery point specified in the Confirmation. Substitute REC(s) must

be similar in all material respects to the REC(s) specified in the Confirmation.

R-10.1.5 Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the REC(s), capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Seller in a commercially reasonable manner, for Energy at the delivery point specified for the transaction in a Confirmation.

R-10.2 Notices. Section 12.2 of the Agreement is revised by inserting "RECs or" before the phrase "capacity and/or energy."

SERVICE SCHEDULE R
ANNEX 1 - DEFINITIONS

“Acceptance” has the meaning given in Sections R-3.1.2 or R-3.2.2, as applicable.

“All Attributes” has the meaning given in Section R-2.4.1.

“Applicable Program” means (a) a program adopted by a Governmental Authority that requires the sale, purchase, or use of energy generated or produced by a facility that converts renewable natural resources such as wind, sunlight, rain, tides, geothermal heat, hydro, or biomass into electric energy, including any Renewable Portfolio Standard (RPS) adopted by a Governmental Authority and all Governing Law that pertains thereto, or (b) a voluntary program for reporting, crediting or attributing RECs and all rules, standards and procedures adopted by the administering organization that pertain thereto.

“Attestation” means (a) the Seller’s written statement, certified as true and correct by an authorized officer of Seller, that the REC is Delivered and title to the REC has been transferred to the Purchaser, and that the Seller has taken all steps to effect transfer of the REC required by any Tracking System designated in the Confirmation, and (b) that satisfies the requirements of any Applicable Program designated in the Confirmation or is a generation information system record of ownership transfer. Annex 2 Exhibit 1 is a template for use of the Parties; an agreed form of Attestation should be included as a part of the Confirmation, and the agreed form will suffice as an Attestation regardless of whether or not it meets the criteria of this definition.

“Change in Law” has the meaning given in Section R-5.2.2(a).

“Deliver” has the meaning given in Sections R-3.1.1 or 3.2.1, as applicable.

“Effective Date” means the date both Parties have executed the Confirmation, or which the Parties otherwise specify in the Confirmation.

“Environmental Attribute” means the following, unless a Tracking System is designated in the Confirmation, and such Tracking System defines “Environmental Attribute,” in which case the Tracking System’s definition of “Environmental Attribute” shall control: a characteristic concerning or affecting the environment created by or resulting from the generation of electric energy by a Renewable Energy Source, and which capable of measurement, verification, or calculation. The term does not include tax credits or other tax benefits under any law or other direct third-party subsidies for generation of electric energy by a Renewable Energy Source. The term includes “non-energy attributes” under Oregon law and “non-power attributes” under Washington law. By way of example, the term may include the following: avoided emissions of CO₂ or other gases, or avoided water use (but not water or other rights or credits required under an Applicable Program to site and develop the Renewable Energy Facility itself).

“Facility As-Run REC” has the meaning given in Section R-2.3.5.

“Facility As-Run Bundled REC” has the meaning given in Section R-2.3.6(a).

“Firm Bundled REC” has the meaning given in Section R-2.3.2.

“Energy” in the case of a Firm Bundled REC refers to Firm Capacity/Energy Sale or Exchange Service under Service Schedule C as may be modified by Service Schedule R, in the case of a Resource Contingent Bundled REC refers to Unit Commitment Service under Service Schedule B as may be modified by Service Schedule R, and in the case of Facility As-Run Bundled REC refers to Economy Energy Service under Service Schedule A as may be modified by Service Schedule R.

“Firm REC” has the meaning given in Section R-2.3.1.

“Fuel Impediment” means the reduction or lack of wind or sunlight, excessive wind, or other insufficiency or excess of a Renewable Energy Source (excluding biomass), that causes a reduction or cessation of generation of electric energy by a Renewable Energy Facility.

“Forced Outage” means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons, or the condition in which the equipment is unavailable due to unanticipated failure (such unanticipated failure does not include a Fuel Impediment).

“Governing Law” has the meaning given in Section 24 of the Agreement as that Section may be modified by Section R-5.1.

“Governmental Authority” means the United States, a State thereof, any political subdivision or governmental body thereof, including any department or agency, with jurisdiction over a Party or an Applicable Program.

“Not Regulatorily Continuing” has the meaning given in Section R-5.2.2(b).

“Program Attributes” has the meaning given in Section R-2.4.2.

“Regulatorily Continuing” has the meaning given in Section R-5.2.2(a).

“REC” refers to a renewable energy certificate and means a credit or certificate representing Environmental Attributes created by or resulting from the generation of one (1) megawatt hour of electric energy by a Renewable Energy Source, subject to the terms and conditions stated in the Confirmation.

“REC Product” has the meaning given in Section R-2.2.

“REC Transaction” has the meaning given in Section R-2.1.

“Resource Contingent REC” has the meaning given in Section R-2.3.3.

“Resource Contingent Bundled REC” has the meaning given in Section R-2.3.4(a).

“Renewable Energy Facility” means an electric generation unit or other facility or installation capable of producing or emitting electric energy using a Renewable Energy Source.

“Renewable Energy Source” means (a) a resource that is recognized as a renewable energy source under an Applicable Program designated in the Confirmation, or (b) if no Applicable Program is designated in the Confirmation, a natural resource from or through which electric energy can be generated, including wind, solar, geothermal, landfill gas, wave, tidal, thermal ocean technologies, and hydroelectric power, and excluding fossil carbon-based, non-renewable, or radioactive fuel.

“Reporting Rights” means the right to report and register the exclusive ownership of the REC or Environmental Attributes under Governing Law or any other laws, regulations, orders or judicial precedents of the government of the United States of America or any department or agency thereof, or any State or political subdivision thereof, including mandatory and voluntary reporting, and including reporting under section 1605(b) of the Energy Policy Act of 1992 and any foreign or international emissions trading or reporting program.

“Scheduled Maintenance” means an outage or partial outage scheduled to perform the necessary normal maintenance on a generating unit, transmission line, or other facility to preserve the reliability of the unit or overall system reliability, including scheduled outages for such maintenance.

“Tracking System” means the entity, if any, the Parties designated in the Confirmation that will perform REC tracking and accounting functions, including receiving evidence of generation of the REC and crediting the resulting REC to the Purchaser’s account.

“Transfer Date” means the date specified in the Confirmation, no later than which Seller must make Delivery as defined in Sections R-3.1.1 or R-3.2.1, as applicable.

“Vintage” means the period in which the REC was or will be created.

SERVICE SCHEDULE R ANNEX 2

**FORM OF
REC TRANSACTION CONFIRMATION**

IDENTIFICATION OF PARTIES

Name of Seller:

Name of Purchaser:

Seller Information:

Contact

Tel (O):

Tel (Cell):

E-mail:

Fax:

Purchaser Information:

Contact

Tel (O):

Tel (Cell):

E-mail:

Fax:

Contact information is subject to change by notice.

ADDRESSES FOR FORMAL NOTICES:

Purchaser:

Seller

INCORPORATED DOCUMENTATION (any "long form" or other bilateral agreements between the Parties applicable to this Confirmation and incorporated herein)

REC TRANSACTION TERMS

REC Product (e.g., Firm REC, Firm Bundled REC, etc.) (see Section R-2.3):

Vintage of REC already created or period of generation for REC to be created (mm/yyyy)

Contract Quantity (stated either on a megawatt hour basis or percentage of output of a designated Renewable Energy Facility)

Transfer Date (generally the Effective Date of this Confirmation for REC that already exists, and future date for REC to be generated after Effective Date)

Contract Price:

Allocation, if agreed:

REC:

Energy:

Environmental Attributes (Check One)

- All Attributes (this designation is effective only if a Renewable Energy Source or Renewable Energy Facility is designated below)

- Program Attributes (this designation is effective only if an Applicable Program is identified below) (Note: WREGIS and possibly other Tracking Systems will not recognize a Program Attributes REC, or may treat it as an All Attributes REC)

Applicable Program (required for Program Attributes; not required for All Attributes, but designation establishes the minimum Environmental Attributes required by a designated Applicable Program). Also required for recovery of penalties and alternative compliance payments (Section R-9.1). Designation should include detailed information, including any applicable legal citations, to assure adequate description of the program.

Designation of Renewable Energy Source or Renewable Energy Facility (required for All Attributes).

Renewable Energy Source: _____

Renewable Energy Facility

Name: _____

Location: _____

Generation Information System number: _____

Tracking System number: _____

Fuel (wind, solar, etc.): _____

Change in Law Provisions (Check One)

Regulatorily Continuing (Section R-5.2.2(b), requiring that Seller make commercial reasonable efforts to obtain compliance with Changes in Law in the designated Applicable Program. If checked, state any agreed maximum costs of such efforts (if no maximum is stated, then no maximum applies):

\$ _____

Not Regulatorily Continuing (Section R-5.2.2(c)).

Tracking System(s) if any: (if none specified, then Delivery occurs by Attestation and not by Tracking System crediting)

Damages. Damages include reimbursement for penalties and alternative compliance payments, subject to any agreed cap on this damages component, which can be zero (Section R-9.1):

\$ _____

Any agreements concerning forward certificates in WREGIS or other Tracking System Expedition) (Section R-3.3.1):

TERMS APPLICABLE TO ENERGY IF INCLUDED IN REC PRODUCT

Period (Schedule) of Delivery: From ______ To ______

Schedule (Days and Hours): _____

Delivery Rate: _____

Delivery Point(s): _____

Contract Quantity (specify all details): _____

Transmission Path for the Transaction (If Applicable): _____

EFFECTIVE DATE AND OTHER PROVISIONS

Effective Date (no earlier than mutual execution of this Confirmation)

Other provisions: _____ [generally
stated in attachment to the Confirmation]

The Parties agree to the REC Transaction set forth herein as of the Effective Date

Seller

Purchaser

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____ Date: _____

ANNEX 2, Exhibit 1
Form of Attestation To Be Included As Exhibit To Confirmation

Attestation Of [Seller] ("REC Generator")
Of Sale, Transfer, and Delivery Of Renewable Energy Certificate to
[Purchaser] "Purchaser"

Party and Contact Information:

[Insert names and addresses of Parties, address, and contact information].

Attestation:

I, [name of attesting officer], the [title] of Seller, declare and certify that Seller sold and delivered

Elect one:

- Environmental Attributes Only
- Bundled with electricity

to Purchaser, and further, that

1. Was generated by the Renewable Energy Facility ("REF") designated below and sold, transferred and delivered, subject to receipt of payment, to Purchaser.
2. Is associated with electricity delivered into the [insert delivery area] in compliance with applicable energy delivery rules.

REF Generator Name and Number	Technology Type	Fuel Type (Renewable Energy Source)	Generation Period (mm/yy)	Generator First Day of Operation

The above statements are true and correct to the best of my knowledge, and based on my duly diligent inquiry. This Attestation may serve as a Bill of Sale to document, in accordance with the Confirmation, the transfer from Generator to Purchaser of all of Seller's right, title and interest in and to the REC and environmental attributes it represents, as set forth above.

Either Party may disclose this Attestation to others, including a Tracking System, public utility commissions and other regulatory bodies having jurisdiction over Purchaser, and administrators of voluntary green energy programs, to substantiate and verify the accuracy of the Parties' compliance, advertising and public claims.

Signature:

Date _____

Print Name: _____

SCHEDULE Q
FERC ACCEPTED SELLER-SPECIFIC COST-BASED RATE SCHEDULES

Note: Each rate schedule included in this Schedule Q is applicable solely to the Member which submitted that rate schedule to FERC, and not to any other Member.

INDEX

Name of Member	FERC Order Re Underlying Rate Schedule
Arizona Public Service Company	Letter Order, Docket No. ER16-1877-000 (July 15, 2016)
Nevada Power Company	Letter Order, Docket No. ER11-1832-000 (Nov. 23, 2010)
PacifiCorp	Letter Order, Docket No. ER16-1964-000 (Aug. 16, 2016)
Public Service Company of Colorado	Letter Order, Docket No. ER15-678-000 (Feb. 4, 2015)
Sierra Pacific Power Company	Letter Order, Docket No. ER14-1420-000 (Apr. 15, 2014)
Southwestern Public Service Company	Letter Order, Docket No. ER08-857-001 (Aug. 28, 2008)
Westar Energy, Inc.	Letter Order, Docket No. ER11-3233-000 (May 26, 2011)

WSPP AGREEMENT SCHEDULE Q FOR ARIZONA PUBLIC SERVICE COMPANY

Determination of Ceiling Rates Applicable to Sales Made by Arizona Public Service Company Under the WSPP Agreement

I. DEFINITIONS

The following terms shall have the specified meaning when used in any Transaction between Arizona Public Service Company ("APS") and any Customer pursuant to this Cost-Based Tariff ("Tariff"):

1. **APS:** Arizona Public Service Company or any successor-in-interest to Arizona Public Service Company.
2. **Commission:** The Federal Energy Regulatory Commission, or any successor federal agency having jurisdiction over this tariff.
3. **Customer:** Any entity entering into a Transaction with APS under this Tariff.
4. **System Incremental Cost:** ("SIC") System Incremental Cost means, with respect to a Transaction, all reasonably forecasted incremental generation, power purchase, and other, related costs that APS would not otherwise incur if such Transaction is not entered into. System Incremental Cost shall include, but not be limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, regulatory commission charges, emission allowance and other environmental compliance costs, transmission losses, wheeling charges, any applicable taxes or assessments based on the revenues received or quantities sold under the Transaction, and with respect to capacity and energy purchased from a third party, the total forecasted amount that would be paid for that capacity and energy by APS. For purchases of energy and capacity by APS, System Incremental Cost will also include, but not be limited to, regulatory commission charges, emission allowances, transmission losses, wheeling charges and taxes.
5. **Tariff:** This Cost-Based Tariff, as it may be amended and/or superseded from time to time.
6. **Transaction:** An individual transaction scheduled pursuant to this Tariff.
7. **Party:** References to a Party shall mean either APS or the Customer, who collectively shall be referred to as "Parties."

II. AVAILABILITY

Service under this Tariff shall be available to Customers for Transactions that have a duration as agreed to by the Parties under the Service Agreement.

III. SALES OF ELECTRIC CAPACITY AND/OR ENERGY

APS and Customers may enter into Transactions under this Tariff from time-to-time. All

such Transactions shall be voluntary on the part of APS and the Customer(s). APS at its sole discretion will determine the amounts of and times that electric capacity and/or energy is to be made available under this Tariff prior to entering into a Transaction.

IV. RATES

1. A Transaction will be priced at rates established by agreement between Seller and Buyer, provided that the sum of all charges with respect to each Transaction may be up to but shall not exceed the sum of:
 - a) A demand charge, equal to, as appropriate:
 - i. \$9,233 /MW/month;
 - ii. \$2,131 /MW/week;
 - iii. \$426 /MW/day, provided the total demand charge in any week, pursuant to a sale of daily electric power, shall not exceed the weekly rate times the highest amount in megawatts of purchased electric power in any day during such week; or
 - iv. \$26.63 /MW/hour, provided that the total demand charge in any day, pursuant to a sale of hourly electric power, shall not exceed the daily rate times the highest amount in megawatts of purchased electric power in any hour during such day, and the total demand charges in any week, pursuant to a sale of hourly or daily electric power, shall not exceed the weekly rate times the highest amount in megawatts of purchased electric power in any such week; and
 - b) The System Incremental Cost, forecasted at the time the Transaction is executed, plus 10% of the forecasted System Incremental Cost; and
 - c) The cost of transmission service and any ancillary services purchased by APS and resold to Customer, as known or forecasted at the time the Transaction is executed.

V. EXPANSION OF FACILITIES

APS will have no obligation under this Tariff to plan its system or modify its facilities in order to provide service hereunder.

VI. OTHER TERMS AND CONDITIONS

Except to the extent otherwise specifically agreed to by the Parties, all Transactions under APS's Schedule Q shall be governed by the terms and conditions set forth in the WSPP Agreement.

**COST-BASED RATE SCHEDULE
FOR
PACIFICORP**

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by
PacifiCorp

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by PacifiCorp (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), and (2) for a term of less than one year.

2. The rates for any cost-based power and/or energy sale made by PacifiCorp pursuant to the applicable terms and conditions of the WSPP Agreement from PacifiCorp's generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

Units Most Likely To Participate Methodology

Monthly Up to \$11,317/MW

Weekly Up to \$2,612/MW

Daily Up to \$522/MW, provided, however, that the Daily rate of \$522/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,612/MW.

Hourly Up to \$32.64/MW, provided, however, that the hourly rate of \$32.64/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$522/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,612/MW.

(ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and

(iii) All charges incurred for transmission service, ancillary services, and transmission losses.

3. If PacifiCorp enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:

- (i) PacifiCorp's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.
- 4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by PacifiCorp including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
- 5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by PacifiCorp in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

WSPP AGREEMENT SCHEDULE Q FOR NEVADA POWER COMPANY

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by Nevada Power Company

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Nevada Power Company, d/b/a NV Energy ("Nevada Power") (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), (2) at a delivery point located within the Nevada Power balancing authority area, and (3) for a term of less than one year.
2. The rates for any cost-based power and/or energy sale made by Nevada Power pursuant to the applicable terms and conditions of the WSPP Agreement from Nevada Power's generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

Units Most Likely To Participate Methodology

Monthly	Up to \$8,390/MW
Weekly	Up to \$1,940/MW
Daily	Up to \$390/MW, provided, however, that the Daily rate of \$390/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$1,940/MW.
Hourly	Up to \$24.40/MW, provided, however, that the hourly rate of \$24.40/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$390/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$1,940/MW.

- (ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Nevada Power enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:
 - (i) Nevada Power's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.

4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Nevada Power including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Nevada Power Company in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

**WSPP AGREEMENT SCHEDULE Q FOR PUBLIC SERVICE COMPANY OF
COLORADO**

**Determination of Ceiling Rates Applicable to Sales Made by Public Service Company of
Colorado under the WSPP Agreement**

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Public Service Company of Colorado ("Public Service") (1) pursuant to the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service) and (2) at a delivery point located within the Public Service balancing authority area.
2. The rates for any cost-based power and/or energy sale made pursuant to the WSPP Agreement from certain Public Service generation resources shall not exceed the following:

Maximum Demand Charge:

The Maximum Demand Charge shall be capped at either of the following methodologies:

Units Most Likely to Participate Methodology

Annual	\$123.73/kW
Monthly	\$10.62/kW
Weekly	\$2.45/kW
Daily	\$0.49/kW, provided, however, that the Daily rate of \$0.49/kW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2.45/kW.
Hourly	\$0.0306/kW, provided, however, that the hourly rate of \$0.0306/kW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$0.49/kW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2.45/kW.

Unit Revenue Constraint Methodology

Annual	\$265.72/kW
Monthly	\$22.14/kW
Weekly	\$5.11/kW
Daily	\$1.02/kW, provided, however, that the Daily rate of \$1.02/kW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$5.11/kW.
Hourly	\$0.0639/kW, provided, however, that the hourly rate of \$0.0639/kW

shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of 1.02/kW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$5.11/kW.

Note: The total amount of Power available for cost-based sales by Public Service based on the costs of Comanche 3 under the WSPP Agreement and under other Public Service tariffs and arrangements, for which the agreed upon demand charge is determined based on Comanche 3, is limited to 500 MWs on an hourly basis.

Plus:

Energy Charge:

- (a) no less than 100% of Public Service's System Incremental Costs (SIC); plus
- (b) up to 10% of SIC, provided, however, that whenever the SIC for an hour is based on purchased power, the 10% mark up shall be limited to one mill/kWh.

Note: The total charges for any sale by Public Service using the Maximum Demand Charge as determined based on the Unit Revenue Constraint Methodology shall not exceed (1) the product of the requested demand (kW) multiplied by the applicable Maximum Demand Charge using the Unit Revenue Constraint Methodology as specified above, plus the variable costs of Comanche 3 (based on the most recent historical month where Comanche 3 was operational at least 80 percent of the time), and (2) be lower than a floor equal to 100% of Public Service's System Incremental Cost.

3. When a cost-based sale of power and/or energy made by Public Service under the WSPP Agreement is conditioned upon Public Service acquiring purchased power, Purchaser shall pay the following amounts to Public Service for power and energy:
 - (a) Public Service's actual purchased power costs; plus
 - (b) a one mill adder for transactions of less than one year in duration.
4. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Public Service in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which otherwise would not have been incurred, had such service not been provided.
5. For purposes of this Schedule Q, "Purchased Power" means the Power and Energy purchased from a third party by Public Service and shall consist of the total amount paid therefor by Public Service associated with such purchase, plus any cost which otherwise

would not have been incurred, including, but not limited to, regulatory commission charges, transmission losses, third-party transmission charges, and taxes, fees or assessments related to such transactions. Tax expenses shall include the expenses that are incurred as taxes either in connection with the sale or production of such Power and Energy. The term Purchased Power shall not apply to long-term purchases that are secured to supply Public Service's obligation load requirements as a system resource or to meet other regulatory requirements.

6. For purposes of this Schedule Q, System Incremental Costs ("SIC")¹ shall be determined as follows:

SIC are any costs forecasted to be incurred by Public Service solely by reason of its provision of an incremental amount of coordination-type energy to supply to another company, including but not limited to, costs for fuel, reactant, labor, operation, maintenance, start-up, fuel handling, taxes, emission allowances, and services provided by RTOs, ISOs, or other transmission providers such as transmission and ancillary services and losses. Such costs may also include costs paid to third parties where Public Service has an existing contractual entitlement to purchase energy.

- For intraday (real-time) transactions, incremental cost is determined through a review of hourly system characteristics:
- For non-intraday transactions, incremental cost is determined by using a resource optimization model such as, but not limited to ProSym or GenTrader.

The forecasted incremental cost represents the relative increase in total variable cost, in comparison to the previously determined base variable cost. Public Service forecasts incremental costs on a monthly, daily and hourly basis in order to evaluate whether it would be economic to engage in a wholesale sale of coordination energy.² In order for Public Service to transact, and sell power to another entity, the purchaser must be willing to pay no less than the forecasted incremental cost for the period during which the energy is sold. It is necessary to use forecasted costs because transactions are entered into in the market in advance. The forecast incremental costs for Public Service utilize its unique portfolio resources, applicable fuel costs and generation characteristics.

Monthly forecasted incremental variable costs are developed utilizing an optimization and unit commitment model. Generation characteristics such as forecasted fuel prices, effective heat rates, system penalty factors, start-up costs, unit parameters (*e.g.*, minimum run time, dispatch minimum, dispatch maximum), variable O&M, and tolling costs are utilized in the model to establish the base cost to serve a forecasted amount of obligation (load and the net of applicable firm purchase and sales transactions). Planned and forced outages are also considered in the model. Additional obligations are added to the model (consistent with blocks traded in the market), and the optimized costs are returned. The difference in costs between the first and second run, *i.e.*, with and without an incremental transaction or load addition, will represent the incremental cost to serve the additional obligation. The

forecasted incremental cost to serve the additional obligation will establish the minimum price required in order to engage in a sale of similar energy volume.

Daily forecasted incremental costs are developed utilizing a unit commitment and optimization program. The best available generation characteristics are utilized in the model to forecast the base cost to serve the next-day obligation. Additional obligations are applied and system costs evaluated to establish the forecasted cost to serve a potential incremental sale.

On an hourly basis, the system operator forecasts the incremental cost to serve an additional obligation by evaluating current and short-term forecast system conditions and the resources that are not previously allocated to meet established obligations. If additional portfolio resources are available (not allocated for native load requirements), the system operator will evaluate the comprehensive cost to produce the quantity of energy needed for an incremental sale.

If the Parties to a transaction under this WSPP Agreement expressly agree in a transaction agreement, incremental costs may be determined in the same manner as specified above, but on an after-the-fact, actual basis.

Note 1: The Commission previously accepted this incremental rate methodology in *Xcel Energy Services, Inc., et al.*, 117 FERC ¶ 61,180, at PP 45-49 (2006).

Note 2: The Commission has found this approach to be acceptable. *See, e.g., Western Systems Power Pool*, 55 FERC ¶ 61,495, at 62,718 (1991) (noting that incremental cost “may be forecasted hourly, weekly, or monthly”).

WSPP AGREEMENT SCHEDULE Q FOR SIERRA PACIFIC POWER COMPANY

**Determination of Ceiling Rates Applicable to Cost-Based Sales Made by
Sierra Pacific Power Company**

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Sierra Pacific Power Company, d/b/a NV Energy ("Sierra") (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), (2) at a delivery point located within the Nevada Power Company balancing authority area ("NEVP"), and (3) for a term of less than one year.
2. The rates for any cost-based power and/or energy sale made by Sierra pursuant to the applicable terms and conditions of the WSPP Agreement from Sierra's generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

Units Most Likely To Participate Methodology

Monthly	Up to \$9,810/MW
Weekly	Up to \$2,260/MW
Daily	Up to \$450/MW, provided, however, that the Daily rate of \$450/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,260/MW.
Hourly	Up to \$28.10/MW, provided, however, that the hourly rate of \$28.10/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$450/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,260/MW.

- (ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Sierra enters into purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:
 - (i) Sierra's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental

impositions; and

- (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.
4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Sierra including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
 5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Nevada Power Company in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

**WSPP AGREEMENT SCHEDULE Q FOR SOUTHWESTERN PUBLIC SERVICE
COMPANY**

**Determination of Ceiling Rates Applicable to Sales Made by Southwestern Public Service
Company under the WSPP Agreement**

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Southwestern Public Service Company ("SPS") (1) pursuant to the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service and (2) at a delivery point located within the SPS balancing authority area.
2. The rates for any cost-based power and/or energy sale made pursuant to the WSPP Agreement from SPS generation resources shall not exceed the following:

Maximum Demand Charge:

Monthly	\$ 7.56/kW
Weekly	\$ 1.745/kW
Daily (On-peak)	\$ 0.349/kW, provided, however, that the Total Weekly charges for a customer paying the Daily rate of \$0.349/kW (on-peak) or \$0.249 (off-peak) shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum Weekly demand charge of \$1.745/kW.
Daily (Off-peak)	\$ 0.249/kW
Hourly	\$ 21.813/MW, provided, however, that the Total Daily charges for a customer paying the Hourly rate of \$21.813/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum Daily (on-peak) demand charge, and total Weekly charges for such a customer shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum Weekly demand charge of \$1.745/kW.

plus

Energy Charge:

- (a) no less than 100% of SPS's System Incremental Costs (SIC); plus
- (b) up to 10% of SIC, provided, however, that whenever the SIC for an hour is based on purchased power, the 10% mark up shall be limited to one mill/kWh.

Note A: The total charges for any cost-based sale under the WSPP Agreement shall not exceed the product of the requested demand (kW) multiplied by the applicable Maximum Demand Charge in this Section 1, plus the variable costs of Lea Power Partners (based on the second previous month's cost data), and not withstanding

the foregoing, a floor equal to 100% of SPS's System Incremental Cost.

Note B: The total amount of Power available for cost-based sales by SPS under the WSPP Agreement and under other SPS tariffs and agreements for which the agreed upon demand charge is determined based on Lea Power Partners is limited to 600 MWs on an hourly basis.

3. When a cost-based sale of power and/or energy made by SPS under the WSPP Agreement is conditioned upon SPS acquiring Purchased Power, Purchaser shall pay the following amounts to SPS for power and energy:
 - (a) SPS's actual Purchased Power costs; plus
 - (b) a one mill adder for transactions of less than one year in duration.
4. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by SPS in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which otherwise would not have been incurred, had such service not been provided.
5. For purposes of the WSPP Agreement, System Incremental Costs ("SIC") shall be determined as follows:

SIC are any costs forecasted to be incurred by SPS solely by reason of its provision of an incremental amount of coordination-type energy to supply to another company, including but not limited to costs for fuel, reactant, labor, operation, maintenance, start-up, fuel handling, taxes, emission allowances, and services provided by RTOs, ISOs, or other transmission providers such as transmission and ancillary services and losses. Such costs may also include costs paid to third parties where the SPS has an existing contractual entitlement to purchase energy.

- For intraday (real-time) transactions, incremental cost is determined through a review of hourly system characteristics.
- For non-intraday transactions, incremental cost is determined by using a resource optimization model such as, but not limited to ProSym, Cougar or GenTrader.

The forecasted incremental cost represents the relative increase in total variable cost, in comparison to the previously determined base variable cost. SPS forecasts incremental costs on a monthly, daily and hourly basis in order to evaluate whether it would be economic to engage in a wholesale sale of energy.² In order for SPS to transact, and sell power to another entity, the purchaser must be willing to pay no less than the forecasted incremental cost for the period during which the energy is sold. It is necessary to use forecasted costs because transactions are entered into in the market in advance. The forecast incremental costs for SPS

² The Commission has found this approach to be acceptable. See, e.g., *Western Systems Power Pool*, 55 FERC ¶ 61,495 at 62,718 (1991) (noting that incremental cost "may be forecasted hourly, weekly, or monthly").

utilize its unique portfolio resources, applicable fuel costs and generation characteristics.

Monthly forecasted incremental variable costs are developed utilizing an optimization and unit commitment model. Generation characteristics such as forecasted fuel prices, effective heat rates, system penalty factors, start-up costs, unit parameters (e.g., minimum run time, dispatch minimum, dispatch maximum), variable O&M, and tolling costs are utilized in the model to establish the base cost to serve a forecasted amount of obligation (load and the net of applicable firm purchase and sales transactions). Planned and forced outages are also considered in the model. Additional obligations are added to the model (consistent with blocks traded in the market), and the optimized costs are returned. The difference in costs between the first and second run, i.e., with and without an incremental transaction or load addition, will represent the incremental cost to serve the additional obligation. The forecasted incremental cost to serve the additional obligation will establish the minimum price required in order to engage in a sale of similar energy volume.

Daily forecasted incremental costs are developed utilizing a unit commitment and optimization program. The best available generation characteristics are utilized in the model to forecast the base cost to serve the next-day obligation. Additional obligations are applied and system costs evaluated to establish the forecasted cost to serve a potential incremental sale.

On an hourly basis, the system operator forecasts the incremental cost to serve an additional obligation by evaluating current system conditions and the resources that are not previously allocated to meet established obligations. If additional portfolio resources are available (not allocated for native load requirements), the system operator will evaluate the comprehensive cost to produce the quantity of energy needed for an incremental sale.

WSPP AGREEMENT SCHEDULE Q FOR WESTAR ENERGY

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by Westar Energy under the WSPP Agreement

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Westar Energy ("Westar") (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service) and (2) at a delivery point located within the Westar Energy balancing authority area.
2. The rates for any cost-based power and/or energy sale made by Westar Energy pursuant to the applicable terms and conditions of the WSPP Agreement from Westar Energy's generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped at either of the following methodologies:

Units Most Likely To Participate Methodology

Monthly	Up to \$13,520/MW
Weekly	Up to \$3,120/MW
Daily	Up to \$624/MW, provided, however, that the Daily rate of \$624/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$3,120/MW.
Hourly	Up to \$39.00/MW, provided, however, that the hourly rate of \$39.00/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$624/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$3,120/MW.

- (ii) Energy Charge of no less than 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Westar Energy enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:

- (i) Westar Energy's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.
- 4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Westar Energy including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
- 5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Westar Energy in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

LIST OF MEMBERS

3 Phases Renewables Inc.
AEP Energy Partners, Inc.
Aha Macav Power Service
Alameda Municipal Power
Albertsons Companies, Inc.
Alcoa Power Marketing LLC
AltaGas Ripon Energy Inc.
American Electric Power Service Corporation as agent for Indiana Michigan Power Company
American Electric Power Service Corporation as agent for Public Service Company of Oklahoma and
Southwestern Electric Power Company
Anahau Energy, LLC
Arizona Electric Power Cooperative, Inc.
Arizona Public Service Company
Arkansas Electric Cooperative Corp.
Associated Electric Cooperative, Inc.
ATCO Power Canada Ltd.
Avangrid Renewables, LLC
Avista Corporation
Basin Electric Power Cooperative
Black Hills/Colorado Electric Utility Company, L.P.
Black Hills Wyoming, Inc.
Black Hills Power Inc.
Blythe Energy Inc.
Bonneville Power Administration
Boston Energy Trading and Marketing LLC
BP Energy Company
Brookfield Energy Marketing LP
California Choice Energy Authority
California Department of Water Resources
California Power Holdings, LLC
CalPeak Power LLC
Calpine Energy Services, L.P.
Calpine Energy Solutions, LLC
Cargill Power Markets, LLC
Castleton Commodities Merchant Trading L.P.
Central Arizona Water Conservation District
Cheyenne Light, Fuel and Power
Citigroup Energy Inc.
City and County of San Francisco
City of Anaheim, Public Utilities Dept.
City of Azusa, California
City of Banning, California
City of Burbank, California
City of Cerritos (Cerritos Electric Utility)
City of Colton, California
City of Corona Department of Water and Power
City of Farmington, New Mexico
City of Gillette
City of Glendale, California

City of Independence, Missouri
City of Industry
City of Iola, Kansas
City of Lancaster
City of Lodi Electric Utility
City of Moreno Valley, California
City of Palo Alto, California
City of Pasadena, California
City of Rancho Cucamonga, California
City of Redding, California
City of Riverside, California
City of Roseville, California
City of San José
City of Sikeston, Board of Municipal Utilities
City of St. George Energy Service Department
City of Vernon, California
City of Wathena, Kansas
Clatskanie People's Utility District
Clean Power Alliance of Southern California
Cleco Power LLC
Cleco Utility Group, Inc.
Colorado River Commission of Nevada
Colorado Springs Utilities
Columbia Power Corporation
Comision Federal de Electricidad
Commercial Energy of Montana Inc.
ConocoPhillips Company
Constellation NewEnergy, Inc.
Cooperative Energy, a Mississippi electric cooperative
Coso Geothermal Power Holdings, LLC
Covanta Energy Marketing, LLC
CP Energy Marketing (US) Inc.
Credit Suisse Energy LLC
CWP Energy, Inc.
Deseret G&T
Direct Energy Business, LLC
Direct Energy Business Marketing, LLC
DTE Energy Trading, Inc.
Dynergy Marketing and Trade, LLC
Dynergy Power Marketing, LLC
East Bay Community Energy Authority
East Bay Municipal Utility District
East Texas Electric Cooperative, Inc.
EDF Trading North America, LLC
Elk Hills Power, LLC
El Paso Electric Company
Empire District Electric Company
Energy Keepers, Inc.
Energy Transfer Group, LLC
Energy Unlimited, Inc.
ENGIE Energy Marketing NA, Inc.

Englehart CTP (US) LLC
ENMAX Energy Corporation
ENMAX Energy Marketing Inc.
Entergy Services, Inc. (also Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc.,
Entergy New Orleans, Inc., Entergy Texas, Inc.)
Eugene Water & Electric Board
ETC Endure Energy L.L.C.
Exelon Generation Company, LLC
FortisBC Inc.
Freepoint Commodities LLC
Freeport-McMoRan Cooper & Gold Energy Services, LLC
GenOn Energy Management, LLC
Grays Harbor Energy LLC
Great River Energy
Golden Spread Electric Cooperative, Inc.
Golden State Water Company
Grand River Dam Authority
Guzman Energy, LLC
Guzman Energy Partners LLC
Harquahala Generating Company, LLC
Hermiston Generating Company, L.P.
High Desert Power Project, LLC
Hinson Power Company, Inc.
Holy Cross Electric Association d/b/a Holy Cross Energy
Idaho Falls Power
Idaho Power Company
Illinois Power Marketing Company
Imperial Irrigation District
Inland Empire Energy Center LLC
J. Aron & Company
Jonesboro City Water and Light
J.P. Morgan Ventures Energy Corporation
Just Energy Solutions Inc.
Kansas City Board of Public Utilities
Kansas City Power & Light Company
Kansas Power Pool
KCP&L Greater Missouri Operations Company
La Paloma Generating Company, LLC
Lafayette Utilities System
Las Vegas Power Company, LLC
Lincoln Electric System
Los Alamos County
Los Angeles Department of Water and Power
Louisiana Energy and Power Authority
Louisville Gas & Electric Company
Luminant Energy Company LLC
Macquarie Energy LLC
Malaga Power, LLC
Manitoba Hydro
Marin Clean Energy
McMinnville Water & Light

Merced Irrigation District
Mercuria Energy America, Inc.
Merrill Lynch Commodities, Inc.
Metropolitan Water District of Southern California
MidAmerican Energy Company
Midwest Energy, Inc.
Missouri Joint Municipal Electric Utility Comm.
Modesto Irrigation District
Mohave Electric Cooperative, Inc.
Monterey Bay Community Power Authority
Morgan Stanley Capital Group, Inc.
M-S-R Public Power Agency
Municipal Energy Agency of Nebraska
NaturEner Power Watch, LLC
Navajo Tribal Utility Authority
Nebraska Public Power District
NextEra Energy Marketing, LLC
Nevada Power Company
Newmont Nevada Energy Investments
New West Energy
Nexen Energy Marketing U.S.A. Inc.
Noble Americas Gas & Power Corp.
Northern California Power Agency
Northern States Power Company
Northern Wasco County People's Utility District
NorthPoint Energy Solutions Inc.
NorthWestern Corporation dba NorthWestern Energy
NRG Power Marketing LLC
Occidental Power Services, Inc.
Oklahoma Gas & Electric Company
Oklahoma Municipal Power Authority
Omaha Public Power District
Ontario Power Generation Inc.
Otter Tail Power Company
Pacific Gas & Electric Company
Pacific Summit Energy LLC
PacifiCorp
Patua Acquisition Company, LLC
Peninsula Clean Energy Authority
PG&E Energy Services
PG&E Energy Trading - Power, L.P.
Pilot Power Group, Inc.
Pioneer Community Energy
Pittsburg Power Company
Placer County Water Agency
Plumas-Sierra Rural Electric Cooperative
Plains Electric Generation and Transmission Cooperative, Inc.
Platte River Power Authority
PNGC Power
Port of Oakland
Portland General Electric

Power and Water Resources Pooling Authority
Power Company of America, L.P.
Power Resources Cooperative
Powerex Corp.
Public Service Company of New Mexico
Public Service Company of Colorado
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grays Harbor County
Public Utility District No. 1 of Klickitat County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Okanogan County
Public Utility District No. 1 of Pend Oreille County
Public Utility District No. 1 of Snohomish County
Public Utility District No. 2 of Grant County
Public Utility District No. 3 of Mason County
Puget Sound Energy
Rainbow Energy Marketing Corporation
Reliant Energy Services, Inc.
Renewable Power Strategies LLC dba RPS Advisors
Rising Tree Wind Farm LLC
Royal Bank of Canada
RWE Trading Americas Inc.
Sacramento Municipal Utility District
Saguaro Power Company
Salt River Project Agricultural Improvement and Power District
Salton Sea Power L.L.C.
San Diego Gas & Electric Co.
San Geronio Farms, Inc.
Seattle City Light
Sempra Gas & Power Marketing LLC
Shell Energy North America (US), L.P.
Sierra Pacific Power Co.
Silicon Valley Clean Energy Authority
Silicon Valley Power
Silver State Energy Association
Skylar Energy Resources, LLC
Skylar Resources, LP
Sonoma Clean Power Authority
Southern Calif. Edison Co.
Southern California Public Power Authority
Southern Company Services, Inc., as agent for: Alabama Power Company, Georgia Power Company,
Gulf Power Company, Mississippi Power Company and Southern Power Company
Southern Illinois Power Cooperative
Southern Nevada Water Authority
Southwestern Power Administration
Southwestern Public Service Company

Sulphur Springs Valley Electric Cooperative, Inc.
Sunflower Electric Power Corp.
Switched On, LLC
Tacoma Power
Talen Energy Marketing, LLC
Talen Montana, LLC
Teck Metals Ltd.
Tenaska Power Services Co.
Tennessee Valley Authority
TGP Energy Management, LLC
The Energy Authority, Inc.
Town of Apple Valley
TransAlta Energy Marketing (US) Inc.
TransCanada Energy Sales Ltd.
Trico Electric Cooperative, Inc.
Tri-State Generation and Transmission Association, Inc.
Tucson Electric Power Company
Turlock Irrigation District
Twin Eagle Resource Management, LLC
Union Electric Company d/b/a Ameren Missouri
Union Power Partners, L.P.
Uniper Global Commodities North America LLC
UNS Electric Inc.
Utah Associated Municipal Power Systems
Utah Municipal Power Agency
Valley Electric Association, Inc.
Vantage Wind Energy LLC
Vitol Inc.
WAPA-Colorado River Storage Project
WAPA-Desert Southwest Region
WAPA – Rocky Mountain Region (LAP)
WAPA-Upper Great Plains Region
WAPA-Sierra Nevada Region
Wellhead Power EXchange, LLC
Westar Energy, Inc.
Western Farmers Electric Coop.
Western Power Services, Inc.
WTMPA/City of Lubbock (Lubbock Power & Light)

Master Power Purchase and Sale Agreement

by and between

**The Buyer and County of San Francisco, acting by and through its Public
Utilities Commission**

And

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS	2
ARTICLE 2: CONDITIONS PRECEDENT AND TERM.....	7
2.1 Conditions Precedent	7
2.2 Master Agreement Term and Transactions.....	7
ARTICLE 3: PURCHASE AND SALE.....	8
3.1 Purchase and Sale of Product	8
ARTICLE 4: BILLING AND PAYMENT.....	9
4.1 Billing and Payment.....	9
4.2 Designated Fund [For CleanPowerSF].....	10
4.3 Guaranteed Maximum Cost.....	10
ARTICLE 5: CREDIT AND COLLATERAL REQUIREMENTS.....	10
5.1 Grant of Security Interest/Remedies.....	10
5.2 Buyer Credit Protection. [TO BE NEGOTIATED].....	11
5.3 Letter of Credit.....	11
5.4 Guaranty.....	12
ARTICLE 6: FINANCIAL STATEMENTS.....	12
6.1 Seller's Obligations.....	12
6.2 Buyer's Obligations.....	12
ARTICLE 7: FORCE MAJEURE.....	12
7.1 Remedial Action.....	12
7.2 Notice.....	12
7.3 Termination Due To Force Majeure Event.....	13
ARTICLE 8: EVENTS OF DEFAULT; REMEDIES.....	13
8.1 Events of Default.....	13
8.2 Termination for Default.....	13
8.3 LIMITATION OF LIABILITY AND DAMAGES.....	15
ARTICLE 9: INDEMNIFICATION.....	16
9.1 Hold Harmless and Indemnification.....	16
ARTICLE 10: REPRESENTATIONS AND WARRANTIES	16
10.1 Seller's Representations and Warranties.....	16
10.2 Buyer Representations and Warranties.....	17
10.3 Covenants.....	18
ARTICLE 11: MISCELLANEOUS.....	18
11.1 Assignment.....	18
11.2 Proprietary or Confidential Information.....	19
11.3 Dispute Resolution; Choice of Law; Venue.....	20
11.4 Audit.....	20
11.5 General.....	20

11.6	City Contracting Requirements.....	22
11.7	Mobile Sierra.....	23
11.8	Forward Contract.....	24
11.9	Notices.....	24
11.10	Counterparts.....	24

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase Agreement (“Master Agreement”) is entered into between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) and [insert name of Seller], a _____ [include place of formation and business type] (“Seller”), as of _____ (“Execution Date”). The Master Agreement together with the exhibits, attachments, and any written supplements hereto, any designated collateral, credit support, or similar arrangement between the Parties and all Transactions (including any confirmations executed in accordance with Section 2.2) shall be referred to as the “Agreement”.

City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (Buyer)	Seller:
All Notices: 525 Golden Gate Ave, 7th Floor San Francisco, CA, 94102 Attn: Contract Administration Phone: 415-554-4603 Facsimile: 415-554-3225	All Notices:
Federal Tax ID Number: 946000417	Federal Tax ID Number: DUNS Number:
Invoices: Attn: Phone: Facsimile:	Invoices: Attn: Phone: Facsimile:
Scheduling: Attn: Phone: Facsimile: Email: Scheduling Desk: PowerScheduler@sfwater.org	Scheduling: Attn: Phone: Facsimile: Email:
Payments: Attn: Phone: Facsimile:	Payments: Attn: Phone: Facsimile:
Wire Transfer: BNK: ABA (ACH): ACCT:	Wire Transfer: BNK: ABA: ACCT:

ARTICLE 1: DEFINITIONS

AC: Means alternating current.

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.

Agreement: Has the meaning set forth in the Cover Sheet.

Master Agreement Term: Has the meaning set forth in Section 2.2.

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 including the CAISO ("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.

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.

Board of Supervisors: Means the Board of Supervisors for the City and County of San Francisco.

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.

Buyer: Means the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF.

Buyer's Obligations: Means the payment obligations of the Buyer under this Agreement and any Transactions entered into pursuant to this Master Agreement.

CAISO: Means the California Independent System Operator Corporation or its functional successor.

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.

CEC: Means the California Energy Commission or any successor agency.

Change in Law: Has the meaning set forth in Section 12.5(f).

CleanPowerSF: Means the Buyer's Community Choice Aggregation Program.

Confidential Information: Has the meaning set forth in Section 12.2(b).

Confirmation: Has the meaning set forth in Section 2.2(a).

Controller: Means the Controller for the City and County of San Francisco.

Costs: Means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement or entering into new arrangements which replace a Terminated Transaction; and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

CPUC: Means the California Public Utilities Commission or any successor government agency.

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 issuer rating by S&P and/or Moody's.

Defaulting Party: Has the meaning set forth in Section 9.1.

Delivery Term: Has the meaning set forth in Section 2.2.

Delivery Point: Means The point at which Product will be delivered and received, as specified in a Transaction.

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

Early Termination Date: Has the meaning set forth in Section 9.2(a).

Effective Date: Has the meaning set forth in Section 2.1(d).

Eligible LC Bank: Means a U.S. commercial bank or a foreign bank with a U.S. branch, that has a credit rating of at least A3 from Moody's or A- from S&P.

Energy: Means three-phase, 60-cycle alternating current electric energy measured in MWh.

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.

Event of Default: Has the meaning set forth in Section 9.1.

Execution Date: Has the meaning set forth on the Cover Sheet.

FERC: Means the Federal Energy Regulatory Commission or any successor agency.

Force Majeure: Means an event or circumstance, including a natural disaster, war, riot, or civil disturbance, which prevents one Party ("Claiming Party") from performing its material obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the action or inaction 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. Neither Party may raise a claim of Force Majeure based in whole or in part on;

- (a) failures or delays by the participating transmission owner and/or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Master Agreement except to the extent that such delay is solely caused by a Force Majeure;
- (b) a strike, work stoppage or labor dispute;
- (c) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Master Agreement;
- (d) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;
- (e) a Curtailment Order; or
- (f) economic conditions that render a Party's performance of this Master Agreement at the Contract Price unprofitable or otherwise uneconomic, including Buyer's ability to buy Product at a lower price, or Seller's ability to sell Product at a higher price).

Gains: Means, with respect to any Party, an amount, determined in a commercially reasonable manner, equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction. Factors used in determining economic benefit may include reference to information either available to the Party internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the term of a Termination Transaction to determine the value of the Product, including the value of Environmental Attributes and Capacity Attributes, as applicable.

Governmental Authority: Any federal or state government, or political subdivision thereof, including, without limitation, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the CAISO or any corporation or other entity owned or controlled by any of the foregoing.

Guarantor: Means, with respect to a Party, any Person that (a) is reasonably acceptable to the other Party, (b) has a Credit Rating of A- or better from S&P or a Credit Rating of A3 or better from Moody's, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of the other Party.

Guaranty: Means a guaranty from a Guarantor provided for the benefit of Buyer as reasonably acceptable to Buyer.

Indemnified Party: Has the meaning set forth in Section 10.1.

Indemnifying Party: Has the meaning set forth in Section 10.1.

Investment Grade: Means a Credit Rating of BBB- or better by S&P and Baa3 or better by Moody's.

Late Payment Penalty: Has the meaning set forth in Section 4.1(b).

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 a credit rating of at least A3 from Moody's or A- from S&P 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.

Losses: Means, with respect to any Party, an amount, determined in a commercially reasonable manner, equal to the present value of the economic loss to it (exclusive of Costs) resulting from termination of a Termination Transaction. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the term of the Terminated Transaction to determine the value of the Product, including Environmental Attributes and Capacity Attributes, as applicable. If the Non-Defaulting Party is the Seller, then in addition to lost payments for Product pursuant to this Agreement, "Losses" shall exclude any associated loss of investment tax credits and other lost tax benefits.

Master Agreement: Has the meaning set forth in the Cover Sheet.

Master Agreement Term: Has the meaning set forth in Section 2.2.

Moody's: Means Moody's Investor Services, Inc. or its successor.

NERC: Means the North American Electricity Reliability Council.

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.

Non-Defaulting Party: Has the meaning set forth in Section 9.2.

Performance Assurance: Means collateral in the form of either cash, Letter(s) of Credit, a Guaranty from an entity with an Investment Grade Credit Rating, or other security acceptable to the requesting party.

Pledgor: Has the meaning set forth in Section 5.1.

Political Activity: Has the meaning set forth in Section 12.14.

Potential Event of Default: Means an event which, with notice or passage of time or both, would constitute an Event of Default.

Product: Means electric capacity, energy, or other products(s) related thereto as specified by the Parties in a Transaction.

Public Records Laws: Means the California Public Records Act, California Government Code §§ 6250, et seq., the San Francisco Sunshine Ordinance, San Francisco Administrative Code Chapter 67, the Ralph M.

Brown Act, California Government Code §§ 54950, et seq., and any other applicable law regarding public records as may be amended from time to time.

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 Buyer the Delivery Point.

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

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.

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.

Scheduling Coordinator or SC: Has the meaning set forth in the CAISO Tariff.

Secured Party: Has the meaning set forth in Section 5.3.

Seller: Means _____.

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 the Non-Defaulting Party incurs as a result of the liquidation of a Termination Transaction pursuant to Section 8.3.

SFPUC: Means the San Francisco Public Utilities Commission or any successor government agency.

Termination Payment: Means, with respect to the Non-Defaulting Party, the sum of (a) the Losses or Gains, and Costs which such Party incurs as a result of the termination of this Master Agreement pursuant

to Section 9.3, plus (b) the sum of all amounts then owed to the Non-Defaulting Party by the Defaulting Party determined as of the Early Termination Date.

Transaction: Means a particular transaction agreed to by the Parties related to the sale and purchase of a Product pursuant to this Master Agreement.

ARTICLE 2: CONDITIONS PRECEDENT AND TERM

2.1 Conditions Precedent. The Term of this Master Agreement shall not commence until the occurrence of all of the following:

- (a) For Each Party: Each Party has received Collateral Assurance from the other Party as required under Article 5.
- (b) For Seller: A copy of each of:
 - (i) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller,
 - (ii) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect, or anticipated to be in effect, on the Execution Date,
 - (iii) A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction, and
 - (iv) Evidence of insurance as set forth in Exhibit E.
- (c) For Buyer:
 - (i) This Master Agreement has been approved, if required, by the San Francisco Public Utilities Commission and/or San Francisco Board of Supervisors; and
 - (ii) The Controller has certified in accordance with the City Charter that sufficient unencumbered balances are available in the proper fund.
- (d) Effective Date. The Effective Date of this Master Agreement shall be the date that all of the Conditions Precedent set forth above have been satisfied or waived in writing by both Parties.
- (e) Failure to meet all Conditions Precedent. If the Conditions Precedent set forth in this Section are not satisfied or waived in writing by both Parties within ninety (90) days of full execution of this Master Agreement, then either Party may terminate this Master Agreement effective upon receipt of notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, as a result of such termination.

2.2 Master Agreement Term and Transactions

- (a) Master Agreement Term. The term of this Master Agreement shall commence and this Master Agreement shall be effective upon the Effective Date, unless earlier terminated

pursuant to an express provision of this Master Agreement, and shall remain in effect until the delivery to Buyer of all of the Environmental Attributes under this Master Agreement (the "Term").

(b) Transactions.

- (i) A Transaction shall be entered into upon agreement of the Parties in writing, through the execution of a confirmation in form and substance mutually agreed to by the Parties ("Confirmation"). No Confirmation shall be binding until executed by the SFPUC on behalf of the City in accordance with all applicable City contracting requirements and by Seller. Neither Party is obligated to enter into any Transaction or any Confirmation pursuant to this Master Agreement and no Party shall have any obligation to purchase or sell any Product unless and until the Parties have executed a Confirmation.
- (ii) 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, margin agreement, or similar arrangement between the Parties and all Transactions executed in accordance with Section 2.2(b)(i) 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.

ARTICLE 3: PURCHASE AND SALE

3.1 Purchase and Sale of Product.

- (a) Transaction. 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 Product at the Delivery Point.
- (b) Title and Risk of Loss. Title to and risk of loss as to all Product purchased by Buyer shall pass from Seller to Buyer at the Delivery Point. Seller shall be responsible for any costs, fees, taxes, assessments, or charges 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 the delivery of the Product at and from the Delivery Point. Seller warrants that it shall deliver all Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto created by any Person other than Buyer.
- (c) Transmission and Scheduling~~Error! Bookmark not defined.~~ Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services 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 to receive the Product at the Delivery Point.

ARTICLE 4: BILLING AND PAYMENT

4.1 Billing and Payment.

- (a) Monthly Invoices. No sooner than ten (10) days after the end of each calendar month, Seller shall provide to Buyer an invoice for the Product delivered in the prior month based on _____. The invoice shall include: _____.
- (b) Payment. All invoices shall be due and payable on or before the forty-fifth (45th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day ("Due Date"). 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 \$100,000.00 ("Late Payment Penalty") for a maximum period of ninety (90) calendar days after such payment is due.
- (c) City Vendor Requirements. Notwithstanding any other provision of this Master Agreement, Buyer shall not be deemed to be in default of this Master Agreement and no Late Payment Penalty shall be assessed if an invoice under this Master Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable Buyer requirements for Buyer's contractors, including but not limited to, certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, or any other current or future Buyer requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.
- (d) 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 Master 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 the Late Payment Penalty 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 the Late Payment Penalty 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 4.1 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.
- (e) CAISO Adjustments. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 4.1, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than

thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

4.2 Designated Fund [For CleanPowerSF]

- (a) Auto-Appropriating Designated Fund. The Buyer's Obligations under this Master Agreement shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further Buyer action and which shall be used solely for CleanPowerSF costs and expenses, including the Buyer's Obligations. Buyer agrees to set CleanPowerSF rates and charges that are sufficient to maintain revenues necessary to pay the Buyer Obligations and all of Buyer's payment obligations under its other contracts for the purchase of energy for CleanPowerSF. Buyer shall provide Seller 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) Limited Obligations. The Buyer's Obligations are special limited obligations of Buyer payable solely from the revenues of CleanPowerSF. The Obligations are not a charge upon the revenues or general fund of the SFPUC or the Buyer or upon any non-CleanPowerSF moneys or other property of the SFPUC or the Buyer.

4.3 Guaranteed Maximum Cost.

- (a) Controller Certification. The Buyer's Obligations 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 Buyer are not authorized to request, and the Buyer is not required to reimburse Seller 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 Buyer are not authorized to offer or promise, nor is the Buyer 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.
- (b) Biannual Budget Process. For each City biannual budget cycle during the term of this Master Agreement, Buyer agrees to take all necessary action to include the maximum amount of the Buyer's payment obligations under this Master Agreement in its budget submitted to the Buyer's Board of Supervisors for that budget cycle.

ARTICLE 5: CREDIT AND COLLATERAL REQUIREMENTS

5.1 Grant of Security Interest/Remedies. To secure its obligations under this Master Agreement, 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, the Pledgor's Collateral Posting posted with the other Party in the form of cash collateral or 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. Within thirty (30) calendar day of the delivery of the Collateral Posting, 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:

- (a) exercise any of the rights and remedies of a Secured Party with respect to all Collateral Posting, including any such rights and remedies under law then in effect;
- (b) draw on any outstanding Letter of Credit or Guaranty issued for its benefit, and;
- (c) liquidate any Collateral Posting 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 Master 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.

5.2 Buyer Credit Protection. [TO BE NEGOTIATED]

5.3 Letter of Credit. Any Collateral Posting provided in the form of a Letter of Credit shall be substantially in the form set forth in Exhibit XXXX subject to the following provisions:

- (a) Renewal of Letter of Credit. If a Party has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 5, then such Party shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Master Agreement.
- (b) Failure of Letter of Credit and Cure. In the event the issuer of such Letter of Credit at any time: fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, becomes Bankrupt, indicates its intent not to renew such Letter of Credit, or fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (i) or (ii) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (i) or (ii) below is considered the "Cure"):
 - (i) providing a substitute Letter of Credit that is issued by an Eligible LC Bank other than the bank which is the subject of Buyer's notice to Seller in this section 6.3(b),
 - (ii) providing a Guaranty, or
 - (iii) posting cash.
- (c) Failure to Cure. If Seller fails to cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Master Agreement, then Seller shall have failed to meet the collateral requirements of Section 5.3 and Buyer may declare an Event of Default as set forth in Article 9.

- (d) Letter of Credit Costs. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

5.4 Guaranty. If at any time the Pledgor's Guarantor or Guaranty is no longer acceptable to the Secured Party, in its reasonable discretion, the Pledgor shall replace the Guaranty within five (5) Business Days following a written request for replacement of the Guaranty. The Pledgor shall provide for the benefit of the Secured Party either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit. If Pledgor fails to provide replacement collateral as required in this Section 5.5, then Buyer may declare an Event of Default as set forth in Article 9.

ARTICLE 6: FINANCIAL STATEMENTS

6.1 Seller's Obligations. If requested by Buyer, Seller shall deliver, or make available on its website, (i) within six (6) months following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year), and (ii) within forty-five (45) days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Seller'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 and shall be certified by the Chief Financial Officer or equivalent officer of Seller on behalf of Seller; 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 Seller diligently pursues the preparation, certification and delivery of the statements.

6.2 Buyer's Obligations. If requested by Seller, Buyer shall deliver to Seller (i) within six (6) months following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year) and (ii) within forty-five (45) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Buyer'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 shall be prepared in accordance with GAAP, 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 constitute an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

ARTICLE 7: FORCE MAJEURE

7.1 Remedial Action. A Party shall not be liable to the other Party if the Party is prevented from performing its obligations hereunder due to a Force Majeure Event. The Party rendered unable to fulfill an obligation by reason of a Force Majeure Event shall take all action necessary to remove such inability with all due speed and diligence. The non-performing Party shall be prompt and diligent in attempting to mitigate the effects of and to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any Party from its obligations to make payment of amounts due hereunder.

7.2 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall, as soon as practicable under the circumstances, notify the

other Party, in writing, of the nature, cause, date of commencement, and the anticipated extent of any delay or interruption in performance.

7.3 Termination Due To Force Majeure Event. If a Party is prevented in any material respect from performing any material obligations under this Master Agreement solely due to a Force Majeure Event lasting for a period of twelve (12) consecutive months or longer, the unaffected Party may terminate this Master Agreement, without liability of either Party to the other, upon thirty (30) calendar days' prior written notice at any time following expiration of such period of twelve (12) consecutive months. This Section 8.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Master Agreement.

ARTICLE 8: EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default by a Party (a "Defaulting Party"):

- (a) the breach of any material covenant or obligation set forth in this Master Agreement and such Party fails to cure such breach within thirty (30) calendar days after written notification of default by the other Party; however, the Parties may mutually agree upon a longer period for cure if the Event of Default cannot reasonably be cured within such initial (30) day period;
- (b) subject to Section 4.3 the failure to make, when due, any payment required pursuant to a Transaction if such failure is not remedied within ten (10) Business Days after written notice that such payment is due;
- (c) 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;
- (d) such Party becomes Bankrupt; the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 5;
- (e) 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 Master 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;

8.2 Termination for Default.

- (a) Declaration of an Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred, is continuing, and has not been cured, the other Party (the "Non-Defaulting Party") shall have the right to:
 - (i) designate a day, no earlier than ten (10) calendar days after such notice is deemed to be received, as an early termination date ("Early Termination Date");

- (ii) 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 and terminate this Master Agreement;
- (iii) collect as of the Early Termination Date the Termination Payment;
- (iv) withhold any payments due to the Defaulting Party under this Master Agreement, and;
- (v) suspend performance;
- (vi) exercise its rights pursuant to Article 5 of this Master Agreement to draw upon and retain any Collateral Posting;
- (vii) exercise any other right of remedy available at law or in equity to the extent otherwise permitted under this Master Agreement.

(b) Calculation of Termination Payment.

- (i) 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). Third parties supplying such information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, and other sources of market information.
- (ii) 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 8, plus any or all other amounts due to the Defaulting Party under this Master 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 Master Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment").
- (iii) Notwithstanding the foregoing, 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).
- (iv) The Non-Defaulting Party shall not be required to enter into replacement transactions to establish a Termination Payment.
- (v) The Termination Payment shall be the sole and exclusive remedy available to the Non-Defaulting Party and shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

- (c) Notice 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, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made by the Defaulting Party within fifteen (15) Business Days after such notice is effective.
- (d) 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. Disputes regarding the Termination Payment shall be resolved in accordance with Section 12.3.

8.3 LIMITATION OF LIABILITY AND DAMAGES.

- (a) **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**
- (b) **THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS MASTER 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 MASTER AGREEMENT OR OTHERWISE; PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS MASTER AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER IN ARTICLE 8 AND EXHIBIT D, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 8.2 AND 8.3. 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 IMPRACTICABLE. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNTS SHALL BE AS AND FOR LIQUIDATED DAMAGES AND NOT AS A PENALTY AND ARE THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671.

- (c) BUYER'S PAYMENT OBLIGATIONS UNDER THE MASTER 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 AND 8.

ARTICLE 9: INDEMNIFICATION

9.1 Hold Harmless and Indemnification.

- (a) 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 3.2. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article 9.
- (b) If a Party determines that it is entitled to defense and indemnification under this Section 10.1 ("Indemnified Party"), such Party shall promptly notify the other Party ("Indemnifying Party") in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnifying Party shall be made without such Party's prior written consent.
- (c) Notice. If an Indemnified Party determines that it is entitled to defense and indemnification under this Section 9.1, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's prior written consent.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES

10.1 Seller's Representations and Warranties. In addition to the representations and warranties set forth in other sections of this Master Agreement, Seller represents and warrants to Buyer that as of the Execution Date:

- (a) Seller is duly organized and validly existing as a _____ under the laws of _____, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Master Agreement, and Seller is duly qualified in California and each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

- (b) Seller has the legal power and authority to make and carry out this Master Agreement and each Transaction and to perform all of its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Master Agreement by Seller shall not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;
- (d) This Master Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened, in writing, against Seller or any of its affiliates, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Master Agreement;
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or any of its affiliates, or, to its knowledge, threatened against it or its affiliates which would result in it being or becoming Bankrupt; and
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Master Agreement).

10.2 Buyer Representations and Warranties. Buyer represents and warrants to Seller that as of the Execution Date:

- (a) Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Master Agreement;
- (b) Buyer has the legal power and authority to make and carry out this Master Agreement and each Transaction and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Master Agreement by Buyer shall not conflict with its governing documents, any Applicable Laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (d) This Master Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened, in writing, against Buyer, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Master Agreement;
- (f) 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; and
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Master Agreement).

10.3 Covenants. In addition to other covenants in this Master Agreement, each Party covenants that throughout the Delivery Term:

- (a) it shall continue to be duly organized, validly existing and in good standing under the Applicable Laws of the jurisdiction of its formation;
- (b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement; and
- (c) it shall perform its obligations under this Master Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law.

ARTICLE 11: MISCELLANEOUS

11.1 Assignment.

- (a) Consent. Except as provided in Sections 12.2(b) and (c), neither Party shall assign this Master Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed so long as among other things, (i) the assignee assumes the transferring Party's payment and performance obligations under this Master Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers financial statements, information and other evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.
- (b) Assignment in Connection with a Change in Control. Notwithstanding any provision to the contrary in this Section 12.1, any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. At Buyer's request, Seller shall promptly deliver financial statements, information and other evidence satisfactory to Buyer regarding the proposed change of control of Seller.

- (c) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 12.1 is void.

11.2 Proprietary or Confidential Information.

- (a) Buyer Confidential Information. Seller understands and agrees that, in the performance of this Master Agreement or in contemplation thereof, Seller may have access to private or confidential information which may be owned or controlled by Buyer and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Buyer. Seller agrees that all private and confidential information disclosed by Buyer to Seller shall be held in confidence and used only in performance of the Master Agreement. Seller shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary data.
- (b) Public Records Act and Sunshine Ordinance. Seller acknowledges that Buyer is a public agency subject to the disclosure requirements of the Public Records Laws. If documents or information submitted to Buyer contain Seller's proprietary and confidential information and Seller claims that such information falls within one or more Public Records Laws exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY", and identify the specific lines containing such information (the "Confidential Information"). Buyer shall disclose such Confidential Information to third parties only to the extent required by California law (including, without limitation, the California Constitution, the Public Records Laws, and other Applicable Law).
- (c) Disclosure of Confidential Information by Buyer. In the event of a third party request for Buyer to disclose such Confidential Information, Buyer shall make reasonable efforts to provide notice to Seller prior to disclosure. If Seller contends that any Confidential Information is exempt from the Public Records Laws and wishes to prevent disclosure, Seller shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in San Francisco County before Buyer's deadline for responding to the disclosure request. If Seller fails to obtain such remedy prior to Buyer's deadline for responding to the request, Seller agrees that Buyer may disclose the requested Confidential Information. Seller further agrees that Buyer shall have no liability to Seller arising out of any disclosure by Buyer of any Seller Confidential Information before Seller has timely obtained an order, injunctive relief or other appropriate remedy to prevent Buyer from making the requested third party disclosure.
- (d) Non-Confidential Information. Notwithstanding anything to the contrary in this Section 12.2 nothing shall restrict any Party from using or disclosing information related to this Master Agreement, including Confidential Information if such information (i) is generally available to the public; (ii) was within the using or disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; (iv) is legally required to be disclosed by judicial or other governmental action as determined by such Party's attorney acting in good faith; or (v) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, the disclosing Party; or (vi) 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.

- (e) Nondisclosure of Private Information. If this Master Agreement requires Buyer to disclose "Private Information" to Seller within the meaning of San Francisco Administrative Code Chapter 12M, Seller shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Master Agreement and only as necessary in performing this Master Agreement. Seller is subject to the enforcement and penalty provisions in Chapter 12M.

11.3 Dispute Resolution; Choice of Law; Venue.

- (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 Master Agreement by negotiation. The status of any dispute or controversy notwithstanding, each Party shall proceed diligently with the performance of its obligations under this Master Agreement in accordance with and subject to the terms of this Master 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; Venue. This Master Agreement and the rights and duties of the Parties hereunder shall be construed, enforced and performed in accordance with the laws of the state of California, and/or the laws of the United States, as applicable, without regard to principles of conflicts of law which may direct the application of the laws of another jurisdiction. Venue shall be in the County of San Francisco, State of California

11.4 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. The Parties shall maintain such data and records in an accessible location and condition for a period of not fewer than five (5) years after final payment under this Master Agreement or until after final audit has been resolved, whichever is later.

11.5 General.

- (a) Entire Agreement. This Master Agreement; the exhibits, attachments, and any written and fully executed supplements hereto, and any designated collateral, credit support, or margin agreement or similar arrangement between the Parties constitute the entire agreement between the Parties relating to the subject matter.
- (b) Construction. 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) Amendments. 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 Master Agreement, such amendment will not in any way affect outstanding Transactions under this Master 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 Master Agreement.

- (d) No Third Party Beneficiaries. 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) No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) Change in Law. If any provision of this Master 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 Master 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 Master Agreement so that the implementation of this Master 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 in a manner that maintains to the greatest extent practicable the original intent of the Parties under this Master Agreement so that the Parties may perform their obligations regarding the purchase and sale of Product. If the Parties cannot reach a good faith agreement on amendments, the Master Agreement shall be terminated by mutual agreement without liability for either Party.
- (g) Headings. The headings used herein are for convenience and reference purposes only.
- (h) Assigns. This Master Agreement shall be binding on each Party's successors and permitted assigns.
- (i) No Dedication. No undertaking by one Party to the other under any provision of the Master Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect Seller as an independent entity and not a public utility.
- (j) Relationship of the Parties. The duties, obligations and liabilities of the Parties are independent of one another and shall be limited to those expressly set forth herein. This Master Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party. Seller and Buyer intend to act as energy supplier and energy purchaser, respectively, and do not intend to act as, or to be treated as, partners in, co-venturers in, or lessor/lessee with respect to any generating facility or any business related to a generating facility.
- (k) Severability. Should any provision of the Master Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Master Agreement shall not be affected and shall continue in full force and effect. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal, or

unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision.

- (l) Survival. All rights pursuant to (i) Section 4.1(d) (Disputes and Adjustment of Invoices); Article 10 (Events of Default; Remedies; Limitations), (iii) Article 11 (Indemnification), (iv) Section 13.2 (Confidential Information); (v) Section 13.3 (Dispute Resolution/Choice of Law), and (vi) Section 13.4 (Audit); (vii) Section 13.6(c) (Prohibition of Political Use of City Funds); (viii) Section 13.6(e) (False Claims), and; (ix) Section 13.6(f) (City Opinion) shall survive termination of this Master Agreement.

11.6 City Contracting Requirements.

- (a) Compliance with Americans with Disabilities Act. Seller 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. Seller shall provide the services specified in this Master Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Seller agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Master Agreement and further agrees that any violation of this prohibition on the part of Seller, its employees, agents or assigns will constitute a material breach of this Master Agreement.
- (b) Limitations on Contributions. Through execution of this Master Agreement, Seller acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services or for the furnishing of any material, supplies or equipment to City, whenever such transaction would require approval by City's elective officer of the board on which that 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 this Master Agreement is approved by the City's elective officer or the board on which that elective officer serves.
- (c) Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Seller 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 this Master Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Master Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.
- (d) Non-Discrimination Requirements.
 - (i) Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) of the San Francisco

Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

- (ii) Seller represents that it does not as of the date of this Master Agreement, and will not during the term of this Master Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.
- (e) 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 Buyer 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 Buyer if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Buyer 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 Buyer; (c) conspires to defraud the Buyer by getting a false claim allowed or paid by the Buyer; (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 Buyer; or (e) is a beneficiary of an inadvertent submission of a false claim to the Buyer, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Buyer within a reasonable time after discovery of the false claim.
- (f) Use of Buyer Opinion. Seller shall not quote, paraphrase, or otherwise refer to or use any opinion of Buyer, its officers or agents, regarding Seller or Seller's performance under this contract without prior written permission of the SFPUC.
- (g) Compliance with Laws. Seller shall keep itself fully informed of the City Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of its obligations under this Master 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. Buyer shall provide notice to Seller of any such amendment to City's Charter, codes, ordinances and regulations of which it becomes aware
- (h) Conflict of Interest. Through its execution of this Master Agreement, Seller acknowledges that it is familiar with the provision of Section 15.103 of 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 Buyer if it becomes aware of any such fact during the term of this Master Agreement.

11.7 **Mobile Sierra.** 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 Master 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 be the "public interest" 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).

11.8 Forward Contract. The Parties acknowledge and agree that this Master Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

11.9 Notices. Unless otherwise stated in this Master Agreement, any notice, demand, request, or communication required or authorized by this Master Agreement shall be delivered either by hand, facsimile, electronic mail, overnight courier or mailed by certified mail, return receipt requested with postage prepaid, to the contacts set forth in the Cover Sheet. Either Party may change any information listed in the Notice section of the Cover Sheet, by written notice as provided in this Section. Any such notice, demand, request, or communication shall be deemed received on the Business Day on which the notice was transmitted if delivery was made by hand, facsimile or electronic mail, or (ii) upon receipt by the receiving Party if sent by overnight courier or mailed by certified mail, return receipt requested with postage prepaid.

11.10 Counterparts. This Master Agreement may be executed in one or more counterparts and by different Parties on separate counterparts, all of which shall be deemed one and the same agreement and each of which shall be deemed an original. Delivery of an executed counterpart of this Master Agreement by electronic means shall be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Master Agreement by electronic means shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Master Agreement shall not affect the validity or effectiveness of this Master Agreement.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Execution Date.

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

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

By: _____
Name: _____
Title: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

COVER SHEET 3

GENERAL TERMS AND CONDITIONS 8

ARTICLE ONE: GENERAL DEFINITIONS 8

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS 13

 2.1 Transactions 13

 2.2 Governing Terms 13

 2.3 Confirmation 14

 2.4 Additional Confirmation Terms 14

 2.5 Recording 14

ARTICLE THREE: OBLIGATIONS AND DELIVERIES 15

 3.1 Seller's and Buyer's Obligations 15

 3.2 Transmission and Scheduling 15

 3.3 Force Majeure 15

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE 15

 4.1 Seller Failure 15

 4.2 Buyer Failure 16

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES 16

 5.1 Events of Default 16

 5.2 Declaration of an Early Termination Date and Calculation of Settlement
 Amounts 17

 5.3 Net Out of Settlement Amounts 18

 5.4 Notice of Payment of Termination Payment 18

 5.5 Disputes With Respect to Termination Payment 18

 5.6 Closeout Setoffs 18

 5.7 Suspension of Performance 19

ARTICLE SIX: PAYMENT AND NETTING 19

 6.1 Billing Period 19

 6.2 Timeliness of Payment 19

 6.3 Disputes and Adjustments of Invoices 19

 6.4 Netting of Payments 20

 6.5 Payment Obligation Absent Netting 20

 6.6 Security 20

 6.7 Payment for Options 20

 6.8 Transaction Netting 21

ARTICLE SEVEN: LIMITATIONS.....	21
7.1 Limitation of Remedies, Liability and Damages.....	21
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS	22
8.1 Party A Credit Protection.....	22
8.2 Party B Credit Protection.....	23
8.3 Grant of Security Interest/Remedies.....	25
ARTICLE NINE: GOVERNMENTAL CHARGES	26
9.1 Cooperation.....	26
9.2 Governmental Charges	26
ARTICLE TEN: MISCELLANEOUS	26
10.1 Term of Master Agreement	26
10.2 Representations and Warranties	27
10.3 Title and Risk of Loss.....	28
10.4 Indemnity.....	28
10.5 Assignment	28
10.6 Governing Law	29
10.7 Notices	29
10.8 General.....	29
10.9 Audit	30
10.10 Forward Contract.....	30
10.11 Confidentiality	30
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS	31
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS	35
EXHIBIT A: CONFIRMATION LETTER.....	42

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: _____ ("*Effective Date*"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, 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 2.3 hereto) shall be referred to as the "*Agreement*." The Parties to this *Master Agreement* are the following:

Name ("_____ " or "Party A")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

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

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

Cross Default for Party A:

Party A: _____ Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount \$ _____

Cross Default for Party B:

Party B: _____ Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option B Specify: _____

Option C Specify: _____

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

- Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

- Other:
Specify: _____

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

- Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: _____

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

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

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.

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

1.3 "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.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank 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.

1.5 "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.

1.6 "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.

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

1.8 "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.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "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.

1.12 "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 as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

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

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

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

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

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

1.20 "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.

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

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

1.23 "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 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 Schedule P.

1.24 "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.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "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.

1.27 "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 a credit rating of at least A- from S&P or A3 from Moody's, 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.

1.28 "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.

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

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

1.31 "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.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 "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.

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

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

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to 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 a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "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.

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

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases 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, or at Buyer's option, 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.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point 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, or at Seller's option, 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.

1.54 "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.

1.55 "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.

1.56 "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.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

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

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

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

1.61 "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.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

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), , the Party A Tariff, if any, and the Party B Tariff, if any, 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 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such

Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

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; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. 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.

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 or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, 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 or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, 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 three (3) 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;
- (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 is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (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) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments,

individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

- (h) 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.

5.2 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).

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") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

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 and whether the Termination Payment is due to or due from the Non-Defaulting Party. 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 two (2) 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 two (2) 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. Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 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.

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 (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). 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 agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) 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 amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

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 two (2) Business Days of such resolution along with interest accrued at the Interest Rate 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 interest accrued at the Interest Rate 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 (unless one of the Parties elects to accelerate payment of such amounts as permitted by 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 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 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 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.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, 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 OR OTHERWISE. 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.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (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.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be 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 the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B

fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A 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 Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, 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 Party A. Such Party B Performance Assurance shall be delivered to Party A 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 plus Party B's Independent Amount, if any, (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 Party A 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 Party A 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 Party A, 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 Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is

specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A'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 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 such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be 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 the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, 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) 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 Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on

any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B 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 A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A 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 Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, 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 A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, 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.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

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

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 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. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

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 terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such 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 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 Section 5.2 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 accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), 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 accepted in accordance with Section 2.3);
- (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 accepted in accordance with Section 2.3);
- (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 accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) 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 accepted in accordance with Section 2.3);

- (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 accepted in accordance with Section 2.3) 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 accepted in accordance with Section 2.3) 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 hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability

hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. 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. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, 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 2.3) 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. This 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. 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. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or

assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. 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. 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 Interest Rate 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.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

- A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

Public Power System's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of

all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System 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) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) 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.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

"Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

"Capacity" has the meaning specified in the Transaction.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Firm (LD)" means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

"Firm Transmission Contingent - Contract Path" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary.

"Firm Transmission Contingent - Delivery Point" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to

the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have

satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall cooperate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain

Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, 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 Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____,
_____ between _____ ("Party A") and _____
("Party B") regarding the sale/purchase of the Product under the terms and conditions as
follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller's Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter

Page 2

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____



**EDISON ELECTRIC
INSTITUTE**

Collateral Annex

Version 1.0

2/21/02

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COLLATERAL ANNEX

This Collateral Annex, together with the Paragraph 10 Elections, (the "Collateral Annex") supplements, forms a part of, and is subject to, the BEI Master Power Purchase and Sale Agreement, dated _____, including the Cover Sheet and any other annexes thereto between _____ ("Party A") and _____ ("Party B"). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.

The obligations of each Party under the Agreement shall be secured in accordance with the provisions of this Collateral Annex, which, except as provided below, sets forth the exclusive conditions under which a Party will be required to Transfer Performance Assurance in the form of Cash, a Letter of Credit or other property as agreed to by the Parties, as well as the exclusive conditions under which a Party will release such Performance Assurance. This Collateral Annex supercedes and replaces in its entirety Sections 8.1(c), 8.2(c) and 8.3 of the Agreement and the defined terms used therein to the extent that such terms are otherwise defined and used in this Collateral Annex. In addition, to the extent that the Parties have specified on the Cover Sheet that Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement are applicable, then the definition of Performance Assurance as used in this Collateral Annex shall apply and Paragraphs 2, 6, 7 and 9 of this Collateral Annex shall apply to any such Performance Assurance posted under such provisions, it being understood that nothing contained in this Collateral Annex shall change any election that the Parties have specified on the Cover Sheet with respect to Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement, which provisions require a Party to Transfer Performance Assurance under certain circumstances not contemplated by this Collateral Annex.

Paragraph 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below:

"Calculation Date" means any Local Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraphs 3, 4, 5 or 8 of this Collateral Annex.

"Cash" means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

"Collateral Account" shall have the meaning attributed to it in Paragraph 6(a)(ii)(B).

"Paragraph 10 Cover Sheet" means the Cover Sheet attached to this Collateral Annex setting forth certain elections governing this Collateral Annex.

"Collateral Requirement" shall have the meaning attributed to it in Paragraph 3(b).

"Collateral Threshold" means, with respect to a Party, the collateral threshold, if any, set forth in the Paragraph 10 Cover Sheet for a Party.

"Collateral Value" means (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the Valuation Percentage multiplied by the stated amount then available under the Letter of Credit to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the Valuation Percentage multiplied by the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, a Party pursuant to this Collateral Annex as determined by such Party in a commercially reasonable manner.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Credit Rating Event" shall have the meaning attributed to it in Paragraph 6(a)(iii).

"Current Mark-to-Market Value" of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction.

"Custodian" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Downgraded Party" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Eligible Collateral" means, with respect to a Party, the Performance Assurance specified for such Party on the Paragraph 10 Cover Sheet.

"Exposure" of one Party ("Party X") to the other Party ("Party Y") for each Transaction means (without duplication) as of any Calculation Date the sum of the following:

(a) the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party X and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party Y and that remain unpaid as of such Calculation Date; plus

(b) the Current Mark-to-Market Value of such Transaction to Party X.

"Exposure Amount" shall have the meaning set forth in Paragraph 3(a).

"Independent Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party (which amount, if designated, shall either be a Fixed

Independent Amount, a Full Floating Independent Amount or a Partial Floating Independent Amount, in each case, as designated on the Paragraph 10 Cover Sheet), or if no amount is specified, zero, or with respect to either Party, an additional or reduced amount agreed to as such for that Party in respect of a Transaction.

"Interest Amount" means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day; multiplied by (b) the Interest Rate for that day, divided by (c) 360.

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Local Business Day on which Cash was Transferred to such Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" means, in respect of a Party holding Cash, the rate specified for such Party in the Paragraph 10 Cover Sheet.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, substantially in the form set forth in Schedule 1 attached hereto, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex.

"Local Business Day" means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation

to any notice or other communication, in the city specified in the address for notice provided by the recipient.

"Minimum Transfer Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Net Exposure" shall have the meaning attributed to it in Paragraph 3(a).

"Notification Time" means 11:00, New York time, on any Calculation Date or any different time specified in the Paragraph 10 Cover Sheet.

"Obligations" shall have the meaning attributed to it in Paragraph 2.

"Performance Assurance" means all Eligible Collateral, all other property acceptable to the Party to which it is Transferred, and all proceeds thereof, that has been Transferred to or received by a Party hereunder and not subsequently Transferred to the other Party pursuant to Paragraph 5 or otherwise received by the other Party. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(a)(iv) and any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash, until all or any portion of such Cash is applied against Obligations owing to such Party pursuant to the provisions of this Collateral Annex. Any guaranty agreement executed by a Guarantor of a Party shall not constitute Performance Assurance hereunder.

"Pledging Party" shall have the meaning attributed to it in Paragraph 3(b).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party determining its Exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Rounding Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Secured Party" shall have the meaning attributed to it in Paragraph 3(b).

"Transfer" means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

- (a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient;

(b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient; and

(c) in the case of any other type of Performance Assurance, delivery thereof as specified by the recipient.

"Valuation Percentage" means, with respect to any Performance Assurance designated as Eligible Collateral on the Paragraph 10 Cover Sheet, the Valuation Percentage specified for such Performance Assurance on the Paragraph 10 Cover Sheet.

Paragraph 2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the "Obligations"), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, the other Party and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

Paragraph 3. Calculations of Collateral Requirement.

(a) On any Calculation Date, the "Exposure Amount" for each Party shall be calculated for all Transactions for which there are any Obligations remaining unpaid or unperformed, by calculating each Party's Exposure to the other Party in respect of each such Transaction and determining the net aggregate sum of all Exposures for all Transactions for each Party. The Party having the greater Exposure Amount at any time (the "Secured Party") shall be deemed to have a "Net Exposure" to the other Party equal to the Secured Party's Exposure Amount.

(b) The "Collateral Requirement" for a Party (the "Pledging Party") means the Secured Party's Net Exposure minus the sum of:

(1) the Pledging Party's Collateral Threshold; plus

(2) the amount of Cash previously Transferred to the Secured Party, the amount of Cash held by the Secured Party as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to the Pledging Party; plus

(3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party; provided, however, that, the Collateral Requirement of a Party will be

deemed to be zero (0) whenever the calculation of such Party's Collateral Requirement yields a number less than zero (0).

Paragraph 4. Delivery of Performance Assurance.

On any Calculation Date on which (a) no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, and (c) the Pledging Party's Collateral Requirement equals or exceeds its Minimum Transfer Amount, then the Secured Party may demand that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall, after receiving such notice from the Secured Party, Transfer, or cause to be Transferred to the Secured Party, Performance Assurance for the benefit of the Secured Party, having a Collateral Value at least equal to the Pledging Party's Collateral Requirement. The amount of Performance Assurance required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by the close of business on the next Local Business Day and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Paragraph 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be Transferred.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) On any Local Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Performance Assurance previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Performance Assurance, (i) the Pledging Party shall in fact have a Collateral Requirement of zero; (ii) no Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The amount of Performance Assurance required to be reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. The Pledging Party shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the Pledging Party. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Pledging

Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, the Pledging Party may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon one (1) Local Business Day's written notice (provided such notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Local Business Days) to the Secured Party; provided, however, that if such substitute Performance Assurance is of a type not otherwise approved by this Collateral Annex, then the Secured Party must consent to such substitution. Upon the Transfer to the Secured Party and/or its Custodian of the substitute Performance Assurance, the Secured Party and/or its Custodian shall Transfer the relevant replaced Performance Assurance to the Pledging Party within two (2) Local Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to the Secured Party and/or its Custodian prior to the release of the Performance Assurance to be returned to the Pledging Party and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal the greater of the Pledging Party's Collateral Requirement or the Pledging Party's Minimum Transfer Amount. Each substitution of Performance Assurance shall constitute a representation and warranty by the Pledging Party that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by the Secured Party and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to a Party that is the Secured Party shall be subject to the following provisions.

(i) If such Party is entitled to hold Cash, then it will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a "Custodian") to hold Cash for it provided that the conditions for holding Cash that are set forth on the Paragraph 10 Cover Sheet for such Party are satisfied. If such Party is not entitled to hold Cash, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to such Party and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B). Upon notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. If the Secured Party or its Custodian fails to satisfy any conditions for holding Cash as set forth above or in the Paragraph 10 Cover Sheet or if the Secured Party is not entitled to hold Cash at any time, then the Secured Party will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(ii)(B), with the Party not eligible to hold Cash being considered the "Downgraded Party" (as defined below). Except as set forth in Paragraph 6(c), the Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to the Secured Party and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party; provided, however, that if a Party or its Custodian is not eligible to hold Cash pursuant to Paragraph 6(a) (such Party shall be the "Downgraded Party" and the event that caused it or its Custodian to be ineligible to hold Cash shall be a "Credit Rating Event") then:

(A) the provisions of this Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business on the next Local Business Day following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution approved by the non-Downgraded Party (which approval shall not be unreasonably withheld), to a segregated, safekeeping or custody account (the "Collateral Account") within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for the Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Collateral Annex and for the security interest of the Downgraded Party and execute such account control agreements as are necessary or applicable to perfect the security interest of the Non-Downgraded Party therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of the non-Downgraded Party. The Qualified Institution holding the Cash will invest and reinvest or

procure the investment and reinvestment of the Cash in accordance with the written instructions of the Pledging Party, subject to the approval of such instructions by the Downgraded Party (which approval shall not be unreasonably withheld), provided that the Qualified Institution shall not be required to so invest or reinvest or procure such investment or reinvestment if an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing. The Downgraded Party shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with the Pledging Party's instructions.

(iii) Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Local Business Day of the first month after the last month to which such invoice relates or (B) the third Local Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within one (1) Local Business Day after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (A), (B), or (C) above, the Pledging Party's Collateral Requirement would be greater than zero.

(ii) As one method of providing Performance Assurance, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Pledging Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

(c) Care of Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii) and beyond the exercise of reasonable care in the custody thereof, the Secured Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by the Secured Party in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence. Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of the Secured Party shall be deemed to be the holding and possession of such Performance Assurance by the Secured Party for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided

in Paragraph 6(a)(ii), nothing in this Collateral Annex shall be construed as requiring the Secured Party to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, the Secured Party may exercise any one or more of the rights and remedies provided under the Agreement, in this Collateral Annex or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may, in its sole discretion, exercise any one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;
- (ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations;
- (iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or
- (iv) the right to liquidate any Performance Assurance held by or for the benefit of the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledging Party, including any right of equity or redemption by the Pledging Party (with the Secured Party having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations in such order as the Secured Party may elect.

(b) The Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).

(c) Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging

Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

(d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party, then:

(1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including any Letter of Credit) and the Interest Amount, if any, to the Pledging Party;

(2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (y) to the extent that the Performance Assurance or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and

(3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.

Paragraph 8. Disputed Calculations

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 4. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging

Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 5(a). In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) The Pledging Party will execute and deliver to the Secured Party (and to the extent permitted by applicable law, the Pledging Party hereby authorizes the Secured Party to execute and deliver, in the name of the Pledging Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex, including any action the Secured Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Pledging Party shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by the Secured Party and/or its Custodian under the Agreement and this Collateral Annex, the Pledging Party hereby represents and warrants that:

(i) the Pledging Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation,

the Performance Assurance, other than the security interests and liens created under the Agreement and this Collateral Annex;

(ii) upon the Transfer of Performance Assurance by the Pledging Party to the Secured Party and/or its Custodian, the Secured Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) it is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Collateral Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(d) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Collateral Annex or the execution, delivery, performance or enforcement of the Agreement and this Collateral Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Collateral Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

SCHEDULE 1 to Collateral Annex

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$_____), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by a representative of the beneficiary:

1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit"; or
2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit".

This Letter of Credit shall expire on _____.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.

With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]



**EDISON ELECTRIC
INSTITUTE**

Paragraph 10 to the Collateral Annex

Version 1.0
2/21/02

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PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEl MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

I. Collateral Threshold

A. Party A Collateral Threshold.

- \$ _____ (the "Threshold Amount"); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

- (a) The amount (the "Threshold Amount") set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for [Party A][Party A's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

<u>Party A</u> <u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- (a) The amount (the "Threshold Amount") set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for [Party A][Party A's Guarantor] on the relevant date of determination, and if [Party A's][Party A's Guarantor's] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

<u>Party A</u> <u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- The amount of the Guaranty Agreement date _____ from _____, as amended from time to time but in no event shall Party A's Collateral Threshold be greater than \$ _____.
- Other – see attached threshold terms

B. Party B Collateral Threshold.

- \$ _____ (the "Threshold Amount"); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential 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.

- (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential 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 Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential 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.

<u>Party B Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, and if [Party B's][Party B's Guarantor's] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the relevant rating agency(ies) specified below or an Event of Default or a Potential 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 Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential 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 pursuant to such demand.

<u>Party B</u> <u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than \$ _____.
- Other -- see attached threshold terms

II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:

		<u>Party A</u>	<u>Party B</u>	(a) <u>Valuation Percentage</u>
(A)	Cash	[]	[]	100%
(B)	Letters of Credit	[]	[]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C)	Other	[]	[]	_____ %

III. Independent Amount.

A. Party A Independent Amount.

- Party A shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- Party A shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- Party A shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

B. Party B Independent Amount.

- Party B shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be

a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding Obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 the Collateral Annex.

- Party B shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- Party B shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party B then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

IV. Minimum Transfer Amount.

- A. **Party A Minimum Transfer Amount:** \$ _____
- B. **Party B Minimum Transfer Amount:** \$ _____

V. Rounding Amount.

- A. **Party A Rounding Amount:** \$ _____
- B. **Party B Rounding Amount:** \$ _____

VI. Administration of Cash Collateral.

- A. **Party A Eligibility to Hold Cash.**

- Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party A] [Party A's Guarantor] has a Credit Rating from _____ and the lowest Credit Rating for [Party A] [Party A's Guarantor] is _____ or higher from _____; (3) Cash shall be held only in any jurisdiction within the United States, and (4) [other, if any]. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- Other - _____

B. Party B Eligibility to Hold Cash.

- Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party B][Party B's Guarantor] has a Credit Rating from _____ and the lowest Credit Rating for [Party B][Party B's Guarantor] is _____ or higher from _____; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

Other - _____

VII. Notification Time.

Other - _____

VIII. General.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 1- but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

Request for Offers:

2019 Local Renewable Energy Supplies

Agreement No. PUC.PRO.0153

8/12/2019



San Francisco
Water Power Sewer

Services of the San Francisco Public Utilities Commission

Table of Contents

1. INTRODUCTION AND BACKGROUND	1
2. ATTACHMENTS	2
3. PRODUCTS SOUGHT	2
4. RFO TIMELINE AND INSTRUCTIONS TO RESPONDENTS.....	5
4.1 RFO Timeline	5
4.2 Notice of Intent to Bid.....	5
4.3 Pre-Bid Conference Call	5
4.4 Bid Documents.....	6
4.5 Addenda/Clarifications	6
4.6 Bid Submissions	6
4.7 Amendment or Withdrawal of Bids.....	7
4.8 Short-listed Offer Requirements	7
4.9 Rights of the SFPUC.....	7
5. BID REQUIREMENTS AND MINIMUM QUALIFICATIONS	8
5.1 Minimum Qualifications.....	9
5.2 Mandatory Bid Criteria	10
5.3 Operating Track Record and Projects Under Development	11
5.4 Locational Requirement & Preference	13
5.5 Community Benefits	13
5.6 Green-e® Energy Eligibility.....	13
6. CONTRACT FORM.....	13
7. EVALUATION PROCESS.....	14
8. PROTEST PROCEDURES	16
9. ADDITIONAL SFPUC REQUIREMENTS	18
10. DEFINITIONS.....	20

1. INTRODUCTION AND BACKGROUND

As described more fully below, the City and County of San Francisco ("City"), acting by and through its Public Utilities Commission ("SFPUC"), seeks to purchase energy (and Resource Adequacy capacity, if available) from new and existing Eligible Renewable Energy Resources ("ERRs"), as defined in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, located within the Northern California NP15 region for (1) CleanPowerSF, the City's Community Choice Aggregation ("CCA") program, and (2) the SFPUC Power Enterprise, the City's municipal electricity utility ("Power Enterprise"). Through this Request for Offers ("RFO"), the SFPUC seeks bids for energy, environmental attributes, and capacity that meet the following criteria:

- New or existing ERRs;
- Renewable resources must be located within California NP15 region, as defined by the CAISO, with a preference for resources located in the nine (9) Bay Area Counties;
- Minimum annual energy delivery of 50,000 megawatt-hours ("MWh") per year and a maximum of 600,000 MWh per year;
- Storage proposals must qualify for Resource Adequacy ("RA") Capacity and be at least 1 MWac;
- Initial delivery date ranging from January 2021 – December 2023;
- Terms up to 25 years.

The SFPUC anticipates entering into contracts (Power Purchase Agreements or "PPAs") with one or more winning Respondents through this RFO.

1.1 The SFPUC

The SFPUC is a City department that provides drinking water to 2.5 million customers in the four (4) Bay Area counties of Alameda, Santa Clara, San Mateo, and San Francisco; greenhouse gas (GHG)-free and renewable electricity in and around San Francisco, and; wastewater services within the City. The SFPUC's mission is to provide its customers with high quality, efficient and reliable water, power, and sewer services in a manner that is inclusive of environmental and community interests, and that sustains the resources entrusted to its care.

The SFPUC is comprised of three (3) separate enterprises: Water, Wastewater, and Power. The SFPUC Water Enterprise is responsible for managing the transmission, treatment, storage and distribution of potable water to San Francisco's wholesale and retail customers, and the production of hydroelectric power. The SFPUC Wastewater Enterprise is responsible for managing the collection, treatment and disposal of San Francisco's wastewater.

The Power Enterprise (AA-/AA long-term bond ratings from Fitch/Standard and Poor's) is a municipal electrical utility responsible for 385 MW of hydro generation resources, transmission and distribution lines, retail power sales and service for its public utility customers, power transmission and scheduling, energy efficiency programs, street lighting services, utilities planning for redevelopment projects, energy resource planning efforts, and various other energy services. The

Power Enterprise serves approximately 3,500 customer accounts with an annual load of approximately 1,000 gigawatt-hours ("GWh").

The City launched CleanPowerSF, the City's Community Choice Aggregation Program ("CCA Program") in May 2016. As a division of the Power Enterprise, the CleanPowerSF program is under the direct administrative oversight of its Assistant General Manager, who in turn reports to the SFPUC General Manager. The program is funded solely by CleanPowerSF ratepayers and does not rely on funding from the Power Enterprise, SFPUC, or the City. The goals of CleanPowerSF are to provide (1) affordable and reliable electricity services to San Francisco residents and businesses, (2) cleaner energy alternatives advancing the City's Greenhouse Gas reduction goals; (3) investment in local renewable energy projects and jobs; and (4) long-term rate and financial stability.

In April 2019, CleanPowerSF completed citywide enrollment and currently serves approximately 378,000 retail accounts with an annual energy requirement of approximately 3,000 GWh. The program has maintained an opt-out rate of about 3% and has attracted more than 6,100 upgrades to CleanPowerSF's 100% renewable *SuperGreen* product. CleanPowerSF's audited financial statements can be found at the following location: <https://sfwater.org/index.aspx?page=347>.

The Power Enterprise and CleanPowerSF serve separate retail loads; in other words, there is no overlap in customers. CleanPowerSF and Power Enterprise individually or together may elect to execute contracts with one or more selected Respondents to serve their respective loads.

2. ATTACHMENTS

The following attachments are included with this RFO:

- Attachment A: Notice of Intent to Bid
- Attachment B: Bid Workbook (must be submitted with the Bid)
- Attachment C: Summary of PPA Terms and Conditions
- Attachment D: Form PPA
- Attachment E: Exclusive Negotiations Agreement
- Attachment F: Community Benefits

Electronic versions of Attachments A, B, C, D, E, and F are available on SFBid (<https://sfbid.sfwater.org/>)

3. PRODUCTS SOUGHT

The SFPUC is seeking proposals for the sale and purchase of renewable energy per the following terms:

Requirement	Specifications
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Resource Eligibility	All eligible renewable resources must be California Renewable Portfolio Standard ("RPS") certified, consistent with Public Utilities Code Section 399.12 and Section 25741 of the California Public Resources Code.
Project Location	Renewable resources must be located within California NP15 region, as defined by the CAISO [TH_NP15_GENAPND]. Preference will be given to bids featuring energy from projects located within California and within the nine (9) Bay Area Counties, equivalent to 10% of bid score.
Delivery Point	Respondent shall be financially and operationally responsible for delivery of all electric energy to the delivery point(s), as further described below. The SFPUC will accept delivery to the NP15 trading hub or another specified node including the project node.
Renewable Energy Product Types	Bids featuring energy from New ERRs must satisfy applicable Product Content Category ("PCC") 1 delivery requirements for all energy volumes. Bids featuring energy from Existing ERRs must satisfy applicable PCC 1 delivery requirements for all energy volumes. Responses may also include the addition of co-located storage as well as pricing at other Delivery Points for CleanPowerSF's or Power Enterprise's consideration (in their sole discretion).
Capacity	The SFPUC will consider proposals from projects offering Energy Only or Resource Adequacy capacity attributes.
Term of Agreement	One (1) to twenty-five (25) years.
Delivery Start Date	Proposals must have a delivery start date that is no earlier than January 1, 2021 and no later than December 31, 2024.
Minimum and Maximum Energy Deliveries	Annual energy deliveries shall be no less than 50,000 MWh per year and no more than 600,000 MWh per year.
Storage	Bidders are encouraged to include options for energy storage projects. Storage offers must qualify for RA Capacity and be sized at least 1 MWac.
Firmness	The PCC 1 energy supply may be offered as either: Firmed and Shaped Renewable Energy – Firmed and shaped renewable energy (and capacity, if applicable) supplied by the Respondent to the SFPUC at the delivery point. Deliveries shall NOT be firmed and shaped from coal or nuclear resources. Deliveries shall be equivalent to 100% of

	<p>the volumes specified by the Respondent in its Bid Workbook (Attachment B). Bids shall provide fixed hourly quantities delivered in the form of standard blocks of energy (e.g., 24x7, 6x16) or alternative fixed hourly quantities (e.g., fixed hourly quantities which align more closely with the Respondent's expected production renewable energy profile) as specified by Respondent in its Bid Workbook.</p> <p>OR</p> <p>Unit Contingent, As-Available Renewable Energy – Renewable energy (and capacity, if applicable) supplied by the Respondent to the SFPUC at the delivery point in hourly amounts equal to all or a specified fraction of the facility's actual energy production. The proposed hourly production forecast and expected total annual deliveries shall be identified in the attached Bid Workbook (Attachment B).</p>
Scheduling	<p>It is the SFPUC's intent that the scheduling of product deliveries shall be accomplished according to industry practices applied in the Western Electricity Coordinating Council ("WECC") region. It will be the Seller's obligation to deliver all energy quantities identified in the firm schedules from the specified resource(s) to the delivery point. Seller will manage the market exposure and related costs for any energy imbalances as well as any alternative transmission path(s) that may be required to deliver the product to Buyer at the delivery point.</p> <p>Respondent shall serve as its own scheduling coordinator ("SC") or make arrangements for a third-party SC. Respondent shall separately identify any costs associated with the provision of SC services.</p> <p>Buyer may elect to serve as the SC for the project.</p>
Proposed Pricing	<p>Each bid must, at a minimum, include the following two pricing alternatives:</p> <ol style="list-style-type: none"> 1. A fixed \$/MWh price, for each year of the proposed contract term, for delivery to the generator node; <p>AND</p> <ol style="list-style-type: none"> 2. A fixed \$/MWh price, for each year of the proposed contract term, for delivery to the NP15 trading hub, as defined by the CAISO [TH_NP15_GENAPND]. <p>In addition to a fixed price, Respondents may also provide Index + premium pricing.</p> <p>Responses may also include pricing for the addition of co-located storage as well as pricing at other Delivery Points for the SFPUC's consideration (in its discretion).</p> <p>As specified, each pricing option shall remain unchanged throughout the entire contract term and shall not be adjusted by periodic escalators or time of delivery multipliers/factors. Proposed prices shall also be inclusive of the capacity (RA) benefit, if applicable.</p>

Green-e® Energy Eligibility	<p>New projects must be Green-e® Energy eligible resources.</p> <p>A copy of the Green-e® Energy National Standard as well as additional information regarding the Green-e® Energy program can be accessed via the following web link: http://www.green-e.org/getcert_restan.shtml#standard.</p>
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4. RFO TIMELINE AND INSTRUCTIONS TO RESPONDENTS

4.1 RFO Timeline

Event	Date
RFO issued	August 12, 2019
Pre-Bid Conference Call	August 19, 2019 at 2:00 PM PPT
Deadline to submit non-binding Notice of Intent ("NOI") to Bid Form	August 21, 2019 at 5:00 PM PPT
Deadline to submit questions	August 21, 2019 at 5:00 PM PPT
Responses to questions provided	August 23, 2019
Deadline to submit bids	August 28, 2019 at 2:00 PM PPT
Notification of shortlisted Bidders	September 20, 2019
PPA negotiations and contract approval	October-December 2019 (estimated)
PPA execution	Starting in December 2019

4.2 Notice of Intent to Bid

By August 21, 2019 at 5:00 PM, Bidders are encouraged to return a completed NOI, as found in Attachment A via email to CAB@sfwater.org. All NOI submissions should include the number and title of the RFO. The NOI is non-binding and all Bidders will be invited to the Pre-Bid Conference Call.

4.3 Pre-Bid Conference Call

A pre-bid conference call will be held on August 19, 2019 at 2:00 PM. Questions regarding the RFO provided in advance of the call will be addressed on this conference call and any new information will be provided at that time. While SFPUC staff may provide oral clarifications, explanations, or responses to any inquiries during the pre-bid conference call, the SFPUC is not bound by any oral representation. If any new and/or substantive information is provided in response to questions raised on the pre-bid conference call, such information will be memorialized in a written addendum to this RFO.

All requests for information concerning the RFO, whether submitted before or after the pre-submittal conference, must be in writing and submitted via the [SFBid website \(https://sfbid.sfwater.org/\)](https://sfbid.sfwater.org/). Substantive replies will be memorialized in written addenda to be

made part of this RFO. All addenda will be posted on the SFBid website. No questions or requests for interpretation will be accepted after August 21, 2019 at 5:00 PM.

4.4 Bid Documents

The submission of a bid shall be deemed a representation and certification by the Respondent that:

- Individual submitting the bid is authorized to act on behalf of Respondent;
- Respondent has read and understands the information provided by the SFPUC in this RFO and the information is the basis for the submission of Respondent's bid;
- Respondent has the financial and technical capability to successfully undertake and complete the responsibilities and obligations described in the bid submitted by Respondent;
- All information contained in the bid is true and correct;
- Respondent understands and acknowledges that either CleanPowerSF or Power Enterprise may select its bid for contract execution at CleanPowerSF's or Power Enterprise's sole discretion.
- The SFPUC has the right to make any inquiry of Respondent or any third-party it deems appropriate to substantiate or supplement information supplied by Respondent, and Respondent hereby grants the SFPUC permission to make these inquiries, and Respondent agrees to provide any and all requested documentation or information in a timely manner.

No request for modification of any bid shall be considered by the SFPUC after the submission of a bid on the grounds that the Respondent was not fully informed of any fact or condition stated in this RFO.

4.5 Addenda/Clarifications

Respondents are responsible for reviewing all portions of this RFO. Respondents are to promptly notify the SFPUC, in writing, if the Respondent discovers any ambiguity, discrepancy, omission, or other error in the RFO. Any such notification should be directed to the SFPUC promptly after discovery, but in no event later than five working days prior to the date for receipt of bids. Modifications and clarifications will be made by addenda as provided below.

Any interpretation of, or change in, the RFO will be made by addendum and shall become a part of the RFO and of any Agreement awarded. Addenda will be posted on the SFBid website (<https://sfbid.sfwater.org/>).

The SFPUC will make reasonable efforts to post in a timely manner any modifications to the RFO on the SFBid website (<https://sfbid.sfwater.org/>). The Respondent shall be responsible for ensuring that its bid reflects any and all addenda posted by the SFPUC prior to the bid due date regardless of when the bid is submitted. The SFPUC will not be responsible for any other explanation or interpretation.

4.6 Bid Submissions

All bids must be submitted online via the SFBid website (<https://sfbid.sfwater.org/>).

Detailed bid response requirements are listed on the online response form within SFBid ("Proposal Response Form"). Please refer to the SFBid website and click the "Submit Proposal" button to view and complete the full Proposal Response Form.

Attachment B to this RFO must be completed and submitted in Excel spreadsheet format with the bid in order for the bid to be considered.

Bids must be submitted no later than **2:00 PM on Wednesday, August 28, 2019**. All bids received after that time will be rejected. Respondents whose bids are selected for the RFO shortlist may be invited to submit optional supplemental materials. **Note:** all files must be successfully uploaded before the deadline. Please allow enough time for all attachments to upload before submitting.

For technical or procedural questions regarding the online submittal, please contact sfbid@sflower.org.

4.7 Amendment or Withdrawal of Bids

A Respondent may amend or withdraw its bid at any time prior to the date and time specified as the deadline for submission of bids by following prompts on the SFBid website. Once withdrawn, a Respondent may submit a new bid through SFBid prior to the bid submission deadline.

4.8 Short-listed Offer Requirements

Upon short-list notification, the SFPUC will request the submission of the following items:

- A signed Exclusive Negotiations Agreement (Attachment E);
- Demonstration of site control;
- A site map, showing latitude and longitude;
- The most recent Phase 2 Interconnection Study and Generator Interconnection Agreement (if available);
- Financing plan;
- Evidence of environmental permitting status;
- Redline of the Term Sheet (Attachment C).

4.9 Rights of the SFPUC

This RFO does not commit the SFPUC to enter into a contract with any Respondent nor does it obligate the SFPUC to pay for any costs incurred in preparation and submission of bids or in anticipation and execution of a contract. The SFPUC reserves the right to:

- Make the selection of bids based on its sole discretion;
- Reject any and all bids;
- Request any and all Respondents to provide additional information under this RFO;
- Prior to the submission deadline for bids, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any supplies to be provided under this RFO, or the requirements for contents or format of the bids;

- In its sole discretion and without notice, suspend, or terminate this RFO without liability to any Respondent;
- Issue subsequent RFOs or Solicitations for Proposals;
- Remedy technical errors in the RFO process or documents;
- Approve or disapprove the use of particular subcontractors;
- Negotiate with any or all of the Respondents;
- Accept a bid or bids that are not the lowest price offer;
- Waive non-substantive informalities and irregularities in the bids; and/or
- Enter into a contract with another Respondent in the event the originally selected Respondent(s) defaults or fails to execute a contract with CleanPowerSF or Power Enterprise.

This RFO does not constitute an offer to buy or create an obligation for the SFPUC, CleanPowerSF, Power Enterprise, and/or the City to enter into an agreement with any entity, and the SFPUC, CleanPowerSF, Power Enterprise, and the City shall not be bound by the terms of any bid until the parties have entered into a fully executed agreement.

Failure by the SFPUC to object to an error, omission, or deviation in the bid will in no way modify the RFO or excuse the Respondent from full compliance with the specifications of the RFO or any contract awarded pursuant to this RFO. No waiver by the City of any provision of this RFO shall be implied from any failure by the City to recognize or take action in response to a failure by a Respondent to observe any provision of this RFO. No Respondent responding to this RFO shall obtain any claim or right of action against the SFPUC by reason of any aspect of the RFO, and defects or abnormalities contained herein, and defects or abnormalities in the selection process, the rejection of any bid, the acceptance of any bid, any statements, representation, acts or omissions of the SFPUC, the exercise of any SFPUC discretion set forth in or with respect to any of the foregoing, and any and all other matters arising out of all or any of the foregoing.

5. BID REQUIREMENTS AND MINIMUM QUALIFICATIONS

This section sets forth the guidelines for the content and format of bids. Each Respondent may submit one or more bids in response to this RFO. Each bid may include several different pricing structures and project terms as provided for in the Bid Workbook (Attachment B). Respondents should review the instructions provided in the Bid Workbook (Attachment B) for additional information regarding the organization and submittal of the bid variations. The SFPUC anticipates entering into contracts with one or more winning Respondents through this RFO.

Respondents that intend to submit bids from generating facilities that have not achieved commercial operation must provide requested information regarding the project development status of the facility, as further described below.

5.1 Minimum Qualifications

The SFPUC is seeking bids from entities sufficiently qualified, experienced and capable of providing the desired product. The following is a list of the minimum requirements for Respondent qualifications. Respondents that do not possess the required minimum qualifications shall be deemed not qualified and shall not be scored. Bids must provide documentation sufficient to demonstrate that Minimum Qualifications described below have been met.

- Firm has developed, installed, or is currently operating at least 50 MW of project capacity. Please submit a summary of relevant projects (including size, location, Commercial Operation Date ["COD"], role of the Firm, etc.) through SFBid.
 - If Respondent is bidding energy from a new ERR,
 - Firm has at least five (5) years of experience in the development of utility-scale renewable energy projects within the last ten (10) years. If Firm does not have five (5) years of experience, Senior Staff of Firm (including the Executive Team and the team responsible for the development, operation and management of the facility) must each hold at least five (5) years of experience in the development of utility-scale renewable energy projects within the last ten (10) years. Please submit a summary of relevant work experience (i.e. resumé, CV, etc.) through SFBid.
 - Firm has provided evidence of adequate liquidity to complete project development in the amount of at least \$3 million, demonstrated by any of the following:
 - Balance sheet cash and/or cash equivalent from the most recent quarterly financial statement
 - Commitment of cash from an investment grade partner and/or parent company
 - Bank liquidity facility
- Please submit the appropriate documentation through SFBid.
- If Respondent is bidding energy from an operating ERR,
 - Firm has at least five (5) years of experience operating utility-scale renewable energy projects and/or remarketing renewable energy within the CAISO Balancing Authority Area within the last ten (10) years. If Firm does not have five (5) years of experience, Senior Staff of Firm (including the Executive Team and the team responsible for the development, operation and management of the facility) must each hold at least five (5) years of experience operating utility-scale renewable energy projects and/or remarketing renewable energy within the CAISO Balancing Authority Area within the last ten (10) years. Please submit a summary of relevant work experience (i.e. resume, CV, etc.) through SFBid.

- Firm has demonstrated financial viability by providing access to latest financial statements (most recent two (2) years plus a recent quarterly financial statement). Please submit the appropriate documentation through SFBid.

5.2 Mandatory Bid Criteria

Failure to meet all of the following criteria shall be grounds for bid rejection. The selected Respondent(s) will be responsible for transferring the specified energy quantities to CleanPowerSF or Power Enterprise at the designated delivery point in the CAISO. Respondents shall serve as their own SC or make arrangements for a third-party SC at no cost to CleanPowerSF or Power Enterprise.

5.2.1 The following mandatory bid criteria apply:

- Bids may be for firming and shaped product or unit contingent, as-available product.
 - For firming and shaped product, deliveries shall be equivalent to 100% of the volumes specified by the Respondent in its Bid Workbook (Attachment B) and may be from multiple generating facilities so long as each facility meets the qualifying criteria set forth in this RFO. Bids shall provide fixed hourly quantities delivered in the form of standard blocks of energy (e.g., 24x7, 6x16) or hourly quantities delivered in accordance with an alternative delivery shape (e.g., a prototypical solar profile) specified by Respondent. The proposed hourly block sizes shall be specified in Attachment B. *Deliveries shall NOT be shaped or firming with coal or nuclear resources.*
 - Bids for unit contingent, as-available renewable energy must specify hourly amounts equal to all or a specified fraction of a specific facility's energy production with minimum and maximum energy delivery requirements. The proposed hourly production forecast and annual volumes delivered shall be identified in the attached Bid Workbook (Attachment B).
- Bids may be for new or existing generating facilities.
- All renewable energy deliveries from new projects must meet the eligibility criteria for PCC 1 and be Green-e® Energy eligible.
- All renewable energy deliveries from existing projects must meet the eligibility criteria for PCC 1.
- The term shall be a minimum of 1 year and no more than 25 years (not including optional extension terms).
- A delivery commencement date no sooner than January 1, 2021 and no later than December 31, 2024.
- Total annual deliveries shall be at least 50,000 MWh and no more than 600,000 MWh. Storage proposals must qualify for RA Capacity and be sized at least 1 MWac.
- Bids may be for all or part of a generating facility's output.
- Bids of PCC 1 product shall include at least two pricing options:

- A fixed \$/MWh price, for each year of the proposed contract term, for delivery to the generator node; and
- A fixed \$/MWh price, for each year of the proposed contract term, for delivery to the NP 15 trading hub, as defined by the CAISO.
- The fixed prices shall remain unchanged throughout the contract term and shall not be adjusted by period escalators or time of delivery multipliers/factors.
- Both energy-only and fully deliverable products will be considered with the expected value of any RA capacity accounted for in the evaluative process.
- All generating facilities that will be used to supply power to CleanPowerSF or Power Enterprise must be identified by the Respondent in its bid (Attachment B), including generator name, fuel source, location, and RPS ID Number (if available).

5.2.2 Optional Bid Components

- The SFPUC encourages Respondents to present additional services or product offerings to enhance the standard Product, including co-location with storage and/or the potential for the project site to accommodate additional renewable capacity. Respondents may propose unique contract provisions and pricing that apply to these enhanced proposals.
- Respondents may, in addition to the two pricing options required above, propose alternative pricing structures by providing a detailed narrative description of the pricing structure and additional pricing tables in the Bid Workbook, Attachment B. For example, alternative pricing options may include alternative proposals for Respondent Development/Performance Assurance and/or Buyer collateral or credit support.
- Respondents may also include bridge contracts for PCC 1 energy until the project begins delivering. Bridge Volume contract proposals can be described in the Bid Workbook, Attachment B.
- For Bids with deliveries in excess of 5 years, Bidders are encouraged to propose mechanisms such as pricing structures, insurance products, or storage to manage curtailment risk over the term of the contract.
- The RFO includes an optional Community Benefits component. Community Benefits are firm commitments on the part of the bidder to be delivered to the community at no cost.

5.3 Operating Track Record and Projects Under Development

In addition to the Mandatory Bid Criteria set forth in Section 5.2 above, Respondents proposing to supply unit contingent, as-available energy from generating facilities that are currently operating shall provide:

- Historical 8760 generation for the last two years of plant operation (if applicable) and capacity factor (expressed as a percentage, based on monthly generation in MWh and rated capacity in MW). The information should be annotated to explain any below/above-average or atypical generation figures (noting any significant issues or extended unexpected

outages). This information should be provided in the format specified in the Historical Generation tab of the Bid Workbook (Attachment B).

Respondents proposing to supply energy from projects that have not yet achieved commercial operation shall provide documentation with the bid submittal demonstrating:

- The anticipated commercial operation date (COD).
- The facility's anticipated 8760 annual hourly generating profile. This information should be provided in the format specified in the Expected Generation tab of the Bid Workbook (Attachment B).
- If the facility is bid as fully/partially deliverable or as energy-only; the Respondent shall also indicate:
 - The date by which the project will have full or partial deliverability status ("FCDS/PCDS").
 - The project has received FCDS/PCDS or is in the Phase II process of the deliverability study.

Respondents shall provide a Project Cover Letter to summarize and demonstrate satisfaction of the Minimum Qualifications, the status of project site control, interconnection, permits, financing, and any applicable project labor agreements.

Respondents shall provide the information requested in the table below.

Information Requested	
1. Firm Experience	Description of the roles, experience, and qualification of the project team members and Firm including the years of experience developing or operating similar renewable projects, the number and type of projects, and experience financing renewable projects. Include an Organization chart and information on Parent company.
2. Site Control	Description of the site control for the project site and generator interconnection path for the entire proposed delivery term.
3. Interconnection	Description of progress in transmission or distribution interconnection for the facility that is equivalent to a completed System Impact Study, Phase I Study, or passed Wholesale Distribution Tariff/CAISO Fast Track screen, including, if available the anticipated interconnection completion date.
4. Permits	The status of all required governmental approvals, permits and environmental reviews, including the applicable agency, the type of approval requested, and the anticipated date of approval or permit issuance.
5. Financing	The financing plan for the project in sufficient detail for the SFPUC to effectively evaluate the viability of such arrangements.

6. Prevailing Wage	The SFPUC requires prevailing wages for facility construction with a preference for Project Labor Agreements. Include a description of any planned labor agreements.
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5.4 Locational Requirement & Preference

Respondents must submit bids for renewable generating resources located within California NP15 region, as defined by the CAISO [TH_NP15_GENAPND]. The SFPUC has a preference for renewable generating resources located within the nine (9) San Francisco Bay Area Counties.¹ Resources located within the nine (9) San Francisco Bay Area Counties will receive higher evaluative value at ten (10) points (equivalent to 10% of the bid score) when the SFPUC reviews responses to this RFO.

5.5 Community Benefits

The RFO includes an optional Community Benefits component. Community Benefits are firm commitments on the part of the bidder to be delivered to the community at no cost and in accordance with the SFPUC's 2011 Community Benefits Policy and 2009 Environmental Justice Policy, which directs the SFPUC and its partner firms to be a good neighbor to all who are directly affected by its activities and investments. Respondents may, but are not required to, submit a Community Benefits proposal ("Community Benefits Submittal," or "CB Submittal") that identifies projects and/or activities that will promote the social and economic outcomes described in the SFPUC Community Benefits Policy and that are located in the specific community or neighborhood impacted by the Agreement, in this case San Francisco County or the County in which the renewable project is or will be located. Community Benefit commitments shall be completed within five (5) years of the Agreement execution date or by the end of the Agreement term, whichever is shorter. The optional CB Submittal is valued at five (5) points under the Evaluation Process located in Section 7 of this RFO. The CB Submittal will be submitted as an attachment in SFBid. The CB submittal will be reviewed and scored by a separate panel of community benefits specialists who will only see the CB submittal. For instructions on the Community Benefits Submittal and additional Community Benefits information see Attachment F. For a sample list of participating firms, examples of community benefits commitments, and templates of the final agreement language and reporting requirements, refer to Attachment F.

5.6 Green-e® Energy Eligibility

New ERRs shall be Green-e® Energy eligible. Respondents should review the currently effective Green-e® Energy National Standard for information regarding the eligibility criteria for such resources. A copy of the Green-e® Energy National Standard as well as additional information regarding the Green-e® Energy program can be accessed via the following web link: http://www.green-e.org/getcert_re_stan.shtml#standard.

6. CONTRACT FORM

¹ San Francisco, Alameda, Contra Costa, Marin, Napa, Sonoma, Solano, San Mateo, and Santa Clara.

CleanPowerSF's Form PPA included as Attachment D. The Term Sheet included as Attachment C indicate which contract terms are non-negotiable. NOTE: Sections 12.5(k) through (q) contain the City's standard contract terms and apply to any contract entered into by CleanPowerSF or Power Enterprise. The Form PPA is the CleanPowerSF contract template for new renewable facilities and will be amended as necessary for existing facilities and for contracts with Power Enterprise. The Form PPA will also be amended as necessary to reflect the elements of the selected bids, for example, optional bid components, new or different Milestones to reflect the status of project development, or necessary changes required for project financing. CleanPowerSF and Power Enterprise may elect to use a Western System Power Pool ("WSP") Confirmation for shorter term contracts. The PPAs may be subject to review and approval by the San Francisco Public Utilities Commission and the Board of Supervisors.

7. EVALUATION PROCESS

SFPUC staff will first perform an Initial Screening to determine responsiveness and acceptability of bids. Elements reviewed during the Initial Screening include, without limitation: bid completeness, compliance with format requirements, compliance with minimum qualification requirements, and responsiveness to the material terms and conditions of the PPA Terms and Conditions, Form PPA, and Exclusive Negotiations Agreement (Attachments C, D, and E, respectively).

Bids that do not meet the mandatory bid criteria and information requirements in Section 5 of this RFO will not be eligible for further consideration. The SFPUC reserves the right to request clarification from Bidders prior to rejecting a bid for failure to meet the Initial Screening Requirements. Clarifications are limited exchanges between the SFPUC and Bidder for the purpose of clarifying certain aspects of the bid, and will not provide a Bidder with the opportunity to revise or modify its bid.

For proposals featuring **New Eligible Renewable Energy Resources** the SFPUC will evaluate the bids based on the following criteria:

QUALIFICATIONS AND EXPERIENCE OF RESPONDENT	Max. 20 points
Firm Experience <ul style="list-style-type: none"> • Experience and track record of the Respondent and key personnel • Volume of energy supplied in the most recent calendar year 	10
Financial Viability <ul style="list-style-type: none"> • Financial strength and viability of Respondent as exhibited by previous two (2) years of financial statements • Credit support to be provided, if credit rating is below investment grade 	10
PROJECT VIABILITY	Max. 10 points
Project / Proposal Viability	10

<ul style="list-style-type: none"> Likelihood that a project will meet the proposed COD as described: site control, interconnection, permits, financing, labor agreements 	
BID VALUE AND PORTFOLIO FIT	Max. 55 points
Cost and Bid Value <ul style="list-style-type: none"> Impact of the proposed pricing in relation to the target retail rates (provides lowest net cost) Contribution to long-term pricing stability and competitiveness (price and term of bid) Value of energy and non-energy attributes (e.g., Resource Adequacy capacity; Storage; time of delivery value of energy) Impact of the bid on operational costs, residual market exposure, financial risk and collateral requirements Contribution to a Diversified Portfolio <ul style="list-style-type: none"> The compatibility of the bid's proposed monthly energy deliveries and capacity attributes with near-term supply needs The bid's contribution to the development of a diverse portfolio (technologies; fuel types; resource locations; operating profiles) 	55
GENERATING RESOURCE LOCATION	Max. 10 points
<ul style="list-style-type: none"> Preference for resources located within the nine (9) Bay Area Counties 	10
COMMUNITY BENEFITS	Max. 5 points
<ul style="list-style-type: none"> Community Benefits Proposal 	5

For proposals featuring Existing Eligible Renewable Energy Resources the SFPUC will evaluate the bids based on the following criteria:

QUALIFICATIONS AND EXPERIENCE OF RESPONDENT	Max. 20 points
Firm Experience <ul style="list-style-type: none"> Experience and track record of the Respondent and key personnel Volume of energy supplied in the most recent calendar year 	10
Financial Viability <ul style="list-style-type: none"> Financial strength and viability of Respondent as exhibited by previous two (2) years' of financial statements Credit support to be provided, if credit rating is below investment grade 	10

BID VALUE AND PORTFOLIO FIT	Max. 65 points
Cost and Bid Value <ul style="list-style-type: none"> • Impact of the proposed pricing in relation to the target retail rates (provides lowest total cost) • Contribution to long-term pricing stability and competitiveness (price and term of bid) • Value of energy and non-energy attributes (Resource Adequacy capacity; Storage; time of delivery value of energy) • Impact of the bid on operational costs, residual market exposure, financial risk and collateral requirements Contribution to a Diversified Portfolio <ul style="list-style-type: none"> • The compatibility of the bid's proposed monthly energy deliveries and capacity attributes with near-term supply needs • The bid's contribution to the development of a diverse portfolio (technologies; fuel types; resource locations; operating profiles) 	65
GENERATING RESOURCE LOCATION	Max. 10 points
<ul style="list-style-type: none"> • Preference for resources located within the nine (9) Bay Area Counties 	10
COMMUNITY BENEFITS	Max. 5 points
<ul style="list-style-type: none"> • Community Benefits Proposal 	5

The SFPUC reserves the right to consider other factors in addition to those specified above and to request additional information from Respondents as needed to assist in selecting the proposal(s) for further consideration.

The SFPUC does not anticipate conducting oral interviews for this RFO. However, the SFPUC reserves the right to contact any Respondent for additional information or clarification of the terms of the bid.

8. PROTEST PROCEDURES

8.1 Protest of Non-Responsiveness Determination

After receipt of proposals, the SFPUC will conduct an Initial Screening of submitted proposals as set forth in Section 7 of this RFO. If staff determines that a proposal should be rejected because it is either non-responsive to RFO requirements or is otherwise unacceptable (i.e., fails to meet the minimum qualification requirements set forth in the RFO), then the SFPUC will issue a Preliminary Notice of Proposal Rejection to the applicable Respondent(s).

If a Respondent believes that the SFPUC has incorrectly determined that its proposal should be rejected, Respondent may submit a written notice of protest within five (5) working days of the SFPUC's issuance of a Preliminary Notice of Proposal Rejection. Such notice of protest must be received by the SFPUC on or before the fifth (5th) working day following the SFPUC's issuance of the Preliminary Notice of Proposal Rejection.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFO provision on which the protest is based. In addition, the Respondent must specify facts and evidence sufficient for the SFPUC to determine the validity of the protest. The SFPUC, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Respondent who submitted the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the prospective Respondent at the time the protest is submitted. If the Respondent later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the SFPUC may not consider such new grounds or new evidence.

Upon receipt of a timely and proper protest, the SFPUC shall review the protest and conduct an investigation as it deems appropriate. As part of its investigation, the SFPUC may consider information provided by sources other than Respondent. The SFPUC may also consider supplemental correspondence or other information relating to the original ground(s) of Protest submitted by a protesting Respondent to the extent the SFPUC determines that such information will assist it in resolving the Protest. At the completion of its investigation, the SFPUC will provide a written determination to the Respondent who submitted the protest. The SFPUC's written determination shall be final.

Protests not received within the time and manner specified will not be considered.

If a Respondent does not protest a Preliminary Notice of Proposal Rejection within the time and in the manner specified, above, then the SFPUC's determination set forth in the Preliminary Notice will become final. A Respondent's failure to protest as specified above on or before the time specified above shall constitute a complete and irrevocable waiver of the ground(s) of protest and forfeit the Respondent's right to raise such ground(s) of protest later in the procurement process, in a Government Code Claim, or in other legal proceedings.

8.2 Protest of Shortlist

As soon as the Shortlist has been finalized, the SFPUC will post notice of the Shortlist(s) on the SFBid website (<https://sfbid.sfwater.org/>). Within five (5) working days of the posting of the notice, any Respondent that has submitted a responsive proposal and believes that the SFPUC has unfairly excluded Respondent from the Shortlist may submit a written notice of protest.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFO provision on which the protest is based. In addition, the Respondent must specify facts and evidence

sufficient for the SFPUC to determine the validity of the protest. The SFPUC, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Respondent who submitted the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the prospective Respondent at the time the protest is submitted. If the Respondent later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the SFPUC may not consider such new grounds or new evidence.

Upon receipt of a timely and proper protest, the SFPUC shall review the protest and conduct an investigation as it deems appropriate. As part of its investigation, the SFPUC may consider information provided by sources other than Respondent. The SFPUC may also consider supplemental correspondence or other information relating to the original ground(s) of Protest submitted by a protesting Respondent to the extent the SFPUC determines that such information will assist it in resolving the Protest. At the completion of its investigation, the SFPUC will provide a written determination to the Respondent who submitted the protest. The SFPUC's written determination shall be final.

Protests not received within the time and manner specified will not be considered.

If a Respondent does not protest the Shortlist within the time and in the manner specified, above, then the Shortlist will become final. A Respondent's failure to protest as specified above on or before the time specified above shall constitute a complete and irrevocable waiver of the ground(s) of protest and forfeit the Respondent's right to raise such ground(s) of protest later in the procurement process, in a Government Code Claim, or in other legal proceedings.

8.3 Delivery of Protests

If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the SFPUC received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

San Francisco Public Utilities Commission
Contract Administration Bureau
RE: Local Renewable Energy Supplies (PRO.0153)
525 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102

9. ADDITIONAL SFPUC REQUIREMENTS

9.1 Respondent Proprietary Information

In accordance with San Francisco Administrative Code Section 67.24(e), bids, responses to RFOs, executed agreements, and all other records of communications between the SFPUC, Power Enterprise, CleanPowerSF, and persons or firms seeking contracts shall be open to inspection immediately after the RFO has been closed. Nothing in this provision requires the disclosure of a private person's or entity's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract

or benefit. Information related to any aspect of this RFO and the contracting process will be made available to the public upon request in accordance with the California Public Records Act and the San Francisco Sunshine Ordinance.

Proprietary data shall be specifically identified on every applicable page of the Respondent's proposal; Respondents should mark or stamp applicable sections and information as "Confidential" or "Proprietary". The SFPUC does not warrant, represent, or guarantee that any information so designated will be treated as confidential or proprietary information if disclosure is required under any applicable state, federal, or City law or regulation.

9.2 The Campaign Reform Ordinance

Respondents must comply with Section 1.126 of the San Francisco Campaign and Governmental Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations for such contract until (1) the termination of negotiations for such contract; or (2) three months have elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

If a Respondent is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Respondent is prohibited from making contributions to:

- The officer's re-election campaign;
- A candidate for that officer's office; and
- A committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Respondent approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential Respondent about a contract. The negotiation period ends when a contract is awarded or not awarded to the Respondent. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a Respondent to propose that the Respondent relating to a RFO, and requests to be placed on a mailing list do not constitute negotiations. Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. Criminal: Any person who knowingly or willfully violates Section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.

2. Civil: Any person who intentionally or negligently violates Section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative: Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

10. DEFINITIONS

"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, 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.

"Buyer" means City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF or the City and County of San Francisco, acting by and through its Public Utilities Commission, Power Enterprise.

"CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"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.

"CCA" or "CCA Program" means Community Choice Aggregation Program.

"CEC" means the California Energy Commission.

"City" means the City and County of San Francisco.

"CleanPowerSF" means the community choice aggregation program operated by City.

"COD" means Commercial Operation Date.

"Community Benefits Submittal," or "CB Submittal" means a Community Benefits proposal.

"CPUC" means the California Public Utilities Commission.

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

"Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff.

"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 (SO_x), nitrogen oxides (NO_x), 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.

"GWh" means gigawatt-hour.

"Interconnection Financial Security" has the meaning set forth in the CAISO Tariff.

"Inter-Scheduling Coordinator" or "Inter-SC Trades" has the meaning set forth in the CAISO Tariff.

"MW" means megawatt.

"MWh" means megawatt-hour.

"Partial Capacity Deliverability Status" or "PCDS" has the meaning set forth in the CAISO Tariff.

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

"Power Enterprise" means the SFPUC Power Enterprise, a municipal utility.

"PPA" means Power Purchase Agreement.

"Renewable Energy" means Energy and Green Attributes generated from an ERR that: (1) meets the requirements of Portfolio Content Category 1 or 2 as set forth in the California Public Utilities Code Section 399.16(b)(1), and (2) is generated in the same calendar year that it is delivered to City.

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

"Renewables Portfolio Standard" or "RPS" 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, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (7th

Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission ("CPUC") and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

"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, the flexible capacity standards under the CAISO Tariff or by any other Governmental Authority having jurisdiction.

"RFO" means Request for Offers.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator" as set forth in the CAISO Tariff.

"Seller" or "Supplier" means the owner and operator of a power generating facility who will sell the product of the facility to the Buyer.

"SFPUC" means the San Francisco Public Utilities Commission.

"System Impact Study" has the meaning set forth in the CAISO Tariff.

"WECC" means the Western Electricity Coordinating Council.

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

"WSPP Confirmation" means Western System Power Pool Confirmation.



**San Francisco
Water Power Sewer**
Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 NOV 26 PM 4:05
BY

TO: Angela Calvillo, Clerk of the Board

FROM: Mona Panchal, Policy and Government Affairs

DATE: November 26, 2019

SUBJECT: Authorizing Agreements - Purchase of Electricity and Related Products and Services for CleanPowerSF - Public Utilities Commission - Waiver of Certain Administrative Code and Environment Code Provisions

Attached please find an original copy of an ordinance. The ordinance is to approve agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for power and related products and services required to supply CleanPowerSF, subject to specified conditions; authorizing the PUC to use pro forma agreements to purchase and sell electricity and related products and services; and authorizing the General Manager of the PUC in such agreements to deviate from certain otherwise applicable contract requirements under specified circumstances.

In this packet you will find:

- Two copies of the draft BOS resolution
- Two copies of the Legislative Digest
- Two copies of the WSPP Master Agreement
- Two copies of the EEI Master Contract
- Two copies of the Master Power Purchase Agreement
- Two copies of the SFPUC Renewable Power Purchase Agreement

Please contact Mona Panchal at (415) 934-3908 if you need any additional information on these items.

- London N. Breed**
Mayor
- Ann Moller Caen**
President
- Francesca Vietor**
Vice President
- Anson Moran**
Commissioner
- Sophie Maxwell**
Commissioner
- Tim Paulson**
Commissioner
- Harlan L. Kelly, Jr.**
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.





File # 191203
Received in Committee
1/15/20

File 191203: CleanPowerSF Renewable Energy Contracts

Michael Hyams
San Francisco Public Utilities Commission
Director, CleanPowerSF



CleanPowerSF Update

- **Enrollment Statistics (a/o January 6, 2020)**
 - Green Customers: 372,169
 - Super Green Customers: 7,234 (1.9%)
 - Total Customers: 379,403
 - Opt-out Percentage: 3.6%
- **Energy Supply**
 - On track to achieve 50% RPS-eligible renewable portfolio in 2020 for Green Product
 - Emissions rate 87% below citywide 1990 levels
- **Next Steps**
 - Conducting biennial Integrated Resource Planning process now focused on achieving 100% renewable energy supply by 2030
 - IRP and Local Renewable Energy Report will inform CleanPowerSF's first 10-year Capital Plan



Request for Offers (RFO): Local Renewable Energy Supplies

- Issued solicitation on August 12, 2019 seeking:
 - Bids for renewable energy from new or existing renewable energy resources located within the NP15 region in Northern California, as defined by the California Independent System Operator (CAISO)
 - Resources located within the 9 Bay Area Counties preferred
 - Energy deliveries from projects starting as early as January 2021 and as late as December 2024
 - Contract terms up to 25 years in duration
 - Total annual energy deliveries at least 50,000 megawatt-hours (MWh) and no more than 600,000 MWh per year



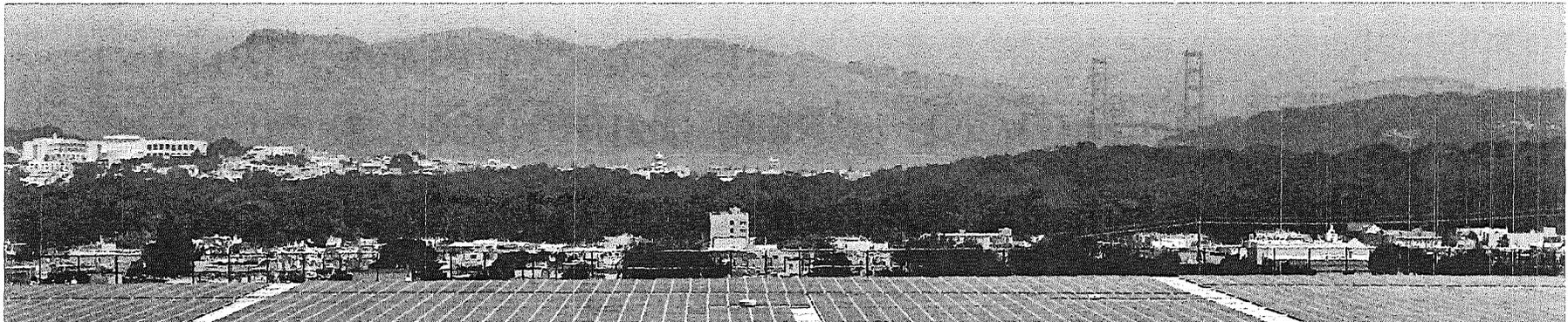
Evaluation Criteria

- **Qualifications and Experience of Bidder**
 - Firm Experience (10 pts.)
 - Financial Viability (10 pts.)
- **Project Viability**
 - Project / Proposal Viability (10 pts.)
- **Bid Value and Portfolio Fit**
 - Cost and Bid Value (40 pts.)
 - Contribution to a Diversified Portfolio (15 pts.)
- **Generating Resource Location (10 pts.)**
 - Preference given to resources located within the 9 Bay Area Counties
- **Community Benefits (5 pts.) - *optional***



Shortlisted Bids

- Received more than 43 unique bids from 13 different companies offering energy from 16 distinct projects
- As a result of the evaluation and scoring process, we have shortlisted 10 projects with 9 suppliers





Authorize the Use of Pro Forma Power Contracts

- SFPUC is requesting Board approval to use Pro Forma Power Contracts
- Short-term Industry Standard Contracts
 - Western System Power Pool (WSPP)
 - Edison Electric Institute (EEI)
- Short and Long-term Contracts
 - City Pro Forma Renewable Power Purchase Agreement
 - City Pro Forma Power Purchase and Sale Agreement
- Consistent with previous actions (Ordinance Nos. 75-15, 223-15, and 08-18)



Waive Certain City Contract Requirements

- Waives certain City contract provisions that are not standard in electric industry contracts and may disadvantage the City
- General Manager of the SFPUC must find and document that waivers are reasonable and in the public interest
- Consistent with previous actions (Ordinance Nos. 75-15, 223-15, and 08-18)



Authorize Inclusion of Community Benefits

- Finds that community benefits component of the 2019 Local Renewable Energy RFO is reasonable and beneficial
- Authorizes use of community benefits where General Manager finds they are feasible and appropriate



Conditionally Authorize SFPUC to Execute Contracts

- Exceeding 10 years in duration and \$10 million in total expenditures
- Subject to the following conditions:
 - Limited to purchase of renewable energy and battery storage energy supplied from short-listed pool of bidders (PRO.0153)
 - Contract term may not exceed 25 years
 - Total value of contracts executed may not exceed \$35 million per year
 - Contracts shall be payable solely from the revenues of CleanPowerSF
 - Other conditions established by SFPUC Commission are met
 - SFPUC submits annual reports to the Board



Right Now – Today's Action

- Asking for Committee to move legislation to the full Board, with a positive recommendation.

Thank you!

Questions?