



Board of Directors Meeting

Wednesday, February 7, 2018

7:00 pm

Castro Valley Library Chabot Room

3600 Norbridge Ave, Castro Valley 94546

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or Scabrera@ebce.org.

If you have anything that you wish to be distributed to the Board please hand it to the clerk who will distribute the information to the Board members and other staff

1. Welcome & Roll Call

2. Pledge of Allegiance

3. Public Comment

This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker.

CONSENT AGENDA

4. Approval of Minutes from January 17, 2018

5. Contracts Entered Into Update (Informational Item)

6. Appoint EBCE General Counsel position

Appoint EBCE General Counsel and approve at-will employment agreement

7. Approval of Administrative and Operational Policies

REGULAR AGENDA

8. CEO Report

Accept CEO report on:

- A. Workflow Priorities; and
- B. Staff Addition

9. Presentation on BayREN and East Bay Energy Watch (Informational Item)

10. Energy Risk Management Policies and Regulations (Action Item)

Approve the following recommendations:

- A. Approve EBCE's Energy Risk Management Policies and Regulations, which include
 - a. Volume matching based on defined time-price matrices
 - b. Cost-at-Risk evaluation of energy portfolio
 - c. Stringent credit requirements for counter parties
 - d. Portfolio Diversification
- B. Delegate authority to CEO to form a Risk Oversight Committee to monitor EBCE adherence to Energy Risk Management Policies and Regulations

11. Rate Discount and Power Content Guidelines (Action Item)

Approve the following recommendations:

- A. Approve EBCE to offer Phase 1 Customers a 2% discount on Bright Choice rate option and no discount on Brilliant 100 rate option
- B. Approve minimum power content guidelines for Bright Choice and Brilliant 100
 - a. Bright Choice: 35% RPS Eligible Renewables, 35% Carbon-free (total of 70% Carbon-free)
 - i. Renewable and Carbon-free power content being set is a minimum threshold which EBCE will seek to exceed when procuring energy
 - b. Brilliant 100: 40% RPS Eligible Renewables, 60% Carbon-free (total of 100% Carbon-free)
 - i. Renewable power content being set is a minimum threshold which EBCE will seek to exceed when procuring energy
- C. Provide feedback on Energy Product Roadmap, including
 - a. Offering 3rd product at Phase 2 launch focused on funding community benefits
 - b. Offering 100% renewable energy product for large commercial and municipal accounts focused on building new renewable projects for specific large loads in late 2018/early 2019
 - c. Offering 100% Community/Shared renewable energy product in 2019

12. Standard Power Purchase Agreements and Confirmations (Action Item)

Approve the following standard power purchase agreements and confirmations for approved product transactions, subject to the approval of General Counsel:

- A. EEI Master Agreement and Confirmation
- B. Deposit Account Control Agreement, Security Agreement, Intercreditor & Agency Collateral Agreement, collectively known as "Lockbox Agreements"
- C. WSPP (Western States Power Pool) Agreements and copies of five proposed standard confirmations to be used in conjunction with the WSPP Agreement for the purchase of:
 - a. Electric Capacity and/or Electric Energy
 - b. Specified Source Energy
 - c. Resource Adequacy
 - d. Renewable Energy Credits "RECs", Category 1
 - e. Renewable Energy Credits "RECs", Category 2
 - f. Renewable Energy Credits "RECs", Category 3

13. Discussion of Initial NEM Policy (Informational Item)

Review and discuss staff proposal for initial Net Energy Metering (NEM) Policy. An updated policy, per Board feedback, to be brought to the February 21st meeting for vote.

14. Board Member and Staff Announcements

15. Adjournment – to Wednesday, February 21, 2018. Location: Castro Valley Library
3600 Norbridge Ave.,
Chabot Room
Castro Valley CA



DRAFT

Summary Minutes Board of Directors Meeting

Wednesday, January 17, 2018

6:00 pm

City of Hayward Council Chambers

777 B Street, Hayward, CA

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or Scabrera@ebce.org.

If you have anything that you wish to be distributed to the Board please hand it to the clerk who will distribute the information to the Board members and other staff

1. Welcome & Roll Call

2. Pledge of Allegiance

3. Public Comment

This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker.

Jessica Tovar – Spoke regarding the agenda process and requested items be identified as action or informational.

CLOSED SESSION

A. Appointment of General Counsel

GENERAL COUNSEL: Report on action taken in Closed Session

In Closed session the Board provided staff with direction.

CONSENT AGENDA

4. Approval of Minutes from December 6, 2017

5. Approval of Amendment to Legal Services Agreement with Richards, Watson & Gershon

Approve six-month extension and increase of contract amount of the Agreement for Legal Services with Richards, Watson & Gershon to provide general/special counsel services to East Bay Community Energy until June 30, 2018

C-2018-4

6. Amended Employment Agreement with Chief Executive Officer

Adopt a Resolution authorizing the Chair to execute an amended Employment Agreement for Chief Executive Officer (“CEO”) between EBCE and Nicolas Chaset to allow the CEO to remain on COBRA medical insurance until January 1, 2019.

**C-2015-5
R-2018-1**

7. Approval of Contract with Weideman Group for Legislative Advocacy and Advisory Services

Approve selection of Weideman Group to provide legislative advocacy and advisory services and delegate to Chief Executive Officer to negotiate and execute a one-year contract not to exceed \$120,000.

C-2018-6

8. Designation of the CEO as Personnel Officer and Authorization to Approve and Adopt Employee Handbook

Adopt a Resolution designating the Chief Executive Officer as Personnel Officer for EBCE and authorizing him to approve and adopt the EBCE Employee Handbook.

R-2018-6

9. Amend the Conflict of Interest Code

Adopt a Resolution amending the EBCE Conflict of Interest Code to add the positions of Chief Operating Officer, Vice President of Marketing and Customer Accounts, Director of Power Resources, and Director of Regulatory and Legislative Affairs.

Barbara Stebbins – Spoke regarding Board policy oversight, delinquent account policy, proposed RFP scoring, and concerns regarding amending the JPA.

Director Mendall motioned to move items 4, 5, 6, 8, 9 & 10 to consent and approve. Director Biddle seconded the motion which carried 10/0 Excused: Directors: Bacon and Spedowfski.

R-2018-7

REGULAR AGENDA

10. CEO Report

Accept CEO report on:

- A. Workflow Priorities
- B. Staff Additions; and
- C. Contracts entered into

The Board discussed:

- Early adopter options
- Direct Access customers

Jessica Tovar – Spoke regarding resolution E-4907.

11. Approval of Administrative and Operational Policies

Approve the following recommendations:

- A. Approve policies relating to: Customer Confidentiality and Process for Considering Policy or JPA Agreement Amendments;
- B. Discuss Policies relating to: Administrative Procurement Practices and Delinquent Accounts and Collections; and
- C. Adopt two Resolutions regarding: Delegation of Authority to the CEO for Regulatory and Legislative Matters, and Records Retention Policy

The Board discussed:

- Placing Administrative items on the Consent calendar
- The Community Advisory Committee's scope
- Delinquent accounts
- Care Customers

Director Arreguin motioned to approve Items A and C as amended:

C: # 4 “The Chief Executive Officer has conferred with the Chair of the Board and the Chair of the Community Advisory Committee (or Vice Chair in the Chair’s absence) ...” and add d) The CEO will distribute the information to Board in compliance with the Brown act.

Director Mendall seconded the motion which carried 10/0: Excused: Directors: Bacon and Spedowski

R-2018-4 P-2018-2
R-2018-5 P-2018-3

12. Discuss Energy Risk Management Policies and Regulations

Receive update and provide feedback on EBCE Risk Policy and Risk Guidelines

The Board discussed:

- Composition of Risk Oversight Committee

13. Power Supply Procurement and Hedging Options

Receive update and provide feedback on EBCE Energy Supply and Hedging Options

The Board discussed:

- Phase 2 timing
- Procurement options

Tom Kelly – Spoke regarding EBCE energy mix, need to meet JPA criteria and pricing.

Barbara Stebbins – Spoke regarding the procurement process and recommended that the LDBP guide the process.

14. EBCE Rate Options

Receive update and provide feedback on EBCE Rate Options

The Board discussed:

- Discount rates
- EBCE Program goals: Less expensive, meet or exceed PG&E green efforts, and local.
- Product options
- Customer opt-up rates

Barbara Stebbins – Spoke regarding the LDBP tasks and importance of prioritizing the local development of projects.

15. Alameda County Local Clean Energy Projects Request for Proposals

Receive update, provide feedback on EBCE’s planned Local Clean Energy Project Request for Proposals

The Board discussed:

- Local project contract term options
- Affect, if any, of delaying RFP until the LDBP is completed
- Benefits of issuing RFP early; and
- Integrating LDBP

Jessica Tovar – Spoke regarding letter sent from EBCPA requesting procurement process be included in LDBP and RFP state a union preference.

Barbara Stebbins - Spoke regarding the importance of the LDBP being part of the RFP process and RFP scoring.

Rick Sherman – Spoke regarding the importance of community programs and in support of starting the RFP process early.

16. Discussion of Brilliant 100 and Offering a Third Energy Product

Receive update and provide feedback on *Brilliant 100* and potential third energy product.

Tom Kelly – Spoke regarding the relationship between product cost and premium products.

17. Standard Power Purchase Agreements and Confirms

Receive update and provide feedback on Standard Power Purchase Agreements and Confirms

18. Formation of EBCE Executive Committee

Appoint an Executive Committee of the Board of Directors to provide in-depth review of certain operational and policy matters of the EBCE, as directed by the Board from time to time. The Executive Committee will be comprised of 5 Board members who can serve the anticipated term of at least one year.

Director Martinez motioned to approve the formation of an Executive Committee. Director Arreguin seconded the motion which carried 10/0; Excused: Directors: Bacon and Spedowski.

19. Board Member and Staff Announcements

Chair Haggerty introduced Union City Director, Mayor Dutra-Vernaci.

Director Martinez invited EBCE Vice-President of Technology and Analytics, Taj Ait-Laoussine to introduce himself.

Director Eldred thanked the community for attending the Community Advisory Committee meetings and invited community to email comments to the Clerk to be distributed.

20. Adjourned – to Wednesday, February 7, 2018. Location: Castro Valley Library
3600 Norbridge Ave.,
Chabot Room
Castro Valley CA

Key:

R – Resolution

C – Contract

P – Policy



Staff Report Item 5

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: **Contracts Entered Into Update (Informational Item)**

DATE: February 7, 2018

Staff Recommendation

Accept CEO report on contracts entered into.

Discussion

At EBCE's August 3rd, 2017 Board meeting, the CEO was given delegated authority to enter into contracts up to \$100,000 without prior Board of Directors authorization. At this meeting, the Board of Directors additionally requested that the CEO report monthly updates on any contracts that were entered into under this authority at the next Board meeting.

Contracts Entered Into in January 2018

No new contracts were entered into in January 2018



Staff Report Item 7

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer
Inder Khalsa, EBCE General Counsel

SUBJECT: **Approve Administrative and Operational Policies**

DATE: February 7, 2018

Recommendation

- A. Adopt a Resolution regarding Administrative Procurement Practices, which includes
 - a. The delegation of the CEO's signing authority to EBCE staff for certain types of contracts.
 - b. The award of professional services agreements.
 - c. Issuance of RFPs for non-professional services contracts.
 - d. Evaluation of bids and proposals.
 - e. Local, union labor and other preferences.
 - f. Ethical vendor standards.
 - g. Reporting & public access to contracts.

- B. Approve by motion Delinquent Accounts and Collections
 - a. Process for returning accounts to PG&E for non-payment
 - b. Late-payment notification
 - c. Collections

Background

As EBCE approaches launch, the adoption of administrative and operational policies will help ensure smooth operations consistent with Board direction. Staff proposed two policies for Board consideration at the January 17th Board meeting and now requests adoption of those policies. Each of the policies, and resolutions where applicable, are attached to this staff report.

Analysis & Discussion

A. Administrative Procurement Practices

The Board directed staff to propose agency procurement practices to facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings. The attached Administrative Procurement Practices policy provides for the following:

- a. The delegation of the CEO's signing authority to EBCE staff for certain types of contracts.
- b. The award of professional services agreements
- c. Issuance of RFPs for non-professional services contracts
- d. Evaluation of bids and proposals
- e. Local, union labor and other preferences
- f. Ethical vendor standards
- g. Reporting & public access to contracts

Please note that policies related to power procurement and wholesale energy services will be included in an energy risk management policy coming to the Board for consideration in February.

B. Delinquent Accounts and Collections Policy

Pacific Gas & Electric (PG&E) issues bills to customers. This policy identifies the process by which PG&E determines when an account is delinquent and the actions both PG&E and EBCE will take to address the delinquency. The attached Delinquent Accounts and Collections Policy provides for the following:

- a. Process for returning accounts to PG&E for non-payment
- b. Late-payment notification
- c. Collections

Attachments:

- A. Resolution adopting Administrative Procurement Practices
- B. Policy: Administrative Procurement Practices
- C. Policy: Delinquent Accounts and Collections Policy

RESOLUTION EBCE R-2018-

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ADOPTING
ADMINISTRATIVE PROCUREMENT PRACTICES**

WHEREAS, it is in the interest of East Bay Community Energy Authority (“EBCE”) to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings; and

WHEREAS, the EBCE desires to facilitate smooth internal operations within the agency by allowing the CEO to delegate his or her signing authority to EBCE staff where appropriate; and

WHEREAS, the EBCE desires to support Alameda County businesses, the use of union labor where available, diversity among its contractors and vendors, and ethical/sustainable business practices and to provide preferences to such businesses; and

WHEREAS, the Board of Directors of the EBCE desires to adopt the attached Administrative Procurement Practices to govern the issuance of requests for proposals and the award of contracts.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Board hereby adopts Policy # [REDACTED], “Administrative Procurement Practices,” attached hereto as Exhibit A, and resolves that the award and execution of contracts by the EBCE shall be governed by this policy.

SECTION 2. This resolution shall become effective immediately upon its passage and adoption.

ADOPTED AND APPROVED this ____ day of February, 2018.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



POLICY # _____

Administrative Procurement Practices

Purpose: It is in the interest of East Bay Community Energy to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

Policy:

1. Executive Management Signing Authority:

- a. On August 2, 2017, the EBCE Board of Directors authorized the Chief Executive Officer to enter into contracts of \$100,000 or less without prior Board approval with the stipulation that all new contracts must be reported at the next scheduled Board meeting. This policy does not include power supply or wholesale energy services and shall remain in place unless and until amended by the EBCE Board of Directors.
- b. EBCE executive level staff, at the discretion and approval of the CEO, may sign professional service agreements and vendor contracts up to \$100,000 as an authorized designee of the CEO subject to Board reporting requirements outlined above. In addition, the following authorities shall apply except where in conflict with the Joint Powers Agreement, state or federal law:
 - Non-Disclosure Agreements – Director level and above;
 - Banking and Treasury Administration – Chief Operating Officer level and above.
- c. Invoices and vendor payments shall be approved by the contract signee, his/her executive level manager and/or the COO.

2. **Professional Services Agreements:** EBCE may contract for professional services, including but not limited to consultant, legal, or design services, in its sole discretion. Contracts valued at greater than \$100,000 in a contract year shall require Board approval, and staff shall obtain at least three bids if feasible. Contracts valued at less than \$100,000 may be signed at the discretion of the CEO and subject to Board reporting requirements outlined in section 8.

3. **Competitive Solicitations:** EBCE will run competitive solicitations through the issuance of requests for proposals (RFPs) or similar instruments for all non-professional services contracts with a contract value in excess of \$100,000 in any given contract year. These contracts are subject to Board approval before final execution. For contracts valued below \$100,000 in a given

year, staff shall obtain at least three bids if feasible; a formal RFP process for contracts under \$100,000 is not required unless otherwise directed by the CEO.

4. **Contract Amendments:** Contract amendments including changes in timeframe, scope, and value shall be at the discretion of the CEO, subject to Board approvals and signing authorities outlined in section 1.
5. **Bid Evaluation:** Bids and proposals received through a competitive solicitation shall be subject to a set of criteria and scoring system, reviewed and evaluated by relevant EBCE staff and an evaluation committee selected by the CEO, or at the discretion of the Board, members of a designated Board subcommittee or the Community Advisory Committee. Bids for contracts received through formal or informal solicitation shall be evaluated based on competency to perform scope of work, best fit, price competitiveness and compliance with sections 6-7 below.
6. **Special Procurement Preferences:** EBCE seeks to support companies and contractors that reflect its values, and has identified three vendor/contractor categories that shall be given special consideration during bid evaluation and selection. In competitive solicitations, these categories shall receive bonus percentages/points ranging from 2.5% - 5% for a maximum bonus total of 10% in a bid scoring process.

6a. Alameda County Preference: EBCE desires to support Alameda County businesses where possible. Businesses with office(s) located in Alameda County and including at least 25% Alameda County residents under their employment shall receive a bonus equal to 5% or 5 points out of a 100-point scoring system in competitive solicitations.

6b. Union Labor Preference: EBCE desires to support the use of union labor where possible. EBCE shall make its best effort to work with unionized contractors and subcontractors in the provision of goods and services to EBCE. Businesses who use union labor and/or unionized contractors shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.

6c. Other Preferences: EBCE desires to support diversity among its contractors and vendors by working with women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender-owned businesses. Businesses owned and operated by a person representing one or more of these categories shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.

7. **Ethical Vendor Standards:** EBCE is committed to the highest standards of responsible behavior and integrity in all of its business relationships. EBCE will consider a company's business practices, environmental track record, and commitment to fair employment practices and compensation in its procurement decisions.

8. **Reporting, Public Access:** EBCE shall report on all new contracts, regardless of scope or contract value, at each Board meeting. As a public agency, the EBCE shall release all public records, including contracts as applicable, as required by the Public Records Act.



POLICY # _____

Delinquent Accounts and Collections

Subject: Delinquent Accounts and Collections Policy

Policies:

Delinquent Accounts:

Pursuant to Electric Rules 8 and 11, Pacific Gas & Electric (PG&E) uses the following process to determine past due accounts and the necessary action:

Residential Accounts		Non-Residential Accounts	
Day 1 - Issuance of Bill	Customer Receives Bill	Day 1 - Issuance of Bill	Customer Receives Bill
Day 22	Past Due	Day 18	Past Due
Day 27 - 33	15 Day Notice on Next Bill	Day 21	7 Day Notice Delivered
Day 41-47	48 Hour Notice via Mail	Day 29	24 Hour Phone Call or In Person Notice
Day 45 - 51	24 Hour Phone Call or In Person Notice	Day 32	Account is Eligible for Disconnection
Day 50-56	Account is Eligible for Disconnection		

Aging Accounts:

All EBCE accounts, whether Residential or Non-Residential, identified in the month aging accounts receivable report, as provided by PG&E, with outstanding balances over 90 days or more are eligible to be returned to PG&E.

EBCE Residential customer accounts exceeding \$250 in charges overdue for more than 90 days will be sent a late payment notification by EBCE. The customer will be provided 60 days to pay or make payment arrangements. If payment in full is not received within 60 days from the date of notification, or the terms of an activated payment arrangement are not fulfilled, the EBCE customer account may be closed and returned to PG&E bundled generation service on the next account meter read date.

Residential customers returned to PG&E will be charged the applicable EBCE opt-out fee.

EBCE Non-Residential customer accounts exceeding \$500 in aggregate in unpaid charges for 60 days or more will be sent a late payment notification by EBCE. The customer will be provided 30 days to pay or make payment arrangements. If payment in full is not received within 30 days of the date of notification, or the terms of an activated payment arrangement are not fulfilled, the EBCE customer account may be closed and returned to PG&E bundled generation service on the next account meter read date. Non-residential customers returned to PG&E will be charged the applicable EBCE opt-out fee.

Collections:

Closed East Bay Community Energy accounts with overdue amounts greater than \$100 may be referred to a collection agency. Amounts \$100 or less may be written off. PG&E may close customer accounts before payment delinquencies bring them to the attention of EBCE operations. When PG&E closes customer accounts, these accounts are also closed in the EBCE program. In these cases, the thresholds outlined in the preceding paragraphs apply in either referring closed accounts to collections or writing off balances.



Staff Report Item 8

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: CEO Report (Informational Item)

DATE: February 7, 2018

A. **Workflow Priorities**

With EBCE starting to staff up, there are many priorities to accomplish to stay on track with the target launch in June; however, there are no substantive updates since the last meeting on January 17th. The CEO report will include updates on data and billing management, wholesale energy services, marketing and outreach, banking and credit services, and the Local Development Business Plan at the next meeting on February 21st.

B. **Staff Additions**

Deidre Sanders:

From September 2007 until January 2018 Deidre was PG&E's environmental justice (EJ) subject matter expert. Her work included advancing the implementation and institutionalization of PG&E's Environmental Justice Policy, climate EJ, and policy strategy for PUC proceedings regarding disadvantaged communities. She also provided direct project support to help PG&E manage risks associated with facility siting and ongoing operations, particularly those related to community concerns. Additionally, supported legislative and regulatory policy initiatives related to EJ and disadvantaged communities.

She currently serves on the US EPA's National Environmental Justice Advisory Council (NEJAC) as an industry representative (2012-Present), and has been a member of the California League of Conservation Voters (CLCV) Green Advisory Council since 2013. Other affiliations include the American Association of Blacks in Energy (AABE) where she serves as Western Region Director and lead on Environmental Justice concerns through its Legislative Issues and Public Policy section. She also serves on the advisory

board of the Department of Energy's National Environmental Justice Training Conference.

Prior to PG&E Deidre worked for Southern California Edison for seven years in various business areas (Environmental Affairs, Community Involvement, and Market Research). She completed her bachelor's degree at the University of Southern California with a double-major in history and international relations and earned a Ph.D. in Politics and Policy from Claremont Graduate University in Claremont, California. Her dissertation is, "Exploring Cooperation, Competition, and Co-optation among Mainstream and Environmental Justice Organizations in California".

Attachment(s):

A. Deirdre Sanders' Resume

Deidre L. Sanders, Ph.D.

Work Experience

Environmental Justice and Policy Manager – Environmental Policy

Pacific Gas and Electric Company, San Francisco, CA

September 2007 – Present

- Lead effort to advance the implementation and institutionalization of PG&E's Environmental Justice Policy throughout the company;
- Lead identification and development of PG&E response strategies to proposed legislation and regulation on Environmental Justice (EJ), including climate policy and renewable energy investments;
- Sole subject matter expert on EJ and disadvantaged community concerns for regulatory strategy, utility commission filings, and external stakeholder engagement;
- Identify emerging environmental policy issues that may impact the company; managed environmental policy legislative and regulatory database; oversaw issue analysis and engagement strategy; advise relevant company leadership as part of risk management strategy;
- Strategically engage regulators, industry associations, environmental organizations, and other stakeholders to educate on company and industry perspectives and seek win-win solutions to environmental and community concerns regarding company and industry impacts;
- Assess project proposals to evaluate potential project impacts on nearby communities as part of risk management strategy;
- Provide operational support by developing community assessments and engagement strategies in collaboration with affected business units;
- Managed one staff person in administration of legislative and regulatory issues, including development of summary reports;

Project Manager – Market Research

Southern California Edison, Rosemead, CA

June 2005 – September 2007

- Core member Government Strategies Approach (GSA) cross-functional team
- Produced Voice of the Customer (VOC) analytic products/reports
- Conducted ad hoc customer opinion surveys for SCE
- Developed tools to measure customer satisfaction with service delivery processes
- Developed mechanism to report customer satisfaction with service processes to internal stakeholders
- Developed and made presentations to managers and executives to inform process improvement efforts
- As environmental justice subject matter expert, provided ad hoc analysis of environmental justice issues and concerns to company business units/officials

Manager-Executive Development Project – Transmission/Distribution

Southern California Edison, Hemet, Santa Ana, Chino, CA

August 2004 – June 2005

- Developed project research objectives to identify a process improvement barrier and made recommendations to address it.
- Collected and analyzed data in support of process improvement program
- Designed research plan and conducted data sampling of primary data source; performed analysis

Education **Claremont Graduate University**, Claremont, CA
Ph.D. Political Science
Dissertation Topic: Exploring Cooperation, Competition, and Co-optation
between Mainstream and Environmental Justice Organizations in California.

University of Southern California
Los Angeles, CA
BA – History/International Relations (Policy/Diplomacy)

Other Relevant Information

2012 - Present, USEPA National Environmental Justice Advisory Council
(NEJAC); 2014-2015 Permit Work Group Co-Chair

2012 – Present: Green Advisory Council, California League of Conservation
Voters

2015 - Western Region Director, American Association of Blacks in Energy
(AABE)

2011 – Present: Lead, American Association of Blacks in Energy (AABE) EJ
Work Group

2011 – Present: Board Member, US Department of Energy National
Environmental Justice Training Collaborative, Washington, DC

2008 – Present: Member, California Council for Environmental and Economic
Balance Environmental Justice Task Force

Publication: “Ignoring Environmental Justice Concerns is Risky Business” *Triple
Pundit*, July 2, 2013
[http://www.triplepundit.com/2013/07/ignoring-environmental-justice-concerns-
risky-business/](http://www.triplepundit.com/2013/07/ignoring-environmental-justice-concerns-risky-business/)



Staff Report Item 10

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer
Supria Ranade, Director of Power Resources

SUBJECT: Energy Risk Management Policies and Regulations

DATE: February 7, 2018

Staff Recommendation

- A. Approve EBCE's Energy Risk Management Policies and Regulations, which include requirements related to:
 - a. Volume matching based on defined time-price matrices
 - b. Cost-at-Risk evaluation of energy portfolio
 - c. Stringent credit requirements for counter parties
 - d. Portfolio Diversification

- B. Delegate authority to CEO to form a Risk Oversight Committee to monitor EBCE adherence to Energy Risk Management Policies and Regulations

Background

Energy Risk Management Policy and Regulations

The primary purpose of the Energy Risk Management Policy and Regulations (ERM) is to identify risks associated with the procurement of the power supply, identify those responsible for administering the various elements of the risk management policy from procurement operations to oversight, and to set policy parameters for managing risk associated with procuring and hedging the power supply portfolio.

The Board will receive a presentation from EBCE's Director of Procurement regarding the development of EBCE's load profile and procurement recommendations based on projected needs for base load energy supply, shaped energy (off-peak, on-peak and super-peak energy), renewable

energy, carbon-free hydropower, and resource adequacy (including system, local and flex capacity). The procurement of power range from the hour-ahead market to multi-year power purchase agreements (PPAs).

The Scope of the Policy provides an overview of the types of risks managed through application of the Energy Risk Management Policy and also identifies types of risks which are not addressed by the Policy.

Scope of ERM

This Energy Risk Management Policy and Regulations (ERM) addresses risks arising from EBCE participation in the Western Interconnection energy markets and applies to all transactions into which EBCE enters. This ERM does not address the following types of general property and casualty business risk: fire, accident and casualty; health, safety, and workers' compensation; general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to risks related to participation in wholesale energy markets as herein defined.

EBCE is exposed to three quantifiable risks: load and resource variability (volumetric), cost variability (price), and counterparty credit risk. Additionally, for ECBE, demand variability is largely attributable to three factors: (1) changes in demand related to the weather, (2) changes in demand related to economic activity, and (3) changes in demand related to customers joining and exiting ECBE service. This third portion of demand uncertainty is unique to CCA's and the risks associated with it need to be carefully considered. From the perspective of risk mitigation, EBCE's primary objective is to cover load and optimize the value of assets. Taking risks in order to arbitrage market opportunities or risks unrelated to EBCE's normal power supply business activities is not permitted.

EBCE is also exposed to regulatory and operational risks. However, these exposures are not quantifiable as they affect structural change. As a result, these risk categories are managed as separate enterprise risk exposures and are not directly governed by this Energy Risk Management Policy, but are addressed in the Energy Risk Regulations.

This policy prescribes the management organization, authority and processes to monitor, measure and control the risks to which EBCE is exposed in the normal course of business. Specific methodologies used to measure, monitor and control these risks shall be established by the Executive Director's Risk Oversight Committee (ROC) in accordance with sound utility practices and included in the Energy Risk Management Regulations.

EBCE's wholesale electricity cost is expected to be over 90% of the CCA operating expenses. In the early years of its operation, EBCE will rely heavily on purchases from the power market which fluctuates on an hourly basis and will have a significant impact on wholesale electricity costs.

EBCE Staff will be working with NCPA to purchase power and enter into transactions to hedge electricity prices on an ongoing basis, as needed to fill load demand. Each of these transactions can be several million dollars and are typically transacted within 2 hours from the time prices are

offered by the supplier, to the time transaction confirmations are executed. This short time frame cannot accommodate the need to seek Board approval for each transaction and generally requires that oversight must be conducted using a different approach. The attached ERM Policy and Regulations provides for internal controls, a Risk Oversight Committee and other measures consistent with power industry standards and the majority of utilities and energy companies.

Attachments

- A. Energy Risk Management Policies
- B. Energy Risk Management Regulations



Energy Risk Management Policy

Version 1.0

Approved
DATE

Table of Contents

1. Philosophy, Objectives and Scope	1
1.1. Risk Philosophy.....	1
1.2. Business Activities	1
1.3. Transacting Objectives	1
1.4. Scope of Policy.....	2
1.5. Applicability.....	2
1.6. Policy Review and Amendments	3
2. Risk Strategy & Parameters	3
2.1. Counterparty Risk Management.....	3
2.2. Balanced Load.....	3
2.3. Minimum Coverage Requirements	3
2.4. Diversification of Portfolio	3
2.5. Purchase to Cover Load Serving Obligations - No Speculation	4
2.6. Use of Derivatives and Financial Transactions.....	4
3. Risk Controls	4
3.1. Control Principles.....	4
3.2. Internal Controls.....	5
3.3. Segregation of Duties	5
3.4. Conflicts of Interest.....	5
4. Roles, Responsibilities, & Organization.....	5
4.1. EBCE Board of Directors.....	6
4.2. Executive Director.....	6
4.3. Risk Oversight Committee	6
4.4. Front Office (Planning and Procurement).....	7
4.5. Middle Office Controls and Reporting.....	7
4.6. Back Office (Settlements and Recording).....	7
4.7. Auxiliary Functions.....	8
4.8. Authorities, Delegations, Limits and Prohibitions	8
5. Policy Compliance	8
5.1. Compliance Exceptions	8
5.2. Reporting of Exceptions	8
5.3. Audit.....	8
5.4. Reserves	8
5.5. Systems, Tools and Training.....	9

1. Philosophy, Objectives and Scope

This Energy Risk Management Policy (ERMP) outlines the philosophies and objectives of East Bay Community Energy (EBCE) Board of Directors (Board). The Energy Risk Management Regulations (ERMR) also adopted by EBCE expand on the roles, strategies, controls and authorities authorized in this policy to form a comprehensive energy risk management program. The ERMR shall be read in conjunction with this ERMP.

1.1. Risk Philosophy

The overall goal of this ERMP is to:

- Serve the participating jurisdictions' needs subject to Board approved risk tolerance limits;
- Provide as much energy supply (generation and capacity) cost certainty for EBCE's customers as possible while maintaining a least cost supply portfolio; and
- Enhance the value of EBCE's assets to meet the financial goals and requirements of the participating jurisdictions.

As a joint powers authority, EBCE is in the business of generation, transmission and procurement of energy for the benefit of its participating jurisdictions. EBCE's objective is to develop the least cost supply portfolio to meet load requirements of its customers, while maximizing revenues from sales of surplus energy, capacity and other wholesale energy and transmission services (e.g. resource optimization). However, unlike a private-sector entity, EBCE's primary purpose in the power supply business is to serve its customers. EBCE's goal is to be a cost hedger for its participating jurisdictions' load and, is therefore, precluded by this policy from engaging in speculative activities typical to many organizations orientated toward profit maximization.

EBCE management recognizes that certain risks are incidental to normal power supply operations and hedging activities. EBCE's goal is to avoid unnecessary risk and to limit, to the extent practicable, any risks associated with normal cost-hedging activities. This document serves as a vehicle to describe and define the limits for activities considered as appropriate for EBCE in a normal course of business.

1.2. Business Activities

A primary part of EBCE's main business is to procure or produce power supplies, capacity, and reserves to meet its customer load requirements. The resource (capacity/energy) supply portfolio may consist of physical assets, such as power plants and distributed energy resources, fixed and variable priced supply contracts of varying lengths, and agreements for other related supplies and services needed to ensure reliable delivery of electricity to EBCE's customers.

1.3. Transacting Objectives

EBCE's overall transacting objective is to meet the load requirements of its customers with an

optimized resource supply portfolio. EBCE's objectives when transacting on behalf of its customers for the procurement of energy and energy related supplies and services are as follows:

- Meet customer load requirements including energy, capacity and reserves;
- Provide stable rates for the participating jurisdictions;
- Obtain the best available price for power supply while complying with the requirements of this policy and other objectives established by the Board (e.g. renewable energy policy goals);
- Manage EBCE's assets to optimize value;
- Act to limit exposure to extreme market system changes;
- Follow effective wholesale counterparty credit management procedures; and
- Develop and maintain EBCE's investment grade credit rating.

1.4. Scope of Policy

This ERMP addresses risks arising from EBCE's participation in the wholesale energy markets, and applies to all energy and energy related transactions made by EBCE. This ERMP does not address the following types of general property and casualty business risk: fire, accident and casualty; health, safety, and workers' compensation; general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to risks related to participation in wholesale energy markets as herein defined.

EBCE is exposed to three quantifiable risks: load and resource variability (volumetric), cost variability (price), and counterparty credit risk. From the perspective of risk mitigation, EBCE's primary objective is to cover load and optimize the value of assets. Taking risks in order to arbitrage market opportunities, or risks unrelated to EBCE's normal power supply business activities, is not permitted.

EBCE is also exposed to regulatory and operational risks. However, these exposures are not quantifiable as they affect structural change. As a result, these risk categories are managed as separate enterprise risk exposures and are not directly governed by this ERMP.

This ERMP prescribes the management organization, authority and processes to monitor, measure and control the risks to which EBCE is exposed in the normal course of business. Specific methodologies used to measure, monitor and control these risks shall be established by the Executive Director's Risk Oversight Committee (ROC), in accordance with sound utility practices and included in the ERMR.

1.5. Applicability

This ERMP is effective immediately upon its adoption by the Board. It applies to EBCE's wholesale supply operations, long-term contracting for energy/capacity and services, acquisition of generation resources, credit risk management and other related ancillary activities undertaken by EBCE.

1.6. Policy Review and Amendments

Prudence is required in implementing any and all policies and procedures. Market and industry norms, technology and risk tolerances tend to change over time. Therefore, this policy should be reviewed as needed, in order to make adjustments in response to changes in business objectives and/or industry norms. Amendments to this ERMP shall be done only by approved Resolution of the Board.

2. Risk Strategy & Parameters

An important aspect of implementing an overall energy risk management policy is the development of related strategies to mitigate all of the related risks associated with energy transacting activities. The key strategies of EBCE are outlined below.

2.1. Counterparty Risk Management

Counterparty risk is defined as the exposure to economic loss resulting from default by a party to a contract (e.g., a *counterparty*). Counterparty risk affects both contracts requiring physical settlement and those specifying monetary settlement. For all fixed price energy transactions, the counterparty must possess at least a BBB- (or equivalent investment grade rating) by a nationally recognized statistical rating organization (NRSRO). EBCE staff may consider counterparties with a rating below investment grade, or a counterparty without a NRSRO rating on a case-by-case basis, with the approval of the ROC.

Effective wholesale counterparty management and credit analysis is essential to mitigate the counterparty risks associated with commodity transactions in the energy markets. The objective is to preserve EBCE's capital, liquidity, and supply reliability by limiting counterparty credit risk and supplier concentration to acceptable levels. Methodologies to achieve this objective are set forth in the ERMR.

2.2. Balanced Load

EBCE shall maintain an integrated and balanced portfolio of resources to cover its customer load within a dual volume and cost-at-risk framework.

2.3. Minimum Coverage Requirements

EBCE shall establish minimum coverage requirements, combined with defined cost-at-risk metrics, for capacity and energy as determined by the ROC and outlined in the ERMR.

2.4. Diversification of Portfolio

EBCE shall strive to develop a resource portfolio that includes diversification in fuel type, contract duration, geographic location, counterparty, pricing terms, cash reserves and types of products.

2.5. Purchase to Cover Load Serving Obligations - No Speculation

As discussed in Section 1.3, EBCE's overall objective for energy procurement activities is to cover the load serving obligations of its customers. In the course of performing these activities, EBCE shall not engage in activities that expose its participating jurisdictions to speculative transactional risks, and shall only utilize approved transaction parameters as determined by the ROC and outlined in the ERM.

2.6. Use of Derivatives and Financial Transactions

Use of financial derivatives or transactions (as opposed to physical or "embedded" options) is allowed in limited circumstances by EBCE. These include transactions used to set price caps and floors, or hedge against load/price volatility. Examples include:

- Exchange traded Puts and Calls;
- Electric Futures;
- Electric Options; and
- Weather Derivatives.

Use of certain types of financial derivatives is necessary in order to mitigate various risks outlined in this policy while optimizing the resource portfolio. Such types of allowable financial derivatives or transactions (but not individual transactions) must be approved by the ROC as outlined in the ERM as developed by the ROC in accordance with this policy.

3. Risk Controls

3.1. Control Principles

EBCE will strive to conduct its energy risk management activities in accordance with best practices of the energy industry, but implementing such practices must be cost justified and balanced between costs and benefits. Processes and control systems must be in place that allow EBCE to identify, measure, monitor, control and track its risk exposures. These processes and control systems shall include the following risk management control principles:

- Appropriate segregation of duties and internal controls will be used;
- Appropriate systems to ensure accurate and effective management reporting;
- Necessary resources in place to achieve management objectives;
- Attract and retain skilled and trained personnel;
- Cross-train and provide cross coverage;
- Employees conducting energy transactions are free of conflicts of interest;
- Authority and approval delegation is commensurate with accountability and capability;
- Performance measurement and reporting incorporate risk and return measures; and
- Ongoing monitoring of control effectiveness.

3.2. Internal Controls

Internal controls shall be based on proven principles that meet the stringent requirements of generally accepted auditing standards (GAAS), financial institutions and credit rating agencies. The required controls shall include all customary and usual business practices designed to 1) prevent errors and improprieties, 2) ensure accurate and timely reporting of results of operations and other information pertinent to management, and 3) facilitate attainment of business objectives.

3.3. Segregation of Duties

Responsibilities related to energy transacting shall be segregated in a manner consistent with the control principles listed above by means of clearly defined roles and responsibilities for the Front Office, Middle Office and Back Office operations. Such roles and responsibilities can also be provided by a qualified third party services provider. Specific roles, responsibilities and organizational structure of these functions are outlined in Section 4 of the ERMP.

These controls shall be fully integrated into all business activities of EBCE, and there shall be active participation by senior management in risk management processes.

3.4. Conflicts of Interest

All EBCE employees who are engaged in energy supply resource transactions, counterparty credit evaluation, or oversight of the foregoing and are employed in any job classification listed in the EBCE Conflict of Interest Code are required to complete annual conflict of interest filings on FPPC Form 700 and disclose investments as required by that code.

In addition to the foregoing disclosure requirement, EBCE employees engaged in energy supply resource transactions, counterparty credit evaluation or oversight of the foregoing, are barred from investing in any company with whom EBCE has consummated energy or related purchases or sales within the last two years.

Such employees must divest existing direct holdings in energy counterparties prior to engaging in any negotiating, evaluating, transacting or oversight functions. The ban on investment and requirement for divestment applies regardless of whether or not the investment would be of sufficient size (\$2,000) to require disclosure on FPPC Form 700.

EBCE employees supervising staff who are subject to this policy are responsible for routinely reviewing Form 700 of each such staff member for the purpose of identifying potential financial conflicts of interest. General Counsel will assist in reviewing these forms and providing legal advice in connection with such reviews upon request.

4. Roles, Responsibilities, & Organization

This section of the ERMP defines the overall roles and responsibilities for implementation of this ERMP. The coordinated efforts of personnel across several divisions are required to successfully

implement EBCE's risk management program. Section 4 of the ERMP outlines the basic roles and responsibilities of each organizational function. Specific details and the specific roles and responsibilities of the oversight and operational divisions within the energy risk management program structure at EBCE are outlined in the ERMR, as developed by the ROC and revised from time to time.

4.1. EBCE Board of Directors

The Board has the ultimate oversight over EBCE operations and is responsible for establishing an organizational-wide framework for risk management and ensuring that risk management results are achieved as planned. The Board shall approve and establish organizational policies for risk management and delegate to the Executive Director the responsibility for implementing the ERMP. With responsibility for the ultimate oversight over EBCE operations, the Board shall be responsible to insure the risk management results are achieved in accordance with the ERMP.

4.2. Executive Director

The Executive Director has overall responsibility for implementing the ERMP and for communicating risk management issues to the Board. The Executive Director shall be responsible for delegating specific duties for carrying out the policy and insuring compliance with it by all affected EBCE employees or contractors. The Board acknowledges that the Executive Director shall established the ROC as a member/staff function and may delegated certain functions to the ROC, which delegation is ratified by this ERMP.

4.3. Risk Oversight Committee

The Risk Oversight Committee (ROC) is responsible for overseeing compliance with risk management policies within EBCE. The ROC serves as the highest level of organizational risk management reporting to the Executive Director. The ROC shall consist of EBCE Management, participating jurisdictional representatives and EBCE's legal counsel, as designated by the Executive Director from time to time. A quorum for the ROC to do business shall be not less than three Committee members (including not less than one participating jurisdictional representative) or their designees.

The two participating jurisdictional representatives shall be appointed to the ROC by the Executive Director. These participating jurisdictional representatives shall reflect the diversity of EBCE's customers (including larger and smaller jurisdictions). The participating jurisdictions may nominate potential ROC members. The Executive Director shall select ROC representatives based on those recommendations.

Each ROC member shall have one vote, and may appoint a voting alternate with the approval of the Executive Director. Participating jurisdictions not represented on the ROC may send representatives to attend ROC meetings and participate in ROC discussions; however, these non-ROC participants will have no voting rights.

The ROC will meet at least quarterly, to act on the responsibilities mentioned above.
Individual

participating jurisdictions may request the ROC to convene in a timely fashion if ROC approval is required for any transaction affecting EBCE. Minutes to each meeting will be maintained according to EBCE policy.

The ROC shall make regular reports to the Board regarding business transacted by the ROC at such intervals as the Board shall direct.

The ROC shall have the responsibility for ensuring that business is conducted in accordance with the ERMP. The ROC shall adopt and keep current “Energy Risk Management Regulations,” which shall define in detail the internal controls, strategies and processes for managing risks covered under the ERMP. Specific ROC responsibilities are outlined in detail in the ERMR.

4.4. Front Office (Planning and Procurement)

The Front Office is responsible for resource planning and procuring resources to meet the physical, financial and contractual requirements of EBCE, with load/resource balancing provisions and such other arrangements as may be approved by the Board in the future. The function includes contract administration, managing the risk assumptions for electricity transactions, including physical and financial needs analyses, energy purchases and sales, procurements of capacity, ancillary services and coordinating energy delivery scheduling. The Front Office is responsible to ensure that the procedures and processes needed to transact business within the ERMP are in place and they perform all duties related to actual transacting in the wholesale energy markets. The Front Office is the primary interface with potential wholesale transacting counterparties. The Executive Director and Director of Power Resources are responsible for managing the Front Office, and can be supported by qualified third party suppliers. Front Office activities and detailed responsibilities are outlined in the ERMR.

4.5. Middle Office Controls and Reporting

The duties of the Middle Office will be conducted by the Finance and Administrative Services Department, and/or are supported by a qualified third party supplier. Its primary purpose is to manage risk oversight and controls. The Middle Office provides independent oversight of the risks assumed by the Front Office in the course of transacting energy products and services. The Middle Office must be independent from the Front Office functions. The Director of Finance and Administrative Services is responsible for managing the Middle Office. Detailed responsibilities of the Middle Office are described in the ERMR.

4.6. Back Office (Settlements and Recording)

The Back Office is primarily responsible for settlement of bills, recording transactions, bookkeeping and accounting, and contract compliance. It is responsible for providing assurance of accurate transaction records and settlements. Back Office functions are conducted by personnel in the Finance and Administrative Services Department, and/or are supported by a qualified third party supplier. Detailed responsibilities of the Back Office are described in the ERMR.

4.7. Auxiliary Functions

Additional issues impacting the overall power supply and risk management program include establishment of financial reserve requirements, which are generated by auxiliary support functions in the Finance and Administrative Services Department.

The Finance and Administrative Services Department is responsible for preparation of the budget and the calculation of rates used to bill customers for their related power supply usage. In addition, the Finance and Administrative Department is responsible for establishment of necessary reserve levels for the various projects owned by EBCE, if any, and for the EBCE in general. The Finance and Administrative Services Department is also responsible for establishment of reserves necessary for credit risks related to counterparty credit as mentioned in the ERMP, but as more clearly defined in the ERMR.

4.8. Authorities, Delegations, Limits and Prohibitions

All executed transactions shall conform to the policies set forth herein. It shall be the responsibility of the ROC, with approval of the Executive Director, to establish appropriate individual transacting authority limits for the various personnel involved in the Front Office function. All staff with designated responsibility for Middle Office or Back Office functions are strictly prohibited from executing any wholesale transactions. The Middle Office shall be responsible for informing counterparties of such approved authorizations, including transacting authority and restrictions, along with product types and/or term and dollar limits.

5. Policy Compliance

5.1. Compliance Exceptions

Compliance exceptions are actions which violate the authority limits or directives set forth herein or in the ERMR as developed and adopted pursuant hereto by the ROC.

5.2. Reporting of Exceptions

The Executive Director shall notify the ROC of exceptions to mandated policies, procedures and regulations within 48 hours after they are identified, and ensure Front Office prepare a full report for review and discussion at the next ROC meeting.

5.3. Audit

Compliance with this ERMP and with the specific ERMR requirements instituted pursuant to this ERMP, shall be subject to examination by EBCE's independent auditors or by such other reviewers that EBCE or ROC may appoint to evaluate the effectiveness of mandated controls.

5.4. Reserves

The ROC and the Executive Director, or his/her designee, are responsible for ensuring adequate

reserves for energy price exposure and credit losses are maintained by EBCE. The reserve estimate methodology, as established by the Finance and Administrative Services Department, shall be reviewed and approved as needed to ensure appropriate reserve levels are maintained and funded.

5.5. Systems, Tools and Training

EBCE employees who are authorized to perform energy risk management functions on behalf of EBCE shall be provided with the necessary systems and tools to support all risk management processes.

Provision shall be made in the budgets submitted for each division which performs market risk management functions on behalf of EBCE for the acquisition and maintenance of computer systems, software, communications equipment, data services and other analytical, measurement and reporting tools.

Provision shall also be made in the budgets submitted for each EBCE division/department which performs market risk management functions on behalf of EBCE for managers and staff to attend seminars and courses in risk management on a regular basis.



ENERGY RISK MANAGEMENT REGULATIONS

Version 1.0

Effective:
DATE

Table of Contents

Part I: Energy Risk Management	2
1. Scope of Regulations and Procedures	2
2. Definitions of Risk	2
3. Risk Management Strategies	6
4. Roles and Responsibility for Energy Risk Management.....	7
5. Authorities, Limits and Prohibitions	12
6. Systems, Tools and Training	14
7. Compliance Exceptions and Reporting	14
8. Risk Management Methodologies	15
9. Risk Limit Structure	15
10. Risk Control Structure	18
11. Conflict of Interest.....	23
12. Policy Review.....	24
Part II: Counterparty Risk Management.....	25
13. Organizational Philosophy Toward Counterparty Risk	25
14. Counterparty Risk Definitions.....	25
15. Underwriting Standards	26
16. Credit Risk Measurement	26
17. Credit Enhancements.....	27
18. Quality Assessment	28
19. Approval Authorities	30
20. Wholesale Credit / Counterparty Management	31
21. Segregation of Duties	33
APPENDIX 1 (Definitions)	1
APPENDIX 2 (Risk Oversight Committee)	1
APPENDIX 3 (Authorized CRR Transacting Guidelines).....	1
APPENDIX 4 (Authorized Approved Product Transaction Limits)	1
APPENDIX 5 (New Product Development Procedures).....	1
APPENDIX 6 (Approved Products)	1
APPENDIX 7 (Management Reports).....	1
APPENDIX 8 (Risk Assessment Methodologies).....	1
APPENDIX 9 (Recommended Coverage).....	1

Objective of the Energy Risk Management Regulations

East Bay Community Energy (EBCE) provides a variety of wholesale and retail energy services to customers within the service areas of its participating jurisdictions (Participating Members). EBCE's goals regarding the provision of such services include, but are not limited to: (i) optimizing the value of EBCE's generation assets, (ii) providing its Participating Members with the lowest cost supply portfolio based on certain policies that may be adopted by the Board from time to time (e.g., renewable energy policy goals), and (iii) maintaining reliable electric service to its Participating Members' customers. Inherent in these goals is the need to manage risks related to transacting in various Energy markets, and providing other wholesale Energy and transmission services on behalf of the Participating Members (e.g., resource optimization).

The purpose of these Energy Risk Management Regulations (Regulations) is to utilize the philosophies and objectives specified in the Energy Risk Management Policy, and document and describe the roles, strategies, controls and authorities that will govern EBCE's comprehensive energy risk management program.

Part I: Energy Risk Management

1. Scope of Regulations and Procedures

1.1. Overview

The EBCE Board will adopt an Energy Risk Management Policy (ERMP) which addresses risks faced by EBCE arising from EBCE's procurement activities on behalf of Participating Members in Energy and related markets. EBCE will develop two-pronged set of metrics that guide procurement decisions that include a rigorous analysis of net open position limits by month (discussed further in Appendix 9) and a cost-at-risk which may include but not limited to total portfolio cost at risk, rate at risk, and cost per wholesale MWh at risk. The ERMP provides for oversight by the Risk Oversight Committee (ROC) and mandates adoption of these Regulations by the ROC to address specific risk management issues. Controls, strategies and processes for managing risks outlined in the ERMP are documented in these Regulations.

1.2. Applicability, Amendments and Updates

These Regulations are initially made effective upon the Board's adoption of the ERMP, and shall subsequently be amended and/or restated from time to time by action of the ROC, when deemed necessary, by the ROC.

2. Definitions of Risk

The term "risks," as used herein, refers specifically to those categories of risk which relate to EBCE's participation in wholesale Energy markets for the purchase and sale of Approved Products, as further described in these Regulations. These risks include, but are not limited to, volumetric, price, counterparty, regulatory and political, and operational risks.

2.1. Volumetric Risk

Volumetric risk is the risk that fluctuations in supply or demand will adversely affect net revenues. Thus, if actual load demands are higher than anticipated, and market prices have increased beyond expectations, the costs to serve such load will be greater than expected. Alternately, if load demands are less than expected, then surplus supply may be sold back into the market. If market prices have declined since the Energy was originally purchased, the ability to serve load at least cost may be impacted. For ECBE, demand variability is largely attributable to three factors: (1) changes in demand related to the weather, (2) changes in demand related to economic activity, and (3) changes in demand related to customers joining and exiting ECBE service. This third portion of demand uncertainty is unique to CCA's and the risks associated with it need to be carefully considered. If supply availability is uncertain, such as when hydroelectric generation capacity is impacted by uncertain rainfall patterns, a resulting shortfall in generation may necessitate the purchase of alternative supply through the wholesale market when prices may be rising, which may also result in increased costs. Volumetric risk also covers the possibility of the unplanned loss of generation resources, transmission curtailments, and extreme weather events that can result in insufficient resources to meet load demands.

Volumetric risk is managed by maintaining financial reserves, diversifying the resource portfolio and developing a regular update of load and resource forecasts.

2.2. Price Risk

Price risk is the risk associated with changes in the market prices of Energy and Energy related products. Price risk is the possibility that the absolute price of a given Energy related product will fluctuate in an unfavorable manner, thereby exposing EBCE to potential cost increases or loss in value to its Participating Members. ECBE will be exposed to price risk any time its fixed-price supply does not perfectly match demand. There are a number of ways that supply and demand may be mismatched. In its simplest form, demand may exceed supply, and any unhedged demand is exposed to changes in prices. With renewable supply, it is common that the production profile of the supply resource does not match the consumption profile of customers. Since hourly prices for electricity vary greatly within the day, this creates risk. This is referred to as “shape” risk. Another mismatch results from locational differences – an entity with generation in one region serving load in another region is exposed to price differences between the two regions. This is referred to as “basis” risk. These risks can manifest themselves over different time periods ranging from sub-hourly mismatches to long term mismatches.

Price risk is managed by closely monitoring and measuring the supply portfolio against estimated demand. The supply portfolio should be constructed to match resources against load obligations taking into account the various risks. Supply portfolios can benefit from resource and fuel source diversification, start dates, duration, pricing terms, types of products, geographic location, and by actively managing portfolios and assets.

Example of Price Risk

ECBE will focus on the price risk of its entire portfolio which is comprised of many individual transactions. When managing risk, ECBE will care about the impact of all of the transactions in the portfolio rather than a single transaction. That said, the portfolio is comprised of a series of individual transactions, and the examples below illustrate how the value of an individual transaction can be impacted by changes in prices.

For example, assume EBCE needs to buy 10,000 MWh of electric power for the last quarter of the coming year (October through December). On January 15th, the market price for that power was \$28.90/MWh, for a total cost of \$289,000. On March 15th, the market value was \$39.00/MWh, or \$390,000. If the budget was set as of the January 15th market price, but the product was not purchased until March 15th, then the cost would be \$101,000 more than budgeted.

Price risk can be viewed as the possibility of a change in the MTM value of a transaction. To illustrate this definition, assume as above that the 10,000 MWh for October – December was purchased on March 15 for \$390,000. If the price for that product drops to \$25/MWh or \$250,000 on September 15th, the MTM of the transaction is negative \$140,000 as of September 15th.

2.3. Counterparty Credit Risk

Counterparty credit risk means risks which EBCE incurs as the result of transacting Approved Products with other entities. It must be understood that in the context of wholesale electric utility operations, both buyers and sellers may be exposed to counterparty credit risks. These risks are of five general types:

- Transacting counterparties may fail to render payment for Energy related products delivered, or otherwise default under the terms of the transaction;
- Transacting counterparties may fail to deliver Energy related products;
- Transacting counterparties may fail to take delivery of Energy related products sold to them, necessitating a resale elsewhere (potentially at a loss) of the Energy related products;
- Counterparties may refuse to extend credit to EBCE; and
- A counterparty or its guarantor may seek bankruptcy protection.

Counterparty credit risk can be mitigated through counterparty diversification, credit risk premium, covenants, credit derivatives (credit default swaps) and insurance.

2.4. Regulatory and Political Risk

Regulatory and political risks are the risks that regulatory agencies, courts and legislatures may take actions or adopt measures which:

- Result in fines, assessments or other unrecoverable costs;
- Make a transaction unlawful or adversely change the its economic benefit;
- Adversely affect market prices or liquidity, leading to trading losses and stranded asset costs;
- Impair the capability or willingness of EBCE's trading counterparties and wholesale suppliers to perform;
- Prevent EBCE from performing to its own contractual obligations;
- Interfere with operation of EBCE's generation or related assets; or
- Negatively impact EBCE's ability to finance capital projects.

Regulatory and political risks are difficult to measure and manage. EBCE has an active legislative and regulatory strategy which monitors and influences the outcome of legislative and regulatory actions for the benefit of EBCE and its Participating Members.

2.5. Operational Risk

Operational risk consists of the potential failure to act effectively to plan, execute and control business activities. Operational risk includes the potential for:

- An organizational structure that is ineffective in addressing risk (i.e., the lack of sufficient authority to make and execute decisions, inadequate supervision, no internal controls, incomplete and untimely reporting, failure to separate incompatible functions, etc.);
- Absence, shortage or loss of key personnel;
- Lack or failure of facilities, equipment, systems and tools such as computers, software, communications links and data services;

- Inability to finance capital projects or meet financial obligations incurred in the course of wholesale operations;
- Exposure to litigation or sanctions as a result of violating laws and regulations, not meeting contractual obligations, failure to address legal issues and/or receive competent legal advice, not drafting and analyzing contracts effectively, etc.; and
- Errors or omissions in the conduct of business, including failure to execute transactions, violation of guidelines and directives, etc.

Operational risk can be managed by adequate oversight and the existence of and adherence to contracts, policies, regulations, and procedures. Operational risk is reduced by streamlined and well defined simple processes managed by skilled and competent staff with appropriate supporting physical and technological resources and appropriate oversight.

2.6. Market Risk

Market risk is manifested by the interdependencies of a market where the failure of a single entity or cluster of entities that may or may not be counterparties can cause a cascading failure which could affect an entire market.

2.7. Legal Risk

Legal risk arises when a counterparty or a Participating Member is not capable of entering into, or has procedurally failed to obtain appropriate approvals to enter into, a contract. Legal risk is managed externally by ensuring counterparty representatives are authorized by the counterparty. Regarding long-term contracts, EBCE will manage legal risk by rigorously vetting and reviewing wholesale electricity contracts with appropriate legal and market experts.

2.8. Concentration Risk

Concentration risk denotes the overall spread of exposures over the number or variety of counterparties. Concentration risk is calculated using the percentage of outstanding exposures each counterparty represents. Concentration risks may result from an uneven distribution of exposures to an individual counterparty, or an uneven distribution of exposures to particular sectors or regions.

Concentration Risk is managed pursuant to Section 18.3 of Part II of these Regulations which requires staff to document the business reasons for awarding Energy contracts to counterparties to whom EBCE has high concentrations of credit exposure.

2.9. Liquidity Risk

Liquidity risk is financial risk due to uncertain liquidity. Liquidity risk may include the risk of insufficient net cash flows on a short term basis, lack of access to credit facilities, the inability to liquidate an asset or position on short notice, and the risk of maintaining explicit liquidity reserves.

EBCE mitigates counterparty liquidity risk with regular, up-to-date credit evaluations; mitigates internal liquidity risks with adequate deposits from Participating Members (if required); and mitigates asset

liquidity risk by utilizing contractual instruments (e.g., approved enabling agreements).

2.10. Custodial Credit Risk

Custodial credit risk is the risk that, in the event of the failure of a custodial asset holder, an entity would not be able to recover the value of its deposits, investments or collateral securities that are in the possession of the custodian.

Custodial credit risk is mitigated by keeping deposits at FDIC insured institutions below insurance thresholds and actively monitoring the creditworthiness of the custodian.

2.11. Business Risk

Business risks are the risks inherent in EBCE's operations and environment that may impair its financial sustainability. These risks include the risks listed in this Section 2, in addition to the risks of creating and maintaining production and administrative facilities.

Business risks are mitigated by adequate planning and budgeting, training of staff and maintaining appropriate insurance coverage.

3. Risk Management Strategies

An important aspect of implementing an overall energy risk management program is the development of related strategies to mitigate all of the related risks associated with Energy product trading activities. The key strategies used by EBCE are outlined below.

3.1. Balanced Portfolio

EBCE shall strive to maintain an integrated and balanced portfolio of resources to cover its Participating Members' load serving obligations, and maintain the value of EBCE's assets, and manage resources within EBCE's financial requirements and within a dual volume and cost-at-risk framework, integral to EBCE's risk management strategy. The "cost at risk" will be designed to capture all of the volume mismatches, basis risk, shape risk, and other balancing risks associated with a given wholesale electricity contract.

3.2. Minimum Coverage Requirements

3.2.1. Minimum Coverage Requirements for Energy

EBCE shall strive to manage price and volatility risk by implementing a diversified procurement strategy that involves purchasing energy products to hedge costs for serving load. EBCE shall strive to purchase amounts of energy based on defined minimum coverage thresholds as set forth in the Time-Price Coverage Matrix combined with a cost-at-risk metric contained in Appendix 9 (Recommended Coverages) of these Regulations. The Time-Price Coverage Matrix, along with the cost-at-risk metric will be used as a guide for EBCE's short term and long-term procurement strategies. The objective of the dual framework is to develop a procurement strategy focused on hedging against the risk of open load positions, as measured over time, and to mitigate EBCE's exposure to market price volatility and

other pricing risk. The actual covered positions taken by EBCE, reflected as a percentage of forecasted load, may deviate from the recommended coverages contained in the dual framework based upon EBCE's staff evaluation of current market conditions and other applicable requirements (e.g., regulatory requirements).

3.2.2. Minimum Coverage Requirements for Capacity

EBCE is required to acquire certain types and amounts of Resource Adequacy capacity, as further set forth in applicable requirements. Such rules, including the CPUC Decisions, establish minimum Resource Adequacy requirements in accordance with policies adopted by EBCE's respective Local Regulatory Authority. Pioneer shall acquire the types and amounts of capacity required to comply with the Resource Adequacy requirements established by its respective Local Regulatory Authority.

3.3. Diversification of Portfolio

EBCE shall strive to develop an integrated resource portfolio that includes a minimum level of diversification in fuel type, contract duration, geographic location, counterparties, pricing terms, cash reserves and types of products.

3.4. Purchases to Cover Load Serving Obligations (No Speculation)

EBCE's primary objective for energy product procurement activities is to cover the load serving obligations of its Participating Members. In the course of performing these activities, EBCE shall not engage in activities that expose EBCE to speculative trading risks, and shall only utilize approved products and transaction parameters as approved by the ROC, and defined in these Regulations.

3.5. Authority to Transact Approved Products

The type of Energy related products EBCE may transact will have a direct impact on the amount of risk EBCE assumes as a result of such activities. The types of Energy related products that EBCE is authorized to transact (herein after referred to as "Approved Products") are specifically identified in Appendix 6 of these Regulations.

4. Roles and Responsibility for Energy Risk Management

4.1. Board of Directors

The Board has the ultimate responsibility for oversight of EBCE's operations, and is responsible for establishing an organizational framework for risk management and for ensuring that risk management results are achieved as planned. The Board has approved and established organizational policies for risk management, and has delegated to the Executive Director the responsibility for implementing the ERMP. The Board is responsible for ensuring appropriate results are achieved in accordance with the ERMP. The Board shall perform an annual review of the ERMP and modify the policies, as needed.

4.2. Executive Director

The Executive Director has day-to-day responsibility for executing and ensuring compliance with the ERMP, and for communicating risk management issues to the Board. The Executive Director shall ensure clear lines of authority and responsibility for assessing, measuring, and managing the risks of EBCE, and for monitoring the functionality of all components of the risk management system. The Executive Director may delegate specific duties for carrying out the policy and insuring compliance by all affected EBCE employees or contractors.

4.3. Risk Oversight Committee

The ROC is responsible for overseeing EBCE's compliance with the ERMP. The ROC serves as the highest level of organizational risk management reporting to the Executive Director. The members of the ROC consist of the Executive Director, Director of Finance and Administrative Services, Director of Power Resources, and two (2) Participating Member representatives. EBCE's legal counsel shall serve as legal advisor to the ROC. The ROC may seek the advice of other advisors at its discretion, including EBCE's Wholesale Energy Services Provider. A quorum of the ROC consists of not less than three ROC members, or their designees, including at least one Participating Member representative. A quorum of the ROC shall be required for the ROC to conduct business.

The two (2) Participating Member representatives shall be appointed to the ROC by the Executive Director. These Participating Member representatives shall reflect the diversity of EBCE's participating jurisdictions (e.g., both larger and smaller Participating Member representation). EBCE's Participating Members may also nominate potential ROC members. The Executive Director shall select Participating Member representatives based on these recommendations. Participating Member representatives shall be appointed for a term of two (2) years.

Each ROC member shall have the right to cast one (1) vote per issue, and may appoint a voting alternate with the approval of the Executive Director. Participating Members that are not represented on the ROC may attend ROC meetings and participate in ROC discussions; provided, however, non-ROC Participating Members will have no voting rights.

The ROC will meet at least quarterly, or as needed, to carry out the responsibilities described in these Regulations. Individual Participating Members may request the ROC to convene at any time, in a timely fashion. Minutes of each meeting will be maintained by EBCE staff.

The ROC shall provide a report to the Board at least annually, regarding the business activities of the ROC, or at such other interval as directed by the Board.

The ROC is responsible for ensuring that EBCE's risk management practices are conducted in accordance with the ERMP and these Regulations. The ROC shall adopt and keep current these Regulations, which shall define in detail the internal controls, strategies and processes for managing risks covered under the ERMP.

ROC responsibilities and delegated authorities are:

- Establishing overall risk tolerances related to Approved Product transactions and counterparty credit risk;

- Reviewing and approving Exception Reports to the ERMP and these Regulations;
- Setting, changing and approving the design of all internal control processes related to energy risk management and Approved Product transactions;
- Assessing the adequacy and functioning of the system of controls over volumetric, price and counterparty credit risks;
- Reviewing all statistical modeling parameters, risk tolerances, risk factors and/or risk weights associated with all Approved Product transaction strategies;
- Reviewing and recommending changes to ERMP policies, the types of Approved Product transactions and controls (e.g., limits, risk/performance methodology, etc.), including the addition of new products and instruments as described in these Regulations;
- Recommending appropriate cash reserve levels to support EBCE's Approved Product transaction activities;
- Reviewing the ERMP, and recommending any amendments to the Board;
- Reviewing and assessing the adequacy of the risk reports generated by the risk management function;
- Ensuring that the results of risk management activities are reported to the Board, and all risk management reports are provided to the Board in accordance with Appendix 7 of these Regulations, or as necessary;
- Reviewing and recommending appropriate transaction authority levels and delegation of authority to EBCE personnel, related to Approved Product transactions; and
- Reviewing, recommending and approving changes to these Regulations, as needed.

Specific responsibilities of the ROC members and advisors are described in Appendix 2 of these Regulations.

4.4. Front Office

The Front Office staff is responsible for the provision of wholesale energy services, which include, but are not limited to, planning and portfolio management, Approved Product transacting, contract origination, schedule coordination and real-time dispatch operations. The Front Office provides recommendations for load and resource balances, and portfolio optimization. These activities are conducted in order to meet the physical, financial and contractual requirements of EBCE. As part of these functions, the Front Office is responsible for transacting Approved Products on behalf of EBCE, in accordance with certain transactional limits, as further defined in these Regulations. All Approved Products that the Front Office is authorized to transact are identified in Appendix 6 of these Regulations. The Front Office is responsible for ensuring that the procedures and processes needed to transact business within the requirements and guidelines of the ERMP and these Regulations are fully implemented, and shall perform all duties related to actual transacting in the wholesale Energy markets. The Front Office is the primary interface with potential wholesale transacting counterparties. The Director of Power Resources is responsible for managing the Front Office. The Front Office may also utilize support from EBCE's Wholesale Energy Services Provider to carry out the duties described herein.

The Front Office is primarily responsible for:

- Day-to-day purchases and sales of Approved Products for EBCE;

- Developing transaction strategies that are consistent with EBCE's ERMP and established risk tolerances;
- Ensuring infrastructure (hardware/software) is in place to support accurate and timely measurement and reporting of risk;
- Ensuring that procedures and systems can effectively and efficiently support the Front Office activities;
- Ensuring training is completed by Front Office staff, as required by CAISO, to comply with minimum participation requirements for participation in CAISO markets;
- Conducting needs analysis for meeting load forecasts, optimizing the value of resources, and satisfying regulatory and/or compliance requirements;
- Recommending transactions for authorization and approval;
- Proposing modifications to commercial provisions of Board approved contracts to the Executive Director for consideration and approval;
- Purchasing and/or selling Approved Products and services based on meeting the load forecast, optimizing the value of EBCE assets, and satisfying regulatory and/or compliance requirements;
- Conducting sales transactions for surplus resources;
- Nominating and managing CRRs in the annual and monthly allocation processes;
- Preparing and submitting bids in the CRR annual and monthly auction processes;
- Transacting Approved Products to satisfy applicable regulatory and compliance requirements (e.g., renewable Energy requirements, emission compliance obligations, etc.);
- Development and maintenance of Renewable Energy Products tracking and allocation;
- Competitively shopping and negotiating transactions in accordance with the ERMP;
- Generating trade confirmations (as needed);
- Ensure transactions are recorded timely and accurately, and that valuation and risk measurement are performed according to approved methodologies;
- Working with the Middle Office to develop and implement risk measurement methodologies and quantitative applications, where appropriate;
- Identifying new products and markets that may add value to EBCE;
- Prepare reports as outlined in Appendix 7 of these Regulation;
- Initiate requests for new counterparty reviews; and
- Prepare and maintain written Front Office procedures.

4.5. Middle Office

The duties of the Middle Office staff are conducted by the Finance and Administrative Services Department. Its primary purpose is to manage risk oversight and controls. The Middle Office provides independent oversight of the risks assumed by the Front Office in the course of transacting Approved Products and services. The Middle Office must be independent from the Front Office functions. The Director of Finance and Administrative Services is responsible for managing the Middle Office. The Middle Office may also utilize support from EBCE's Wholesale Energy Services Provider to carry out the duties described herein.

The Middle Office is responsible for oversight, reporting and training; including:

- Managing and overseeing risk, including reviewing controls and reviewing valuation and risk management methodologies;
- Developing and implementing counterparty credit risk policies, procedures and limits as approved by the ROC;
- Reviewing and approving changes and provisions to enabling agreements (including all credit terms);
- Monitoring EBCE's current and potential risk exposures and ensuring compliance with the ERMP and these Regulations;
- Ensuring Middle Office training is completed;
- Verifying that Approved Product transactions are authorized and executed based on the requirements of the ERMP and these Regulations, and are properly recorded in the deal capture systems;
- Monitoring the effectiveness of the internal control structure, including the segregation of duties and independence of oversight;
- Maintaining a list of individuals who are authorized to approve and execute Approved Product transactions;
- Ensuring timely and accurate collection of market data for risk measurement and reporting;
- Conducting necessary stress test on portfolio exposure and CVaR models;
- Preparing, reviewing and distributing all risk management reports;
- Processing and verifying market data provided by the Front Office;
- Maintaining independent market forward price data;
- Evaluating performance of Approved Product procurement and hedging transactions relative to market indices and approved budget;
- Notifying the ROC of credit limit exceptions;
- Working with the Front Office to develop and implement risk measurement methodologies and quantitative applications;
- Serving as secretary of the ROC, developing ROC agendas, taking and compiling meeting minutes, and distributing meeting materials;
- Maintaining archives of risk management program documents;
- Monitoring and ensuring compliance with the Commercial Compliance Policy;
- Coordinating risk management education and training;
- Various credit management duties as outlined in these Regulations; and
- Prepare and maintain written Middle Office procedures.

4.6. Back Office

The Back Office staff is primarily responsible for settlement of invoices, verifying transactions, bookkeeping and accounting, and ensuring Approved Product transactional activities are consistent with contract authorities and requirements. The Back Office is responsible for providing assurance of accurate transaction records and settlements. The Director of Finance and Administrative Services is responsible for managing the Back Office. The Back Office may also utilize support from EBCE's Wholesale Energy Services Provider to carry out the duties described herein.

The Back Office is responsible for the following duties:

- Crosschecking counterparties confirmation documents for individual trade transactions to EBCE's own records of those transactions, and investigating and resolving exceptions;
- Ensuring settlements are made timely and in accordance with contract terms;
- Verifying and reporting compliance with procedures as reflected in the transaction tracking documentation;
- Ensuring that operations and systems can effectively and efficiently support the processing of approved transactions;
- Performing and supporting transaction allocations, invoicing and settlements;
- Development and maintenance of GHG Compliance Instrument tracking and allocation;
- Monitoring accounts receivable and payable;
- Verification of transaction data entry; and
- Preparing and maintaining written Back Office procedures.
- Disputing any charges from the ISO.

4.7. Auxiliary Functions

Other functions in support of and relevant to risk management are conducted by EBCE staff who are not directly including within the Front Office, Middle Office and Back Office functions. These include some contract administration functions, load forecasting and managing financial reserves.

Long term planning and forecasting of Energy supply requirements (long term supply plans) are developed by EBCE analytical support personnel who are not part of the Front Office transacting function.

The Finance and Administrative Services Department is responsible for preparation of the budget, and amounts billed for Approved Product transactions. Finance and Administrative Services Department staff also establish necessary financial reserve levels related to counterparty credit requirements for EBCE in general. These auxiliary functions may also be supplied to EBCE by EBCE's Wholesale Energy Services Provider.

5. Authorities, Limits and Prohibitions

5.1. Individual Trading Authority and Transaction Limits

All executed transactions shall conform to the policies set forth in the ERMP and these Regulations. It shall be the responsibility of the ROC, with approval of the Executive Director, to establish appropriate individual trading authority limits for the various staff involved in the Front Office function. All Middle Office and Back Office staff are strictly prohibited from executing any Approved Product transactions. The Middle Office shall confirm that the Front Office has informed EBCE's counterparties of changes in Front Office staff authorized to trade within seven (7) business days. Unless or except as recommended by the ROC from time to time, and approved by the Executive Director, trading authority limits for individual transactions shall be as outlined in Appendix 4 of these Regulations.

5.2. Permitted Transactions and Approved Products

The ROC is responsible for authorizing and approving all Approved Products that may be transacted by EBCE. Transacting Energy related products that are not authorized as Approved Products by the ROC is strictly prohibited, unless the ROC grants an exception in advance.

All transactions shall conform to the following general principles:

- Be for an Approved Product;
- Be duly authorized and within risk limits, and shall not cause either aggregate or individual counterparty credit limits to be exceeded;
- Be executed with a counterparty with an approved credit limit;
- Shall utilize contract terms intended to minimize the risk of loss if a counterparty fails to deliver, take delivery or pay for transactions provided;
- Be executed and documented following standardized procedures; and
- Be in compliance with applicable laws, regulations and court orders.

Approved Products that have been authorized by the ROC are listed in Appendix 6 of these Regulations. Appendix 6 also contains certain limitations for each authorized Approved Product.

5.3. Unauthorized Transactions

Any member of staff who enters into an unauthorized transaction may be subject to disciplinary action up to and including termination of employment.

The following provides the minimum procedures for managing unauthorized transactions:

- If a transaction is unauthorized, the Executive Director shall determine the course of action. If the transaction involves market risk, the Executive Director may elect to either enter into a risk neutralizing transaction, or attempt to unwind the transaction with the original counterparty. However, the first alternative (offsetting transaction) only offsets market price; operational and credit risk may still exist. Unwinding the transaction would likely remove all risk from the trade.
- Once the corrective steps have been taken, the Executive Director shall review the transaction to ensure all risks have been offset and report the results in the Exception Report.

5.4. Process for Adding New Approved Products

All requests to add a new Approved Product to Appendix 6 must be analyzed by the Front Office, Middle Office, Back Office staff, and EBCE's legal counsel to determine what risks such product may create for EBCE, and what business needs exist that provide the basis for adding the new product to the Approved Products list. All requests to add a new Approved Product to these Regulations must be presented to the ROC for consideration, and if approved by the ROC shall be added to Appendix 6 as an Approved Product. Any product not listed as an Approved Product in Appendix 6 of these Regulations is considered to be a new product.

A report to the ROC recommending approval of a new Approved Product shall address the issues described in the New Product Approval Checklist contained in Appendix 5 of these Regulations. The

New Product Approval Checklist is a guideline for activities that should be performed in evaluating and mitigating the market and credit risks associated with use and deployment of new products.

Front Office staff have primary responsibility for developing the report to identify the business needs for the new Approved Product being requested, and an assessment of risks that EBCE may be exposed to by transacting the new Approved Product. Front Office staff are responsible for presenting the report to the ROC for consideration and approval. Primary responsibility may be delegated by Front Office staff to those individuals having special knowledge or expertise of the activity or new product type.

6. Systems, Tools and Training

EBCE employees (or supporting suppliers) who are authorized to perform energy risk management functions on behalf of EBCE shall be provided the necessary systems and tools to support all risk management processes, including:

- Access in real time to market activity, prices and other data;
- Systematically evaluating the financial condition, credit standing and ability to perform of other entities with whom EBCE does business;
- Analyze the trends of supply, demand, market prices and costs of service;
- Record transactions accurately and completely;
- Measure key indicators and risk parameters; and
- Generate complete and accurate management and financial reports.

Provision of funding shall be requested and made in the budgets submitted for each division that performs market risk management functions on behalf of EBCE, for the acquisition and maintenance of computer systems, software, communications equipment, data services and other analytical, measurement and reporting tools. Provision of funding shall also be requested and made in the budgets submitted for each EBCE division, which performs market risk management functions on behalf of EBCE for managers and staff to attend seminars and courses in risk management as required to comply with the ERMP and these Regulations.

7. Compliance Exceptions and Reporting

7.1. Compliance Exceptions

Compliance exceptions are actions which violate the provisions and/or requirements as set forth in the ERMP and these Regulations, and/or the procedures developed and approved by the ROC.

The following types of occurrences shall not be considered compliance exceptions:

- Losses incurred on wholesale transactions which were undertaken in compliance with the ERMP and these Regulations;
- Adverse changes in credit standing, financial condition or ability to perform of a wholesale trading counterparty which occur subsequent to the execution of a transaction or contract;
- Adverse changes in capital asset valuations, MTM exposures, or CVaR resulting from fluctuations in prices subsequent to the execution of a transaction or contract; and

- Actions compelled by order of regulatory authorities or by legislation, which are otherwise in violation of the ERMP, these Regulations, and/or related Procedures.

7.2. Exception Reporting

In the event a compliance exception occurs, the Executive Director is responsible for notifying the ROC within 48 hours after it is identified and ensure that the Front Office prepare a report (Exception Report) for the ROC at its next meeting. The Report shall identify the issue or violation, and discuss the alternative remedial actions, document the action taken in response, and describe the steps that will be taken to prevent a reoccurrence of the event. A summary of all exceptions shall be reported at least annually to the Board by the Executive Director.

8. Risk Management Methodologies

8.1. Measurement of Risks

EBCE measures risk by estimating how high or low future supply costs and revenues could be, given a particular portfolio position and specific confidence level of market price movements. These estimates apprise management as to the risks inherent in a particular position and are used to make decisions to accept that risk or to reduce the risk by changing the position or the portfolio management strategy going forward.

Volumetric variability is estimated as part of the load and resource forecasting process. Normal, High and Low scenarios are provided as part of the annual budget process. An updated load and resource forecasted balance is provided each month. Volumetric uncertainty shall be incorporated in the quantitative risk measures that EBCE tracks and reports on a regular basis. The financial consequences of volumetric risk depend upon both how actual loads and supplies compare to forecasts, and on market price variations.

Market price risk is measured by calculating forward price volatility (either using recent historical data for forward prices or market prices for options), and applying that volatility to the future to see how costs and revenues could change if there were an adverse market price movement.

Counterparty credit risk measures are captured in reporting of counterparty exposure and transaction limits.

Appendix 8 of these Regulations provides a more detailed description of EBCE's risk measurement methodology. Risk management reports that are presented to management and the ROC are described in Appendix 7 of these Regulations.

9. Risk Limit Structure

EBCE sets risk limits in order to mitigate risk exposure within the broad objectives of optimizing the value of EBCE's assets, and serving Participating Member loads at cost effective and stable prices. Transaction limits authorized in Appendix 4 shall comply with the requirements described in this Section 9.

Portfolio risk limits are expressed based on volume, duration, dollar value, and CVaR. EBCE will develop a path towards setting (1) volume limits and (2) VAR limits. Risk limits include: (1) qualification criteria for counterparties, including creditworthiness and required contractual provisions, (2) counterparty credit limits, and (3) preferred contractual terms. Counterparty credit risk limits are intended to monitor and contain potential losses due to counterparty default. This Section 9 also includes a brief discussion of risk monitoring and reporting requirements.

Risk limits may be employed to indicate either:

- An exception, which requires an Exception Report to the ROC;
- A warning, which indicates that a risk measure is outside of an acceptable tolerance band, and should be reported to the ROC promptly; or
- A standard, such as minimum qualifications or contract provisions.

Risk limits are subject to regular review and adjustment by the ROC as market conditions change. Risk limit metric methodologies and limits are further explained in Part II of these Regulations.

9.1. Basic Principles for Setting Risk Limits

The following set of basic principles shall guide the general approach to setting risk limits (including but not limited to credit exposure limits, contract duration, volume, and transaction limits):

- Enable staff to conduct required business effectively
 - Volume and dollar limits adequate to reliably meet physical and financial requirements at prevailing prices
- Reflect the risk-reward tradeoffs consistent with EBCE's risk tolerance
 - Duration, volume, dollar and exposure limits appropriate for associated risks
- Favor strong counterparty attributes
 - Creditworthiness and financial strength
 - Favorable contractual terms
 - Demonstrated performance
- Promote fair and competitive transacting process
 - Should not narrow field to a single supplier or unduly favor any supplier
- Promote diversification
 - Avoid too great a concentration of supply or exposure with any single supplier
- Facilitate operational flexibility
 - Allow for load uncertainty, resource uncertainty, and other contingencies
- Facilitate conformance to the ERMP and Regulations
 - Clear, measurable, consistent and enforceable
- Balance burden of monitoring and enforcing limits with value
 - Not so complex and cumbersome that it takes too many resources to manage

9.2. Portfolio Risk Limit Guidelines

Portfolio limits facilitate: (1) adhering to policies and procedures, (2) quantifying risk tolerance levels for risk monitoring, reporting and control, and (3) reducing operational risks.

Portfolio limits must take into account:

- Load and resource balance variability – monthly and seasonal variation;
- Load and resource balance uncertainty – confidence intervals around expected values;
- Minimum feasible wholesale transaction size – Approved Products are traded in large discrete package sizes; and
- Operational flexibility and constraints – customer responsiveness, system reliability.

Risk limits shall be reviewed and updated by the Middle Office and Front Office in conjunction with development of the long-term power supply forecast, as part of the annual budget process, or more frequently as deemed necessary.

9.3. Net Position Guidelines

Purpose: Net position guidelines specify the physical load and resource balance tolerance levels within which EBCE staff shall recommend transactions to comply with these Regulations, and to ensure that Approved Products are transacted to meet physical and financial load and resource balance requirements.

Applicability: Net position guidelines apply to Approved Product transactions that are one month in duration or longer. These transactions include all must-take, fixed-priced contracts, index-priced contracts¹, fixed-priced Call Options, supply from generating resources, and the long-term contracts.

For all other transactions:

1. Option transactions shall be excluded from the Net Position guidelines until exercised, but shall be included in transaction reporting to the ROC. Options to transact Approved Products that have been exercised, or any other transaction that commits EBCE to take delivery or commit resources, shall be included in the Net Position guidelines.
2. Put options that have not been exercised are not included in the Net Position guidelines as they reflect a potential short position and would understate the Net Position. Put option transactions shall be included in transaction reporting to the ROC.
3. Within-the-month Approved Product transactions are operational in nature, and require flexibility to balance hourly, daily, and weekly, and balance-of-month load variations. Net Position Limits guidelines do not apply to within-the-month transactions, but they are included in transaction reporting and total deliveries reported to the ROC.
4. Resource Adequacy capacity, GHG Compliance Instruments, transmission,

¹ A transaction priced based on an index rate that is directly offset with a matching transaction priced at the same index rate (e.g., a sales transaction that is directly offset with a like purchase transaction) shall be excluded from the calculation of net position.

transportation, ancillary services, basis, and storage requirements are set by reliability based technical standards, regulatory requirements, or maximum potential usage in order to reliably meet real-time and peak demand. Net Position guidelines do not apply to these Approved Products, but staff shall inform the ROC of the criteria used for estimating EBCE's needs.

5. Transactions of surplus or excess Approved Products made available through existing physical assets or contracts (e.g. due to hydro conditions) shall not constitute Speculation, but shall be reported to the ROC.

The net changes in physical position due to buy-sell transactions executed to offset positions with a counterparty, effect transportation or transmission transactions, or other approved purpose shall be included in the Net Position guidelines.

10. Risk Control Structure

10.1. Control Principles

EBCE will strive to conduct its energy risk management activities in accordance with best practices of the wholesale electric industry, but implementing such practices must be justified and balanced as to their costs and benefits. Processes and control systems must be in place that allow EBCE to identify, measure, monitor, control and track its risk exposures. These processes and control systems shall be consistent with the following risk management control principles:

- Appropriate segregation of duties and internal controls;
- Appropriate systems to ensure accurate and effective management reporting;
- Necessary resources in place to achieve management objectives;
- Attract and retain skilled and trained personnel;
- Cross-train and provide cross-coverage;
- Employees conducting Energy transactions who are free of conflicts of interest;
- Authority and approval delegation that is commensurate with accountability and capability;
- Performance measurement and reporting incorporate risk and return measures; and
- Ongoing monitoring of control effectiveness.

10.2. Functional Responsibilities

EBCE has integrated but segregated responsibilities to control risks in a manner consistent with the above control principles by means of clearly defined roles and responsibilities for the Front Office, Middle Office, and Back Office. Oversight functions are performed at an operational level by these offices, and managed at an executive level by the Board, Executive Director, and ROC. These functional responsibilities are described in detail in Section 4 of these Regulations. EBCE may utilize the services of its Wholesale Energy Services Provider for performing such functions.

10.3. Transaction Capture Process

All transactions² of Approved Products must be formally and officially documented by EBCE. Transaction capture procedures shall address all of the following elements:

- Authorization/Approval (e.g., participant authorization form as used in the market purchase program agreement);
- Competitive bidding;
- Commitment to the transaction;
- Recording the transaction;
- Confirming the validity of the transaction with the counterparty;
- Inputting the transaction into the deal capture system;
- Actual product delivery; and
- Billing and settlement.

10.3.1. Authorization/Approval

The appropriate authorizations and approvals must be obtained by Front Office staff prior to transacting Approved Products. Such authorizations may be in the form of predefined contractual authorizations, or as defined in the ERMP or these Regulations. EBCE shall develop protocols to address when the volume and/or VAR limits are not in compliance. If the limits are violated by a certain to-be-determined amount EBCE shall assemble the ROC for an emergency meeting. The ROC can choose to be flexible on the limits (within certain parameters) or require action. If it exceeds a certain amount it goes higher in the organization and to EBCE's board. Front Office staff shall obtain approval from duly authorized personnel (supervisor or higher) with specified *dollar and volume* limits as specified in Appendices 3, 4 and 5 before consummating any transactions for Approved Products.

10.3.2. Competitive Bidding

For Approved Product transactions scheduled for delivery further than one (1) week in advance, quotes for forward commitments, with the exception of exchange traded transactions, must be obtained competitively from available and approved counterparties, consistent with the size and type of transaction and counterparty. Alternatives are to be evaluated on an equivalent basis (similar quality, volume, duration and options), adjusted for such factors as transmission, losses, etc. Front Office staff must obtain quotes from at least two (2) qualified suppliers, if two (2) approved counterparties are available. Alternatives are to be evaluated on an equivalent basis (similar quality, volume, duration and options), adjusted for such factors as transmission, losses, etc.

Transactions occurring for delivery of product within one week or less, or exchange traded (e.g. NYMEX, ISO, ICE, etc.) transactions, do not require formal written documentation that two (2) quotes were obtained beyond what is entered in the deal capture system.

10.3.3. Commitment to the Transaction

A commitment is a legally binding contract between EBCE and a counterparty. The Front Office must

² Transaction for a term of balance-of-month or shorter are not subject to certain elements of the transaction capture process, as further described in the respective transaction procedures.

be the point of commitment for all Approved Product transactions. Final price commitments may only be made by authorized EBCE transacting personnel. Commitments shall be made verbally or electronically in the case of an electronic exchange. Transacting personnel shall only transact with counterparties who are listed on the Approved Counterparties List.

10.3.4. Recording the Transaction

All transactions must be recorded.³ Verbal commitments must be executed on a recorded telephone line when available, and shall be stored and maintained in accordance with EBCE's records retention policy. Electronic commitments must have an electronic audit trail. All transactions must be evidenced by a deal control system entry prepared in a timely manner. All transaction information shall be time and date stamped at the time of commitment.

10.3.5. Confirmation

A confirmation is a written document evidencing a verbal or electronic commitment made by EBCE transaction personnel. All confirmations must agree with the transacting person's commitments, as evidenced by phone records, deal capture system entries or other supporting documentation. All confirmations must be reviewed and confirmed by Back Office personnel for accuracy. The Front Office shall generate a written confirmation, when required, in any case where the counterparty does not provide or require a written confirmation. Any transaction that is not confirmed by the counterparty and approved by authorized personnel within five (5) business days after the transaction has been executed will be subjected to review and identification by the Middle Office. Using the confirmation, the Back Office staff shall review and confirm the consistency and accuracy of the deal capture system entry made by the Front Office staff. All written transaction confirmation shall be stored by EBCE consistent with EBCE's records retention policies. Written confirmations are not required for any transaction with a duration of less than seven (7) calendar days.

10.3.6. System Input

All transactions must be entered into the deal capture system, and the transaction information shall be maintained in accordance with EBCE's record retention policy. All transactions shall be entered into the dealcapture system by Front Office personnel. Deal capture system input shall be performed no later than the first business day after the deal was confirmed. Once a transaction is entered into the deal capture system, Back Office staff shall review the deal entry to confirm that the information entered into the deal capture system is consistent with the transaction confirmation, if required. If the data entry is found to be correct by Back Office staff, the deal shall be approved for accuracy. If the data entry is found to be inconsistent with the deal confirmation, Back Office staff shall notify Front Office staff to make the necessary corrections to the data entry stored in the deal capture system.

10.3.7. Billing and Settlement

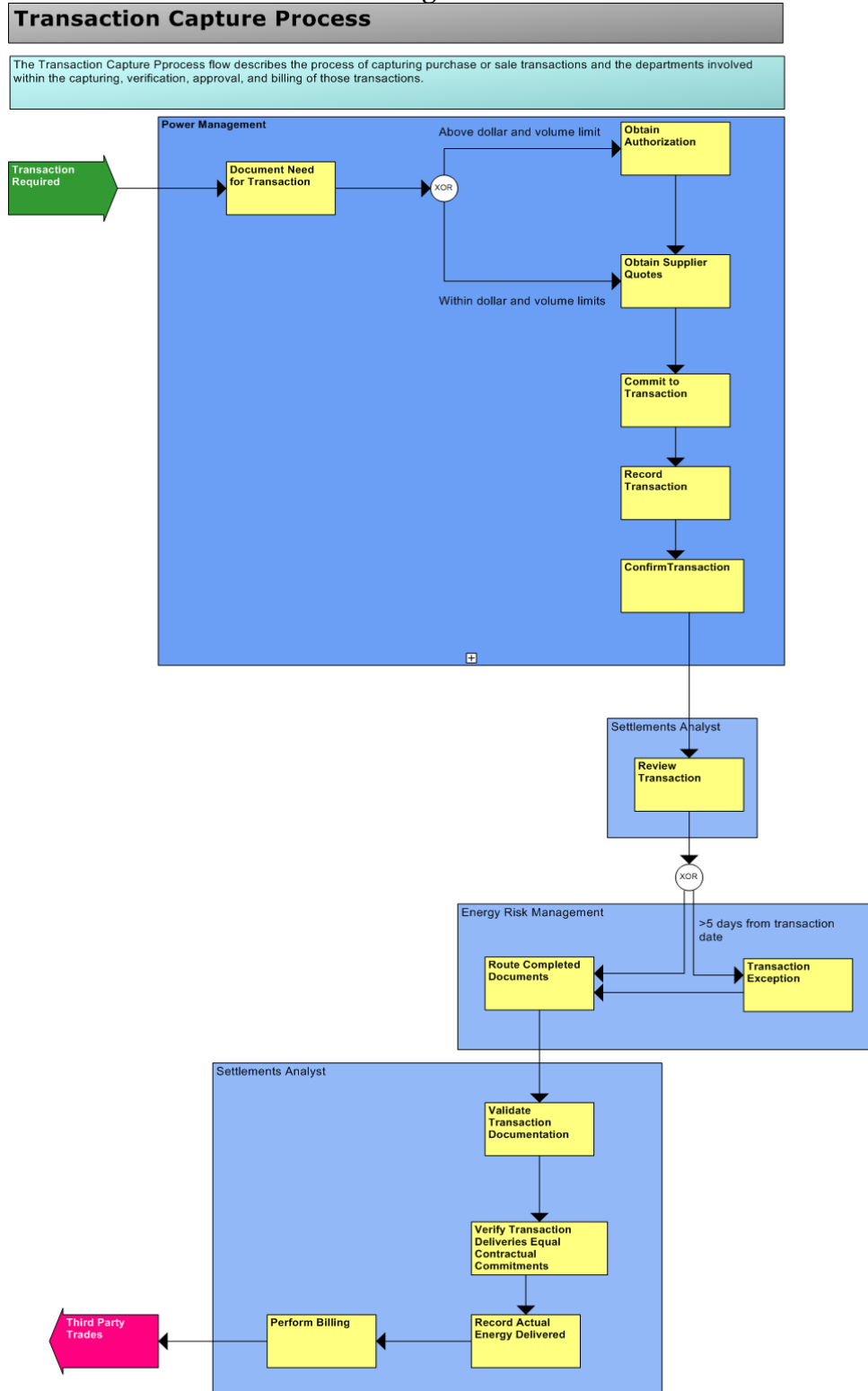
Back Office staff ensures that bills are issued to counterparties with outstanding accounts receivable,

³ Real-time verbal and electronic commitment dates and times are recorded in the dispatch log. GHG Compliance Instruments are recorded in the CITTS system maintained by the California Air Resources Board.

and reviews bills for transactions to verify that the bills match the terms of the contract and the amount of product actually delivered (this process is generally referred to as the “checkout process”).

Diagram 1 below is a representation of the transaction capture process:

Diagram 1



10.4. Management Reporting Framework

The key to energy risk management is monitoring of risks. Accurate and timely information must be provided to all parties involved in any aspect of energy risk management, to allow them to perform their functions appropriately. Reports can be categorized into three main areas:

1. Risk Monitoring – illustrate risks that are faced ahead;
2. Oversight – show compliance with policies, authorities or risk limits; and
3. Performance – compares actual past and present performance of the portfolios to appropriate budget and market benchmarks.

A complete list of management reports for each level of oversight is provided in Appendix 7 of these Regulations. These reports shall be prepared on a frequency as indicated in Appendix 7. New reports, or changes to existing report formats, may be recommended and approved by the ROC.

10.5. Internal Controls

Internal controls shall be based on proven principles that meet the stringent requirements of generally accepted auditing standards (GAAS), financial institutions and credit rating agencies. The required controls shall include all customary and usual business practices designed to prevent errors and improprieties, ensure accurate and timely reporting of results of operations, provide information pertinent to management and facilitate attainment of business objectives.

The required controls shall include the following:

- Segregation of duties between initiation, confirmation, monitoring and settlement transactions;
- Delegation of authority that is commensurate with responsibility and capability;
- Complete and precise capture of transaction and other data, with standardization of electronic and hard copy documentation;
- Meaningful summarization and accurate reporting of transactions and other activity at regular intervals;
- Regular independent compliance review to ensure that the ERMP and these Regulations are adhered to; and
- Active participation of senior management in the risk management process.

11. Conflict of Interest

All EBCE employees who are engaged in Approved Product transactions, counterparty credit evaluation, or oversight of the foregoing and are employed in any job classification listed in the EBCE Conflict of Interest Code are required to complete annual conflict of interest filings on FPPC Form 700, and disclose investments as required by that Code. They are required by that Code to abstain from participating in or attempting to influence any decisions that foreseeably would have a material financial effect on any such investment.

In addition to the foregoing disclosure requirement, EBCE employees engaged in Approved Product

transactions, counterparty credit evaluation, or oversight of the foregoing are barred from direct investment in any company with whom EBCE has consummated any Approved Product transaction within the last two (2) years. Further, such employees must divest existing direct investments in Approved Product counterparties prior to engaging in any negotiating, evaluating, transacting or oversight functions. The ban on investment and requirement for divestment applies regardless of whether or not the investment would be of sufficient size (\$2,000) to require disclosure on FPPC Form 700. As used in this section, a “direct” investment means an investment which, if of sufficient size, is of a nature that would constitute an “investment” pursuant to the California Political Reform Act.

EBCE employees supervising staff who are subject to this policy are responsible for routinely reviewing the most recent Form 700 of each such staff member for the purpose of identifying potential financial conflicts of interest. Updated copies of Form 700 shall be given to the supervisor/manager by the EBCE Conflict of Interest Filing Officer designated in the EBCE Conflict of Interest Code. The EBCE legal counsel will assist in reviewing these forms and providing legal advice in connection with such reviews on request.⁴

12. Policy Review

Prudence is required in implementing any and all policies and procedures. Market and industry conditions, technology and risk tolerances tend to change over time. Therefore, the ERMP and these Regulations should be reviewed annually, or as necessary, in order to make adjustments in response to changes in business objectives and/or industry conditions. All recommended amendments to the ERMP are to be reviewed by the ROC and presented to the Board for final review and approval. Changes to these Regulations shall be reviewed and approved by the ROC.

⁴ Non-staff ROC members shall not be subject to the requirements of Section 11 since their oversight functions are generally not transactional and company specific. Non-staff ROC members may be subject to conflict of interest compliance requirements at each of their own organizations.

Part II: Counterparty Risk Management

13. Organizational Philosophy Toward Counterparty Risk

13.1. Objective and General Risk Policy

EBCE's wholesale energy market activities are directed toward the goal of providing Energy, capacity, transmission and related services to its Participating Members at the lowest possible cost consistent with an acceptable level of risk. EBCE fulfills its supply obligations by using generating assets, or by contracting with counterparties for the purchase or sale of such assets on a long-term or short-term basis. Effective wholesale counterparty management and credit analysis is essential to mitigate the counterparty risks associated with Approved Product transactions in the Energy wholesale markets. The objective of the wholesale counterparty risk policy is to preserve EBCE's capital, liquidity and supply reliability by limiting counterparty credit risk and counterparty concentration to acceptable levels.

13.2. Expectations of the EBCE Board

Analytical procedures for granting open lines of credit and managing counterparty exposures are required. However, EBCE recognizes that the models used in managing credit risk are not predictive; they are explanatory. Credit risk management models cannot predict individual credit events or collective credit events. The Finance and Administrative Services Department is expected to manage counterparty risks to acceptable levels established by the ROC and approved by the Board. The Board recognizes that EBCE is generally a net buyer of Energy. Exposure to wholesale counterparty credit risk will normally be greater in periods of rising market prices due to higher replacement costs in a rising market. On the other hand, in high hydrological conditions, where excess generation may be available for sale on the wholesale market, EBCE is exposed to greater counterparty credit risk if counterparties fail to take delivery, or if they fail to pay for power delivered.

14. Counterparty Risk Definitions

14.1. Counterparty Risk

Counterparty risk is defined as the exposure to economic loss resulting from default by another party to a contract. Such risk exists in all financial and commodity markets and can be distinguished from other financial risks such as market risk, operational risk and regulatory risk.

Counterparty risk affects both contracts requiring physical settlement and those specifying monetary settlement. Contractual payments can result from purchases or sales. Under a sale, the counterparty owes cash and a receivable is created. The holder of the receivable is at risk of financial loss if the receivable is ultimately uncollectible. Under a purchase, the counterparty is obligated to deliver a product. However, the counterparty may also be required to reimburse the purchasing party for financial loss in the event of delivery failure. Therefore, the purchasing party is at risk of financial loss if the counterparty is unwilling or unable to reimburse for financial losses.

The ERMP states that for all fixed price Approved Product transactions, the counterparty must possess a public credit rating of at least a BBB- (or equivalent investment grade rating) by a nationally recognized statistical rating organization (NRSRO). EBCE staff may consider counterparties with a rating below investment grade or counterparties with no NRSRO rating on a case-by-case basis with the approval of the ROC. If ratings differ between NRSRO's, the lowest available rating will be used for underwriting purposes.

14.2. Credit Risk

For the purchaser of an Energy related product, credit risk is defined as the difference between the contracted price and current market price of a contracted product. If the current market price is greater than the contracted price, a positive MTM exists, thus exposing the purchaser to credit risk in the event of supplier default.

If the current market price is less than the contracted price, a negative MTM exists. The purchaser has credit exposure with a negative MTM if the deal is subject to termination or MTM damages. There is no credit exposure with negative MTM if the deal is subject to one-way liquidating damages and the purchaser is not the defaulting party.

If the seller has a positive MTM position in a transaction, the seller is exposed to profit risk in the event the counterparty defaults, where the seller would lose its opportunity to above market revenue. In contrast, if the seller has a negative MTM position in a transaction, the seller is exposed to liquidity risk and may be subject to margin calls if the MTM exceeds established credit limits.

15. Underwriting Standards

All transacting counterparties shall be reviewed for creditworthiness. This review shall include:

- A search of public debt and implied unsecured credit ratings as published by a NRSRO such as Standard & Poor's, Moody's Investor Services and Fitch;
- Review of at least the two (2) most recent years audited financial statements receiving an unqualified opinion from a certified public accounting firm; and
- Other information, as available, from news services, trade publications, financial websites, etc.

For transacting counterparties without NRSRO ratings, EBCE credit staff shall determine an implied rating according to EBCE's internally-developed methodology and rating scale. Transacting for all counterparties shall require an implied "investment grade" rating of BBB- or its equivalent, at a minimum. EBCE credit staff may consider counterparties with a rating below BBB- or its equivalent on a case-by-case basis. All sub-investment grade rated counterparties require ROC approval before transacting and may require credit assurances or other consideration.

16. Credit Risk Measurement

Credit risk exposure should be measured as: (1) current exposure, and (2) potential exposure. Current credit risk exposure to a single counterparty is defined as the sum of: (1) the dollar value of all amounts

invoiced and unpaid, and (2) the dollar amount of all uninvoiced deliveries. Potential credit exposure is the MTM value of all forward contracts from today forward, as reported by the business unit.

Total credit risk exposure is the sum of the variables shown in the formula below, less all offsetting amounts that are supported by legally binding netting agreements or available collateral. EBCE's credit exposure measurement is defined by the following formula:

$$\text{Credit Exposure} = \text{Current and Prior Month Sales (Net Sales}^5) + \text{MTM} - \text{Credit Enhancements}$$

In addition, potential credit risk exposure is captured by the CVaR statistic. The CVaR statistic represents the maximum dollar loss at a 95% confidence level within a certain time, due to volatility in market prices if the counterparty defaults. CVaR is a dollar estimate of the risk that potential changes in market price would result in increased credit exposure for all forward contracts. CVaR shall be presented as supplementary information for credit benchmarking. EBCE's CVaR calculation methodologies are documented in Appendix 8 of these Regulations.

17. Credit Enhancements

Customers or counterparties that do not meet the minimum requirements for an extension of an open line of credit, as set forth in Section 15 of these Regulations, must post at least one (1) of the following types of security prior to the execution of transactions:

17.1. Guarantees and Surety Bonds

Counterparties may provide a guarantee from a third party, or parties, which meets the creditworthiness requirements set forth in Section 15 of these Regulations. If a counterparty provides a guarantee, the amount of any open line of credit will be determined through an analysis of the financial strength of the guarantor. The guarantor will be considered secondarily liable for the obligations of the counterparty. In the event a surety bond is provided, EBCE will consider the surety bond as primarily liable for the obligations of the counterparty. All guarantees must be approved as to content and form by EBCE's legal counsel.

Preferred terms for guarantees include, but are not limited to:

- A statement that the guarantee is one of payment and not of collection;
- A statement that the guarantor agrees to pay the guaranteed obligations on the date due;
- A statement that the guarantor's obligations under the guarantee rank pari passu with its senior unsecured debt obligations;
- A statement restricting the guarantor's right to terminate the guarantee, and any termination must still guarantee existing exposures as they may exist;
- A statement that the guaranteed obligations are unconditional, irrespective of value, genuineness, validity, waiver, release, alteration, amendment, and enforceability of the guaranteed obligations, and a statement that the guarantor waives the right of set-off, counterclaim, etc;

⁵ Provided there is a netting agreement with the counterparty. Otherwise, it will be the receivable portion only.

- A statement that the guarantee reinstates if any guaranteed payment made by the primary obligor is recaptured as a result of the primary obligor's bankruptcy or insolvency;
- A statement that the guarantor waives its right to subrogation until the guaranteed obligations are paid in full;
- A statement that the guarantee is binding on successors of the guarantor and a statement that EBCE is a beneficiary of the guarantee;
- A statement that the guarantee will be interpreted under either New York or California law; and
- A statement that the guarantor has subjected itself to jurisdiction and service of process in the jurisdiction in which the guarantee is to be performed (i.e., State of California).

Exceptions to the above concepts and/or acceptance of guarantees from entities domiciled outside the U.S. or Canada require ROC approval.

17.2. Letter of Credit

Counterparties may provide an irrevocable Letter of Credit in an amount sufficient to cover the amount in excess of the credit limit approved by EBCE at the date the transactions are entered into (e.g., MTM in excess of credit limit). Letters of Credit must have a term of at least 45 days past the term of the transactions. Letters of Credit must be issued by a domestic bank (or domestic branch of a foreign bank) that has a senior debt rating of at least "A" or its equivalent from a NRSRO. Approved Banks should be monitored for any potential Letter of Credit concentration between EBCE and various counterparties.

Exposure to any single institution will be limited to 20% of EBCE's total credit exposure, unless exposure is derived from a few transactions whereby demanding Letter of Credits from several institutions would be unreasonable for the counterparty. If credit risk exposure is derived over the entire portfolio of transactions, the 20% rule will apply. Any exposures greater than 20% must be approved by the ROC. All Letters of Credit must be approved as to content and form by EBCE's legal counsel.

17.3. Prepayments

Counterparties may provide a prepayment or cash margin deposit in an amount that is sufficient to cover the related transactions. Discounts for prepayment, consistent with industry standards, may be applied to the sum owed as authorized by the Executive Director.

18. Quality Assessment

18.1. Counterparty and Credit Analysis

Middle Office staff are responsible for ensuring a standardized credit screening process for all counterparties. All counterparties must be reviewed for financial creditworthiness according to these guidelines.

Middle Office staff will submit a credit review report to the appropriate approval authority, depending on the level of credit requested, for consideration and action. For agency-rated counterparties, Middle Office staff may elect a rating similar to one derived by a NRSRO, and waive initial review

requirements, if the counterparty is recognized and established in the industry. As a result, a more stringent review process should be followed for those entities that do not possess a NRSRO rating and/or have marginal financial capacity.

All counterparty credit lines and credit reviews will be submitted to the appropriate authority level as authorized in Section 19 of these Regulations. ROC actions can result in the approval or rejection of a proposed counterparty, or in an amendment to credit limits approved under delegated approval authorities. Approved counterparties will be grouped into three tiers. A counterparty's tier status will be based on the credit evaluation matrix found in Table 1. More frequent monitoring may be required if a counterparty is subject to the possibility of a credit event (e.g., if their credit rating falls one full letter grade or greater, or if their credit rating falls below investment grade), or if industry factors dictate.

Table 1

	Credit Evaluation Matrix		
	Tier 1	Tier 2	Tier 3
Criteria	Bilateral master agreement or transactions of one (1) month or longer within past two (2) years	No greater than prompt month transactions within past two (2) years	No transactions in past two (2) years
Type of Trading	All	Prompt month or less	Day-ahead (Prescheduling time frame)/Real-time
Credit Evaluation Requirement	At least annually	At least biennially, or as needed	None
External credit and EDF ratings checked	For RFPs and at least annually	Annually	Annually
Credit Limit	See Section 19	\$500,000	\$100,000
Event Monitoring	On-going	On-going	On-going

18.2. Credit Limits

Once a counterparty has been determined to be creditworthy, a credit limit will be proposed. An open

line of credit may be extended up to the lesser of 5% of the counterparty’s adjusted tangible net worth⁶ or EBCE’s maximum counterparty credit limits. In the case of municipal or public organizations, an open line of credit may be extended up to 10% of average free cash flow⁷ for the prior two (2) years not to exceed EBCE’s maximum counterparty credit limits.

<u>NRSRO/EBCE Internal Rating</u>	<u>Maximum Counterparty Credit Limits</u>
AA- and above	\$ 35 million
A+ to A-	\$ 25 million
BBB+	\$ 15 million
BBB	\$ 10 million
BBB-	\$ 5 million
BB+ and below	\$100,000 per Section 19.3

For example, if a municipal counterparty qualifies for a credit limit of \$10,000,000 based on the cash flow test (e.g., 10% of avg. free cash flow for past two (2) years), but only qualifies for an EBCE rating of BBB-, then the maximum policy limit allowed would be \$5,000,000.

Although a counterparty may qualify for a certain maximum credit limit, anticipated transaction volumes and other business factors may prompt the selection of a lower limit that is considered more appropriate. As a result, the credit limit methodology provides limit ceilings while allowing flexibility in response to normal business activities.

18.3. Concentration Limits

In addition to maintaining credit limits, EBCE staff shall strive to diversify transactions among counterparties. EBCE staff shall document the business reasons (e.g. differences in bid price, lack of other qualified suppliers, etc.) for awarding contracts to counterparties with high concentrations of credit exposure.

19. Approval Authorities

19.1. Credit Authorization

Approval authorities are based on the level of business experienced by EBCE on a historical and current basis within limits allowed under the Regulations. Authority to establish credit limits is segregated as follows:

Director of Procurement, Finance or Administrative Services:	Up to \$ 20Million
---	--------------------

⁶ Tangible Net Worth (TNW) = shareholder equity – goodwill – intangible assets – receivables from officers – investments in other trading companies – off-balance sheet liabilities, etc.

⁷ Free Cash Flow = net income + non-cash charges such as depreciation + or - changes in accounts receivable, inventory, prepaid expenses, accounts payable, and accrued liabilities – cash dividends (general fund transfer) + net borrowing – capital expenditure.

Executive Director	Up to \$ 50 Million
ROC:	Up to \$ 60 Million
Board:	\$ 60 Million +

The maximum amount of any open line of credit to be extended to any customer or counterparty shall not exceed \$50 million unless authorized by the ROC. If credit lines exceeding \$60 million are anticipated, approval by the Board is required.

19.2. Increases to Wholesale Counterparty Limits

Any increase to an existing open line of credit must have the written approval of the Director of Finance and Administrative Services, the Executive Director or the ROC, within the authorized limits stated in Section 19.1. A sign off sheet shall be used to ensure written approval according to the limits authorized by this Regulations.

19.3. Credit Review Exceptions

Wholesale counterparties not subject to the above credit review criteria include those associated with day-ahead and current day purchases where risk associated with market movements is minimal. Sales transactions within the day-ahead and current day can be consummated with a counterparty that has not been assigned a pre-approved credit limit if the counterparty maintains at least a BBB-/Baa3/BBB- rating from an NRSRO. Such transactions may not exceed \$250,000 per counterparty.

If a counterparty or guarantor does not maintain any NRSRO rating, and if a counterparty credit review has not been performed in the past 24 months, a policy limit of \$100,000 in aggregate net receivables per counterparty may be authorized, with the approval of the Executive Director, until a formal review can be completed. These individual non-rated counterparty limits are subject to a total net receivable portfolio limit not to exceed \$1,000,000, in aggregate.

20. Wholesale Credit / Counterparty Management

20.1. Monitoring and Reporting Exposures

Middle Office staff are responsible for monitoring and reporting on the risk management program. A list of reports, which document trade positions, risk exposure, authorization and policy compliance, may be found in Appendix 7 of these Regulations. The credit exposure for each customer or counterparty described in these Regulations may be monitored according to concentration in the following areas: credit rating, counterparty, region, contract type, contract term and MTM exposure.

Middle Office staff are also responsible for communicating this information to management under the timelines outlined in Appendix 7 of these Regulations, and for establishing a violation reporting process to document exceptions to the ERMP or these Regulations. Exception Reports will document the nature of exception, and the actions taken to correct exceptions.

The credit risk reporting system should be integrated with the transaction processing system. This is generally an extension of the concept that credit risk assessment and reporting should be supported by

the normal transaction processing system. The credit system, should be integrated with the deal capture system and should not be a stand-alone system, or an add-on with manual interface.

20.2. Master Enabling Agreements

The use of master enabling agreements⁸ to document trading relationships with counterparties is considered to be the preferred practice and should be followed whenever reasonably possible. The general form of such master enabling agreements shall be approved by the Board upon recommendation of the ROC before any such master enabling agreement is used for any individual counterparty transaction. Transactions entered into under such contracts and agreements are subject to the requirements of these Regulations, and limited to Approved Products. The department managers are responsible for ensuring that master enabling agreements are developed in conjunction with legal counsel review, approved by the Board and used for the following transactions:

- The Western Systems Power Pool (“WSPP”) Agreement may be used as the master agreement for transacting Approved Products with WSPP members. The WSPP Agreement applies to all transactions between WSPP members unless the parties to a transaction expressly opt out of the WSPP Agreement.
- The Edison Electric Institute (“EEI”) Agreement, or its equivalent, as modified by a set of Board approved special provisions, may be used as the master agreement for transacting Approved Products. The EEI Agreement provides for an array of reciprocal credit and collateral requirements for each party, and includes negotiated provisions as specified on a “Cover Sheet”. The EEI Agreement can also be supplemented with specific annexes (e.g., Credit Annex, Collateral Annex, REC Annex).
- Transmission transactions shall be consummated under an Open Access Transmission Tariff or Board approved bilateral agreement.
- Master The International Swap Dealers Association (“ISDA”) Agreement, or its equivalent, may be used as the master agreement for transacting financial based Approved Products.

A master enabling agreement executed by EBCE and a counterparty provides the general terms and conditions for all transactions entered into with that counterparty. All master enabling agreements are to be executed and entered into in accordance with the ERMP and these Regulations, and with applicable EBCE policy and procedures.

Netting agreements should be incorporated into all counterparty agreements and transactions.

20.3. Premium Surcharge on Counterparties Without Master Enabling Agreement

Master enabling agreements require credit and performance assurances from a counterparty that provide protection against counterparty credit risk. In the event EBCE desires to transact with a counterparty without such assurances, a premium surcharge shall be imposed on the counterparty’s bid to compensate for its increased credit risk and allow for comparison of the relative prices, taking into account the varying credit risks which might be incurred. The following formula shall be used in calculating the surcharge:

⁸ The form and content of each master agreement must be approved by the Board.

$$\text{Premium Surcharge} = \text{Edf} * \text{Fwd} * 1.645 * \sigma$$

Where: (i) *Edf* is the expected default frequency of the counterparty, (ii) *Fwd* is the current forward price, (iii) σ is the market implied volatility (or standard deviation) of the commodity price, and (iv) 1.645 represents the number standard deviations where the price falls at a 95% confidence level.

Example of Premium Surcharge Calculation

A counterparty with a master enabling agreement where EBCE has accepted changes to its preferred terms, is bidding on EBCE's RFP for a NP-15 peak Energy product for the 3rd quarter. The current market forward price for the product is \$50/MWh, market implied volatility is 40%, and the expected default frequency for this counterparty is 0.55%. Therefore, a premium of \$0.18/MWh ($0.0055 * 50 * 1.645 * 0.4$) should be added to the counterparty's bid price for comparison with other bids.

20.4. Margin Calls

If a counterparty has exceeded a credit limit, the Middle Office is responsible for initiating a margin call if such action is authorized under the applicable master enabling agreement. Calling margin may include a request for cash collateral or other credit enhancement (i.e., letter of credit, etc.). A margin call is necessary when counterparty credit exposure exceeds an established credit limit. The appropriate timing of a margin call is not dictated by these Regulations. However, factors such as counterparty financial capacity, volume of business, overall portfolio concentration and market conditions should be considered. A margin call should be considered necessary if credit exposure exceeds the counterparty's limit by more than one ratings notch⁹. The same would apply if the counterparty suffers a ratings downgrade.

EBCE as a buyer or seller may be exposed to margin calls from counterparties. Middle Office staff must be aware of collateral thresholds assigned to EBCE by counterparties, and monitor these limits no less than monthly, and shall keep the Executive Director informed in the event of market volatility. EBCE may be exposed to margin calls if a significant level of purchases or sales is reached.

20.5. Transaction Authority

No new transactions are to be entered into with counterparties that have exceeded their credit limits unless: (1) the new transactions are used to mitigate (offset) existing exposure, and (2) if those transactions have prior approval of the Executive Director, or ROC within authorized limits as established in this Regulations.

21. Segregation of Duties

Controls over counterparty inputs and systems operations are of particular importance in ensuring the integrity of data used in counterparty risk control and management. In all cases the Middle Office will be responsible for managing the counterparty review and ratings process and all counterparty reporting. Front Office staff is responsible for recommending new counterparties to the Middle Office for review and approval

⁹ Notch as referenced by Nationally Recognized Statistical Rating Organization (e.g., from BBB to BBB+ represents one notch).

APPENDIX 1

DEFINITIONS

1. Definitions

Whenever used in these Regulations, the following terms shall have the following respective meanings, provided, capitalized terms used in these Regulations that are not defined in this Appendix 1 shall have the meaning indicated in Appendix A Master Definition Supplement of the CAISO Tariff:

- 1.1. “Approved Counterparty List” is a list of the active trading counterparties that have been authorized for trading, and that have been assigned an approved credit limit by the Middle Office or ROC.
- 1.2. “Approved Product” means transactions types or products that are authorized pursuant to these Regulations, as specifically identified in Appendix 6.
- 1.3. “Balance-of-Month Transaction” means a purchase or sale of electric Energy, capacity and/or other related attributes for a term not greater than one month to be performed or delivered within the current or next succeeding calendar month.
- 1.4. “California Independent System Operator Corporation” or “CAISO” means the non-profit public benefit corporation responsible for the provision of fair and open transmission access, and maintaining reliable and efficient operation of that portion of the electric grid contained within its defined balancing authority area, pursuant to the California Public Utilities Code, or its successor entity.
- 1.5. “CAISO Tariff” means the CAISO FERC Electric Tariff.
- 1.6. “Call Option” means an option that gives the buyer (holder) the right, but not the obligation,
to buy a futures contract (enter into a long futures position) for a specified price within a specified period of time in exchange for a one-time premium payment. It obligates the seller (writer) of an option to sell the underlying futures contract (enter into a short futures position) at the designated price, should the option be exercised at that price.
- 1.7. “Cap and Trade Program” means CARB’s Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 5 (commencing with section 95800), as such may be amended from time to time, or
(ii) other GHG compliance obligations, including but not limited to, federal, regional, state, or local jurisdictions.
- 1.8. “CARB” means the California Air Resources Board, or its regulatory successor.

- 1.9. “CARB Offset Credit” means a tradable compliance instrument issued by CARB that represents a GHG reduction of GHG removal enhancement of one metric ton of carbon dioxide equivalent.
- 1.10. “Commercial Compliance Policy” means the Commercial Compliance Policy adopted by the Board, as such may be amended from time to time.
- 1.11. “Congestion Revenue Right” or “CRR” means a financial instruments made available through the CAISO’s CRR Allocations and Auctions. CRRs are acquired primarily for the purpose of offsetting integrated forward market transmission congestion costs that are incurred in the day-ahead market on CAISO managed transmission paths.
- 1.12. “Cost of Value at Risk” or “Cost VaR” means a calculation that summarizes the expected maximum “cost” exposure over a target horizon within a given confidence level.
- 1.13. “Counterparty” means a party on either side of a transaction (i.e., purchasing counterparty as opposed to a selling counterparty).
- 1.14. “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.15. “CRR Allocation” means the process of allocating CRR source-to-sink combinations, both annually and monthly, based on nominations by registered Candidate CRR Holders.
- 1.16. “CRR Auction” means the awarding of bids for CRR source-to-sink combinations, by the CAISO, made by Candidate CRR Holders based on criteria established by the CAISO.
- 1.17. “CVaR” means credit value at risk.
- 1.18. “Board of Directors” of “Board” means the EBCE Board of Directors, which is made up of an elected official from each of the participating jurisdictions and one representative from the EBCE Community Advisory Committee.
- 1.19. “EBCE” means East Bay Community Energy.
- 1.20. “Emission Allowance” means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.
- 1.21. “Energy” means an electric charge that lets work be accomplished.
- 1.22. “ERMP” means the Energy Risk Management Policy.

- 1.23. "FERC" means the Federal Energy Regulatory Board, or its regulatory successor.
- 1.24. "Forward Power Transaction" means an Energy transaction that starts beyond the Balance-of-Month.
- 1.25. "Executive Director" means the Executive Director of EBCE.
- 1.26. "Greenhouse Gas" or "GHG" includes, but is not limited to, carbon dioxide ("CO₂"), methane ("CH₄"), nitrous oxide ("N₂O"), sulfur hexafluoride ("SF₆"), hydro fluorocarbons ("HFCs"), perfluorocarbons ("PFCs"), and other fluorinated gasses.
- 1.27. "GHG Compliance Instrument" means any instrument, including but not limited to, Emission Allowance, CARB Offset Credit, or Sector-Based Offset Credit that can be used to fulfill a GHG emissions compliance obligation.
- 1.28. "Letter of Credit" means a document, typically from a bank, assuring that a seller will receive payment up to the amount of the letter of credit, as long as certain documentary delivery conditions have been met.
- 1.29. "Long Term Transaction" means a purchase or sale of natural gas, electric power, capacity, transmission and/or other related attributes to be performed or delivered for a duration longer than a Balance of Month Transaction.
- 1.30. "MTM" means Mark-to-Market. MTM is a measure of the fair value of accounts that can change over time, such as assets and liabilities. MTM aims to provide a realistic appraisal of an institution's or company's current financial situation. The accounting act of recording the price or value of a security, portfolio or account to reflect its current market value rather than its book value.
- 1.31. "Natural Gas" means a flammable gas, consisting largely of methane and other hydrocarbons, occurring naturally underground (often in association with petroleum) and used as fuel.
- 1.32. "NRSRO" means nationally recognized statistical rating organization.
- 1.33. "Participating Member" means a participating jurisdiction within the East Bay Community Energy program, and which receives certain wholesale and retail services from EBCE.
- 1.34. "Prompt month" means the next full calendar month beyond the current month.
- 1.35. "Put Option" means an option that gives the buyer, or holder, the right, but not the obligation, to sell a futures contract at a specific price within a specific period of time in exchange for a one-time premium payment. It obligates the seller, or writer, of the option to buy the underlying futures contract at the designated price, should an option be exercised at that price.

- 1.36. "Regulations" means these Energy and Counterparty Risk Management Regulations.
- 1.37. "Renewable Energy Credit" or "REC" is the (i) right to the environmental benefits from generating electricity from renewable Energy sources that can be sold and traded and the owner of the REC can legally claim to have purchased renewable Energy, or (ii) as set forth in California Public Utilities Code §399.12, as such can be amended from time to time.
- 1.38. "Renewable Energy Products" means any combination of Energy, capacity, RECs, or other environmental attributes produced by a generation facility or resource that is eligible to satisfy applicable renewable Energy mandates as defined by federal, state, or local jurisdictions.
- 1.39. "Resource Adequacy" means the resource adequacy requirements established for load serving entities by the their respective governing body having jurisdiction.
- 1.40. "ROC" mean the Risk Oversight Committee.
- 1.41. "Sector-Based Offset Credit" means a credit issued from a sector-based crediting program once the crediting baseline for a sector has been reached.
- 1.42. "Speculation" means the practice of engaging in risky financial transactions in an attempt to profit from fluctuations in the market value of a tradable good such as a financial instrument. Speculation can in principle involve any tradable good or financial instrument.
- 1.43. "Transmission" means the bulk transfer of electrical Energy, from generating power plants to electrical substations located near demand centers. This is distinct from the local wiring between high-voltage substations and customers, which is typically referred to as electric power distribution.
- 1.44. "Wholesale Energy Services Provider" means the Northern California Power Agency ("NCPA").

APPENDIX 2

RISK OVERSIGHT COMMITTEE

1. Roles and Responsibilities

1.1. ROC Members

All members of the ROC have the following responsibilities:

- Oversee implementation of risk strategy of EBCE as such pertains to transaction activities;
- Advise the Executive Director on educational needs on risk management at all levels within EBCE;
- Review proposed changes to the ERMP and these Regulations by other ROC members;
- Attend all ROC meetings or ensure that fully-briefed alternates attend, including meetings requested by a member requiring ROC approval in a timely fashion; and
- Monitor key activities of the Front Office, Middle Office and Back Office as such pertain to transaction activities.

1.2. ROC Advisors

EBCE's legal counsel has the following responsibilities:

- Reviewing and approving all forms of contracts used by EBCE to consummate transactions of Approved Products;
- Determining what legal documentation is required, and proposing monitoring and review procedures to ensure legal and regulatory compliance with the ERMP and these Regulations; and
- Reviewing processes and procedures associated with transaction activities to ensure legal compliance with all local, state and federal laws and regulations.

ROC members' and all advisors' roles and responsibilities are detailed in the Table 2 below:

**Table 2
Roles and Responsibilities**

Responsibility	Executive Director	Director Admin. Services	Director Power Resources	Middle Office	Legal Counsel
Oversee implementation of EBCE's risk strategy.	✓	✓	✓	✓	
Verify to ROC that rules related to transacting authority and speculations are complied with by Front Office.				✓	
Verify to the ROC that all adopted Regulations are consistent with applicable law.					✓
Verify that Front Office and Back Office staff are in compliance with all policies and regulations.				✓	
Verify that the ROC is provided the most accurate forecast possible of market trends and a summary of stress testing and sensitivity analysis.				✓	
Ensure to the ROC that operational performance of the Front, Middle and Back Offices are in conformance with policies approved by the Board.	✓			✓	
Verify to the Executive Director that operational performance of the Front, Middle and Back Offices are in conformance with the ERMP and these Regulations.		✓	✓	✓	
Verify that the ROC is provided with an accurate report on Front Office operations.			✓	✓	
Ensure to the ROC that the Middle Office reporting is accurate and in compliance with Middle Office policies.		✓		✓	
Verify that the ROC is provided an accurate reporting of all transactions.				✓	
Ensure that the ROC is provided accurate reporting of risk measures and performance monitoring (including MTM, Cost VaR, CVaR) and compliance (limits, transaction authority, transaction type, instrument type).				✓	
Verify to the ROC that all approved contracts and enabling agreements have followed a process that is consistent with applicable law.					✓
Ensure that the ROC is provided with an accurate report on all Middle Office operations,		✓		✓	

especially with regard to market and credit exposure.					
Ensure that the ROC is provided with accurate reports on any transactions which exceeded limits, and proposed actions on strengthening compliance procedures and recommendations for corrective action.				✓	
Ensure that the ROC is provided with reporting that is consistent with the ERMP and these Regulations.	✓	✓	✓	✓	
Provide accurate reports to the ROC on any discrepancies between the Back Office settlement and reconciliation with the deal capture system.		✓			
Provide accurate reports on the risk management program to the Board.	✓	✓	✓	✓	
Provide timely support and legal advice to the Front, Middle and Back Office operations and to the ROC.					✓
Provide accurate reports on trading operations and all transactions carried out since last ROC meeting and summary of current and future transaction strategies.			✓		
Provide accurate reports on operational performance of Front and Back Offices with strategic objectives and provide solutions for violations.				✓	
Review proposed changes to ERMP by other ROC members.	✓	✓	✓	✓	✓
Advise ROC on analysis of potential enabling agreements with regard to Front and Back Office operations.	✓	✓	✓		
Advise ROC on consideration of pending enabling agreements and large contracts with regard to market and credit risk.			✓	✓	
Advise ROC on proposed portfolio and trader limits.	✓	✓	✓	✓	
Attend all ROC meetings or ensure that a fully briefed delegated representative is present.	✓	✓	✓	✓	✓
Advise ROC on proposed changes to Middle Office procedures.		✓		✓	
Provide ROC with “market view” of future market conditions and results of market models.			✓		
Provide ROC with “market view” of financial market conditions and implications on an as needed basis.		✓			

Monitor key activities of Front, Middle and Back Offices.		✓	✓	✓	
Present ROC-approved recommendations for changes to ERMP for consideration by the Board.	✓				
Brief the ROC on transaction operations with special regard to transacting authority and speculation issues.		✓	✓		
Advise ROC on education needs on risk management at all levels within EBCE.	✓	✓	✓	✓	✓
Serve as Chairperson for ROC.	✓				
Serve as official spokesperson for the ROC reports to the Board.	✓				
Determine documentation and legal review requirements to all processes are consistent with applicable law.					✓
Ensure Front and Middle Offices, and Legal Counsel participate on new product or transaction type development team.		✓	✓	✓	✓
Propose change to Front and Back Office Regulations.	✓	✓	✓	✓	✓

APPENDIX 3 AUTHORIZED CRR TRANSACTING GUIDELINES

1. Congestion Revenue Rights Transacting Guidelines

Congestion Revenue Rights are used by CAISO market participants to hedge against the cost of congestion associated with delivering resources to serve load obligations within a locational marginal price (LMP) market.

1.1. CRR Allocation Process

EBCE staff will participate in the CRR Allocation and Auction markets as follows:

EBCE staff nominates its CRRs during the allocation process in general conformance with the following methodology:

- CRR nominations are limited by the seasonal/monthly eligible quantities.
- CRR valuation of source/sink combinations are based upon the historical congestion component of the LMP. If access to an Integrated Forward Market (IFM) pricing model becomes available, simulated prices may be used in the CRR valuation process.

CRRs that have EBCE generation or scheduling points as sources, and the DLAP_PGAE-APND pricing node as the sink, are nominated first when the expected average congestion is statistically greater than zero, and no one historical period exhibited large negative congestion. Nominated amounts are equal to or less than expected generation in order to create a perfect or partial hedge. When expected congestion is low, nominated amounts are low and increase as expected congestion increases.

- After exhausting possible EBCE source/sink pairs, then nominations may be made from non-EBCE source/sink combinations that statistically have positive average congestion across historical periods with, no substantial negative congestion, as follows:
 - Rank the CRRs by congestion value.
 - Nominate the highest valued CRRs first, working down the possible Source-Sink combinations until the seasonal/month eligible quantities are exhausted.
 - Avoid large positions at any one non-EBCE sourced CRR.
 - Avoid clustered CRRs (e.g., source CRRs in the same geographic area that would expect to have the same or similar congestion component price).
- Avoid nominating both EBCE and non-EBCE sourced CRRs when data and experience shows that the CRR will not clear the allocation feasibility test.
- Once the above selection criteria results in a nomination portfolio, and prior to final submission, EBCE stress tests the portfolio on historical data for any large negative single period positions and if found removes that position prior to submission.

1.2. CRR Auction Process

EBCE staff bids into the CRR Auction in general conformance with the following methodology:

- Bids are made only to unwind CRRs obtained in the allocation process that are non-hedged, or are expected to have a negative value due to operational changes.
- Prices on the bid curves start at zero and go negative.
- Bids that clear in the auction result in revenue to EBCE and reduce overall risk by unwinding existing un-hedged allocation portfolio positions.
- Auction revenue is left in the EBCE CRR collateral account until the monthly/seasonal period is over.

APPENDIX 4

AUTHORIZED APPROVED PRODUCT TRANSACTION LIMITS

1. Approved Product Transaction Limits

1.1. Executive Director

The Executive Director is assigned the following primary responsibilities and transactions limits:

- Developing and approving all long-term supply strategies. Approval authority for long-term strategic plans and modeling parameters is not limited by fiscal constraints.
- Approval of financial authority limits associated with Approved Product transactions as recommended by the ROC.
- Authority for individual transactions as authorized under Board approved agreements or resolutions.
- Approval authority for Approved Product transactions up to, but not greater than, 115% of a Participating Member's annual load forecast, including executed fuel transactions that have been made to support generation operations up to 115% of load.
- All optimization strategies, statistical/procedural risk management methods (including risk tolerances), and resulting exposures.
- Approval of premiums and terms associated with the use of financial instruments on a case-by-case basis.

1.2. Director of Power Resources

The Director of Power Resources is assigned the following primary responsibilities and transaction limits:

- Approval authority for Approved Product transactions up to, but not greater than, 115% of a Participating Member's annual load forecast, including executed fuel transactions that have been made to support generation operations up to 115% of load.
- Authority to enter individual transactions with a term not to exceed 24 cumulative months, and not to extend past 60 consecutive months from the calendar month following the date of the transaction.

1.3. Scheduler and Planner (EBCE's Wholesale Energy Services Provider)

- Planning functions to determine the appropriate transactions necessary to maintain load/resource balance from day-ahead to Balance-of-Month in duration, and prompt month beginning 10 days prior to the conclusion of the current month.
- Approval authority for Approved Product transactions up to, but not greater than, the hourly peak load forecast, including executed fuel transactions that have been made to support generation operations, or to support economic optimization of generation assets.

- Authority to enter individual transactions with a term not to exceed balance-of-month, and prompt month beginning 10 days prior to the conclusion of the current month. Transacting is limited to variability between supply requirements and available resources.

Approved Product Transaction Limits Summary

	Executive Director	Director of Power Resources	Scheduler / Planner EBCE Wholesale Energy Services Provider
Transaction Term Limits:	As authorized under Board approved resolutions, programs or project agreements.	Transactions for a term up to 24 cumulative months, within the next 60 consecutive months.	Day-ahead to balance-of-month. Prompt month beginning 10 days prior to conclusion of current month.
Transaction Volume Limits:	Approved Product volume limits up to 115% of annual load forecast.	Approved Product volume limits up to 115% of annual load forecast.	<ol style="list-style-type: none"> 1. Approved Product volume limits up to Hourly peak load forecast. 2. Transacting limited to variability between load requirements and available resources. 3. Fuel transactions for power plant consumption limited to volumes necessary to support generation operations up to 115% of load.

APPENDIX 5

NEW PRODUCT DEVELOPMENT PROCEDURES

1. New Product Development

When the Front Office staff request to transact a new product type, instrument or strategy, several control processes must take place to ensure EBCE can identify, manage, control and report on the risks from the new transaction.

The process for submitting a request for a new Approved Product type is as follows:

1. The Front Office staff notifies Middle Office staff of his/her desire to enter into a new type of transaction. The Front Office staff are responsible for reviewing the transaction details, including all the key risk, pricing and operational elements of the transactions with Middle Office staff. Middle Office staff assume responsibility for undertaking all the risk and processing implications of the proposed transaction.
2. The Front Office staff is responsible for preparing a new product report for review and consideration by Middle Office staff. This report requires the Front Office staff to document all of the risk attributes of the transaction, and how they will be controlled (primarily focusing on market and credit risk).
3. Middle Office staff will review the new product report and begin the process of determining EBCE's ability to record, process and manage the transaction.
4. Middle Office staff first ascertains if the Front Office staff has the ability to accurately price the transaction. Secondly, Middle Office staff determines whether the risk of the transaction can be accurately measured. In either case, if the Front Office staff does not have the capability to price or measure the risk of the transaction, the Front Office staff is notified, and the Front Office staff must discuss the model development or purchase options with the Middle Office staff before the transaction can be authorized.
5. If the Front Office staff can price and model the risk of the new product, then the Middle Office staff will evaluate the Front Office's operational readiness to execute the transaction. The Middle Office staff will also evaluate the Middle Office's and Back Office's readiness to transact the new product. If any outstanding issues or concerns are identified by the Middle Office staff as part of the review, the issues or concerns identified must be resolved prior to transacting the new product.
6. The Middle Office staff then gathers all of the new product report summaries, and prepares a written recommendation to the ROC for consideration and approval. This written recommendation will consider whether or not the risks and potential control considerations, if any, warrant entering into the new product type.

New Product Approval Checklist

Risk/Task to be Completed During the Analysis	Primary Accountability
Business Strategy	
Sponsor new strategy	Front Office
Understand and document the economics of the new strategy	Front Office
Define the resource requirements for the new product	Front Office
Regulatory and Legal Risks	
Identify applicable California and local regulatory restrictions for product or business	Legal Counsel
Verify counterparty power and authority to enter into activity	Legal Counsel
Determine what legal documentation is required	Legal Counsel
Propose monitoring and review procedures to ensure legal/regulatory compliance	Legal Counsel
Designate the supervisor responsible to ensure that the product is sold only to counterparties for which it is suitable	Front Office
Determine if sufficient resources are available to support regulatory and legal requirements	Front Office
Market Risks	
Identify and analyze market risk	Front Office/Middle Office
Specify management's intention (Hold positions, actively trade or hedge)	Front Office
Propose fair market value and risk measurement methodology	Middle Office
Determine hedging approach	Front Office
Establish product trading limits	Middle Office
Determine impact on total position limits	Middle Office
Establish special interim limits on control the new product expansion in a measured, granular manner	Middle Office
Define and recommend management reporting requirements	Middle Office
Present report format for communication of positions on a timely basis	Front Office
Check if the new product involves commitments, guarantees, contingencies or any other off-balance sheet items	Middle Office
Credit Risks	
Identify and analyze credit risk of product	Middle Office
Develop methodology for capturing facilities and counterparties in the credit reporting system and measuring credit risk and concentration exposures	Middle Office
Define procedure for monitoring credit exposure	Middle Office
Identify target counterparties, determine suitability and request credit facilities	Middle Office
Determine proper procedure for perfecting collateral, netting agreements	Middle Office
Recommend maximum credit exposure limits for counterparties	Middle Office
Develop capability to report daily/weekly credit limit compliance	Middle Office
Check if the new product involves commitments, guarantees, contingencies or any other off-balance sheet items	Middle Office
Operational Risks	
Verify consistency with ERMP	Front Office/Middle Office
Define transaction tracking plan and procedures	Middle Office
Develop required deal sheet modifications	Front Office
Settlement procedures – how will transaction payment/billing be handled?	Back Office
Authorizations/approvals – what approval levels or delegation of authority is required?	Front Office/Middle Office
Develop procedure for transacting from start to finish	Front Office/Middle Office/Back Office

Note: Advice services in areas such as valuation, market/credit risk management, legal review, accounting/tax may also be sought and presented as part of this process.

APPENDIX 6 APPROVED PRODUCTS

1. Approved Products

The Energy and Energy related products that EBCE is authorized to transact are as follows:

Approved Products	Pre-Approved Examples	Authorization
1. Long Term Transactions for Energy	<ul style="list-style-type: none"> • Purchases of Energy to cover the forecasted supply shortage of the Participating Members • Sales of Energy amounts that are forecasted to be surplus to a Participating Member’s need • Liquidating “in the money” and “out of the money” transactions for optimization in accordance to a dual volume-VAR framework. 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.
2. Balance-of-Month Transaction for Energy	<ul style="list-style-type: none"> • Energy purchases/sales within defined term and volume limits • Loss of generation • Loss of transmission • Forecasting errors 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.
3. Day-Ahead and Real-Time Power Transactions Through a BAA (e.g., CAISO)	<ul style="list-style-type: none"> • Purchasing Energy from the CAISO day-ahead and/or real-time market to serve load • Selling Energy into the CAISO day-ahead and/or real-time market from generation resources 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.
4. Purchase/Sale of Capacity	<ul style="list-style-type: none"> • Short-term or forward purchases of capacity products (e.g., Ancillary Services and Resource Adequacy products) • Short-term or forward sales of capacity products (e.g., Ancillary Services and Resource Adequacy products) 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.
5. Purchase/Sale of Physical Call Options	<ul style="list-style-type: none"> • To cover potential supply deficiency due to unpredictable weather conditions (e.g., hydrological forecast error) • To balance load and resources in an illiquid market • To provide a hedge against a Participating Member’s net open position 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.

	<ul style="list-style-type: none"> • Sale of a hedged (with physical plant) call option 	
6. Purchase/Sale of Physical Put Options	<ul style="list-style-type: none"> • To hedge a surplus resource position • Sale of an option for the sole purpose of unwinding a purchase if economically advantageous 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.
7. Transmission	<ul style="list-style-type: none"> • Purchases/sales of firm and non-firm transmission capacity required for the delivery Energy 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.
8. GHG Compliance Instruments	<ul style="list-style-type: none"> • Purchases of Emission Allowances from bilateral trades, and from the CARB administered Cap and Trade Program auctions and reserve auctions to satisfy actual and/or forecasted GHG emissions compliance obligations attributed to EBCE generation and scheduling activities (e.g. imports) 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.
9. Renewable Energy Products	<ul style="list-style-type: none"> • Purchases of Renewable Energy Products to satisfy any requirement for such products under applicable law; Bilateral purchases are to be consummated under approved contract forms, follow approved credit risk limit procedures, and all other applicable risk management practices defined in this regulation • Sales of Renewable Energy Products for the sole purpose of eliminating a surplus 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations.
10. Congestion Revenue Rights	<ul style="list-style-type: none"> • Participation in the CRR Allocation and CRR Auction processes through the submission of nominations and/or bids in the Annual and/or Monthly Congestion Revenue Right Allocation and Auction processes administered by the CAISO 	<ul style="list-style-type: none"> • Authorized in accordance with the limits as set forth in these Regulations. • See Appendix 3 to these Regulations

APPENDIX 7 MANAGEMENT REPORTS

1. Management Reports

The following energy risk management reports shall be developed and presented as further described in the following table:

	Primary Responsibility			Report Frequency			
	Front	Middle	Back	Weekly	Monthly	Quarterly	Annual
Management Report							
Load and Resource Balance	X					X	
Portfolio Performance		X				X	
Portfolio Risk Exposure (Open Position Cost VaR)		X				X	
Exceptions Report		X				X	
Master Agreements	X						X
Policies Update		X					X
Transaction Position Detail		X			X		
MTM		X		X			
Credit Limit Status by Counterparty		X		X			
Trading Strategy	X				X		
Scenario Planning	X						X
Pending Agreements	X					X	
Energy Transaction Summary	X				X		
Non-Energy Transaction Summary	X				X		
Market Forecast	X				X		
Performance to Budget			X			X	
Procedure Exceptions			X		X		

1.1. Description of Management Reports

- Load and Resource Balance: Front Office report detailing total resources by source as compared to total load. Report shows supply surpluses and shortages. The Load Resource Balance report is developed weekly and presented to the ROC quarterly.
- Portfolio Performance: Middle Office report comparing the cost of the portfolio of contracts, to the market value of the portfolio (tracking what we paid for it to what it's worth now). This is the counterpart to the risk exposure report. The Portfolio Performance report is developed weekly and presented to the ROC quarterly.

- Portfolio Risk Exposure (Open Position Cost VaR): Middle Office report showing portfolio exposures by month due to price volatility. The Portfolio Risk Exposure report is developed weekly and presented to the ROC.
- Exception Report: Middle Office report summarizing current exception and violation reports. The Exception Report is developed quarterly presented to the ROC.
- Master Agreements: Front Office report summarizing the current set of approved master agreements by approved counterparty. The Master Agreements report is developed quarterly presented to the ROC.
- Policies Update: Middle Office report providing annual review of risk management policies and procedures and recommendations for updates. The Policies Update report is presented to the ROC.
- Transaction Position Detail: Middle Office report showing detail of Portfolio Performance report. Individual deal details showing MWh under contract and total dollars sorted by counterparty in support of the Portfolio Performance report are included in this report. The Transaction Position Detail report is presented to the ROC.
- MTM: Middle Office report showing MTM for life of deals by counterparty. The MTM report is developed weekly presented to Front Office and Back Office staff quarterly
- Credit Limit Status by Counterparty: Middle Office report showing counterparty credit limits, credit used and credit remaining. Special flagging of counterparties nearing their credit limits should also be shown. The Credit Limit Status by Counterparty report is presented to Front Office and Back Office staff weekly.
- Trading Strategy: Front Office report detailing trading strategies for various periods (e.g., daily, monthly, quarterly, future years). The Trading Strategy report is presented to the ROC quarterly.
- Scenario Planning: Front Office report detailing potential scenarios, expected result and probabilities. The Scenario Planning report is presented to the ROC quarterly.
- Pending Agreements: Front Office report detailing status of negotiations with potential counterparties on enabling agreements. The Pending Agreements report is developed weekly and presented to the ROC quarterly
- Energy Transaction Summary: Front Office report summarizing, by counterparty, Energy related transactions, both completed and contracted, involving Energy delivery. The Energy Transaction Summary report is developed weekly and presented to the ROC quarterly
- Non-Energy Transaction Summary: Front Office report summarizing, by counterparty, non-CAISO market Energy related transactions (puts, calls, options, RECs, GHG Compliance

Instruments and etc.) which do not involve (or are not specifically reliant on) Energy delivery. The Non-Energy Transaction Summary report is developed monthly presented to the ROC quarterly

- Market Forecast: Front Office report detailing forecast of market for periods (e.g. monthly, quarterly, future years). The Market Forecast report is presented to the ROC.
- Performance to Budget: Back Office report comparing incurred Energy costs to budgeted costs and existing contracts and uncovered exposure at market prices to remainder of budget. The Performance to Budget report is developed for EBCE staff weekly and presented to the ROC quarterly
- Procedures Exceptions: Back Office report noting any procedure exceptions. The Procedures Exceptions report is presented to the ROC quarterly

APPENDIX 8

RISK ASSESSMENT METHODOLOGIES

1. Risk Assessment Methodologies

1.1. CRR Valuation and Risk Assessment

CRR valuation is based upon historical data. EBCE values its CRR holdings individually and as a portfolio. Along with the average valuation, EBCE calculates the fifth (5th) percentile and 95th percentile position of each CRR Source/Sink combination.

EBCE performs a stress test on its CRR nominations. The stress test identifies the minimum, maximum and expected revenue for each available seasonal/monthly historical period.

The highest risk to EBCE's CRR allocation and auction portfolios is a collateral call. The CAISO does not net the portfolios, so the risk is a result of the separate collateral requirements for each portfolio. The expected value of EBCE's allocated CRR portfolio is positive. EBCE's auction portfolio consists only of unwound allocated CRR; as such, the expected value is negative. A collateral call could occur if an event increased the expected negative value of the auction portfolio even though the actual day-ahead market position would be offset by an increase in the expected value of the allocation portfolio.

EBCE mitigates this risk by leaving all its auction revenue in the CRR collateral account at the CAISO. EBCE's initial deposits of \$500,000 for the annual auction, and \$100,000 for the monthly also remain in the collateral account.

EBCE will only request a return of its auction revenue after the end of each monthly/ seasonal period, thereby maintaining usable secured available credit well in excess of its required collateral.

1.2. Mark-to-Market Methodology

The MTM calculation is a method to value future or forward open trading or hedge positions on an on-going basis to track market price changes. Once a position is taken in the market for some future delivery period, the value of that position must be monitored and managed on a routine basis. The volatility and volume of activity for a particular traded product will dictate how often it is necessary to update the MTM valuation of such product. EBCE will "mark" all open positions on no less than a MONTHLY basis, or as necessary, given market dynamics.

Long Term Transactions for future delivery or receipt of Energy. Several trading hubs host the majority of physically traded contracts such as Palo Verde (PV), California Oregon Border (COB), Mid-Columbia (Mid-C), California South (SP15), and California North (NP15). There are also several emerging hubs in the desert southwest and rocky-mountain areas. Publications such as *Megawatt Daily* and *Energy Market Report* list the daily prices traded at more heavily traded hubs. Information sources such as McGraw Hill publishing report broker trades for forward contracts at the most active trading

points. For illiquid products or trading points, the MTM may be applied less frequently than daily. In these circumstances a weekly or monthly mark may be appropriate. However, periodic market inquiries, as appropriate, should be made to capture any market movement.

The following information sources, or their equivalents as approved by the Middle Office and Front Office, are to be used to mark open positions for the traded products and hubs listed below:

- **WSPP Contracts for Liquid Products and Trading Hubs:** The standard forward traded electricity products as reported in the *Energy Market Report*, published by *Insight Research, Inc.*, or other relevant broker/trade reporting system. This source may be replaced at such time that EBCE has available an information service such as the Intercontinental Exchange (“ICE”), *Reuters North America Power* or other reliable source.
- **WSPP Illiquid Products and Trading Points:** these products are likely to change value less often than the more standard products. Periodic (weekly or bimonthly) probing of the market may be necessary to obtain current valuation. It may be possible to identify basis relationships between the liquid and illiquid trading points resulting in an approximate valuation.

1.3. Cost Value at Risk Calculation Methodology

In its most literal sense, Value at Risk (VaR) refers to a particular *amount of money*, the maximum amount likely to be spent or lost over some period, at some specific confidence level. EBCE has defined its supply management activity as a cost hedging activity. Therefore, for purposes of power resources management, Cost VaR is defined as a single, summary statistical measure of possible costs that are in excess of, expected costs.¹⁰

Traditional VaR methodology (as practiced in the financial sector) has two important characteristics. The first is that it provides a common consistent measure of risk across different positions and risk factors. The other characteristic of VaR is that it takes account of the correlations between different risk factors. If two risks offset each other, the VaR allows for this offset and tells us that the overall risk is fairly low. If the same two risks don't offset each other, the VaR takes this into account as well and gives us a higher risk estimate.

Since Cost VaR tells us about EBCE's maximum cost exposure, management can use it to determine internal capital allocation. Cost VaR can be used to determine capital requirements at the senior management level of the organization, and also down the line to the level of the individual transaction decision. The higher the risk associated with the transaction, the higher the VaR and the greater the capital requirement. Cost VaR can also be used to assess the risks associated with different transaction opportunities and the implications of various risk tolerance thresholds. Cost VaR can also be used to

¹⁰ Specifically, standard, or traditional, VaR is a measure of cash flow exposure due to “normal” market movements; traditional VaR would be used when monitoring hedge positions initiated with financial derivatives. Costs or losses greater than VaR estimates are suffered only with a specified small probability (e.g., 5% of the time, etc.). However, VaR is not a stress test – it will not indicate what a maximum loss may be 5% of the time.

evaluate the performance of divisions.

1. Methodology

The two (2) principal components of the traditional VaR calculation are the:

- Market
- Portfolio

The “Market” involves understanding and estimating how the particular market parameters behave over a specified holding period. This is captured by performing market parameter modeling. The “Portfolio” involves understanding and quantifying how the portfolio’s value varies according to estimated changes in market parameters. This is captured by revaluation. The standards applied to market parameter modeling and revaluations are described below. These two components are illustrated as follows:

Market > **Market Parameter Modeling** >

- Distribution assumptions
- Correlation assumptions
- Parameter assumptions

VaR Calculation

Portfolio > **Revaluation** >

- Historical Simulation
- Monte Carlo Simulation
- Full revaluation
- Analytic (Covariance/Variance Method)
- Sensitivities
or any reasonable
- Sensitivity Analysis
combination of these

2. Market Parameter Modeling

During market parameter modeling, various assumptions are made in relation to the distributions and correlations between assets, or products in the case of electricity, within the same risk category, or hub jurisdiction (i.e., SP15 vs. COB, etc.). In addition, various estimations are made with respect to the level of commodity prices and their implied volatilities.

Market parameters should be modeled on the basis of the following:

- Distribution assumptions for the market parameters are normal (this is a primary assumption for Cost VaR);

- Parameters are usually estimated on the following:
 - a one (1) month holding period, which is consistent with the frequency of revaluation of all financial trading positions.
 - the historic time period of one (1) calendar year or 252 days, unweighted, should be used to calculate historic volatilities and correlations.

Although distribution assumptions are assumed normal, management recognizes that actual power price distributions have displayed a skewed distribution. Traditional VaR methodology is not currently appropriate for the electric power industry. However, it may be appropriate for measuring positions in natural gas, whether physical or financial. Cost VaR, in the context of electricity portfolios, is not concerned with duration or term parameters (such as holding periods, etc.) since electricity products currently have predefined terms (e.g., hourly product, month product, quarterly product, etc.)

For modeling purposes, the Cost VaR is taken from the 95.0% quartile of the distribution of changes in the hourly chronological simulation of loads and resources (1.645 standard deviations).

3. Portfolio Revaluation

Revaluation is the calculation of the changes in portfolio costs resulting from a change in specific model assumptions (i.e., price, risk tolerance, volatility, etc.).

Two revaluation techniques are permitted:

- Full revaluation: Full revaluation occurs where the transactions in the portfolio, or positions, are all individually marked to market value for each market rate scenario generated. This is also true for Cost VaR applications.
- Delta approximation: Delta refers to the change in one variable given a change in another variable. A sensitivity analysis is an *approximation* of the change in net present value for various sensitivities of the portfolio. Sensitivity analysis may be used only for linear approximation. For linear approximation the sensitivity of the rate of change of the price of the transaction to a small change in the market rate is calculated. This is more applicable to traditional VaR where linear relationships and correlations may exist between financial instruments. On a more simplified level, Cost VaR considers delta approximation when adjustments are made to parameters such as risk tolerance, price, and volatility.

For purposes of traditional VaR, the range should cover at least 1.645 standard deviations in either full revaluation or delta approximation. Any reasonable combination of the above is also permitted. For example, a combination of the above might be used for large portfolios which contain both complex and simple instruments and for which different revaluation techniques are appropriate.

The risk measurement methodology must take the current mark-to-market value supplied and apply revaluation techniques to calculate the potential loss or VaR, which may arise from the future changes in market.

Note: Sensitivity analysis is appropriate for individually measuring risks which may not otherwise be measured on a full portfolio basis such as location or spread risks. Sensitivity analysis is not appropriate

for products with non-linear price behavior. In particular, option portfolios contain a high degree of non-linearity. This means that the change in the portfolio value has a non-linear relationship with changes in the underlying asset price. In this case, a sensitivity analysis is no longer valid.

4. VaR Calculation

Monte Carlo simulation is the preferred approach to VaR calculation for all portfolios. This is also true for Cost VaR when simulating loads and resources. However, the Analytic Method (Variance/Covariance) will be used if EBCE does not have the computing power necessary to generate a Monte Carlo simulation. EBCE recognizes that the Analytic Method is inappropriate for portfolios with non-linear characteristics (i.e., optionality) and will make the necessary adjustments when portfolio non-linearity becomes significant.

Monte Carlo Simulation Method:

Monte Carlo simulation estimates Cost VaR from a simulated distribution that is derived by assuming particular theoretical market processes and simulating large numbers of random paths that prices, or other parameters, could follow. The method proposes that if we take a sufficiently large number of simulations, they will produce a simulated distribution that will converge to the unknown true distribution of portfolio values. VaR and Cost VaR can be inferred from the simulated distribution. The steps required in a Monte Carlo simulation are as follows:

- Perform market parameter modeling by estimating the parameters of the distribution (e.g., volatilities and correlations) using a historical time series of market parameters;
- Generate an appropriate distribution of random variables;
- Perform the simulation by applying the covariance to the random numbers to generate a set of correlated market parameter scenarios; and
- Apply market parameter scenarios to the portfolio and, using revaluation method set, generate a distribution of portfolio values.

Analytic Method (Variance/Covariance):

The Analytic Method is based on the same distribution assumptions for market parameter modeling as the Monte Carlo method but restricts the portfolio to linear risk components only. This allows the analyst to assume that the portfolio changes are normally distributed.

The steps required in the analytic VaR calculation are:

- Perform market parameter modeling by estimating the parameters of the distribution (e.g., volatilities and correlations) using a historical time series of market parameters;
- Calculate the vector of sensitivities with respect to the underlying spot rates;
- A first order approximation is used to calculate changes in portfolio value. Given the normality assumption, the distribution parameters can then be calculated analytically using the sensitivities determined in step 2 above.

The VaR is defined as 1.645 the standard deviation of the change in portfolio value which equals –

under the assumption of zero mean – a confidence level of 95%.

1.4. Cost VaR Stress Testing Methodologies and Procedures

In broad terms, there are two (2) main approaches to Cost VaR stress testing. The first of these focuses on the impact of particular specified scenarios – typically a fairly limited number of such scenarios – that are fed into an analytical process. This approach to stress testing is usually known as scenario analysis. The term “stress testing” is used here to apply to any procedures that attempt to evaluate the impact of hypothetical future events on EBCE’s hedging and/or transacting portfolios.

The term “scenario analysis” is used to apply to that type of stress testing that focuses on particular specified *scenarios*, as distinct from the second type of stress testing that specifies classes of mathematical or *statistical possibilities* and then works through these possibilities in a mechanical way. Note that scenario analysis only indicates what EBCE stands to “spend” in a particular circumstance, and does not indicate (and is not designed to indicate) how likely any particular circumstance is to occur. Scenario analysis is therefore a natural complement to Cost VaR approaches that indicate something about the probability of a clearly defined event, but do not as such identify what EBCE would spend if the event actually occurred.

The Cost VaR stress testing methods approved for use by the ROC include 1) worst-case scenario analysis, and 2) extreme value analysis.

Worst-Case Scenario Analysis (WCSA):

WCSA allows an examination of the worst case that is *expected to occur* (Boudoukh, Richardson and Whitelaw, 1995). This approach is useful when there is concern about maximum possible costs over a particular horizon period (e.g., one month, one year, etc.) and an expectation of some savings or cost over each sub-period (e.g., each day or month). The worst-case scenario is the cost associated with the most adverse daily outcome. If each outcome is a random variable Z_i , and there are n sub-periods in our horizon, then the worst-case scenario is:

- $\text{Min}[Z_1, Z_2, \dots, Z_n]$

The actual worst-case scenario can now be estimated by running simulations of the random Z variables.

Extreme Value Analysis (EVA):

This approach starts from the premise that the extreme values of the cost distribution are what we are mostly concerned about, and then uses the statistical theory of extreme values to determine maximum extreme costs with a determined degree of confidence.

In practice the distribution of extreme values is not known, but the key insight of EVA theory is that this distribution converges in large samples to a limiting distribution of a particular known form. An analytic solution for the Cost VaR can then be found from this distribution once a desired confidence level is specified. The important parameter is the tail index, which gives the thickness of the tails (e.g., for a t -distribution, this is the number of degrees of freedom).

The Extreme Value Analysis approach has various attractions: (1) It deals directly with the extreme values typical of the electric Energy market. (2) It provides a firm methodological basis for the estimation of Cost VaR. (3) It does not impose any particular form on the underlying price distribution, but instead allows this distribution to take any well-behaved form, including an asymmetric (i.e., skewed) one. (4) It produces a simple analytical formula for Cost VaR. (5) The approach is robust, flexible and easy to use.

Note: Standard VaR methodology will be used to evaluate exposures resulting from activity in financial instruments. Currently, the electric power industry has not developed a highly liquid market in financial instruments. However, the natural gas market is relatively mature and offers opportunities in the use of financial instruments for the purpose of cost hedging. Standard VaR methods can be utilized more appropriately with natural gas as market performance generally follows a normal distribution.

Backtesting:

The purpose of a backtest is to compare the expected cost (at the then forward price) with actual cost (at the spot price), and implied volatility with actual volatilities, to determine if EBCE's cost VaR is adequate (conservative enough) to capture the potential market exposure.

To serve such purpose, staff may use the same open position number forecast 12 months ago and apply the DA spot market price in the past 12 months. This number would be the "actual cost" of the open position had it stayed unchanged and filled in the DA market. Comparing the difference between the two numbers will provide guidance as to whether the variance falls within the 95% cost VaR boundary and identify whether EBCE would have been better off leaving the position open or covering it 12 months ago.

EBCE has performed backtesting of the Cost VaR measures during the in-house model development and validation phase. The backtesting results revealed adequacies in the Cost VaR measures (given the statistical confidence intervals used or various parameters).

APPENDIX 9

Recommended Coverage

The following Time-Price Coverage Matrix will be used as a guide for EBCE’s short term and long term procurement strategies. The objective of the Time-Price Coverage Matrix is to develop a procurement strategy focused on hedging against the risk of open load positions, as measured over time, and to mitigate EBCE’s exposure to market price volatility and other pricing risk. EBCE will strive to further develop this matrix based on (1) EBCE’s wholesale price risk and (2) appropriate limits for these risks. The actual covered positions taken by EBCE, reflected as a percentage of forecasted load, may deviate from the following Time-Price Coverage Matrix based upon EBCE’s staff evaluation of current market conditions and other applicable requirements (e.g., regulatory requirements).

Months to Delivery		Price Matrix Percentile						
		>60%	60%	50%	40%	25%	10%	<10%
		Covered Position as a % of Forecasted Load						
0+	3	80%	80%	85%	85%	90%	90%	100%
3+	6	70%	70%	75%	80%	80%	90%	100%
6+	9	70%	70%	75%	80%	80%	80%	90%
9+	12	60%	60%	70%	80%	80%	80%	90%
12+		60%	60%	70%	80%	80%	80%	90%

Cost-at-Risk Metrics

RESERVED / TO BE DEVELOPED



Staff Report Item 11

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: Rate Discount and Power Content Guidelines

DATE: February 7, 2018

Staff Recommendation

- A. Approve EBCE to offer Phase 1 customers a 2% discount on Bright Choice rate option and no discount on Brilliant 100 rate option
- B. Approve minimum power content guidelines for Bright Choice and Brilliant 100
 - a. Bright Choice: 35% RPS Eligible Renewables, 35% Carbon-free (total of 70% Carbon-free)
 - i. Renewable and Carbon-free power content being set is a minimum threshold which EBCE will seek to beat when procuring energy
 - b. Brilliant 100: 40% RPS Eligible Renewables, 60% Carbon-free (total of 100% Carbon-free)
 - i. Renewable power content being set is a minimum threshold which EBCE will seek to beat when procuring energy
- C. Provide feedback on Energy Product Roadmap, including
 - a. Offering 3rd product at Phase 2 launch focused on funding community benefits
 - b. Offering 100% renewable energy product for large commercial and municipal accounts focused on building new renewable projects for specific large loads in late 2018/early 2019
 - c. Offering 100% Community/Shared renewable energy product in 2019

Background

At the January 17, 2018 EBCE Board of Directors meeting, several rate discount and energy content options were presented, each with an associated review of the cost implications of the particular choice. Input from the Board of Directors was solicited on what priorities EBCE should focus on when considering the trade-offs between rate discount, energy content and surplus. Board comments generally focused on the importance of offering energy products that

are less expensive than PG&E and deliver lower carbon emissions. During this discussion, it was noted that opt-out rates for new CCAs don't have a direct relationship to rate discounts, as both Peninsula Clean Energy and Silicon Valley Clean Energy had opt-out rates below 3% while having rate discounts of 5% and 1% respectively.

Discussion

After the January 17, 2018 Board Meeting, EBCE staff continued to review the financial implications for EBCE of a range of rate discount options and power content scenarios. EBCE staff also considered the direction from the Board that offering a carbon-free energy product at a cost-effective rate would align well with the Climate Action Plans of individual JPA member jurisdictions.

In an effort to balance the need to offer EBCE customers a compelling value proposition, build a strong financial position, support carbon emissions reductions and make investments in community development, EBCE staff has developed the following recommendations for Board approval.

Power Content Recommendation

Bright Choice

Staff recommendation is to set Bright Choice, which is EBCE's planned default energy product for Phase 1, power content at levels that are just slightly better than PG&E's Power Content. The Bright Choice power content proposal is for 35% Renewable and 35% Carbon-free. As a reference, below is PG&E's current power content.

Figure 1 - PG&E Power Content

2016 POWER CONTENT LABEL		
Pacific Gas and Electric Company		
ENERGY RESOURCES	Power Mix	2016 CA Power Mix**
Eligible Renewable	33%	25%
Biomass & biowaste	4%	2%
Geothermal	5%	4%
Eligible hydroelectric	3%	2%
Solar	13%	8%
Wind	8%	9%
Coal	0%	4%
Large Hydroelectric	12%	10%
Natural Gas	17%	37%
Nuclear	24%	9%
Other	0%	0%
Unspecified sources of power*	14%	15%
TOTAL	100%	100%

* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.

** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the identified year.

For specific information about this electricity product, contact: **Pacific Gas and Electric Company**
415-973-0640

For general information about the Power Content Label, please visit: <http://www.energy.ca.gov/pcl/>

For additional questions, please contact the California Energy Commission at: 844-454-2906
psdprogram@energy.ca.gov

PG&E’s updated power content label will not be available until late 2018 - the California Energy Commission published this 2016 Power Content Label in September 2017. PG&E has reported lower carbon content in regulatory filings, but the Power Content Label is the industry standard for assessing power content, and so EBCE staff believes it is the best metric to use as the basis for setting EBCE’s power content. In addition to evaluating PG&E’s power content, EBCE staff also evaluated the financial impact of a number of power content scenarios to determine what is the maximum quantity of renewable and carbon-free energy that can be procured while still ensuring EBCE remains on strong financial footing.

Table 1 - Comparison of Power Content on EBCE Finances

Option	70%	75%	80%	80%
RE	35%	40%	35%	40%
Carbon-free	35%	35%	45%	40%
Surplus (% change) (2019)	n/a	- 3.77%	- 6.60%	- 7.55%

Given the need to balance the priorities of beating PG&E on carbon-free energy and building a strong financial position, EBCE staff recommends focusing on just slightly exceeding PG&E’s level of carbon-free content at launch for Bright Choice. Additionally, in an effort to also offer a cost competitive product that also far exceeds PG&E’s carbon-free content, EBCE staff is recommending a Brilliant 100 product that focuses on delivering carbon-free energy instead of 100% renewable energy, but at a cost that is on par with PG&E.

Brilliant 100

Staff recommendation is to set Brilliant 100, which is EBCE’s planned opt-up energy product for Phase 1, power content to be 100% carbon-free. Within this 100% carbon-free product, the planned ratio of renewable to carbon-free energy is proposed to be a minimum of 40% renewable and 60% carbon-free. Staff’s goal here is to focus on delivering an energy product that offers premium value at a cost competitive rate so that customers who prioritize deep carbon emissions reductions can do so without paying more. EBCE does plan to offer a 100% renewable rate later in 2018, and provides a description of the planned product roadmap later in this memo.

Rate Discount Recommendation

Bright Choice

Staff recommendation is to set Bright Choice, which is EBCE’s planned default energy product for Phase 1, at a 2% discount to the PG&E’s generation rate available to the EBCE customer at the time of phase-in to EBCE service.

To arrive at this level, EBCE analyzed what the impact of a 2% and a 4% rate discount would be on the amount of surplus (or net revenue) that EBCE would expect to generate in 2018 and 2019. EBCE used the proposed power content outlined above as the baseline for this analysis. EBCE also analyzed what the relative savings of these two discount rates would be for three types of customers: residential, small commercial and large commercial.

Table 2 - Rate Discount Comparison

	2018	2019
Rate Discount	2% → 4%	2% → 4%
% in Revenues	3% reduction in revenues	3% reduction in revenues
% in Debt	6% increase in debt requirements	no increase in debt requirements
% in Surplus (Deficit)	50% decrease in surplus	22% decrease in surplus

Table 3 - Customer Savings Comparison

	Estimated Annual Savings	
	2%	4%
Residential	\$12	\$16
Small Commercial	\$56	\$75
Large Commercial	\$19,300	\$25,700

Based on the above assessment, EBCE generates over 20% more surplus revenue after a full operating year (2019) when offering a lower discount while the vast majority of EBCE’s customers (over 550,00 accounts) see no more than a \$20 a year savings difference. Additionally, recent experiences at Bay Area CCAs have shown that the level of discount offered does not result in a major difference in level of opt-out.

Table 4 - Comparison of Discount to Opt-Out for Most Recent Bay Area CCAs to Launch

	Peninsula Clean Energy	Silicon Valley Clean Energy
Discount at Launch	5.00%	1.00%
Opt Out (% of accounts)	2%	2.75%

Brilliant 100

Staff recommendation is to set Brilliant 100, which is EBCE’s planned opt-up energy product for Phase 1, at par with PG&E’s generation rate available to the EBCE customer at the time of phase-in to EBCE service. To arrive at this recommendation, EBCE analyzed the cost to procure the constituent energy products that are being recommended for Brilliant 100 - 40% Renewable and 60% carbon-free energy - and compared them against other power content mixes to assess their impact on EBCEs finances. For the purposes of this analysis, EBCE staff assessed what discount or premium would be needed to ensure Brilliant 100 would have no incremental impact on EBCEs finances - i.e. results in the same margin as Bright Choice.

Table 5 - Comparison of Brilliant 100 Power Content Margin Impacts

	Bright Choice	Brilliant 100		
		40% RE 60% Carbon-free	50% RE 50% Carbon-free	100% RE
Rate at par w/ PG&E (2019)	-	Same margin as Bright Choice	2% lower margin than Bright Choice	18% lower margin than Bright Choice

In setting up a premium product that has the same margin as Bright Choice, EBCE is positioned to support the scaling up of Brilliant 100 to a much higher percentage of customers without an adverse impact on EBCE’s finances.

Energy Product Roadmap Discussion

At Phase 1 launch, EBCE proposes to only offer two products, Bright Choice and Brilliant 100, but over time EBCE staff believes there is significant value to increasing the number of energy product options. EBCE’s proposed product roadmap is outlined in the attached presentation. The underlying goal being to start delivering products that create more local development and support the build-out of new renewable energy projects.

Attachments

- A. Power Content and Rate Discount Presentation



PRODUCT ROADMAP

PRESENTED BY: Nick Chaset

DATE: 02/07/18



EBCE PRIORITIES

JPA Recitals	Action
Offer default and opt-up product	Bright Choice/Brilliant 100
Develop portfolio with lower GHG intensity than PG&E	70% and 100% Carbon-Free at launch with continued progression to lower GHG intensity
Establish portfolio with local renewable resources and uses limited RECs	Local Development Business Plan in-development
Demonstrate economic benefits to the region	
Recognize value of workers	
Deliver programs that support local workforce	
Promote local ownership of renewable resources, especially for low income customers	
Provider cost savings	2% discount/par with PG&E
Be financially sustainable and create positive work environment	discount and power costs project surplus in year 2 of operations

RECOMMENDATIONS OVERVIEW

- Approve **power mix** for *Bright Choice** and *Brilliant 100**

<i>Bright Choice</i>	35% RE + 35% carbon-free	70% clean
<i>Brilliant 100</i>	40% RE + 60% carbon-free	100% clean

- Approve **rate discount** for *Bright Choice* at 2%
- Approve rate for *Brilliant 100* **on par** with PG&E rate
- Review and discuss the future **roadmap** for a third product

** Numbers represent floor requirements. At time of procurement, EBCE will seek to have higher levels of renewable and carbon-free.*

POWER CONTENT



35% RE
+ 35% Carbon-Free
70% Clean



40% RE
+ 60% Carbon-Free
100% Clean

Comparison to PG&E Power Content*:
33% Renewable
+ 36% Carbon-Free
69% Clean

** Each year the CEC publishes every Load Serving Entity's Power Content Label for the prior year's power content. Current PG&E Power Content is for 2016 and was published by the CEC in September 2017. PG&E has forecasted lower GHG levels for 2017 and 2018 due, in major part, to departing CCA loads.*

PG&E POWER CONTENT LABEL

2016 POWER CONTENT LABEL		
Pacific Gas and Electric Company		
ENERGY RESOURCES	Power Mix	2016 CA Power Mix**
Eligible Renewable	33%	25%
Biomass & biowaste	4%	2%
Geothermal	5%	4%
Eligible hydroelectric	3%	2%
Solar	13%	8%
Wind	8%	9%
Coal	0%	4%
Large Hydroelectric	12%	10%
Natural Gas	17%	37%
Nuclear	24%	9%
Other	0%	0%
Unspecified sources of power*	14%	15%
TOTAL	100%	100%
<p>* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.</p>		
<p>** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the identified year.</p>		
For specific information about this electricity product, contact:		<p>Pacific Gas and Electric Company</p> <p>415-973-0640</p>
For general information about the Power Content Label, please visit:		<p>http://www.energy.ca.gov/pcl/</p>
For additional questions, please contact the California Energy Commission at:		<p>844-454-2906</p> <p>psdprogram@energy.ca.gov</p>

BRIGHT CHOICE CONTENT OPTIONS vs. SURPLUS

Option	70%	75%	80%	80%
RE	35%	40%	35%	40%
Carbon-free	35%	35%	45%	40%
Surplus (% change) (2019)	n/a	- 3.77%	- 6.60%	- 7.55%

This assessment of power content options focuses on the change in expected surplus (net revenue) at the end of 2019 because this metric measures the impact of different power supply options on EBCE's financial position.

BRILLIANT 100 CONTENT OPTIONS vs. MARGIN

	Bright Choice	Brilliant 100		
		40% RE 60% Carbon-free	50% RE 50% Carbon-free	100% RE
Rate at par w/ PG&E (2019)	-	Same margin as Bright Choice	2% lower margin than Bright Choice	18% lower margin than Bright Choice

This assessment of power content options focuses on margins so that EBCE can determine what the relative impact of different power content options will be on EBCE's finances. The closer margin is to Bright Choice, the lower the impact of more customers choosing to take Brilliant 100 as their energy option will be.

RATE DISCOUNT



2% Discount

No Discount

Additional 12%-14% increase in annual surplus generated by 2% discount compared to higher discount levels. Surplus will allow EBCE to more quickly pay down debt, establish critical financial reserves, and start investing in local development.

IMPACT OF BRIGHT CHOICE DISCOUNT OPTIONS

	2018	2019
Rate Discount	2% → 4%	2% → 4%
% in Revenues	3% reduction in revenues	3% reduction in revenues
% in Debt	6% increase in debt requirements	no increase in debt requirements
% in Surplus (Deficit)	50% decrease in surplus	22% decrease in surplus

	Estimated Annual Savings	
	2%	4%
Residential	\$12	\$16
Small Commercial	\$56	\$75
Large Commercial	\$19,300	\$25,700

DISCOUNT vs. OPT-OUT RATES

	Peninsula Clean Energy	Silicon Valley Clean Energy
Discount at Launch	5.00%	1.00%
Opt Out (% of accounts)	2%	2.75%

PRODUCT ROADMAP



Phase 1
Launch

No 3rd
Product

Phase 2
Launch

Community
Investment
Option

Late
2018/
Early
2019

100%
Renewable
Option

2019

100% Local
Renewable
Option

For large C&I customers, option for customized product that serves as a business retention tool

Customers will be able to select 3rd product where power content is same as Bright Choice, but there is no discount. Incremental revenue will go to local development fund

EBCE facilitates large C&I and Muni customers purchase of newly developed RE

EBCE develops local RE project(s) and offers community buy-in option for residential and commercial customers

CCA PRODUCTS

Default Product

CCA	MCE Clean Energy	Sonoma Clean Power	CleanPower SF	Peninsula Clean Energy	Silicon Valley Clean Energy	Monterey Bay Clean Energy
Power Mix	56% Renewable 13% Carbon-Free	42% Renewable 49% Carbon-Free	40% Renewable 38% Carbon-Free	58% Renewable 27% Carbon-Free	50% Renewable 50% Carbon-Free	30% Renewable 70% Carbon-Free
Total Carbon-Free	69%	91%	78%	85%	100%	100%
Discount to PG&E (inclusive of PCIA)	-0.6%	-2%	-0.25%	-5%	-1%	0%

Premium Product

CCA	MCE Clean Energy	Sonoma Clean Power	CleanPower SF	Peninsula Clean Energy	Silicon Valley Clean Energy	Monterey Bay Clean Energy
Power Mix	25% Biomass 25% PV 50% Wind	100% Geothermal	100% Wind	100% Wind	80% Hydro 20% PV	30% Renewable 70% Carbon-Free
Premium over PG&E (inclusive of PCIA)	+10%	+23%	+20%	+5%	+7%	0%

REQUEST OF BOARD

- Approve **power mix** for *Bright Choice** and *Brilliant 100**

<i>Bright Choice</i>	35% RE + 35% carbon-free	70% clean
<i>Brilliant 100</i>	40% RE + 60% carbon-free	100% clean

- Approve **rate discount** for *Bright Choice* at 2%
- Approve rate for *Brilliant 100* **on par** with PG&E rate
- Review and discuss the future **roadmap** for a third product



Staff Report Item 12

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: **Standard Power Purchase Agreements and Confirmations**

DATE: February 7, 2018

Staff Recommendation

Adopt a Resolution approving the following standard power purchase agreements and confirmations for approved product transactions, subject to the final approval of General Counsel.

- A. EEI Master Agreement and Confirmation
- Direct Energy Business Marketing, LLC
 - Exelon Generation Company, LLC
 - Shell Energy North America (US) L.P.
 - Morgan Stanley Capital Group Inc.
 - TransAlta Corporation
 - Powerex Corp.
- B. Deposit Account Control Agreement, Security Agreement, Intercreditor & Agency Collateral Agreement, collectively known as “Lockbox Agreements”
- Direct Energy Business Marketing, LLC
 - Exelon Generation Company, LLC
 - Shell Energy North America (US) L.P.
 - Morgan Stanley Capital Group Inc.
 - TransAlta Corporation
- C. WSPP (Western States Power Pool) Agreements and copies of five proposed standard confirmations to be used in conjunction with the WSPP Agreement for the purchase of:
- Electric Capacity and/or Electric Energy
 - Specified Source Energy
 - Resource Adequacy
 - Renewable Energy Credits “RECs”, Category 1
 - Renewable Energy Credits “RECs”, Category 2
 - Renewable Energy Credits “RECs”, Category 3

Background

On January 11, EBCE Board received copies of the EEI Master Agreement and Confirmation, “Lockbox” Agreements: Deposit Account Control Agreement, Security Agreement, Intercreditor & Agency Collateral Agreement, and WSPP (Western States Power Pool) Agreements and copies of five proposed standard confirmations to be used in conjunction with the WSPP Agreement. EBCE Staff will be working with NCPA to purchase power and enter into transactions to hedge electricity prices on an ongoing basis, as needed to fill load demand. Each of these transactions can be several million dollars and are typically transacted within 2 hours from the time prices are offered by the supplier, to the time transaction confirmations are executed. This short time frame cannot accommodate the need to seek Board approval for each transaction and generally requires that oversight must be conducted using a different approach. The attached ERM Policy and Regulations in Item 9 provides for internal controls, a Risk Oversight Committee and other measures consistent with power industry standards and the majority of utilities and energy companies.

Edison Electric Institute Master Agreement (EEI Master): EBCE is basing its power supply agreements on the industry-standard Edison Electric Institute master power purchase and sale agreement (“Master Agreement”) and WSPP agreement, using terms and conditions that have been commonly adopted by existing CCA programs. The Master Agreement is a widely used standard form agreement containing general terms and conditions for electric power transactions. The first section of the Master Agreement, known as the “Cover Sheet”, enables election of certain optional provisions and allows for modifications to the standard terms agreed to between the parties. Generally speaking, the Cover Sheet represents the product of negotiations that have occurred among the parties as those relate to the Master Agreement. The specifics of individual transactions, such as product, price, and delivery term, are documented in the EEI Confirmations, under the umbrella of the general terms and conditions set forth in the Master Agreement.

Because EBCE is a new entity with few existing assets, credit exposure is an important consideration in negotiating power supply contracts. Some of the contracts that involve relatively low levels of financial exposure will not require any unique credit support from EBCE and can be executed immediately upon Board authorization. For larger transactions that impose significant credit exposure to the seller, EBCE will utilize a lockbox structure that has been used successfully by numerous other CCA entities as a form of credit support. Revenues collected by PG&E on EBCE’s behalf will be deposited into a dedicated account, and suppliers will be paid for energy deliveries from that account, administered by the bank acting as collateral agent on behalf of the supplier. Unlike the Master Agreements and Confirmations, which are negotiated and executed separately with each power supplier, there will be a single set of lockbox agreements for the benefit of all secured power suppliers. EBCE has confirmed that many suppliers are able to utilize the lockbox credit structure, and each of these as well as the bank must agree to the same set of lockbox agreements.

All transactions under the Master Agreements will be executed by EBCE staff in accordance with the Board-approved Energy Risk Management Policy, including the Approved Product List and Energy Risk Management Guidelines and Procedures. These procedures are monitored by the Executive Director, Risk Oversight and Coordination Committee to ensure that risks inherent in the energy industry are managed prudently. Staff provides Council with an update of all executed transactions under the Master Agreements in the quarterly Energy Risk Management reports.

WSPP Agreement: EBCE is a member of WSPP, which manages power procurement agreements. The WSPP's purpose is to facilitate efficient and robust power purchase transactions among its 300 members. Only WSPP members may use the Agreement. The Agreement is another way to allow transactions to occur without constant renegotiations of contract terms and to standardize terms, thereby promoting liquidity in the market. Currently, the WSPP Agreement is a commonly used standardized power sales contract in the electric industry. The WSPP Agreement represents a standardized contract for electric power sales and physical options.

The WSPP Agreement, however, provides parties with the flexibility on the major terms to modify the agreement, by their mutual agreement, to be applied to any WSPP transaction, as discussed below. The WSPP Agreement, by its terms, only applies to transactions between WSPP members. It is anticipated that a portion of EBCE's power procurement will be transacted through the WSPP Agreement.

Standard Confirmations: NCPA has provided EBCE with standard confirmation, which they have developed for use in power purchase transactions for their members, which are to be used in conjunction with the WSPP Agreement. There are six standard confirmations related to the following specific types of power purchases:

- Electric Capacity and/or Electric Energy
- Specified Source Energy
- Resource Adequacy Transaction
- Renewable Energy Credit Category 1
- Renewable Energy Credit Category 2

The WSPP Agreement can also serve as a master agreement. The confirmations provide for the specific product(s) being transacted, the identification of the transacting parties, and specific terms of service and delivery. The confirmations also include any special regulatory or legal provisions related to California market transactions. Typical power procurement transactions will be conducted through a competitive process (i.e. a request for proposals). At the close of the response submission deadline, the proposals are reviewed and the selected proposal(s) are awarded, usually within a few hours. The confirmation is then executed to document the transaction. The confirmation is considered a part of the Agreement, providing specific terms and conditions. The confirmations are provided to the Board for consideration and discussion. Staff will return to the Board at a future meeting, seeking approval of the confirmations.

Fiscal Impact

There is no fiscal impact associated with approval of the standard power purchase agreements and confirmations.

Attachments

- A. Resolution Authorizing execution of EEI, Lockbox Agreements and Service Agreement
- B. EEI Master Agreements for
 - 1. Direct Energy Business Marketing, LLC
 - 2. Exelon Generation Company, LLC
 - 3. Shell Energy North America (US) L.P.
 - 4. Morgan Stanley Capital Group Inc.
 - 5. TransAlta Corporation
 - 6. Powerex Corp.
- C. Standard EEI Confirmation
- D. Deposit Account Control Agreement*
- E. Security Agreement*
- F. Intercreditor & Agency Collateral Agreement*
- G. WSPP (Western States Power Pool) Agreement and copies of five proposed standard confirmations to be used in conjunction with the WSPP Agreement for the purchase of:
 - 1. Electric Capacity and/or Electric Energy
 - 2. Specified Source Energy
 - 3. Resource Adequacy
 - 4. Renewable Energy, Category 1
 - 5. Renewable Energy, Category 2
 - 6. Renewable Energy, Category 3
- H. Energy Supply Agreements presentation

*Attachments 3, 4 and 5 are collectively known as “Lockbox Agreements”. Each document in Attachments 3, 4 and 5 applies to the following agreements within the singular document:

- Direct Energy Business LLC
- Exelon Generation Company, LLC
- Shell Energy North America (US) L.P.
- Morgan Stanley Capital Group Inc.
- TransAlta Corporation

RESOLUTION NO. 2018-____

RESOLUTION OF THE BOARD OF DIRECTORS OF EAST BAY COMMUNITY ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO ENTER INTO CERTAIN EEI MASTER AGREEMENTS, THE LOCKBOX AGREEMENTS WITH RIVER CITY BANK, AND THE SERVICES AGREEMENT WITH NORTHERN CALIFORNIA POWER AGENCY.

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the East Bay Community Energy Authority ("East Bay Community Energy") was formed on December 1, 2016;

WHEREAS, launch of service of the community choice aggregation program is planned for June 1, 2018;

WHEREAS, East Bay Community Energy administered a competitive process to select contractors capable of providing energy, renewable energy, carbon free energy, and related products and services (the "Product") from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices;

WHEREAS, East Bay Community Energy has identified six energy service providers (each, an "Energy Service Provider" or "ESP") as having competitive proposals and the ability to meet the aforementioned goals;

WHEREAS, East Bay Community Energy has negotiated a separate EEI Master Power Purchase and Sale Agreement and the WSPP Master Agreement (the "Master Agreements") with each of the following Energy Service Providers:

- Direct Energy Business Marketing, LLC ("Direct")
- Exelon Generation Company, LLC ("Constellation")
- Morgan Stanley Capital Group, Inc. ("Morgan Stanley")
- Powerex Corp. ("Powerex")
- Shell Energy North America (US), LP ("Shell")
- TransAlta Energy Marketing (US) Inc. ("Transalta");

WHEREAS, the Master Agreements are an industry standard framework agreement between an energy purchaser and an energy supplier that establishes certain terms and conditions for the contractual relationship between an energy purchaser and energy supplier, but which does not require a purchaser to purchase or a supplier to supply the Product without executing a separate written agreement in the form of a Confirmation Agreement (defined below);

WHEREAS, East Bay Community Energy has negotiated a form of Confirmation Agreement (the "Confirmation Agreement") with each of the ESPs;

WHEREAS, a Confirmation Agreement is an agreement between an energy purchaser and an energy supplier (e.g., an ESP) that binds the energy purchaser and the energy supplier to supply specific quantities of specific types of energy products at specific prices and is governed by the terms and conditions of the Master Agreement;

WHEREAS, there are minor differences in each form of Master Agreement and Confirmation Agreement based upon changes requested by each ESP, these differences are not material in the overall context of the proposed transaction;

WHEREAS, East Bay Community Energy has agreed to provide a “multi-party lockbox” into which East Bay Community Energy customer payments will be deposited, as security for the power purchase obligations of East Bay Community Energy under the Master Agreement and Confirmation Agreement;

WHEREAS, certain of the ESPs have elected to participate in the multi-party lockbox;

WHEREAS, River City Bank was selected to administer, and act as collateral agent for the ESPs with respect to, the multi-party lockbox;

WHEREAS, three agreements with River City Bank are necessary to establish the “multi-party lockbox”: an Intercreditor and Collateral Agency Agreement, a Security Agreement and a Deposit Account Control Agreement (collectively, the “Lockbox Agreements”) and forms of these three agreements were negotiated with participating ESPs as well as River City Bank and are intended to be entered into no later than the time that East Bay Community Energy enters into the Confirmation Agreements with the ESPs that are participating in the multi-party lockbox;

WHEREAS, East Bay Community Energy has negotiated a services agreement (the “Services Agreement”) with Northern California Power Agency, a joint powers agency of the State of California (“NCPA”). Under the Services Agreement, NCPA would provide California ISO Scheduling Coordinator, portfolio management, and other related services necessary for the implementation and operation of East Bay Community Energy’s community choice aggregation program;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute each of the aforementioned Master Agreements and the Lockbox Agreements for the reasons provided above;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Services Agreement for the reasons provided above;

WHEREAS, the Board’s approval of Confirmation Agreements will occur at a later time;

WHEREAS, because of the timing of the execution of the various agreements, it is infeasible to bring such agreements back to the Board prior to execution, the Board also wishes to delegate to the Chief Executive Officer the authority to approve any non-material changes, additions, variations or deletions (“Changes”) to the form of Master

Agreements, Lockbox Agreements and Services Agreement presented to the Board in connection with this resolution; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer in the name and on behalf of East Bay Community Energy to negotiate, enter into and deliver, and to do all things necessary or appropriate for the execution and delivery of, and the performance of East Bay Community Energy's obligations under, the aforementioned Master Agreements, Lockbox Agreements and Services Agreement in substantially the same form as presented to the Board, (including any other instruments, documents, certificates and agreements executed by East Bay Community Energy in connection therewith, including the opening of bank, escrow or other similar accounts) and, in each case, subject to such Changes as the Chief Executive Officer may deem necessary or appropriate, with the execution and delivery of the aforementioned Agreements containing any such Changes by the Chief Executive Officer to be conclusive evidence of the Chief Executive Officer's approval of such Changes.

ADOPTED AND APPROVED this ____ day of February 2018.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of
the Board

Master Power Purchase & Sale Agreement



MASTER POWER PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

<u>COVER SHEET</u>	3
GENERAL TERMS AND CONDITIONS	25
ARTICLE ONE: GENERAL DEFINITIONS	25
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS	29
2.1 Transactions	29
2.2 Governing Terms	29
2.3 Confirmation	30
2.4 Additional Confirmation Terms	30
2.5 Recording	30
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	30
3.1 Seller's and Buyer's Obligations	30
3.2 Transmission and Scheduling	31
3.3 Force Majeure	31
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE	31
4.1 Seller Failure	31
4.2 Buyer Failure	31
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES	31
5.1 Events of Default	31
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts	32
5.3 Net Out of Settlement Amounts	33
5.4 Notice of Payment of Termination Payment	33
5.5 Disputes With Respect to Termination Payment	33
5.6 Closeout Setoffs	33
5.7 Suspension of Performance	34
ARTICLE SIX: PAYMENT AND NETTING	34
6.1 Billing Period	34
6.2 Timeliness of Payment	34
6.3 Disputes and Adjustments of Invoices	34
6.4 Netting of Payments	34
6.5 Payment Obligation Absent Netting	35
6.6 Security	35
6.7 Payment for Options	35

6.8	Transaction Netting.....	35
ARTICLE SEVEN: LIMITATIONS.....		35
7.1	Limitation of Remedies, Liability and Damages	35
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS		36
8.1	Party A Credit Protection.....	36
8.2	Party B Credit Protection	37
8.3	Grant of Security Interest/Remedies.....	38
ARTICLE NINE: GOVERNMENTAL CHARGES.....		39
9.1	Cooperation.....	39
9.2	Governmental Charges.....	39
ARTICLE TEN: MISCELLANEOUS		39
10.1	Term of Master Agreement.....	39
10.2	Representations and Warranties.....	39
10.3	Title and Risk of Loss	41
10.4	Indemnity	41
10.5	Assignment	41
10.6	Governing Law	41
10.7	Notices	41
10.8	General.....	41
10.9	Audit	42
10.10	Forward Contract	42
10.11	Confidentiality	42
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS		43
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....		46
EXHIBIT A: CONFIRMATION LETTER.....		53

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: _____, 2018 (“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:
(Direct Energy Business Marketing, LLC or “Party A”)

Name:
East Bay Community Energy Authority, a California joint powers authority (“EBCE” or “Party B”)

All Notices:

Address: 12 Greenway Plaza, Suite 250
Houston, TX 77046

All Notices:

Address: 1111 Broadway, Suite 300
Oakland, CA 94607

Attn: Steve Dalicandro
Phone: 713-877-5828
Facsimile: _____
E-mail: steve.dalicandro@directenergy.com

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org
Duns: _____
Federal Tax ID Number: _____

Invoices:

Attn: Manager Power Settlements
Address: 12 Greenway Plaza, Suite 250
Houston, TX 77046
Phone: 713-904-7393
Facsimile: 713-904-7197
E-Mail: EMGPhysPowerSettlements@directenergy.com

Invoices:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Scheduling:

Attn: Jay Robertson
Address: 12 Greenway Plaza, Suite 250
Houston, Texas 77046
Phone: 713-877-5712 or 713-877-3669 24 Hours
E-Mail: jay.robertson@directenergy.com

Scheduling:

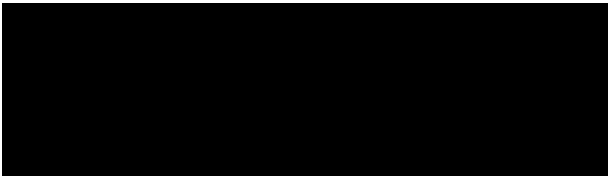
Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

Confirmations:

Attn: Confirmations
Address: 12 Greenway Plaza, Suite 250
Houston, Texas 77046
Phone: 713-877-3728
Facsimile: 713-877-3729
E-mail: _____

Payments:

Attn: Manager Power Settlements
Address: 12 Greenway Plaza, Suite 250
Houston, TX. 77046
Phone: 713-904-7393
Facsimile: 713-904-7197
E-Mail: EMGPhysPowerSettlements@directenergy.com



Credit and Collections:

Attn: Head of Credit
Address: 12 Greenway Plaza, Suite 250
Houston, TX 77046
Phone: 713-904-7004
Facsimile: _____
E-Mail: creditnotices@directenergy.com

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

cc: Legal Notices:
Attention: V.P. Head of Commercial Legal
Address: 12 Greenway Plaza, Suite 250
Houston, TX 77046
Phone: 713-877-3851
Facsimile: 713-621-5648

Confirmations:

Attn: Nick Chaset
Address: Same as above
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Payments:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

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

Attn: Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com

days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at <http://ebce.org/>, and (2) quarterly unaudited financial statements for Party B as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. 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. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

████████████████████
████████████████████

(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: N/A _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
 Option B Specify: _____
 Option C Specify:

The annual report containing audited consolidated financial statements for such fiscal year of Party A's Guarantor as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A's Guarantor and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A's Guarantor, and such request will be deemed to have been filled if such financial statements are available at www.centrica.com. 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.

(b) Credit Assurances:

(c) Collateral Threshold:

- Not Applicable
 Applicable

If applicable, complete the following:

Party A Collateral Threshold: The lesser of: (a) the amount (the "Threshold Amount") set forth below under the heading "Threshold (US)" opposite the Credit Rating for Party A's Guarantor on the relevant date of determination, and if Party A's Guarantor's Credit Ratings shall not be equivalent, the lower Credit Rating shall govern; (b) zero if on the relevant date of determination its Guarantor does not have a Credit Rating from at least one of the rating agency(ies)

specified below or an Event of Default with respect to Party A has occurred and is continuing; or (c) the maximum amount of Party A's obligations under this Agreement that are guaranteed pursuant to the Guarantee provided by Party A's Guarantor (as amended from time to time).

██████████	██████████	██████████
██████████	██████████	██████████
████	████	██████████
████	████	██████████
██████████	██████████	████

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 BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

Other:

Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

(e) Guarantor for Party A: Centrica plc

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

[X] Add Section 8.4, collateral is the “Secured Account” as defined in Schedule M. If not checked, inapplicable.

Other Changes

This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

1) Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:

“Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party A, and with respect to Party B the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith, and shall exclude, in the case of Party A, any such person that is not organized or existing under the jurisdiction of Canada or the United States or a political subdivision thereof.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

4) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

5) A new Section 1.26A is added as follows:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of December 1, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s

option” from the fifth line and replacing it with the phrase “absent a purchase”.

9) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

10) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

11) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

12) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”

13) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

14) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“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 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; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

15) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

16) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

17) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“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 and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as 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.”

18) Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

██
██

20) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

21) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

22) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be

incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party's calculation of a Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Settlement Amount shall be deemed to be zero dollars (\$0.00)."

24) Section 5.3 shall be amended by adding the phrase "plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8," after the first use of the phrase "due to the Non-Defaulting Party" in the sixth line.

25) Section 5.5 – Disputes With Respect to Termination Payment

Add the following at the end of Section 5.5:

“(a) Senior Officers. Each of the Parties shall upon five days notice from the other Party designate in writing to the other a senior officer, who shall be authorized to resolve any dispute relating to the calculation of the Termination Payment with respect to Terminated Transactions following the designation of an Early Termination Date (“Dispute”). If any Dispute is not resolved within fifteen days following receipt by a Party of notice of a Dispute, the Parties may pursue any other right or remedy available at law, in equity or under this Agreement, subject to Section 7.1, to resolve the Dispute. The Parties shall (1) attempt to resolve all Disputes promptly and equitably; and (2) provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

26)(b) Preservation of Rights and Remedies. Nothing in this Section 5.5 shall preclude, restrict, limit or stop any right or remedy that, subject to Section 7.1, may be available to a Party at law, in equity or under this Agreement in connection with any claim, action, cause of action or indemnity which is not a Dispute as defined in Section 5.5(a) above.”

27) In Section 5.7, delete “(a)” and “or (b) a Potential Event of Default” from the second line.

28) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

29) Section 7.1 shall be amended by:

(i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

[REDACTED]

32) Section 8.5 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, or any other collateral that in the aggregate exceeds Termination Payment.”

33) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

34) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”;
and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

35) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

36) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity

succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”

37) Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;”

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

38) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

39) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

40) In section 10.9 insert the words “copies of” after the word “examine” in line 2.

41) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

42) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the

commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

43) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the *Mobile Sierra* “public interest” standard of review set forth in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.* No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.”

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

44) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and

signatures of employees of Party B with authority to act on behalf of Party B.”

45) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

46) The following shall be added as a new Section 10.15:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

47) The following new Section shall be added as Section 10.16:

“Imaged Agreement.” Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

48) The following new Section shall be added as Section 10.17:

“Index Transactions.” If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and 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 taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or 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 in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original 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, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

49) The following new Section shall be added as Section 10.18:

Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

50) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California

(Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B's constituent members, in connection with this Agreement.

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

**DIRECT ENERGY BUSINESS MARKETING,
LLC**

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

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: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

(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” the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

“Collateral Agent” has the meaning in the Security Documents.

“Depository Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement, the Account Control Agreement entered into by the Parties and certain third parties in connection with a Transaction, and any other agreement or instrument documenting the security of Party A in connection with a Transaction, as the same may be amended, restated, modified, replaced, extended, or supplemented from time to time.

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’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 Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A 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, to the extent applicable, 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 all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B 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 laws, (iii) entry into and performance of this Master Agreement by Party B 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) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Party B's Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide Party A (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 Party B of this Master Agreement and (ii) a certificate, signed by an officer of Party B and in form and substance reasonably satisfactory to Party A, certifying as to certain factual matters.

Section 3.5 No Immunity Claim. Party B 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 the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue

permitted under the Agreement), (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; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

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 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.

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 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depository Bank and such notice shall include information regarding the replacement Secured Account.

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 CALIFORNIA SHALL APPLY.

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 co-operate 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: _____

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: _____

EBCE DRAFT
[EXG]
1/5/2018

Master Power Purchase & Sale Agreement



MASTER POWER PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

<u>COVER SHEET</u>	3
GENERAL TERMS AND CONDITIONS	24
ARTICLE ONE: GENERAL DEFINITIONS	24
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS	28
2.1 Transactions	28
2.2 Governing Terms	28
2.3 Confirmation	29
2.4 Additional Confirmation Terms	29
2.5 Recording	29
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	29
3.1 Seller's and Buyer's Obligations	29
3.2 Transmission and Scheduling	30
3.3 Force Majeure	30
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE	30
4.1 Seller Failure	30
4.2 Buyer Failure	30
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES	30
5.1 Events of Default	30
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts	31
5.3 Net Out of Settlement Amounts	32
5.4 Notice of Payment of Termination Payment	32
5.5 Disputes With Respect to Termination Payment	32
5.6 Closeout Setoffs	32
5.7 Suspension of Performance	33
ARTICLE SIX: PAYMENT AND NETTING	33
6.1 Billing Period	33
6.2 Timeliness of Payment	33
6.3 Disputes and Adjustments of Invoices	33
6.4 Netting of Payments	33
6.5 Payment Obligation Absent Netting	34
6.6 Security	34
6.7 Payment for Options	34

6.8	Transaction Netting.....	34
ARTICLE SEVEN: LIMITATIONS.....		34
7.1	Limitation of Remedies, Liability and Damages	34
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS		35
8.1	Party A Credit Protection.....	35
8.2	Party B Credit Protection	36
8.3	Grant of Security Interest/Remedies.....	37
ARTICLE NINE: GOVERNMENTAL CHARGES.....		38
9.1	Cooperation.....	38
9.2	Governmental Charges.....	38
ARTICLE TEN: MISCELLANEOUS		38
10.1	Term of Master Agreement.....	38
10.2	Representations and Warranties.....	38
10.3	Title and Risk of Loss	40
10.4	Indemnity	40
10.5	Assignment	40
10.6	Governing Law	40
10.7	Notices	40
10.8	General.....	40
10.9	Audit	41
10.10	Forward Contract	41
10.11	Confidentiality	41
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS		42
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....		45
EXHIBIT A: CONFIRMATION LETTER.....		52

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: [_____, 2018] (“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: **Exelon Generation Company, LLC**
 (“EXGEN” or “Party A”)

Name:
East Bay Community Energy Authority, a California joint powers authority (“EBCE” or “Party B”)

All Notices:

Address: 1310 Point Street, 8th Floor
 Baltimore, MD 21202

All Notices:

Address: 1111 Broadway, Suite 300
 Oakland, CA 94607

Attn: Contract Administration
 Phone: 410-470-3500
 Facsimile: 443-213-3556

Attn: Nick Chaset
 Phone: 510-670-5936
 Facsimile: _____
 E-mail: Nchaset@ebce.org
 Duns: _____
 Federal Tax ID Number: _____

Invoices:

Attn: Billing Group
 Phone: 410-470-3737
 Facsimile: 410-468-3540

Invoices:

Attn: Nick Chaset
 Phone: 510-670-5936
 Facsimile: _____
 E-mail: Nchaset@ebce.org

Scheduling:

Attn: Scheduling Desk
 Phone: 410-468-3530
 Facsimile: 410-468-3540

Scheduling:

Attn: Nick Chaset
 Phone: 510-670-5936
 Facsimile: _____

Confirmations:

Attn: Confirmations Group
 Phone: 410-470-3738
 Facsimile: 410-468-3540
 E-mail: confirmationsmanager@constellation.com

Confirmations:

Attn: Nick Chaset
 Address: Same as above
 Phone: 510-670-5936
 Facsimile: _____
 E-mail: Nchaset@ebce.org

Payments:

Attn: Payments Group
Phone: 410-470-3737
Facsimile: 410-468-3540



Credit and Collections:

Attn: Credit Risk Department
Phone: 410-470-6000
Facsimile: 443-213-3215

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

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

Payments:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

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

Attn: Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com

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: FERC Electric Tariff Dated: March 1, 2014 Docket Number: ER00-3251

Party B Tariff N/A

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: East Bay Community Energy Authority 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

8.1 Party A Credit Protection:

Credit and Collateral Requirements

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at <http://ebce.org/>, and (2)

quarterly unaudited financial statements for Party B as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. 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. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

████████████████████
████████████████████

(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 BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

Other:
Specify: Downgrade Event threshold as set forth in the Applicable Confirmation.

(e) Guarantor for Party B: N/A _____

Guarantee Amount: N/A _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: _____

Option C Specify: _____

The annual report containing audited consolidated financial statements for such fiscal year of Party A as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A, and such request will be deemed to have been filled if such financial statements are available at www.exeloncorp.com. 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.

(b) Credit Assurances:

████████████████████
████████████████████

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

Party A Collateral Threshold: **[\$TBD]**; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: As set forth in the Applicable Confirmation.

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 BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

Other:

Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

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 8.4. If not checked, inapplicable. Collateral description as follows: See Schedule M

Other Changes

This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

1) Section 1.1 is amended by adding the following sentence at the end of the definition of "Affiliate":

"Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party A, Baltimore Gas & Electric Company, CNEGH Holdings, LLC, CNE Gas Holdings, LLC, CNEG Holdings, LLC, Constellation NewEnergy-Gas Division, LLC, CNE Gas Supply, LLC, PECO Energy Company, Commonwealth Edison Company, Delmarva Power & Light Company, Atlantic City Electric Company and Potomac Electric Power Company, and with respect to Party B the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be

deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

4) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

5) A new Section 1.26A is added as follows:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of December 1, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

9) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

10) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the

Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

11) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

12) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”

13) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

14) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“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 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; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

15) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

16) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

17) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“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 and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as 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.”

18) Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

[REDACTED]

20) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

21) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

22) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party’s calculation of the Termination Payment results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars (\$0.00).”

24) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent

pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

25) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

26) Section 7.1 shall be amended by:

(i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

[REDACTED]

29) Section 8.4 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment plus the Independent Amount.”

30) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

31) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

32) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

33) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such

Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”

34) Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;”

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional

remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

35) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

36) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

37) In section 10.9 insert the words “copies of” after the word “examine” in line 2.

38) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

39) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to

comply with the Requestor's demand and is not required to defend against it."

40) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the *Mobile Sierra* "public interest" standard of review set forth in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.* No. 08-674, 130 S.Ct. 693 (2010) ("NRG Order"). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order."

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

41) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

42) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B (i) a certificate of good standing issued by the Pennsylvania Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

43) The following shall be added as a new Section 10.15:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

44) The following new Section shall be added as Section 10.16:

“Imaged Agreement.” Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the

Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

45) The following new Section shall be added as Section 10.17:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and 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 taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price

Source to announce or publish the specified Floating Price or 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 in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original 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, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

46) The following new Section shall be added as Section 10.18:

Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

47) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.

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

EXELON GENERATION COMPANY, LLC

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

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: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

(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” the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

“Collateral Agent” has the meaning in the Security Documents.

“Depository Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement, the Account Control Agreement entered into by the Parties and certain third parties in connection with a Transaction, and any other agreement or instrument documenting the security of Party A in connection with a Transaction, as the same may be amended, restated, modified, replaced, extended, or supplemented from time to time.

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’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 Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A 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, to the extent applicable, 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 all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B 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 laws, (iii) entry into and performance of this Master Agreement by Party B 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) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Party B's Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide Party A (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 Party B of this Master Agreement and (ii) a certificate, signed by an officer of Party B and in form and substance reasonably satisfactory to Party A, certifying as to certain factual matters.

Section 3.5 No Immunity Claim. Party B 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 the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue

permitted under the Agreement), (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; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

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 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.

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 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depository Bank and such notice shall include information regarding the replacement Secured Account.

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 CALIFORNIA SHALL APPLY.

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 co-operate 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: _____

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: _____

SENA DRAFT 1/29/18

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: February ____, 2018 (“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: **Shell Energy North America (US), L.P., a Delaware limited partnership** (“Shell Energy” or “Party A”)

Name: **East Bay Community Energy Authority, a California joint powers authority** (“EBCE” or “Party B”)

All Notices:

Address: 1000 Main Street, Level 12
Houston, TX 77002

All Notices:

Address: 1111 Broadway, Suite 300
Oakland, CA 94607

Attn: Contracts North America
Phone: 877-504-2491
Facsimile: 713-767-5414
E-mail: _____

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org
Duns: _____
Federal Tax ID Number: _____

Invoices:

Attn: Power Accounting
Phone: 713-767-5500
Facsimile: 713-767-5414
E-Mail: _____

Invoices:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Scheduling:

Attn: Attn: 24 Hour Operations (Houston, Texas)
Phone: 1-800-267-2562
Facsimile: 713-767-5415
Attn: 24 Hour Operations (San Diego, California)
Phone: 1-858-320-1500
Facsimile 858-320-1550
Address: _____
Email: _____

Scheduling:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

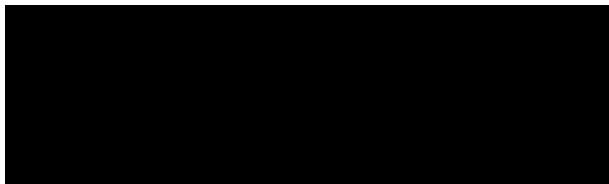
Confirmations:

Attn: Power Confirmations
Address: _____
Phone: 877-504-2491
Facsimile: 713-767-5414
E-mail: _____

Option Exercise Line: (Houston, Texas)
Phone: 713-767-5398

Payments:

Attn: Power Accounting
Address: _____
Phone: 713-767-5500
Facsimile: 713-767-5414
E-Mail: _____



Credit and Collections:

Attn: Director – Credit Risk Management
Address: 713-767-5329
Phone: _____
Facsimile: 713-230-7925
E-Mail: www.margindesk@shell.com

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

Attn: General Counsel
Address: _____
Phone: 713-767-5500
Facsimile: 713-230-2900

Confirmations:

Attn: Nick Chaset
Address: Same as above
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Payments:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

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

Attn: Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com

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 Market-Based Rate Tariff, Approved on May 8, 2008, effective April 25, 2008, Docket Number ER08-656-000, as amended from time to time.

Party B Tariff N/A



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: Shell Energy North America (US), L.P. 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

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

(1) The annual report containing audited consolidated

financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at <http://ebce.org/>, and (2) quarterly unaudited financial statements for East Bay Community Energy Authority as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. 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. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

████████████████████
████████████████████

(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:

The annual report containing audited consolidated financial statements for such fiscal year of Party A as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A, and such request will be deemed to have been filled if such financial statements are available at _____[website]. 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.

(b) Credit Assurances:

(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 with respect to Party A has occurred and is continuing.

Party A Independent Amount: As set forth in the Applicable Confirmation.

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 BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

Other:
Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor'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.

(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 8.4. If not checked, inapplicable. Collateral description as follows: See Security Documents

Other Changes

This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

1) Section 1.1 is amended by adding the following sentence at the

end of the definition of “Affiliate”:

“Notwithstanding the foregoing, the Parties hereby agree and acknowledge that (i) with respect to Shell Energy, “Affiliates” shall mean Shell Energy and its subsidiaries for purposes of Section 5.6 and Section 10.2(vi) and (ii) the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.12 is amended by deleting the word “issues” and replacing it with “issuer”. Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

4) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

5) A new Section 1.26A is added as follows:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of December 1, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

9) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

10) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0); provided, however that in no event shall Shell Energy be prevented from recovering the costs set forth in this Section”.

11) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

12) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”

13) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

14) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“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 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; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

15) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding

anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

16) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

17) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“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 and secured from improper access; provided, however, that both Parties acknowledge and agree that any such recording may not be submitted as 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.”

18) Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

[REDACTED]

20) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

21) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

22) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections

which read as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23) Section 5.2 is amended by:

(i) changing in line 3 “right (i) to” to “right to (i)”;

(ii) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(iii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to

replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party's calculation of the Termination Payment results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars (\$0.00)."

24) Section 5.3 shall be amended by adding the phrase "plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8," after the first use of the phrase "due to the Non-Defaulting Party" in the sixth line. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a replacement Transaction in order to determine the Settlement Amount.

25) In Section 5.7, delete "(a)" and "or (b) a Potential Event of Default" from the second line and (ii) deleting from line 5 "ten (10)" and replacing it with "twenty (20)." In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

26) Section 7.1 shall be amended by:

- (i) deleting in the fifteenth line the words "UNLESS EXPRESSLY HEREIN PROVIDED,";
- (ii) adding "SET FORTH IN THIS AGREEMENT" after "INDEMNITY PROVISION" and before "OR OTHERWISE," in the fifth sentence;
- (iii) adding in the nineteenth line the words "PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3." immediately after the words "ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR

OTHERWISE”; and

- (iv) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

[REDACTED]

[REDACTED]

[REDACTED]

30) A new Section 8.5. “UCC Waiver,” is added as follows:

“Section 8.5: Section 8 and Schedule M of the Agreement and the Security Documents set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, and in Schedule M and in the Security Documents, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.”

31) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

32) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement

payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

33) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

34) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, as of the Effective Date, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance

satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date”

35) Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional

remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

36) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

37) Section 10.8 shall be amended by:

- (i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and
- (ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

38) In section 10.9 insert the words “copies of” after the word “examine” in line 2 and (ii) changing twelve (12) months to twenty-four (24) months in line 9.

39) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

40) Section 10.11, shall be amended by adding the following:

- (i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;
- (ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel,

accountants, or advisors” in line four;

- (iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;
- (iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and
- (v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request

has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it."

41) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

- (a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the *Mobile Sierra* "public interest" standard of review set forth in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.* No. 08-674, 130 S.Ct. 693 (2010) ("NRG Order"). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order."
- (b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing

the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

42) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4(i), and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

43) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. Prior to entering into a Transaction, and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B a certificate, dated as of the Effective Date and signed by an authorized signatory of Party A, certifying as to the completeness and correctness of attached copies of (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

44) The following shall be added as a new Section 10.15:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions

for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

45) The following new Section shall be added as Section 10.16:

“Imaged Agreement.” Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

46) The following new Section shall be added as Section 10.17:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and 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 taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or 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 in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the

original 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, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

47) The following new Section shall be added as Section 10.18:

Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

48) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.

49)The following changes shall be made to Schedule M:

The “Governmental Entity or Public Power System” definition shall be deleted and all references thereto in the Agreement shall be replaced with “Party B”

“Act” shall mean “the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

The following definitions will be added to Schedule M:

“Collateral” has the meaning in the Security Agreement.

“Collateral Agent” has the meaning in the Security Documents.

“Depositary Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement, among the Depositary Bank, Party B and the Collateral Agent.

The “Special Fund” definition shall be deleted in its entirety and replaced with:

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’s obligations under this Master Agreement for the entire Delivery Period.

The text of Section 10.2, shall be deleted in its entirety and replaced with:

Party B represents and warrants to Party A 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, to the extent applicable, 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 all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B 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 laws, (iii) entry into and performance of this Master Agreement by Party B 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) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Collateral provided that Party B shall be fully liable for Party B's failure to comply with Section 5.01 of the Security Agreement, (vi) entry into and performance of this Master Agreement and each Transaction by Party B will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Party B or any members of Party B otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

Section 3.5 shall be amended by deleting the text in the parenthesis in lines 3 and 4 and replacing with the following: "provided that such court is located within a venue permitted under the Agreement". In addition, add the following to the end of Section 3.5:

"provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.)."

Section 3.6, the text shall be deleted in its entirety and replaced with:

"Section 3.6 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Collateral provided that Party B shall be fully liable for Party B's failure to comply with Section 5.01 of the Security Agreement."

Section 8.4, the text shall be deleted in its entirety and replaced with:

Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security

Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein.

Section 10.6, shall be amended by adding “California” after “of” and before “Shall”.

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

**SHELL ENERGY NORTH AMERICA (US),
LP., a Delaware limited partnership**

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

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.

Master Power Purchase & Sale Agreement



MASTER POWER PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

<u>COVER SHEET</u>	3
GENERAL TERMS AND CONDITIONS	27
ARTICLE ONE: GENERAL DEFINITIONS	27
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS	31
2.1 Transactions	31
2.2 Governing Terms	31
2.3 Confirmation	32
2.4 Additional Confirmation Terms	32
2.5 Recording	32
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	32
3.1 Seller's and Buyer's Obligations	32
3.2 Transmission and Scheduling	33
3.3 Force Majeure	33
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE	33
4.1 Seller Failure	33
4.2 Buyer Failure	33
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES	33
5.1 Events of Default	33
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts	34
5.3 Net Out of Settlement Amounts	35
5.4 Notice of Payment of Termination Payment	35
5.5 Disputes With Respect to Termination Payment	35
5.6 Closeout Setoffs	35
5.7 Suspension of Performance	36
ARTICLE SIX: PAYMENT AND NETTING	36
6.1 Billing Period	36
6.2 Timeliness of Payment	36
6.3 Disputes and Adjustments of Invoices	36
6.4 Netting of Payments	36
6.5 Payment Obligation Absent Netting	37
6.6 Security	37
6.7 Payment for Options	37

6.8	Transaction Netting.....	37
ARTICLE SEVEN: LIMITATIONS.....		37
7.1	Limitation of Remedies, Liability and Damages	37
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS		38
8.1	Party A Credit Protection.....	38
8.2	Party B Credit Protection	39
8.3	Grant of Security Interest/Remedies.....	41
ARTICLE NINE: GOVERNMENTAL CHARGES.....		41
9.1	Cooperation.....	41
9.2	Governmental Charges.....	41
ARTICLE TEN: MISCELLANEOUS		41
10.1	Term of Master Agreement.....	41
10.2	Representations and Warranties.....	42
10.3	Title and Risk of Loss	43
10.4	Indemnity	43
10.5	Assignment	43
10.6	Governing Law	43
10.7	Notices	43
10.8	General.....	44
10.9	Audit	44
10.10	Forward Contract	44
10.11	Confidentiality	44
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS		45
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....		48
EXHIBIT A: CONFIRMATION LETTER.....		55

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: _____, 2018 (“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: **Morgan Stanley Capital Group Inc.**
 (“MSCG” or “Party A”)

Name:
**East Bay Community Energy Authority, a
California joint powers authority** (“EBCE” or
“Party B”)

All Notices:
Commodities Department – 3rd Floor
Address: 1585 Broadway
New York, NY 10036

All Notices:
Address: 1111 Broadway, Suite 300
Oakland, CA 94607

Attn: Power Manager
Phone: 914-225-1500
Facsimile: _____
Email: _____

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org
Duns: _____
Federal Tax ID Number: _____

Invoices:
Attn: Commodities Settlements
Address: _____
Phone: 443-627-6673
Facsimile: _____
E-Mail: commodpsg@morganstanley.com

Invoices:
Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Scheduling:
Attn: 24-hour Scheduling in US:
Phone: (914) 225-1500
Pre-scheduling:
(914) 225-1501
24-hour Scheduling in Vancouver:
(604) 658-8120
Facsimile: 212-507-4821
Email: schedulers@morganstanley.com

Scheduling:
Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

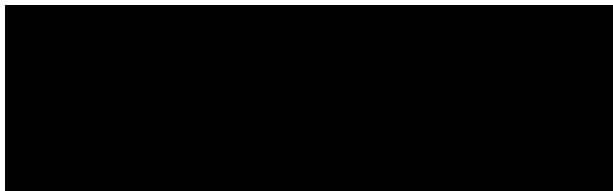
Option Exercise Line:
Phone: (914) 225-1501

Confirmations:

Attn: _____
Address: _____
Phone: _____
Facsimile: _____
Email: _____

Payments:

Attn: Commodities Settlements
Address: _____
Phone: 443-627-6673
Facsimile: _____
E-Mail: commodpsg@morganstanley.com



Credit and Collections:

Attn: Credit Manager - Commodities
Address: _____
Phone: 212-762-2680
Facsimile: 212-762-0344

Collateral:

Attn: Collateral Management
Phone: 212-761-0933
Facsimile: N/A
Email: Nycoll1@morganstanley.com

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

Attn: Morgan Stanley Capital Group Inc.
Address: 1585 Broadway
New York, NY 10036-8293
Attn: Close-out Notices
Phone: N/A
Facsimile: *With a mandatory copy to:*
Facsimile: 212-507-4622

Confirmations:

Attn: Nick Chaset
Address: Same as above
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Payments:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

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

Attn: Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com

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: Market Based Rate Tariff Dated: 11/8/1994 Docket Number: ER94-1384-000

Party B Tariff N/A

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: Morgan Stanley Cross Default Amount \$ ██████████
 Cross Default for Party B:
 Party B: East Bay Community Energy Authority 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

8.1 Party A Credit Protection:

Credit and Collateral Requirements (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later

than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at <http://ebce.org/>, and (2) quarterly unaudited financial statements for Party B as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. 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. The statements shall consist of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, statement of cash flows on a consolidating basis (as applicable), including the associated notes. Audited statements shall be audited by an independent certified public accountant. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

████████████████████
████████████████████

(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 BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

Other:
Specify: Downgrade Event threshold as set forth in the Applicable Confirmation.

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: _____

Option C Specify: Morgan Stanley

The annual report containing audited consolidated financial statements for such fiscal year of Party A's Guarantor as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A's Guarantor and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A's Guarantor, and such request will be deemed to have been filled if such financial statements are available at www.morganstanley.com or at www.sec.gov. 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.

(b) Credit Assurances:

(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 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 only if the Credit Rating of Party A's Guarantor, Morgan Stanley, falls below BBB- from S&P or Baa3 from Moody's or if the unsecured, senior long-term debt obligations of Morgan Stanley ceases to be rated by either S&P or Moody's.

Other:

Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

(e) Guarantor for Party A: Morgan Stanley

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 8.4. If not checked, inapplicable. Collateral description as follows: See Schedule M

Other Changes

This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

1) Section 1.1 is amended by adding the following sentence at the

end of the definition of “Affiliate”:

“Notwithstanding the foregoing, the Parties hereby agree and acknowledge that the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith. and shall exclude, in the case of Party A, any such person that is not organized or existing under the jurisdiction of Canada or the United States or a political subdivision thereof and Morgan Stanley Derivative Products Inc.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

4) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

5) A new Section 1.26A is added as follows:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of December 1, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

8) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

9) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

10) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

11) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

12) Section 1.61 is amended by adding the following definition: ““Act” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).”

13) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

14) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“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 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; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

15) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

16) Section 2.4 is hereby amended by deleting the words “either

orally or” in the sixth line.

17) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“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 and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as 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.”

18) Section 3.2 is hereby amended by adding the following text to the end of the Section:

“Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

19) Section 3.3 is hereby amended by adding at the end thereof:

“The non-Claiming Party shall have until the end of the next Business Day to notify the Claiming Party that it objects to or disputes the existence of Force Majeure.”

21) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

22) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

23) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections

which read as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield

curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party's calculation of a Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money for such Transaction), then for purposes of the calculation of the Termination Payment such Settlement Amount shall be deemed to be zero dollars (\$0.00); provided, however, that if the Non-Defaulting Party has declared an Early Termination Date under either (i) Section 5.1 (d) or (ii) Section 5.1 (h) (either such event, a "Defaulting Party Credit Event") the Settlement Amount shall not be deemed to be zero dollars (\$0.00) and shall be equal to the amount originally calculated by the Non-Defaulting Party. If a Termination Payment would be due from the Non-Defaulting Party due to a Defaulting Party Credit Event, the Non-Defaulting Party may elect to pay the Termination Payment over the delivery term of the Terminated Transaction(s) by providing written notice to the Defaulting Party. The Non-Defaulting Party shall provide the Defaulting Party with a written explanation of the method for payment of the Termination Payment and the method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each Terminated Transaction in a manner reasonably designed to replicate as closely as possible the payment streams under each such Terminated Transaction."

25) Section 5.3 is amended by inserting before the first line thereof the following new sentence:

"A Party shall determine the Settlement Amount for each Terminated Transaction as of the relevant Early Termination Date, or if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable."

26) Section 5.3 shall be amended by adding the phrase "plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then available to the Defaulting Party or its agent pursuant to Article 8," after the first use of the phrase "due to the Non-Defaulting Party" in the sixth line.

27) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

[REDACTED]

[REDACTED]

30) In Section 8.2(d), remove “determined by Party B in a commercially reasonable manner” at the end of the first sentence and replace it with “equal to the amount of the Termination Payment”.

31) Section 8.4 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment.”

32) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act;

(xix) it continuously represents that it is not (i) an employee benefit plan (hereinafter an “ERISA Plan”), as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), subject to Title I of ERISA or a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended, or subject to any other statute, regulation, procedure or restriction that is materially similar to Section 406 of ERISA or Section 4975 of the Code (together with ERISA

Plans, “Plans”), (ii) a person any of the assets of whom constitute assets of a Plan, or (iii) in connection with any Transaction under this Agreement, a person acting on behalf of a Plan, or using the assets of a Plan. It will provide notice to the other party in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation.”

33) Section 10.2(viii) is hereby amended by adding at the end thereof:

“; it is understood that information and explanations of the terms and conditions of each such Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction, and the other Party is not acting with respect to any communication (written or oral) as a “municipal advisor,” as such term is defined in Section 975 of the U.S. Dodd-Frank Wall Street Reform & Consumer Protection Act; no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other Party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;”

34) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

35) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such

Party so long as (x) such Affiliate's creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any"

36) Section 10.6 shall be amended by deleting the sentence "EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.";"

and adding the following after the last line: "NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY. (a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make

a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the prevailing Parties shall be entitled to an award of its fees and expenses of any referee appointed in such action or proceeding.”

37) Section 10.7 is amended by deleting from the sixth line the phrase “at the close of business”.

38) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

39) In section 10.9 insert the words “certified and authenticated copies of, or originals at the option of the Party providing the records” after the word “examine” in line 2.

40) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

41) Section 10.11, is deleted in its entirety and replaced with the following:

“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 or the completed Cover Sheet to, or any annex to, this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors, or any such representatives of a Party's Affiliates (all collectively referred to as "Representatives") who have a need to know such information and who the Party is satisfied will 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 or request by a regulatory authority and in the event that any disclosure is requested or required by the regulatory authority or a government body by interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or applicable law, the Party subject to such request or requirement may disclose to the extent so requested or required but shall promptly notify the other Party, prior to such disclosure, if such Party's counsel determines that such notice is permitted by law, so that the other Party may seek an appropriate protective order or waive compliance with the provisions of this Section 10.11. Failing the entry of a protective order or the receipt of a waiver hereunder, that Party may disclose that portion of the Confidential Information as requested or required. In any event, a Party will not oppose action by the other to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. Each Party shall be liable for breach of any confidentiality obligation pursuant to this Master Agreement by such Representatives. 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. The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers

confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it."

42) The following Mobile-Sierra clause shall be added as Section 10.12:

"10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, 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 *Mobile Sierra* "public interest" application of the "just and reasonable" standard of review set forth in *United Gas PipeLine Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)

and clarified by *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.* No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.”

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

43) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

44) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B a certificate, signed by an authorized signatory of Party A, certifying as to the completeness and correctness of attached copies of (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of a physical power Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

45) The following shall be added as a new Section 10.15:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

46) The following new Section shall be added as Section 10.16:

“Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

47) The following new Section shall be added as Section 10.17:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and 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 taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or 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 in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the

Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price; or (f) Tax Disruption Event.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

“Tax Disruption Event” means the imposition of, change in or removal of an excise, severance, sales, use, value-added, transfer, stamp, documentary, recording or similar tax on, or measured by reference to, the relevant Product (other than tax on, or measured by reference to overall gross or net income) by any government or taxation authority after the Trading Day, if the direct effect of such imposition, change or removal is to raise or lower the Floating Price on the relevant Trading Day that would otherwise be the date of pricing from what it would have been without that imposition, change or removal.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original 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, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is

less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

48) The following new Section shall be added as Section 10.18:

Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

49) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.

SCHEDULE M

50. Schedule M is amended, with respect to Party A, as follows:

(a) Paragraph A is amended by deleting the term “Act” and replacing it with the following:

“Act” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).”

(b) Paragraph G is deleted in its entirety and replaced with the following:

“NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.””

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

51. The following shall be added at the end of Schedule P:

“If the Parties agree to a service level/product defined by reference to a different agreement (*e.g.*, the MAPP Restated Agreement, the WSPP Agreement, ERCOT Guides) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product shall be as defined by such other agreement, including if applicable, the

regional reliability requirements and guidelines as well as the specific excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement remain applicable.”

52. The following shall be added at the end of Schedule P:

““CAISO Energy” means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the California Independent System Operator (“CAISO”) Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO tariff, as amended from time to time for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” as defined in the CAISO Tariff.”

53. The following shall be added at the end of Schedule P:

““West Firm” or “WSPPC-Firm” means with respect to a Transaction, a Product defined by the WSPP Agreement as amended, in Service Schedule C as Firm Capacity/Energy Sale or Exchange Service.”

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

**MORGAN STANLEY CAPITAL GROUP
INC.**

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

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: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

(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” the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

“Collateral Agent” has the meaning in the Security Documents.

“Depository Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement, the Account Control Agreement entered into by the Parties and certain third parties in connection with a Transaction, and any other agreement or instrument documenting the security of Party A in connection with a Transaction, as the same may be amended, restated, modified, replaced, extended, or supplemented from time to time.

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’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 Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A 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, to the extent applicable, 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 all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B 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 laws, (iii) entry into and performance of this Master Agreement by Party B 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) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Party B 's Deliveries . On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide Party A (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 Party B of this Master Agreement and (ii) a certificate, signed by an officer of Party B and in form and substance reasonably satisfactory to Party A, certifying as to certain factual matters.

Section 3.5 No Immunity Claim. Party B 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 the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue

permitted under the Agreement), (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; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

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 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.

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 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depository Bank and such notice shall include information regarding the replacement Secured Account.

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 CALIFORNIA SHALL APPLY.

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 co-operate 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)

<input type="checkbox"/> FT-Contract Path Contingency	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> FT-Delivery Point Contingency	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> Transmission Contingent	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> Other transmission contingency		

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

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: _____

**PROPOSED EXECUTION VERSION
TRANSALTA
1/11/2018**

Master Power Purchase & Sale Agreement



MASTER POWER PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

<u>COVER SHEET</u>	3
GENERAL TERMS AND CONDITIONS	23
ARTICLE ONE: GENERAL DEFINITIONS	23
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS	27
2.1 Transactions	27
2.2 Governing Terms	27
2.3 Confirmation	28
2.4 Additional Confirmation Terms	28
2.5 Recording	28
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	28
3.1 Seller's and Buyer's Obligations	28
3.2 Transmission and Scheduling	29
3.3 Force Majeure	29
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE	29
4.1 Seller Failure	29
4.2 Buyer Failure	29
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES	29
5.1 Events of Default	29
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts	30
5.3 Net Out of Settlement Amounts	31
5.4 Notice of Payment of Termination Payment	31
5.5 Disputes With Respect to Termination Payment	31
5.6 Closeout Setoffs	31
5.7 Suspension of Performance	32
ARTICLE SIX: PAYMENT AND NETTING	32
6.1 Billing Period	32
6.2 Timeliness of Payment	32
6.3 Disputes and Adjustments of Invoices	32
6.4 Netting of Payments	32
6.5 Payment Obligation Absent Netting	33
6.6 Security	33
6.7 Payment for Options	33

6.8	Transaction Netting.....	33
ARTICLE SEVEN: LIMITATIONS.....		33
7.1	Limitation of Remedies, Liability and Damages	33
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS		34
8.1	Party A Credit Protection.....	34
8.2	Party B Credit Protection	35
8.3	Grant of Security Interest/Remedies.....	36
ARTICLE NINE: GOVERNMENTAL CHARGES.....		37
9.1	Cooperation.....	37
9.2	Governmental Charges.....	37
ARTICLE TEN: MISCELLANEOUS		37
10.1	Term of Master Agreement.....	37
10.2	Representations and Warranties.....	37
10.3	Title and Risk of Loss	39
10.4	Indemnity	39
10.5	Assignment	39
10.6	Governing Law	39
10.7	Notices	39
10.8	General.....	39
10.9	Audit	40
10.10	Forward Contract	40
10.11	Confidentiality	40
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS		41
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....		44
EXHIBIT A: CONFIRMATION LETTER.....		51

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: _____, 2018 (“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:
TransAlta Energy Marketing (U.S.) Inc.
 (“TEMUS” or “Party A”)

Name:
**East Bay Community Energy Authority, a
California joint powers authority** (“EBCE” or
“Party B”)

All Notices:

Address: 110 – 12th Avenue SW
Calgary, AB T2R 0G7

All Notices:

Address: 1111 Broadway, Suite 300
Oakland, CA 94607

Attn: Contract Admin
Phone: 403-267-3945
Facsimile: 403-267-7255
Email: ContractAdmin@transalta.com

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org
Duns: _____
Federal Tax ID Number: _____

Invoices:

Attn: Counterparty Settlements
Phone: _____
Facsimile: _____
Email: transalta_settlements@transalta.com

Invoices:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Scheduling:

Attn: Scheduler
Phone: 403-267-6902 / 403-267-6931
Facsimile: 403-267-6906

Scheduling:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

Confirmations:

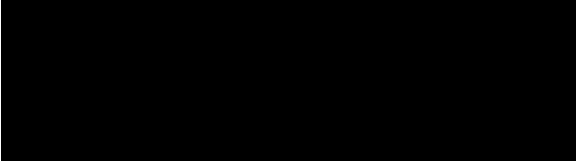
Attn: Confirmations
Address: _____
Phone: _____
Facsimile: 1-888-865-5643
Email: TA_Confirms@transalta.com

Confirmations:

Attn: Nick Chaset
Address: Same as above
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Payments:

Attn: Counterparty Settlements
Phone: _____
Facsimile: _____
Email: transalta_settlements@transalta.com



Credit and Collections:

Attn: Credit Risk Department _____
Phone: _____
Facsimile: 403-267-7575
Email: TACredit@transalta.com

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

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

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

Attn: Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com

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: FERC Electric Tariff Dated: 12/31/2013 Docket Number: ER10-2806-001

Party B Tariff N/A

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: TransAlta Corporation Cross Default Amount [REDACTED]
 Cross Default for Party B:
 Party B: East Bay Community Energy Authority Cross Default Amount [REDACTED]
 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: _____ providing that the Phrase "or its Affiliates" is deleted after the phrase "Defaulting Party" from each of the fourth and sixth lines. _
- Option C (No Setoff)

Article 8

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180

days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at <http://ebce.org/>, and (2) quarterly unaudited financial statements for Party B as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. 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. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

████████████████████
████████████████████

(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 BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

Other:
Specify: Downgrade Event threshold as set forth in the
Applicable Confirmation.

(e) Guarantor for Party B: NONE

Guarantee Amount: Not Applicable

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
 Option B Specify: _____
 Option C Specify:

TransAlta Corporation, provided however, that such financial statements are not required to be delivered if they are available on “SEDAR”, “EDGAR” or on the party’s home page.

Option C Specify:

(b) Credit Assurances:

████████████████████
████████████████████

(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 with respect to Party A has occurred and is continuing.

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 BBB- from S&P or Baa3 from Moody’s or if Party A is not rated by either S&P or Moody’s.

Other:
Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

(e) Guarantor for Party A: TransAlta Corporation

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 8.4. If not checked, inapplicable. Collateral description as follows: See Schedule M

Other Changes

This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

1) Section 1.1 is amended by adding the following sentence at the end of the definition of "Affiliate":

"Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party B the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith."

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase "foregoing factors" the word "two."

4) Section 1.24 is amended by adding before the period at the end thereof the following: "in accordance with Section 5.2".

5) A new Section 1.26A is added as follows:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of December 1, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

9) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

10) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

11) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

12) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”

13) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

14) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“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 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; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

15) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

16) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

17) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“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 and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as 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.”

18) Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

19) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

20) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

21) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

22) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party’s calculation of the Termination Payment results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars (\$0.00).”

23) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

24) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

25) Section 7.1 shall be amended by:

(i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN

SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

[REDACTED]

[REDACTED]

28) Section 8.4 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment plus the Independent Amount.”

29) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

30) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by

the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

31) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

32) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”

33) Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF

OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

34) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

35) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the

same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

36) In section 10.9 insert the words “copies of” after the word “examine” in line 2.

37) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

38) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ.

Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential”. The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

39) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the *Mobile Sierra* “public interest” standard of review set forth in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.* No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard

applies, to the maximum degree permitted under the NRG Order.”

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

40) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

41) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of

the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

42) The following shall be added as a new Section 10.15:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

43) The following new Section shall be added as Section 10.16:

“Imaged Agreement.” Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

44) The following new Section shall be added as Section 10.17:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price

(or a method for determining a Floating Price), and 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 taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or 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 in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is

published or announced by the person responsible for that publication or announcement within three (3) years of the original 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, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

45) The following new Section shall be added as Section 10.18:

“Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

46) The following new Section shall be added as Section 10.19:

“No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.”

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

**TRANSALTA ENERGY MARKETING (U.S.)
INC.**

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

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: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

(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” the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

“Collateral Agent” has the meaning in the Security Documents.

“Depository Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement, the Account Control Agreement entered into by the Parties and certain third parties in connection with a Transaction, and any other agreement or instrument documenting the security of Party A in connection with a Transaction, as the same may be amended, restated, modified, replaced, extended, or supplemented from time to time.

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’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 Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A 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, to the extent applicable, 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 all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B 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 laws, (iii) entry into and performance of this Master Agreement by Party B 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) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Party B's Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide Party A (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 Party B of this Master Agreement and (ii) a certificate, signed by an officer of Party B and in form and substance reasonably satisfactory to Party A, certifying as to certain factual matters.

Section 3.5 No Immunity Claim. Party B 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 the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue

permitted under the Agreement), (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; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

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 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.

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 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depository Bank and such notice shall include information regarding the replacement Secured Account.

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 CALIFORNIA SHALL APPLY.

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 co-operate 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)

<input type="checkbox"/> FT-Contract Path Contingency	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> FT-Delivery Point Contingency	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> Transmission Contingent	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> Other transmission contingency		

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

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: _____

Master Power Purchase & Sale Agreement



MASTER POWER PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

<u>COVER SHEET</u>	3
ARTICLE ONE: GENERAL DEFINITIONS	28
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS	33
2.1 Transactions	33
2.2 Governing Terms	33
2.3 Confirmation	33
2.4 Additional Confirmation Terms.....	33
2.5 Recording.....	34
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	34
3.1 Seller's and Buyer's Obligations	34
3.2 Transmission and Scheduling	34
3.3 Force Majeure	34
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE	34
4.1 Seller Failure.....	34
4.2 Buyer Failure	35
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES	35
5.1 Events of Default	35
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.....	36
5.3 Net Out of Settlement Amounts.....	36
5.4 Notice of Payment of Termination Payment	36
5.5 Disputes With Respect to Termination Payment	37
5.6 Closeout Setoffs	37
5.7 Suspension of Performance.....	37
ARTICLE SIX: PAYMENT AND NETTING	38
6.1 Billing Period	38
6.2 Timeliness of Payment.....	38
6.3 Disputes and Adjustments of Invoices.....	38
6.4 Netting of Payments.....	38
6.5 Payment Obligation Absent Netting	38
6.6 Security	39
6.7 Payment for Options	39
6.8 Transaction Netting.....	39

ARTICLE SEVEN: LIMITATIONS.....	39
7.1 Limitation of Remedies, Liability and Damages	39
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS	40
8.1 Party A Credit Protection.....	40
8.2 Party B Credit Protection	41
8.3 Grant of Security Interest/Remedies	42
ARTICLE NINE: GOVERNMENTAL CHARGES.....	43
9.1 Cooperation.....	43
9.2 Governmental Charges.....	43
ARTICLE TEN: MISCELLANEOUS	43
10.1 Term of Master Agreement.....	43
10.2 Representations and Warranties.....	44
10.3 Title and Risk of Loss	45
10.4 Indemnity	45
10.5 Assignment	45
10.6 Governing Law	45
10.7 Notices	45
10.8 General.....	46
10.9 Audit	46
10.10 Forward Contract	46
10.11 Confidentiality	46
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS	48
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....	51
EXHIBIT A: CONFIRMATION LETTER.....	58

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: _____, 2018 (“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: **Powerex Corp.***
 (“Powerex” or “Party A”)

** Powerex Corp., doing business in California as Powerex Energy Corp.*

All Notices:

Address: Suite 1300 – 666 Burrard Street
 Vancouver, B.C. V6C 2X8

Attn: Manager, Contracts
 Phone: 604-891-6090
 Facsimile: 604-891-5006
 Email: powerex.legalservices@powerex.com

Invoices:

Attn: Finance Department
 Phone: 604-891-5023
 Facsimile: 604-891-6011
 Email: powerex.finance@powerex.com

Scheduling:

Attn: Daily Optimization & Scheduling
 Phone: 604-891-5007
 Facsimile: 604-891-5045
 E-mail: presched@powerex.com

Confirmations:

Attn: Trade Record Control
 Address: Same as above
 Phone: 604-891-5057
 Facsimile: 604-891-5056
 Email: middle.office@powerex.com

Name:
East Bay Community Energy Authority, a California joint powers authority (“EBCE” or “Party B”)

All Notices:

Address: 1111 Broadway, Suite 300
 Oakland, CA 94607

Attn: Nick Chaset
 Phone: 510-670-5936
 Facsimile: _____
 E-mail: Nchaset@ebce.org

Duns: _____
 Federal Tax ID Number: **[insert]** _____

Invoices:

Attn: Nick Chaset
 Phone: 510-670-5936
 Facsimile: _____
 E-mail: Nchaset@ebce.org

Scheduling:

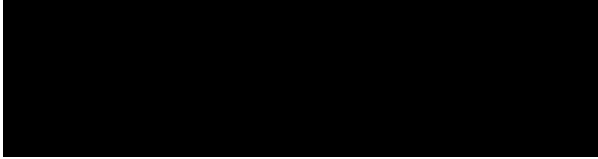
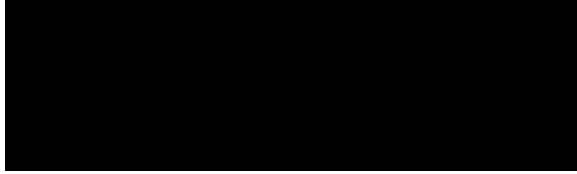
Attn: Nick Chaset
 Phone: 510-670-5936
 Facsimile: _____

Confirmations:

Attn: Nick Chaset
 Address: Same as above
 Phone: 510-670-5936
 Facsimile: **[insert]** _____
 E-mail: Nchaset@ebce.org

Payments:

Attn: Finance Department
Phone: 604-891-5023
Facsimile: 604-891-6011
Email: powerex.finance@powerex.com



Credit and Collections:

Attn: Credit Risk Department
Phone: 604-891-6014
Facsimile: 604-891-5025
Email: powerex.credit.risk@powerex.com

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

Attn: Director, Risk Management
Phone: 604-891-5041
Facsimile: 604-891-5056

Payments:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____
E-mail: Nchaset@ebce.org

Wire Transfer:

BNK: [insert]
ABA: [insert]
ACCT: [insert]

Credit and Collections:

Attn: Nick Chaset
Phone: 510-670-5936
Facsimile: _____

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

Attn: Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com

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: Powerex Corp. FERC Rate Schedule No. 1, effective February 25, 2016, Docket No. ER17-704-000, as such Rate Schedule may be amended, modified, updated or replaced in accordance with FERC rules and procedures.

Party B Tariff N/A

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: British Columbia Hydro and Power Authority Cross Default Amount [REDACTED]
 Cross Default for Party B:
 Party B: East Bay Community Energy Authority Cross Default Amount [REDACTED]
 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: Affiliates shall have the meaning set forth in the Master Agreement as amended by this Cover Sheet.
- Option C (No Setoff)

Article 8

8.1 Party A Credit Protection:

Credit and Collateral Requirements (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: (A) (1) The annual report containing audited consolidated financial statements for

such fiscal year of East Bay Community Energy Authority as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at <http://ebce.org/>, and (2) quarterly unaudited financial statements for East Bay Community Energy Authority as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. 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. The statements shall consist of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, statement of cash flows on a consolidating basis (as applicable), including the associated notes. Audited statements shall be audited by an independent certified public accountant. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30. [REDACTED]

[REDACTED]

(b) Credit Assurances:

[REDACTED]

(c) Collateral Threshold:

Not Applicable
 Applicable

If applicable, complete the following:

Party B Collateral Threshold: Shall be [REDACTED]; 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: US\$ 0.00

Party B Rounding Amount: [REDACTED]

(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 BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

Other:

Specify: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(e) Guarantor for Party B: NONE

Guarantee Amount: Not Applicable.

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: British Columbia Hydro and Power Authority. Any request for financial statements will be deemed to have been fulfilled if such financial statements are available on the website for British Columbia Hydro and Power Authority.
- Option C Specify:

(b) Credit Assurances:

[REDACTED]
[REDACTED]

(c) Collateral Threshold:

- Not Applicable

[X] Applicable

If applicable, complete the following:

Party A Collateral Threshold: Shall be the lower of (i) the amount set forth in the table immediately below opposite the lowest Credit Rating for Party A's Guarantor, as determined by Moody's or S&P or (ii) the amount of the dollar limit in the guarantee, if any, provided by Party A's Guarantor:

██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████

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 or Party A's Guarantor has occurred and is continuing.

Party A Independent Amount: US\$ 0.00

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 BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

Other:

Specify: It shall be a Downgrade Event for Party A if the Credit Rating of Party A's Guarantor falls below BBB- from S&P or below Baa3 from Moody's, or if Party A's Guarantor is not rated by any Ratings Agency.

(e) Guarantor for Party A: British Columbia Hydro and Power Authority

Guarantee Amount: In accordance with Section 8.2(e).

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 8.4. If not checked, inapplicable. Collateral description as follows: See Schedule M

Other Changes

This Master Power Purchase and Sale Agreement incorporates, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

1) Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:

“Notwithstanding the foregoing, with respect to Party A, the sole Affiliate of Party A shall be British Columbia Hydro and Power Authority, and with respect to Party B, the public entities that are “Parties” (also referred to herein as “members”) under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday, Easter Monday, a Canadian bank or a Federal Reserve holiday or any statutory holiday in British Columbia.

3) Section 1.12 is deleted and replaced with the following:

“1.12 “Credit Rating” means, with respect to any entity, the rating then assigned by Moody’s, S&P or any other rating agency agreed by the Parties as set forth in the Cover Sheet, to such entity’s senior unsecured long-term debt obligations (not supported by insurance provider 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 Moody’s or as an issuer or corporate credit rating by S&P or another rating by any other rating agency agreed by the Parties as set forth in the Cover Sheet. In the event that the Party or its Guarantor has multiple ratings, the lower rating shall prevail.”

4) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

5) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

6) A new Section 1.26A is added as follows:

“1.26A “Joint Powers Agreement” means the East Bay Community Energy Authority Joint Powers Agreement, effective as of December 1, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

7) Section 1.27 is amended by (a) deleting the word “transferable” in the first line and replacing it with “non-transferable”, (b) adding the phrase “, a Canadian commercial bank” in the second line immediately after the words “U.S. commercial bank”, (c) deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank”, (d) deleting the words “credit rating” in the third line and replacing it with “long term debt rating or deposit rating”, and (e) adding the phrase “and at least \$10 billion in total assets” in the third line immediately after the word “Moody’s”

8) Section 1.28 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

9) The following defined term is added as Section 1.49A:

“1.49A “Ratings Agency” means S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.”

10) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

11) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

12) Section 1.53 is amended by:

(i) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(ii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer and a market price is not

reasonably determinable by Seller, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

13) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Sections 5.2 and 5.3.”

14) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”

15) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

16) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“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 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.”

17) Section 2.2 is amended by deleting the text “accepted in accordance with Section 2.3” from the second sentence and is further revised by adding the following to the end of that Section:

"Party A and Party B agree that from and after the Effective Date, all new transactions with respect to the purchase and sale of any Product shall be made or deemed to be made pursuant to this Master Agreement (unless otherwise specifically agreed in writing). Both Parties further agree that this Master Agreement shall apply to those transactions, if any, under the WSPP, Inc. Agreement ("WSPP Agreement"). Party A and Party B confirm the terms of those transactions and agree that such transactions, if any, are, effective as of the Effective Date, governed by this Master Agreement and are part of the single integrated agreement between the Parties, consistent with this Section 2.2."

18) Section 2.3 is hereby deleted in its entirety and replaced with the following:

“2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties (“Confirmation”). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties.”

19) Section 2.4 is hereby amended by deleting the words “either orally or” in the seventh line.

20) Section 2.5 is hereby amended by deleting the last two sentences thereof in their entirety.

21) Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region. From time to time the Parties may agree to bookout Transactions until further notice. Bookouts are undertaken as a scheduling convenience and do not modify the terms of any Transaction”.

[REDACTED]

[REDACTED]

24) Section 5.1(g) is amended by (a) adding “required to be made under one or more agreements for such Party or any other party specified in the Cover Sheet,” in the eleventh line before the word “individually” and (b) adding the following at the end of the Section:

““provided, however, that no default or event of default shall occur or be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available and has not lapsed or if, as demonstrated to the reasonable satisfaction of the other Party, the Event of Default or the failure to pay is the result of a failure to pay caused by an error or omission of an administrative or operational nature, funds were available to such Party to enable it to make the relevant payment when due, and such relevant payment is made within three (3) Business Days following receipt of written notice from the party to whom the payment is owed;”

25) Section 5.1(h)(ii) is revised to add the phrase “or any other agreement between Party A or its Affiliate and Party B or its Affiliates,” after the word “Agreement”.

26) Section 5.1(h)(v) is revised to add “made in connection with this Agreement” after “any guaranty”.

27) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“(l) a Letter of Credit Failure that is not cured within five (5) Business Days after the occurrence thereof.

28) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including,

without limitation, Intercontinental Exchange, Inc.”

29) Section 5.3 shall be amended by (a) adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line and (b) adding the following sentence at the end of the section:

“Notwithstanding the immediately preceding sentence, no Termination Payment shall be due or payable to the Defaulting Party.”

30) Section 5.7 is revised by replacing the word “early” with the word “Early” in the sixth line thereof.

31) The following is added as a new Section 5.8

“5.8 Letter of Credit Failure. For the purposes of this Article Five, “Letter of Credit Failure” shall mean, with respect to a Party that has provided a Letter of Credit as Performance Assurance:

(a) a failure to renew or substitute a Letter of Credit by no later than fifteen Business Days prior to expiry thereof;

(b) the issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P or at least “A3” by Moody’s and fails to maintain at least \$10 billion in total assets;

(c) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit if such failure continues after the lapse of any applicable grace period;

(d) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(e) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement or any outstanding Transaction; or

(f) any event analogous to an event specified in Subsection 5.1(d) or (f) of this Agreement occurs with respect to the issuer of such Letter of Credit.

However, no Letter of Credit Failure will occur with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.”

32) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

33) Section 6.4 is revised by adding the following sentence to the end of the section:

“In the event the Parties are transacting under additional agreements, all transactions completed in the same month shall be netted against each other using the procedure described above.”

34) Section 7.1 shall be amended by:

(i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT PROVIDING FOR AN EXPRESS REMEDY OR MEASURE OF DAMAGES” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

35) Section 8.2(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.

[REDACTED]

37) Section 8.2(c) is revised by adding the following paragraph after the first paragraph:

“Party A may at any time and from time to time (including at the time of a request by Party B for Performance Assurance) give notice to Party B of its intent to increase the amount of the guarantee provided by Party A’s Guarantor up to the amount set forth in the table on the Cover Sheet opposite the lowest Credit Rating for Party A’s Guarantor. No such increase shall become effective until Party A shall have provided Party B with a new guaranty or an amended guaranty (in form and substance acceptable to Party B). If the operation of the foregoing results in the sum of Party A Performance Assurance and Party A’s Collateral Threshold being in excess of its Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount) Party A shall be deemed to have requested that the Party A Performance Assurance be reduced accordingly.”

[REDACTED]

[REDACTED]

39) Section 8.2(e) is deleted in its entirety and replaced with the following:

“(e) If specified on the Cover Sheet, Party A shall, at the request of Party B, deliver to Party B a guarantee in a form and an amount agreed to by both Parties and Party A’s Guarantor, which shall be delivered to Party B on or before ten (10) Business Days after the date on which the Parties and Party A’s Guarantor have agreed to the form and amount of the guarantee. In the event the Parties (each acting reasonably) and Party A’s Guarantor cannot agree to the form and amount for the guarantee to be delivered by Party A within ten (10) Business Days of Party B’s request, Party A may deliver Performance Assurance to Party B in substitution for the guarantee. For greater certainty, it shall not be an Event of Default if Party A does not deliver a guarantee to Party B absent a request by Party B and the agreement of the Parties and Party A’s Guarantor as to the form and amount of such guarantee.”

40) Section 8.4 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment plus the Independent Amount.”

41) Section 10.2(iii) is revised by inserting the text “(including, with respect to Party B, the Joint Powers Agreement)” immediately after the words “governing documents”.

42) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Code, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy

Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

43) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

44) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”

45) Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;

and adding the following after the last line: “SUBJECT TO SECTION 10.12 (a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY), AND (b) EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in accordance with clause (b) by or against any Party in connection with any of the transactions contemplated by this Agreement and the Parties are otherwise unable to proceed without a trial by jury, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

46) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights and obligations of either Party pursuant to (i) Article 4, (ii) Article 5, (iii) Article 6, (iv) Section 7.1, (v) Article 8, (vi) the obligation of either Party to make payments hereunder, (vii) Section 10.6, (viii) Section 10.11 and (ix) Section 10.13 shall also survive the termination of the Agreement or any Transaction”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed

signature page.”

47) In section 10.9 insert the words “copies of” after the word “examine” in line 2.

48) Section 10.11 is deleted and replaced with the following:

“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 (i) the terms or conditions of a Transaction or any other information exchanged relating to a Transaction or potential Transaction, or (ii) the completed Cover Sheet to this Master Agreement (collectively, “Confidential Information”), 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 (a) 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, or (b) to the extent necessary to provide commercial terms of a Transaction, except the details pertaining to Seller or Buyer or either Party’s name, to a third party for the sole purpose of calculating a published index; 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. This Section 10.11 is in addition to, and not in substitution for, any other written assurances of non-disclosure between and executed by the Parties.

Party A acknowledges that Party B is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that Party A considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Cal. Government Code Sections 6254 and 6255). Party B acknowledges that Party A is not subject to the requirements of the California Public Records Act (Cal. Government Code Section 6250 et seq.). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), the receiving Party as soon as practical shall notify the disclosing Party in writing that

such request has been made. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to prevent release of the Requested Confidential Information to the Requestor by the receiving Party. If the disclosing Party takes no such action, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. If the disclosing Party does take or attempt to take such action, the receiving Party shall provide timely and reasonable cooperation to the disclosing Party if requested by the disclosing Party, for which the disclosing Party will be responsible for any agreed reasonable expenses incurred by the receiving Party in providing such cooperation."

49) The following is added as Section 10.12:

"10.12 Arbitration.

(a) Any claim, counterclaim, demand, cause of action, dispute or controversy arising out of or relating to this Agreement, or in respect of any legal relationship associated therewith or derived there from or relating to the subject matter of this Agreement, whether contractual in nature or not, shall be referred to and finally resolved by arbitration administered pursuant to the International Arbitration Rules of the American Arbitration Association (or such other rules of arbitration as the Parties may agree). The number of arbitrators shall be three, and each Party shall choose one arbitrator and the two arbitrators shall choose the third arbitrator, who shall serve as chair. The place of arbitration shall be Portland, Oregon. The language of the arbitration shall be English. It is agreed that the arbitrators shall have no jurisdiction or authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under any applicable law, and each of the Parties hereby waives its rights, if any, to recover any such damages. To the fullest extent permitted by law, the Parties shall maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrators' award, provided that each of the Parties shall be entitled to disclose such matters to its own officers, directors and employees, its professional advisors and other representatives as necessary for the purposes of conducting the arbitration, and may make such disclosures in the course of legal proceedings as may be required to pursue any legal right arising out of or in connection with the arbitration.

(b) If any applicable law or statute authorizes any form of court proceeding in any of the courts of the United States that in any way arises out of or is related to an arbitration conducted pursuant to this Agreement ("Related Proceedings"), then, to the extent that

any such matter is in whole or in part eligible for resolution by a United States District Court, whether or not the dispute may in whole or in part also be eligible for resolution in a state court, each party irrevocably:

(i) submits to the exclusive jurisdiction of the United States District Court located in the City of Portland, Oregon for the purposes of such Related Proceedings; and

(ii) waives any objection which it may have at any time to the laying of venue of any Related Proceedings brought in any such court, waives any claim that such Related Proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such Related Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either Party from bringing a proceeding in any jurisdiction to enforce an arbitration award or any judgment enforcing an arbitration award, nor will the bringing of such proceedings in any one or more jurisdictions preclude the bringing of enforcement proceedings in any other jurisdiction. In connection with any court proceedings, each Party waives its respective right to any jury trial.”

50) The following Mobile-Sierra clause shall be added as Section 10.13:

“10.13 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates or other material economic terms and conditions of service of this Agreement or any Transaction entered into thereunder, 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine). The parties, for themselves and their successors and assigns, (y) agree that “public interest” standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with this Agreement and (z) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard of review, provided that this standard of review and the other provisions of this Section 10.13 shall only apply to proceedings before the FERC or appeals thereof.

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

51) The following shall be added as a new Section 10.14:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

52) The following new Section shall be added as Section 10.15:

“Imaged Agreement.” Any original executed Master Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the

admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

53) The following new Section shall be added as Section 10.16:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then the following provisions shall be applicable to such Transaction:

(i) Market Disruption. If a Market Disruption Event occurs on one or more days during a Determination Period (each day a “Disrupted Day”), then the Floating Price for the Disrupted Day shall be determined by reference to the fallback Floating Price, if any, specified by the Parties in the relevant Confirmation; provided, however, if the fallback Floating Price is not so specified, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and 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 taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (iii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (iii) below.

(ii) Definitions: For the purposes of this Section 10.16, the following terms shall have the following meanings:

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the

Floating Price for a particular day; (b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

“Price Source” means, in respect of a Transaction, a publication or such other origin of reference (including an Exchange, regional transmission operator or independent system operator) containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(iii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source within thirty (30) days of the original publication, announcement or availability (or, if the Price Source is a regional transmission operator or independent system operator, such longer time as is consistent with its procedures), then 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, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise

(iv) Calculation of Floating Price. For purposes of calculating

a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

54) The following new Section shall be added as Section 10.17:

Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

55) The following new Section shall be added as Section 10.18:

“No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Agreement. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s members in connection with this Agreement.”

Schedule M: Governmental Entity or Public Power System

Section A of Schedule M is hereby amended by deleting the defined term “Act” and replacing it with the following:

“Act” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).”

Section D of Schedule M is hereby amended by deleting paragraph (ii) of Section 3.4 and replacing it with the following:

“(ii) an opinion of counsel for Party B, in form and substance reasonably satisfactory to Party A, regarding the validity, binding effect and enforceability of this Master Agreement against Party B in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.”

Section E of Schedule M is hereby amended by inserting the text “Governmental Entity or” immediately after the word “cover” in the second sentence of Section 3.6.

Section G of Schedule M is hereby deleted in its entirety and replaced

with the following:

“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 CALIFORNIA SHALL APPLY.””

Schedule P: Products and Related Definitions

The following definition and provision are added to Schedule P:

1. “CAISO Energy” means with respect to any Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator (“CAISO”) (as amended from time to time, the “Tariff”) for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” (as defined in the Tariff). A CAISO “Schedule Adjustment” (defined as a schedule change implemented by the CAISO that is neither caused by, or within the control of, either Party) shall not constitute an Uncontrollable Force (as defined in the Tariff).

2. Other Products and Service Levels: In addition to the Products set out in Schedule P, the Parties may agree to use a product or service level defined by a different agreement (i.e., the Tariff, the WSPP Agreement, etc.) for a particular Transaction under this Master Agreement. If so, then the Transaction shall be subject to all the terms of this Master Agreement, except that (1) the product or service level definition, (2) force majeure, uncontrollable force definitions or other excuses for performance, (3) applicable regional reliability requirements and guidelines, and (4) other terms and conditions as mutually agreed in writing, shall have the meaning given to them in the different agreement or in the applicable Confirmation.

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

POWEREX CORP.*

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

** doing business in California as
Powerex Energy Corp.*

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: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

(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 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

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

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.

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

² Insert relevant state for Governmental Entity or Public Power System.

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 co-operate 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)

<input type="checkbox"/> FT-Contract Path Contingency	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> FT-Delivery Point Contingency	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> Transmission Contingent	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> Other transmission contingency		

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

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: _____

CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between _____ (“Seller”)
And
East Bay Community Energy Authority, a California joint powers authority (“Buyer”)
dated _____
Transaction Date: _____ (the “Effective Date”)

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

WHEREAS, Buyer is a California joint powers authority, which has established East Bay Community Energy Authority for purposes of delivering CCA service to certain customers located within the County of Alameda;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

WHEREAS, the CPUC has certified the Implementation Plan;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS**. Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

“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, the Project(s), or the terms of the Agreement.

“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 Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California RPS” or “California Renewables Portfolio Standard” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Carbon Free Energy” means Energy generated by Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the East Bay Community Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of Alameda.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“East Bay Community Energy Program” means the community choice aggregation program operated by Buyer.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” means the price (\$/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled with Buyer as an IST.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

“Inter-SC Trade” or “IST” has the meaning set forth in the Tariff.

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” has the meaning set forth in Section 2.1 hereof.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law(s), the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practices shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.

“Renewable Energy” means Energy and associated Renewable Energy Credits generated by an Eligible Renewable Energy Resource.

“Renewable Energy Contract Price” shall mean the price (\$/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“Security Documents” has the meaning set forth in the Master Agreement.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification of the power source.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

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

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. PRODUCT.

2.1 Seller Delivery Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of one or more of the following:

- (a) the quantity of Energy specified in Section 7.1;
- (b) the quantity of Renewable Energy specified in Section 7.2; and
- (c) the quantity of Carbon Free Energy specified in Section 7.3.

2.2 Change in Law.

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to

maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within sixty (60) days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below.

2.3 RPS Standard Terms and Conditions.

STC 6: Eligibility

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement that: (i) the Project 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 Project’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.

STC REC-1: Transfer of Renewable Energy Credits

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period 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.

STC REC-2: Tracking of RECs in WREGIS

Seller warrants that 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 contract.

STC 17: Applicable 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 California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

- 2.4 Resources. For Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power, as further detailed in Exhibit B & C respectively; provided however, Seller may designate additional Specified Sources of Power upon 5 (five) days written notice to Buyer thereof; provided further any such additional Specified Sources of Power shall meet the requirement of Renewable Energy and Carbon Free Source as defined herein. For other Energy deliveries hereunder, if any, Seller may use Unspecified Sources of Power; provided that any Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) shall not be procured from unit-specific sources that are nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.
- 2.5 Delivery of WREGIS Certificates. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer's sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to

the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage (i.e. with WREGIS Certificates produced within the same calendar year) and that meet the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation;

Upon either Party’s receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its applicable reports to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.6 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations (“CCR”) Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs for compliance purchased from Seller hereunder no later than four months after the year in which they are produced for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D) and to provide Seller with the WREGIS retirement report.

2.7. Additional Terms and Conditions

(1) Seller Representations and Warranties: Seller represents and warrants:

- (a) Seller has not sold the Product or any Program Attributes of the Product to be transferred to Buyer to any other person or entity;
- (b) For the sale of Renewable Energy and Carbon Free Energy, Seller receives compensation directly from the CAISO for energy imported or scheduled to the CAISO in real-time on Buyer’s behalf.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

Start Date:	End Date:

4. **DELIVERY POINT.**

Product	Delivery Point
Energy	TH_NP15_GEN- APND
Renewable Energy	CAISO or a California Balancing Authority inside the California State boundaries
Carbon Free Energy	CAISO or a California Balancing Authority inside the California State boundaries

5. **SCHEDULING.** Seller will perform all scheduling requirements applicable to the transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols. The Energy will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). Unless otherwise mutually agreed between the Parties, Carbon Free Energy and Renewable Energy will be scheduled to the applicable delivery point without (an) IST.

6. **PRICING.**

6.1 **Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.

6.2 **Renewable Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to: a) the applicable Renewable Energy Contract Price as specified in Exhibit B multiplied by the portion of the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS.

6.3 **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C.

7. **CONTRACT QUANTITIES.**

7.1 **Energy.** Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.

- 7.2 Renewable Energy. Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include all Renewable Energy Credits associated with such Renewable Energy.
- 7.3 Carbon Free Energy. Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

8. MONTHLY BILLING SETTLEMENT.

- 8.1 Collection of Customer Payments. In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller's invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.
- 8.2 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the tenth (10th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-third (23rd) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-third (23rd) day of the month.
- 8.3 Specified Source of Power. Seller shall deliver the Specified Source of Power associated with the Renewable Energy and Carbon Free Energy to the CAISO at the Delivery Point and shall be entitled to retain all CAISO revenues associated with such delivery.

- 9. COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on its own behalf and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.

- 10. NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities or prevent Buyer from purchasing Energy from other parties or prevent Seller from selling Energy to other parties; provided, however, that

Buyer shall remain responsible to pay Seller for the Contract Quantities represented in Exhibits A, B and C.

11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Industry Practices.

12. **SECURITY PROVISIONS.**

12.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer's failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform. If the Security Documents have not become effective in accordance with their terms as of the Effective Date, Buyer expressly agrees (a) to use its best efforts to cause such Security Documents to become effective as soon as reasonably possible, but in any case, not later than the Start Date, (b) that such Security Documents will be substantially in the form of such documents last presented to Seller prior to the Effective Date, subject to conforming, clarifying or other non-material changes, including changes reasonably requested by the Collateral Agent, and (c) that Seller will have a security interest in the Collateral as a Secured Creditor in accordance with the Security Documents. In the event the Security Documents do not become effective by the Start Date, Seller shall have no obligation to perform under this Confirmation until such time as the Security Documents become effective.

12.2 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer's financial performance, Buyer's performance of its obligations under this Confirmation or any Security Document or the ongoing viability of the CCA. In the event Buyer fails to provide Seller with any required reports requested by Seller and such failure is not remedied within fifteen (15) Business Days of Seller's written request therefor and notice of a potential Event of Default, such failure shall be an Event of Default in accordance with Article Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

- (i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity;
 - (ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);
 - (iii) Cash reconciliations and bank statements for each of Buyer's banking accounts; and
 - (iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers
- (b) Semi-Annual Reports. The following report shall be provided by Buyer to Seller not later than 20 days following the end of the first six calendar months of each Buyer fiscal year: consolidated and consolidating financial statements for such six-month period prepared in accordance with generally accepted accounting principles. Such financial statements shall include, at a minimum, a detailed profit and loss statement balance sheet statement of cash flows, a monthly and year to date financial projections showing line item and total variances between such financial projections and actual results and an executive summary describing the causes of any variances which are +/- 5% between the annual financial statements and the financial projections. Such report shall be in the format as Seller may reasonably require from time to time.

12.3 Annual Reports. The following report shall be provided by Buyer to Seller not later than 120 days following the end of Buyer's fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer's financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the “Master Agreement”) between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

This Confirmation is subject to the Exhibits identified below and that are attached hereto:
Exhibit A – Energy Contract Quantity and Price Schedule
Exhibit B – Renewable Energy Contract Quantity and Price Schedule
Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule

**EAST BAY COMMUNITY ENERGY, a
California joint powers authority**

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

Exhibit A

Energy Contract Quantity and Price Schedule

[TBD]

Exhibit B

Renewable Energy Contract Quantity and Price Schedule

[TBD]

Exhibit C

Carbon Free Energy Contract Quantity and Price Schedule

[TBD]

DATED as of _____, 2018

- (1) **RIVER CITY BANK**,
as Account Bank,
 - (2) **EAST BAY COMMUNITY ENERGY AUTHORITY**,
as EBCEA,
- and
- (3) **RIVER CITY BANK**, not in its individual capacity, but solely as
collateral agent,
as Secured Party.

ACCOUNT CONTROL AGREEMENT

ACCOUNT CONTROL AGREEMENT (this “Agreement”) dated as of _____, 2018 (the “Effective Date”)

BETWEEN:

- (1) **RIVER CITY BANK**, a California corporation (the “Account Bank”);
- (2) **EAST BAY COMMUNITY ENERGY AUTHORITY** (“EBCEA”);
and
- (3) **RIVER CITY BANK**, a California corporation, not in its individual capacity, but solely as collateral agent (the “Secured Party”).

WHEREAS:

(A) EBCEA has pledged to the Secured Party (for the benefit of the PPA Providers (as defined in the Security Agreement), as secured creditors) all of the Collateral (as defined in the Security Agreement), pursuant to that certain Security Agreement between EBCEA and Secured Party dated as of the Effective Date (the “Security Agreement”);

(B) EBCEA has directed Pacific Gas and Electric Company (“PG&E”) to remit all present and future collections on accounts receivable now or hereafter billed by PG&E and owed by EBCEA’s customers to Secured Party, for remittance to a Lockbox Account (as defined in the Security Agreement) maintained by Secured Party;

(C) Secured Party shall have, for the benefit of the PPA Providers, a first priority continuing security interest in and lien on such Collateral pledged to Secured Party for the benefit of the PPA Providers, as provided in the Security Agreement;

(D) EBCEA intends that Secured Party shall distribute the Collateral deposited into the Lockbox Account in accordance with the provisions of the Security Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

Unless otherwise defined herein, all capitalized terms used herein and defined in the Security Agreement shall be used herein as therein defined. Reference to singular terms shall include the plural and vice versa.

1. THE ACCOUNTS.

EBCEA hereby requests that Account Bank open, and Account Bank hereby confirms that it has opened, account number ***** _____ (a non-interest-bearing deposit account held in the name of EBCEA) which will be subject to, and administered in accordance with, the terms of this Agreement (together, the “Lockbox Account”).

The parties hereto agree that the Lockbox Account shall be funded solely by electronic transfers of immediately available funds and that Account Bank shall not be required to accept

any other items for deposit into the Lockbox Account. All amounts payable for deposit into the Lockbox Account shall be paid to Account Bank at the following accounts:

Bank: River City Bank
ABA#: _____
Account No. ***** _____

2. CONTROL OF THE ACCOUNTS / PAYMENT MECHANICS.

- (a) The Lockbox Account shall be maintained by Account Bank in the name of “East Bay Community Energy Authority” and shall be under the sole dominion and control of Secured Party. Account Bank agrees that it will comply with written instructions originated by Secured Party directing disposition of the funds in the Lockbox Account without further consent by EBCEA or otherwise.
- (b) Account Bank (i) shall disburse and/or invest funds held in the Lockbox Account as instructed by Secured Party and (ii) agrees that, except as otherwise expressly provided herein, EBCEA will not have access to the funds in the Lockbox Account and that the Account Bank will not agree with EBCEA or any other party (other than the Secured Party) to comply with any instructions for the disposition of the funds in the Lockbox Account originated by EBCEA or such other party.

3. STATEMENTS AND OTHER INFORMATION.

- (a) Account Bank shall provide Secured Party with copies of the regular monthly bank statements of the Lockbox Account at such times such statements are provided to EBCEA and such other information relating to the Lockbox Account as shall reasonably be requested by Secured Party or EBCEA. Account Bank shall also deliver a copy of all notices and statements required to be sent by it to EBCEA pursuant to any agreement governing or related to the Lockbox Account to Secured Party at such times such notices and statements are provided to EBCEA. Except as otherwise required by law, Account Bank will use reasonable efforts promptly to notify Secured Party and EBCEA if Account Bank receives a notice that any other person claims that it has an interest in the Lockbox Account. As of the date of this Agreement, Account Bank confirms that it has not received notice that any other person has any interest in the Lockbox Account.
- (b) Account Bank hereby confirms that (i) the Lockbox Account has been established and is maintained with Account Bank on its books and records, (ii) Account Bank is a bank within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code of California, (iii) the Lockbox Account is a deposit account within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code of California, and (iv) the jurisdiction of Account Bank for the purposes of Article 9 of the Uniform Commercial Code of California is California.

4. **FEES.**

EBCEA agrees to pay on demand all usual and customary service charges, transfer fees and account maintenance fees of Account Bank in connection with the Lockbox Account in accordance with the terms of the separate fee agreement entered into by EBCEA and Account Bank.

5. **SET-OFF.**

Account Bank hereby agrees that Account Bank will not exercise or claim any right of set-off or banker's lien against the Lockbox Account. As of the date of this Agreement, Account Bank does not know of any claim to or interest in the Lockbox Account, except for claims and interests of the parties hereto. All of Account Bank's present and future rights against the Lockbox Account are subordinate to Secured Party's security interest therein.

6. **ACCOUNT BANK.**

The acceptance by Account Bank of its duties under this Agreement is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to all of Account Bank's rights, duties, liabilities and immunities:

- (a) Account Bank shall be protected in acting upon any written notice, certificate, resolution, instruction, request, authorization or other paper or document as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information therein contained, which it in good faith believes to be genuine and to have been signed or presented by the proper party or parties in accordance with the terms of this Agreement.
- (b) Account Bank may act relative hereto upon advice of counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. If at any time Account Bank determines that it requires or desires guidance regarding the application of any provision of this Agreement or any other document, regarding compliance with any direction it receives hereunder, Account Bank may deliver a notice to Secured Party (or EBCEA after Secured Party has informed Account Bank that EBCEA has satisfied all of its obligations under the Power Purchase Agreements) requesting written instructions as to such application or compliance, and such instructions by or on behalf of Secured Party (or EBCEA after Secured Party has informed Account Bank that EBCEA has satisfied all of its obligations under the Power Purchase Agreements), as applicable, shall constitute full and complete authorization and protection for actions taken and other performance by Account Bank in reliance thereon. Until Account Bank has received such instructions after delivering such notice, it may, but shall be under no duty to, take or refrain from taking any action with respect to the matters described in such notice.

- (c) This Agreement sets forth exclusively the duties of Account Bank with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Agreement against Account Bank.
- (d) Any funds held by Account Bank, as such, need not be segregated from other funds except to the extent required by mandatory provisions of law.

7. REPRESENTATIONS OF ACCOUNT BANK.

Account Bank represents and warrants as to itself (as set forth below) to Secured Party as follows, such representations are being made on the date of the execution and delivery of this Agreement, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties are correct on and as of such earlier date):

- (a) Organization, Corporate Authority. Account Bank represents and warrants that it is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority to enter into and perform its obligations under this Agreement, and has full right, power and authority to enter into and perform its obligations under this Agreement.
- (b) Authorization. Account Bank represents and warrants that this Agreement has been duly executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its own behalf.
- (c) Legal, Valid and Binding. Account Bank represents and warrants that this Agreement has been duly executed and delivered by it and, assuming that this Agreement is the legal, valid and binding obligation of each other party thereto, is the legal, valid and binding obligation of Account Bank, enforceable against Account Bank in accordance with its terms.
- (d) No Violation. Account Bank represents and warrants that this Agreement has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will violate any federal law or regulation relating to its banking or trust powers or contravene or result in any breach of, or constitute any default under its charter or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected.

8. EXCULPATION OF ACCOUNT BANK; INDEMNIFICATION BY BORROWER.

Each of EBCEA and Secured Party agrees that Account Bank shall have no liability to any of them for any loss or damage that any or all may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof, unless occasioned by the gross negligence, breach of an express term of this Agreement or willful misconduct of Account Bank. In no event shall Account Bank be

liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Account Bank's reasonable control or for the indirect, special or consequential damages. EBCEA agrees to indemnify Account Bank and hold it harmless from and against all claims, other than those ultimately determined to be founded on the gross negligence or willful misconduct of Account Bank, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Account Bank through the use of any Lockbox Account at Account Bank or pursuant to this Agreement.

9. TERMINATION.

This Agreement may be terminated upon delivery to Account Bank of a written notification thereof jointly executed by Secured Party and (provided Secured Party has not notified Account Bank that an Event of Default is then continuing) EBCEA. Notwithstanding the foregoing, this Agreement may be terminated by Secured Party in accordance with and subject to the requirements of that certain Intercreditor and Collateral Agency Agreement, dated as of the Effective Date, between and among Secured Party, the PPA Providers, and EBCEA, at any time, with or without cause, upon its delivery of written notice thereof to each of EBCEA and Account Bank. This Agreement may be terminated by Account Bank at any time on not less than sixty (60) days' prior written notice delivered to each of EBCEA and Secured Party provided that such termination shall not take effect until Secured Party confirms that a replacement account and replacement security thereover have been obtained in form and substance satisfactory to Secured Party. Upon any such termination of this Agreement, Account Bank will immediately transmit to such account as Secured Party may direct all funds, if any, then on deposit in, or otherwise standing to the credit of the Lockbox Account. The provisions of paragraphs 2 and 5 shall survive termination of this Agreement unless and until specifically released by Secured Party in writing. All rights of Account Bank under paragraphs 4, 5, 6 and 8 shall survive any termination of this Agreement.

10. IRREVOCABLE AGREEMENTS.

EBCEA acknowledges that the agreements made by it and the authorizations granted by it in paragraph 2 hereof are irrevocable and that the authorizations granted in paragraph 2 hereof are powers coupled with an interest.

11. NOTICES.

All notices, requests or other communications given to Account Bank, EBCEA or Secured Party shall be given in writing (including by facsimile) at the address specified below:

Account Bank:	River City Bank
	Attention: Cash Management
	2485 Natomas Park Dr.
	Sacramento, CA, 95833

EBCEA: East Bay Community Energy Authority
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Nick Chaset
Email: Nchaset@ebce.org

Secured Party: River City Bank
Attention: Cash Management
2485 Natomas Park Dr.
Sacramento, CA, 95833

Any party may change its address for notices hereunder by notice to each other party hereunder given in accordance with this paragraph 11. Each notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this paragraph 11 and confirmation of receipt is made by the appropriate party, (b) if given by overnight courier, five (5) days after such communication is deposited with the overnight courier for delivery, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified in this paragraph 11.

12. MISCELLANEOUS.

- (a) This Agreement may be amended only by a written instrument executed by each of the parties hereto acting by their respective duly authorized representatives.
- (b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but neither EBCEA nor Account Bank shall be entitled to assign or delegate any of its rights or duties hereunder without first obtaining the express prior written consent of Secured Party.
- (c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- (d) This Agreement and any document contemplated hereby may be delivered by a party hereto by way of facsimile or e-mail transmission and such delivery shall be deemed completed for all purposes upon the completion of such facsimile or e-mail transmission. A party that so delivers this Agreement or any such document by way of facsimile or e-mail transmission agrees to promptly thereafter deliver to the other party hereto an original signed counterpart. The signature of any party transmitted by facsimile or e-mail shall be considered for these purposes as an original document, and any such document shall be considered to have the same binding legal effect as an originally executed document. In consideration of the mutual covenants herein contained, the parties agree that none of them shall raise the use of a facsimile machine or e-mail as a defense in any suit or controversy related to this Agreement or any of the other documents and forever waive any such defense.

- (e) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF CALIFORNIA. The parties agree that the State of California (i) is and shall remain the “bank’s jurisdiction” of the Account Bank for purposes of the Uniform Commercial Code; and (ii) shall be deemed to be the location of the Lockbox Account and of EBCEA’s rights and interests in and to the Lockbox Account.
- (f) JURY WAIVER AND JUDICIAL REFERENCE. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN PARAGRAPH (ii) BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (1) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (2) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (3) APPOINTMENT OF A RECEIVER AND (4) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN THE FOREGOING CLAUSES (1) – (4) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iv) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT

JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(vi) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

- (g) EBCEA hereby submits to the nonexclusive jurisdiction of the United States District Court for the Northern District of California and of any California state court sitting in San Francisco for the purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby and thereby. EBCEA irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.
- (h) EBCEA hereby irrevocably appoints Nick Chaset, Chief Executive Officer, East Bay Community Energy Authority, 1111 Broadway, Suite 300, Oakland, CA 94607 from time to time to receive on its behalf service of process issued out of the federal courts of California in any legal action or proceeding arising out of or in connection with this Agreement or any other document to which it is a party. EBCEA undertakes not to revoke the authority of the agent specified above and if, for any reason, any such agent no longer serves or is capable of serving as agent of the relevant party hereto to receive service of process in California, such party shall promptly appoint another such agent and advise Secured Party thereof and, failing such appointment within fourteen (14) days, Secured Party shall be entitled (and is hereby authorized) to appoint an agent on behalf of EBCEA. Nothing herein contained shall restrict the right to serve process in any other manner allowed by law.

[Signature page follows]

IN WITNESS WHEREOF, each of the parties has executed and delivered this Account Control Agreement as of the Effective Date.

Account Bank

RIVER CITY BANK

By: _____

Name:

Title:

EBCEA

**EAST BAY COMMUNITY ENERGY
AUTHORITY**

By: _____

Name:

Title:

Secured Party

RIVER CITY BANK, not in its individual
capacity, but solely as Collateral Agent

By: _____

Name:

Title:

SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this “**Agreement**”) dated as of _____, 2018, is entered into between East Bay Community Energy Authority, a California joint powers authority, as pledgor (“**EBCEA**”), and River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”), for the benefit of the PPA Providers (as defined below), as Secured Creditors (as defined below).

RECITALS:

A. EBCEA has (i) entered into the Master Agreements (as defined below) with the PPA Providers for the purchase of Product (as defined below), and (ii) may in the future enter into, a Power Purchase Agreement (as defined below) with a PPA Provider pursuant to which EBCEA has agreed, or will agree, to purchase the Product from such PPA Provider and shall cause such PPA Provider to become a party to the Intercreditor Agreement (as defined below).

B. EBCEA shall sell the Product it purchases from PPA Providers to EBCEA’s customers at rates established by EBCEA from time to time.

C. EBCEA generates accounts receivable owing to EBCEA by EBCEA’s customers for such Product.

D. EBCEA’s customers are billed by PG&E (as defined below) and instructed to remit to PG&E sums they owe for the Product provided by EBCEA.

E. As of the date hereof, EBCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of EBCEA to Collateral Agent, for remittance to a Lockbox Account (as defined below) maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and EBCEA direct PG&E otherwise.

F. EBCEA desires herein to pledge to Collateral Agent, for the benefit of the PPA Providers as Secured Creditors, a first priority continuing security interest in and to the Collateral (defined below).

G. The PPA Providers, EBCEA, and the Collateral Agent have entered into the Intercreditor Agreement (as defined below) wherein the PPA Providers appointed River City Bank, as Collateral Agent, to act on their behalf regarding the administration, collection and allocation of the proceeds of the Collateral; and

H. EBCEA and Collateral Agent desire to enter into this Agreement to evidence the pledge of the Collateral and to set forth their agreements regarding the Collateral and the application of the Collateral to the Obligations (as defined below).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Definitions, Etc.

1.01 Defined Terms. The following terms shall have the meanings assigned to them in this Section 1.01 or in the provisions of this Agreement referred to below:

“Applicable Law” means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the State of California are required or authorized to close.

“Collateral” means the following, whether now existing or hereafter arising: (a) the Receivables; (b) the Deposit Accounts; (c) all cash, cash equivalents, Securities, Investment Property (as such term is defined in the UCC), Security Entitlements (as such term is defined in the UCC), checks, money orders and other items of value now or hereafter that are required to be, or that are, paid, deposited, credited or held (whether for collection, provisionally or otherwise) in or with respect to any Deposit Account or otherwise in the possession or under the control of, or in transit to, the Collateral Agent or the Depository Bank for credit or with respect to any Deposit Account and all interest accumulated thereon; and (d) all Proceeds (as such term is defined in the UCC) of any or all of the foregoing. The term “Collateral” shall not include any amounts distributed to EBCEA pursuant to Section 6.02(iv).

“Collateral Agent” has the meaning given to such term in the Preamble hereof.

“Control” has the meaning given to such term in Section 9-104 of the UCC.

“Control Agreements” means the Account Control Agreement, dated as of the date hereof, among the Depository Bank, EBCEA and Collateral Agent and any other agreements entered into among Depository Bank, EBCEA and Collateral Agent which shall designate the Deposit Accounts as blocked accounts under the Control of Collateral

Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“Credit Rating” means for a Qualified Institution 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.

“Customer” means any customer of EBCEA who purchases the Product from EBCEA but is invoiced by PG&E, and any other obligor(s) responsible for payment of a Receivable.

“Deposit Accounts” means the Lockbox Account, together with any other Deposit Account or Securities Account (as such terms are defined in the UCC) from time to time pledged by EBCEA to Collateral Agent, for the benefit of Secured Creditors, to secure the Obligations.

“Depository Bank” means River City Bank, a California corporation, in its capacity as depository bank, and its successors and assigns.

“Direction Letter” means that certain letter, a copy of which has been delivered to the Collateral Agent, from EBCEA to PG&E dated as of the date of this Agreement pursuant to which EBCEA has directed PG&E to remit all of the Proceeds on the Receivables collected by PG&E from Customers to the Lockbox Account for application to the Obligations, unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and EBCEA jointly instruct PG&E to terminate or change such direction and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof and any similar letter or written direction provided to PG&E.

“Discharge Date” means that date on which: (a) any and all outstanding Obligations under the Transaction Agreements have been fully satisfied, and (b) there are no continuing obligations by EBCEA under any Transaction Agreements (other than for any provisions which are intended to survive the termination of the Transaction Agreements).

“Distribution Date” means the twenty-third (23rd) day of each month.

“Distribution Date Certificate” means a certificate prepared and submitted by EBCEA in accordance with Section 6.03.

“Event of Default” has the meaning set forth in the applicable Power Purchase Agreement.

“Implementation Plan” means that certain Implementation Plan filed with and certified by the California Public Utilities Commission (CPUC).

“Intercreditor Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of even date herewith, among Collateral Agent, the Secured Creditors from time to time party thereto and EBCEA, as amended, supplemented, restated or replaced from time to time.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit, in a form acceptable to the Secured Creditors and issued by a Qualified Institution.

“Lien” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

“Lockbox Account” means the deposit account no. *****____, which is maintained in the name of EBCEA and is under the Control of Collateral Agent, for the benefit of the Secured Creditors, at Depository Bank, and any replacement account, in each case, pursuant to the Control Agreements.

“Master Agreements” means the following:

(i) the Master Power Purchase and Sale Agreement, dated as of _____, 2018, between _____ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(ii) the Master Power Purchase and Sale Agreement, dated as of _____, 2018, between _____ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iii) the Master Power Purchase and Sale Agreement, dated as of _____, 2018, between _____ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iv) the Master Power Purchase and Sale Agreement, dated as of _____, 2018, between _____ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof; and

(v) the Master Power Purchase and Sale Agreement, dated as of _____, 2018, between _____ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.

“**Moody’s**” means Moody’s Investor Services, Inc.

“**Obligations**” means all of the obligations and liabilities of EBCEA to each PPA Provider, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereinafter arising under or in respect of one or more of the Transaction Agreements, including all payments, fees, purchases, mark-to-market exposure, commitments for reimbursement, indemnifications, interest, damages and Termination Payments, if any. The term “Obligations” also includes all of EBCEA’s other present and future obligations to each PPA Provider under the Transaction Agreements, including the repayment of (a) any amounts that Collateral Agent (or a PPA Provider) may advance or spend for the maintenance or preservation of the Collateral and (b) any other expenditure that Collateral Agent (or PPA Provider) may make under the provisions of the Transaction Agreements for the benefit of EBCEA. For the avoidance of doubt, the term “Obligations” includes any of the foregoing that arises after the filing of a petition by or against EBCEA under any bankruptcy or insolvency statute, even if the Obligations do not accrue because of any statutory automatic stay or otherwise.

“**Person**” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“**PG&E**” means the Pacific Gas and Electric Company, its successor and assigns or any other Person that is the host utility that bills Customers in EBCEA’s service territory and collects payments for Product from such Customers on behalf of EBCEA.

“**Power Purchase Agreement**” means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations (including confirmations entered into after the date hereof), and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to EBCEA, as amended, modified, supplemented, restated, extended or replaced from time to time.

“**PPA Provider**” means each seller of Product under a Power Purchase Agreement that is made a party to the Intercreditor Agreement, and its respective successors and assigns.

“**Product**” means one or more of the following: energy, renewable energy attributes, capacity attributes, resource adequacy benefits, or any other similar or related products contemplated in the Master Agreements.

“**Qualified Institution**” means a commercial bank organized under the laws of the United States or a political subdivision thereof having at the applicable time (a) a Credit Rating of (i) A- or better from Standard & Poor’s, or (ii) A3 or better from Moody’s, or (iii) if such bank has a Credit Rating at such time from both Standard & Poor’s and Moody’s, A- or better from Standard & Poor’s and A3 or better from Moody’s and (b) assets of at least Ten Billion Dollars (\$10,000,000,000).

“**Receivable**” means an Account evidencing EBCEA’s rights to payment for Product, billed in an invoice sent to a Customer by PG&E, together with all late fees and other fees which PG&E and EBCEA agree are to be charged in such invoice to the Customer by PG&E on behalf of EBCEA.

“**Regular Charges**” means, as of any date of determination, amounts then due and owing to a PPA Provider for the Product delivered by such PPA Provider, without giving effect to any Supplemental Payment owing to such PPA Provider.

“**Regular Sharing Percentage**” means, as of any date of determination, with respect to each PPA Provider as calculated by EBCEA in a commercially reasonable manner, the percentage equivalent of a fraction, (i) the numerator of which is the amount of the Regular Charges due and owing to such PPA Provider, as of such date, and (ii) the denominator of which is the amount of the Regular Charges due and owing to all PPA Providers, as of such date.

“**Required Secured Creditors**” has the meaning given to such term in the Intercreditor Agreement.

“**Reserve Amount**”

[REDACTED]

“**Secured Creditors**” means each PPA Provider party to the Intercreditor Agreement, and its respective successors and assigns.

“**Standard & Poor’s**” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Supplemental Payment**” means, as of any date of determination, all Obligations owing by EBCEA to each PPA Provider, excluding, however, the Regular Charges owed to such PPA Provider. Supplemental Payments include, but are not limited to, all out-of-pocket losses such as indemnity claims arising under the Transaction Agreements to the extent such losses were incurred by such PPA Provider, all late payment charges due under a Power Purchase Agreement, and all Obligations arising upon a default or Termination Event, such as Termination Payments.

“**Supplemental Sharing Percentage**” means, as of any date of determination, with respect to each PPA Provider, the percentage equivalent of a fraction, (y) the numerator of which is the outstanding amount of the Supplemental Payments due and owing to such PPA Provider, as of such date, and (z) the denominator of which is the sum of the outstanding amount of the Supplemental Payments due and owing to all PPA Providers, as of such date.

“Termination Event” means, with respect to any Power Purchase Agreement, the termination of transactions and/or acceleration of all amounts owing thereunder in accordance with the terms of such Power Purchase Agreement.

“Termination Payment” has the meaning given to such term in the Intercreditor Agreement.

“Transaction Agreements” means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Intercreditor Agreement, this Agreement and all other agreements, instruments or documents to which EBCEA is a party and which are executed and delivered from time to time in connection with or as security for EBCEA’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

“UCC” means the Uniform Commercial Code in effect in the State of California from time to time.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms **“Account”**, **“Investment Property”**, and **“Proceeds”** have the respective meanings set forth in Article 9 of the UCC. The terms **“Security”** and **“Security Entitlements”** have the respective meanings set forth in Article 8 of the UCC.

1.03 Other Interpretive Provisions. References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement. References to any Person include the successors and permitted assigns of such Person. References to any statute, act or regulation shall include its related current version and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

Section 2. Grant of Security Interest.

As collateral security for the payment and performance in full of the Obligations when due, whether at stated maturity, by acceleration or otherwise, EBCEA hereby assigns, pledges and grants to Collateral Agent, for the benefit of the Secured Creditors, a first priority continuing security interest in and continuing lien on all of EBCEA’s right, title and interest in and to the Collateral, including the following:

(a) the prompt and complete payment, when due and payable, of all Obligations;

(b) the timely performance and observance by EBCEA of all covenants, obligations and conditions contained in the Transaction Agreements; and

(c) without limiting the generality of the foregoing and to the fullest extent permitted under Applicable Law, the payment of all amounts, including interest which constitute part of the Obligations and would be owed by EBCEA to the Secured Creditors under the Transaction Agreements but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving EBCEA.

The collateral assignment evidenced by this Agreement is a continuing one and is irrevocable by EBCEA so long as any of the Obligations are outstanding.

Section 3. Representations and Warranties.

EBCEA represents and warrants to Collateral Agent that:

3.01 Title. It is the sole beneficial owner of the Collateral and such Collateral is free and clear of all liens, except liens in favor of Collateral Agent created hereunder.

3.02 Names, Etc. As of the date hereof, the full and correct legal name, type of organization, jurisdiction of organization, mailing address and principal place of business, and federal employer identification number of EBCEA is as follows: East Bay Community Energy Authority, a California joint powers authority, 1111 Broadway, Suite 300, Oakland, CA 94607, federal employer identification number: [REDACTED].

3.03 Changes in Circumstances. EBCEA has not: (a) within the period of four (4) months prior to the date hereof, changed its location (as defined in Article 9 of the UCC); (b) within the period of five (5) years prior to the date hereof, changed its name; or (c) within the period of four (4) months prior to the date hereof, become a “new debtor” (as defined in Article 9 of the UCC) with respect to a currently effective security agreement previously entered into with any other Person.

3.04 Security Interests. The Liens granted by this Agreement have attached and constitute a perfected first priority continuing security interest in the Collateral. EBCEA owns good and marketable title to the Collateral free and clear of all Liens, and neither the Collateral nor any interest in the Collateral has been transferred to any other Person. EBCEA has full right, power and authority to grant a first-priority security interest in the Collateral to Collateral Agent in the manner provided in this Agreement, free and clear of any other Liens, adverse claims and options and without the consent of any other person or entity or if consent is required, such consent has been obtained. No other Lien, adverse claim or option has been created by EBCEA or is known by EBCEA to exist with respect to the Collateral. At the time the security interest in favor of Collateral Agent attaches, good and indefeasible title to all after-acquired property included within the Collateral, free and clear of any other Liens, adverse claims or options shall be vested in EBCEA. All consents for the assignment of Collateral to Collateral Agent, if any, required to be obtained by EBCEA have been obtained.

Section 4. Covenants.

EBCEA hereby stipulates and agrees with the Collateral Agent as follows:

4.01 Perfection by Control. EBCEA shall not be permitted to withdraw funds from the Deposit Accounts until the Discharge Date and this Agreement has been terminated. Collateral Agent shall have the exclusive authority to withdraw, or (other than as set forth herein) direct the withdrawal of, funds from the Deposit Accounts. The Control Agreement for each Deposit Account shall give the Collateral Agent the sole power to direct Depositary Bank regarding the Deposit Account, and thus Collateral Agent shall Control the Deposit Accounts within the meaning of the UCC. Collateral Agent shall make distributions from the Deposit Accounts only in accordance with Section 6 of this Agreement.

4.02 Further Assurances. Upon the request of Collateral Agent, EBCEA shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, documents, agreements or other papers as may be necessary in the judgment of Collateral Agent to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable Collateral Agent to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

- (a) take such other action as Collateral Agent may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created hereunder in the Collateral;
- (b) promptly from time to time enter into such Control Agreements, each in form and substance reasonably acceptable to Collateral Agent, as may be required to perfect the security interest created hereby;
- (c) keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement; and
- (d) permit representatives of Collateral Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and to be present at EBCEA's places of business to receive copies of communications and remittances relating to the Collateral, and forward copies of any notices or communications received by EBCEA with respect to the Collateral, all in such manner as Collateral Agent may reasonably require.

4.03 No Other Liens. EBCEA is and shall be the owner of or have other transferable rights in the Collateral free from any right or claim of any other Person or any Lien and EBCEA shall defend the same against all claims and demands of all Persons at any time claiming the same or any interest therein adverse to Collateral Agent. EBCEA shall not (a) grant, or permit to be granted, any Lien with respect to any of the Collateral in which Collateral Agent is not named as the sole secured party, (b) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which Collateral Agent is not named as the sole secured

party, or (c) cause or permit any Person other than Collateral Agent to have Control of any Deposit Account constituting part of the Collateral.

4.04 Locations; Names, Etc. Without at least thirty (30) days' prior written notice to the Collateral Agent, EBCEA shall not: (a) change its location (as defined in Article 9 of the UCC), (b) change its name from the name shown as its current legal name in Section 3 of this Agreement, or (c) agree to or authorize any modification of the terms of any item of the Collateral if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of control (within the meaning of Article 9 of the UCC) by Collateral Agent over such item of Collateral.

4.05 Perfection and Recordation. EBCEA authorizes Collateral Agent to file Uniform Commercial Code financing statements describing the Collateral (provided that no such description shall be deemed to modify the description of Collateral set forth in Section 2). The Collateral Agent, in accordance with Section 4.02 hereof, hereby requests and instructs EBCEA to, and EBCEA hereby agrees, at its sole cost and expense to, prepare and file such Uniform Commercial Code financing and continuation statements describing the Collateral as may be necessary to perfect and continue the security interest granted herein. EBCEA shall deliver to the Collateral Agent a file stamped copy of all such filings, which the Collateral Agent shall make available to any PPA Provider upon request.

Section 5. Remittance of Collections to Collateral Agent.

5.01 Irrevocable Direction. EBCEA has, pursuant to the Direction Letter, irrevocably instructed PG&E to remit to Collateral Agent all payments due or to become due in respect of the Receivables unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and EBCEA direct otherwise in writing. The Collateral shall be collected by Collateral Agent from PG&E pursuant to the Direction Letter. EBCEA shall periodically take such additional measures as may be commercially reasonable to cause PG&E or Customers to make all payments due to EBCEA into the Lockbox Account. All invoices issued by or on behalf of EBCEA shall direct payment into the Lockbox Account. EBCEA shall provide Collateral Agent with such proof of compliance with this Section 5.01 as Collateral Agent may reasonably request from time to time. Without the prior written consent of Collateral Agent (acting at the written direction of the Required Secured Creditors), EBCEA shall not (a) terminate, amend, revoke or modify such payment instructions to PG&E or Customers or (b) direct or cause, directly or indirectly, PG&E or any Customer to make any payments except in accordance with such payment instructions. The parties agree that if any such payments, or any other Proceeds of Collateral, are received by EBCEA, (i) they shall be held in trust by EBCEA for the benefit of the Collateral Agent, (ii) EBCEA shall as promptly as possible remit or deliver same to Collateral Agent for application as provided herein, (iii) EBCEA shall take such commercially reasonable steps as necessary to require such Customer or PG&E to make any future remittances into the Lockbox Account and (iv) such activity shall be reported promptly to Collateral Agent following EBCEA's receipt of such funds. Collateral Agent thus has the right to all collections on the Collateral remitted to it by PG&E until the Discharge Date.

5.02 Application of Proceeds. The Proceeds of any collection or realization of all or any part of the Collateral shall be applied by Collateral Agent as provided for in Section 6 below.

5.03 Deficiency. If the Proceeds of the collection of the Collateral are insufficient to pay in full the Obligations, EBCEA remains liable to Collateral Agent and Secured Creditors for any deficiency.

5.04 Attorney-in-Fact. Collateral Agent is hereby appointed the attorney-in-fact of EBCEA to receive, endorse and collect all checks made payable to the order of EBCEA representing any payment or other distribution in respect of the Collateral.

Section 6. Establishment of and Distributions From Deposit Accounts.

6.01 Establishment of Deposit Accounts. EBCEA shall establish the Deposit Accounts in EBCEA's name at Depository Bank and shall fund the Reserve Amount into the Lockbox Account. The deposits into the Deposit Accounts and all interest accumulated thereon shall be held and disbursed by the Depository Bank in accordance with the terms and conditions of the Control Agreements and this Agreement. The Deposit Accounts are subject to the sole dominion, control and discretion of Collateral Agent until the Discharge Date. Until the Discharge Date, neither EBCEA nor any person or entity claiming on behalf of or through EBCEA shall have any right or authority, whether express or implied, to make use of, withdraw or transfer any funds or to give instructions with respect to disbursement of the Accounts other than Collateral Agent. Until the Discharge Date, subject to Section 6.02, Collateral Agent shall be entitled to exercise any and all rights in respect of or in connection with the Deposit Accounts including (i) the right to specify the amount of payments to be made from the Deposit Accounts, (ii) when such payments are to be made out of the Deposit Accounts and (iii) the right to withdraw funds for the payment of Obligations which are due and payable from the Deposit Accounts. Collateral Agent shall accept all funds remitted to the Deposit Accounts under this Agreement, and credit such funds as provided for in Section 6.02 below.

6.02 Priority of Distributions of Collateral. Proceeds of Collateral shall be allocated in accordance with this Section 6.02. On each Distribution Date, Collateral Agent shall distribute all funds in the Lockbox Account or otherwise received on the Collateral in accordance with the following priority:

(i) *first*, to each PPA Provider in payment of any Regular Charges, according to its Regular Sharing Percentage;

(ii) *second*, to each PPA Provider in payment of any Supplemental Payment owing to it according to its Supplemental Sharing Percentage;

(iii) *third*, to the Collateral Agent (as such and in its individual capacity) in respect of its reasonable out-of-pocket fees and expenses incurred under this Agreement, the Intercreditor Agreement or the Control Agreements that have been invoiced to EBCEA, including, without limitation, payment of expenses incurred by the Collateral Agent which indemnity shall include the reasonable out of pocket attorneys' fees of outside counsel to the Collateral Agent; and

(iv) *fourth*, unless an Event of Default shall exist as to EBCEA, the balance, if any, after retention in the Lockbox Account of the Reserve Amount, shall be returned to EBCEA free and clear of the lien of this Agreement, provided, however, that if the Collateral Agent has been notified of a dispute in accordance with Section 6.06, the portion of the balance, if any, up to such disputed amount shall be retained in the Lockbox Account and EBCEA shall only receive the amount of the balance, if any, that is in excess of such disputed amount until such time as the Collateral Agent receives written notice from the relevant PPA Provider and EBCEA that the dispute pursuant to Section 6.06 has been resolved.

Collateral Agent shall rely, and shall be fully protected in relying, on a Distribution Date Certificate submitted to it by EBCEA in making the above calculations, without any requirement that Collateral Agent verify the accuracy of such Distribution Date Certificate, subject to revision in the event of disputes resolved under Section 6.06.

6.03 Distribution Date Certificate. On or before three (3) Business Days before each Distribution Date, EBCEA shall remit to Collateral Agent and each PPA Provider a certificate in substantially the form of Exhibit A hereto (the “**Distribution Date Certificate**”) prepared by EBCEA itemizing each of the payments to be remitted under Section 6.02 above. The PPA Providers may share such Distribution Date Certificates with their respective accountants, legal counsel and other advisors.

6.04 Replenishing the Reserve Amount; No Waiver. Subject to Section 6.05, if at any time the balance in the Lockbox Account is less than the Reserve Amount, then (a) the Collateral Agent shall within two (2) Business Days thereafter provide EBCEA with written notice thereof, with a copy to Secured Creditors, and (b) EBCEA shall deposit such shortfall amount into the Lockbox Account not later than ten (10) Business Days after its receipt of such notice from Collateral Agent. The Collateral Agent shall have no duty or obligation to monitor or oversee EBCEA’s replenishment of the Reserve Amount, and shall have no duty or obligation under this Section 6.04 other than to deliver the written notice required pursuant to 6.04(a). Nothing contained herein shall impair or otherwise limit EBCEA’s obligations to timely make the payments required pursuant to any of the Transaction Agreements. It is expressly understood and agreed that the Collateral Agent shall have no liability for its failure to deliver any amounts required to be delivered by it pursuant to this Agreement or any other Transaction Agreement to the extent that such amounts are not then available in the Deposit Accounts.

6.05 Release of Reserve Amount. Except following and during the continuance of an Event of Default, if EBCEA and all Secured Creditors confirm in writing to the Collateral Agent that no such Event of Default exists or is continuing, and EBCEA provides the Collateral Agent with a Letter of Credit for the benefit of the PPA Providers in an amount equal to the Reserve Amount, EBCEA may request in writing and, upon receipt of such request, Collateral Agent shall instruct the Depositary Bank to release and distribute the Reserve Amount to EBCEA. All of the fees, costs and expenses associated with the Letter of Credit shall be borne by EBCEA. EBCEA shall thereafter cause the Letter of Credit to be maintained in full force and effect through the Discharge Date. If at any time the issuer of the Letter of Credit is no longer a Qualified Institution, then EBCEA shall, within five (5) Business Days of such occurrence, either (a) provide Collateral Agent with a replacement Letter of Credit for the benefit of the PPA

Providers issued by a Qualified Institution in an amount equal to the Reserve Amount or (b) fund the applicable Reserve Amount into the Lockbox Account.

6.06 Disputes. If a PPA Provider advises EBCEA and Collateral Agent in writing that the calculations by EBCEA in any Distribution Date Certificate are in its opinion materially incorrect, then EBCEA and such PPA Provider shall attempt to resolve the discrepancy in good faith. If the parties are able to reach an agreement with respect to such discrepancy in advance of the relevant Distribution Date, EBCEA shall remit to Collateral Agent and each PPA Provider a revised Distribution Date Certificate reflecting the agreed upon amounts, and the Collateral Agent shall disburse funds in accordance with such revised Distribution Date Certificate on the applicable Distribution Date, provided, however, that the Collateral Agent shall have no liability whatsoever for any failure to disburse funds in accordance with a revised Distribution Date Certificate to the extent that it has not received such revised Distribution Date Certificate sufficiently in advance of the scheduled distribution. If the parties are unable to agree, they shall resolve such dispute in accordance with the dispute resolution provision of the Power Purchase Agreement between such PPA Provider and EBCEA. In the interim, the Distribution Date Certificate originally submitted by EBCEA shall be relied upon by Collateral Agent for purposes of making distributions from the Lockbox Account or any other Deposit Account of all undisputed amounts in accordance with Section 6.02, and the Collateral Agent shall make no distribution in respect of any disputed amount until such time as it has received a revised Distribution Date Certificate. Notwithstanding the above, no dispute shall prevent any other PPA Provider from receiving its distributions from the Lockbox Account, even if such distributions would result in a shortfall of the disputed amount. However, EBCEA shall not be entitled to receive any funds if such distribution to EBCEA would result in a shortfall of the disputed amount.

6.07 Earnings on Deposit Accounts. EBCEA shall establish the Deposit Accounts as non-interest bearing accounts.

6.08 Rights and Remedies. If an Event of Default shall have occurred and is continuing, Collateral Agent may exercise, without any other notice to or demand upon EBCEA, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC and any additional rights and remedies as may be provided to a secured party in any jurisdiction in which Collateral is located; it being understood and agreed that the Collateral Agent would be exercising any such rights and remedies in its capacity as collateral agent for the benefit of the PPA Providers, as Secured Creditors. In addition, **EBCEA HEREBY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO A JUDICIAL HEARING IN ADVANCE OF THE ENFORCEMENT OF COLLATERAL AGENT'S RIGHTS AND REMEDIES HEREUNDER, INCLUDING ITS RIGHT FOLLOWING AN EVENT OF DEFAULT TO TAKE IMMEDIATE POSSESSION OF THE COLLATERAL AND TO EXERCISE ITS RIGHTS AND REMEDIES WITH RESPECT THERETO.** Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Intercreditor Agreement or the Control Agreements with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Intercreditor Agreement or the Control Agreements. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so

and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

6.09 No Waiver by Collateral Agent. Collateral Agent shall not be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be made in writing and signed by Collateral Agent (acting at the written direction of the Required Secured Creditors). No delay or omission on the part of Collateral Agent in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any occasion shall not be construed as a bar to or a waiver of any right or remedy on any future occasion. All rights and remedies of Collateral Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, may be exercised by Collateral Agent (acting at the written direction of the Required Secured Creditors), shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Collateral Agent (acting at the written direction of the Required Secured Creditors) deems expedient.

6.10 Waivers by EBCEA. To the extent permitted by applicable law, EBCEA hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description.

6.11 Marshalling. **TO THE EXTENT THAT IT LAWFULLY MAY, EBCEA HEREBY AGREES THAT IT WILL NOT INVOKE ANY LAW RELATING TO THE MARSHALLING OF COLLATERAL WHICH MIGHT CAUSE DELAY IN OR IMPEDE THE ENFORCEMENT OF COLLATERAL AGENT'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT CREATING OR EVIDENCING ANY OF THE OBLIGATIONS OR UNDER WHICH ANY OF THE OBLIGATIONS IS OUTSTANDING OR BY WHICH ANY OF THE OBLIGATIONS IS SECURED OR PAYMENT THEREOF IS OTHERWISE ASSURED, AND, TO THE EXTENT THAT IT LAWFULLY MAY, EBCEA HEREBY IRREVOCABLY WAIVES THE BENEFITS OF ALL SUCH LAWS.**

Section 7. Miscellaneous.

7.01 Notices. Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed to the relevant party as provided below their signatures to this Agreement or at such other address for notice as EBCEA or Collateral Agent shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) that is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) that is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

7.02 No Waiver. No failure on the part of the Collateral Agent to exercise, and no course of dealing with respect to, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof.

7.03 Amendments. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by EBCEA and Collateral Agent.

7.04 Expenses. If EBCEA fails to do so, Collateral Agent may, upon receipt from the Required Secured Creditors of written direction and such sums as may be necessary in connection therewith, discharge taxes and any other Liens or encumbrance at any time levied or placed on any of the Collateral. EBCEA agrees to reimburse Collateral Agent on demand for any such expenditures made by Collateral Agent, and the Collateral Agent promptly upon receipt thereof shall remit such reimbursed sums to the Required Secured Creditors. For the avoidance of doubt, it is expressly understood and agreed that the Collateral Agent shall not use or expend its own funds in connection with such taxes, Liens or encumbrances. Collateral Agent shall have no obligation to make any such expenditure nor shall the making thereof be construed as a waiver or cure of any Event of Default. EBCEA agrees to reimburse Collateral Agent (as such and in its individual capacity) for all reasonable costs and expenses incurred by it (including the reasonable fees and expenses of legal counsel) in connection with (i) the performance by Collateral Agent of its duties under this Agreement, the Intercreditor Agreement or the Control Agreements, (x) protecting, defending or asserting rights and claims of the Collateral Agent in respect of the Collateral, (y) litigation relating to the Collateral, and (z) workout, restructuring or other negotiations or proceedings, and (ii) the enforcement of this Section 7.04, and all such reasonable costs and expenses shall be Obligations entitled to the benefits of the collateral security provided pursuant to Section 2.

7.05 Duty of Care; Earnings. Collateral Agent shall have no duty or obligation with respect to the Collateral except for its contractual obligations under this Agreement, the Intercreditor Agreement or the Control Agreements. The Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against any Person, beyond the safe custody of any Collateral in the Collateral Agent's possession or control. Without limiting the generality of the foregoing, Collateral Agent shall have no duty (a) other than to instruct EBCEA as set forth in Section 4.05 hereof, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of EBCEA, the Secured

Creditors, and the Collateral Agent (provided that EBCEA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of Collateral Agent) and Collateral Agent shall only transfer or assign its rights hereunder in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of the Intercreditor Agreement). This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect in accordance with Section 7.12, and be binding upon EBCEA, its successors and assigns, and inure, together with the rights of Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns.

7.07 Counterparts. This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto shall be as effective as an original signature.

7.08 GOVERNING LAW; JURISDICTION. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

7.09 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

7.10 CONSENT TO INJUNCTIVE RELIEF. WITHOUT LIMITING ANY OTHER RIGHTS OR REMEDIES THAT COLLATERAL AGENT MAY HAVE, EBCEA ACKNOWLEDGES THAT ITS VIOLATION OF SECTION 5.01 WOULD RESULT IN IRREPARABLE INJURY TO COLLATERAL AGENT FOR WHICH NO ADEQUATE REMEDY AT LAW WOULD BE AVAILABLE. ACCORDINGLY, EBCEA HEREBY (I)

CONSENTS TO THE ENTRY OF AN IMMEDIATE EX-PARTE INJUNCTION, TEMPORARY RESTRAINING ORDER, AND/OR PERMANENT INJUNCTION TO ENFORCE THE PROVISIONS OF SECTION 5.01, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY AND (II) WAIVES ANY DEFENSE THAT ADEQUATE REMEDIES ARE AVAILABLE AT LAW AND ANY REQUIREMENT THAT A BOND OR ANY OTHER SECURITY BE POSTED IN CONNECTION WITH THE ENTRY OF ANY RESTRAINING ORDER OR INJUNCTION.

7.11 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

7.12 Termination. Unless earlier terminated in writing by the parties hereto, this is a continuing security agreement and the grant of a security interest under this Agreement shall remain in full force and effect and all the rights, powers and remedies of Collateral Agent hereunder shall continue to exist until: (a) the Obligations are paid in full as the same becomes due and payable; (b) the PPA Providers have no further obligation to deliver products or render services (including credit support services) to, or on behalf of, EBCEA; (c) EBCEA has no further obligations to the PPA Providers under any of the Transaction Agreements; and (d) the PPA Providers, upon request of EBCEA, have executed a written termination statement, and Collateral Agent has reassigned to EBCEA, without recourse, the Collateral and all rights conveyed hereby and returned possession of the Collateral to EBCEA. Furthermore, it is contemplated by the parties that there may be times when no Obligations are owing; but notwithstanding such occurrences, unless the PPA Providers have executed a written termination under clause (d) above, this Agreement shall remain valid and shall be in full force and effect as to subsequent Obligations, provided Collateral Agent has not executed a written agreement terminating this Agreement. This Agreement shall continue irrespective of the fact that the liability of any other obligor may have ceased, or irrespective of the validity or enforceability of the Transaction Agreements, to which any other obligor may be a party, and notwithstanding the reorganization or bankruptcy of EBCEA, or any other event or proceeding affecting EBCEA or any other obligor. At EBCEA's request, Collateral Agent shall, at EBCEA's reasonable expense, instruct Depository Bank to release all assets credited to the Deposit Accounts to EBCEA, and Collateral Agent shall also execute such other documentation as shall be reasonably requested by EBCEA to effect the termination and release of the liens on the Collateral, including notice to PG&E that the Direction Letter is terminated.

7.13 Severability. The provisions of this Agreement are intended to be severable. If for any reason any of the provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

7.14 Disclosure of Information. EBCEA hereby consents to the disclosure by any PPA Provider or Collateral Agent of any information provided by or relating to EBCEA as may be required or reasonably necessary for the administration of this Agreement, the Intercreditor Agreement or the Control Agreements, or the enforcement or protection of any of the rights of the Collateral Agent or the PPA Providers hereunder.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

EAST BAY COMMUNITY ENERGY AUTHORITY,
as Pledgor

By: _____
Name:
Title:

Notice Address:

East Bay Community Energy Authority
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Nick Chaset
Email: Nchaset@ebce.org

RIVER CITY BANK,
not in its individual capacity, but solely as Collateral Agent

By: _____
Name:
Title:

Notice Address:

River City Bank
2485 Natomas Park Dr.
Sacramento, CA, 95833
Attention: Cash Management
Fax: (916) 567-2799
Email: cashmgmt@rivercitybank.com

Exhibit A

Form of Distribution Date Certificate

The undersigned, [INSERT NAME], the [INSERT NAME OF OFFICE HELD] of East Bay Community Energy Authority, a California joint powers authority (“**EBCEA**”), hereby certifies, on behalf of EBCEA in such capacity and not in its individual capacity, with reference to that certain Security Agreement dated as of _____, 201__ (capitalized terms used herein shall have the same meaning as set forth in the Security Agreement) between EBCEA and _____, as collateral agent (“**Collateral Agent**”), to Collateral Agent as follows:

This certificate is being delivered to Collateral Agent on or before the date that is three (3) Business Days before the Distribution Date of [_____], 20__.

No Event of Default exists as of the date of this certificate and EBCEA does not anticipate that an Event of Default will exist as of the Distribution Date set forth in paragraph 1 above.

The funds that are on deposit in the Lockbox Account shall be disbursed on the Distribution Date as follows:

1. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of its Regular Charges, an aggregate amount equal to [_____ Dollars (\$_____)]; *[Include this paragraph for each PPA Provider]*
2. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of any Supplemental Payment owing in an aggregate amount equal to [_____ Dollars (\$_____)]; *[Include this paragraph for each PPA Provider]*
3. To Collateral Agent, in respect of Collateral Agent’s reasonable out-of-pocket fees and expenses incurred under the Security Agreement or the Intercreditor Agreement that have been invoiced to EBCEA, an aggregate amount equal to [_____ Dollars (\$_____)]; and
4. The remaining funds, if any, that are on deposit, after retention of the Reserve Amount are to be disbursed to EBCEA into the account designated by EBCEA.

[Signature page follows]

I hereby certify, on behalf of EBCEA and not in my individual capacity, that this Distribution Date Certificate is true and complete in all material respects.

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT,

dated as of _____, 2018,

by and among

**RIVER CITY BANK,
as Collateral Agent,**

**THE PPA PROVIDERS
FROM TIME TO TIME
PARTY HERETO,**

and

EAST BAY COMMUNITY ENERGY AUTHORITY

TABLE OF CONTENTS

	Page
SECTION 1. Definitions.....	2
Section 1.1. Definitions.....	2
Section 1.2. Other Interpretive Provisions.....	3
SECTION 2. Relationships Among Secured Creditors	4
Section 2.1. Liens in the Collateral.....	4
Section 2.2. No Debt Subordination	4
Section 2.3. Restrictions on Enforcement Action.....	4
Section 2.4. No Restriction on Terms of Power Purchase Agreements.....	4
Section 2.5. Representations and Warranties.....	5
Section 2.6. Cooperation; Accountings	5
SECTION 3. Agency Provisions	5
Section 3.1. Appointment and Authorization of Collateral Agent.....	5
Section 3.2. Collateral.....	6
Section 3.3. Delegation of Duties	6
Section 3.4. Exculpatory Provisions	7
Section 3.5. Reliance by Collateral Agent	7
Section 3.6. Knowledge	7
Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors	7
Section 3.8. Reporting.....	8
Section 3.9. Indemnification	8
Section 3.10. Collateral Agent May Act in its Individual Capacity	8
Section 3.11. Successor Collateral Agent	8
SECTION 4. Actions by Collateral Agent.....	10
Section 4.1. Duties and Obligations.....	10
Section 4.2. Voting; Amendments to Transaction Agreements.....	10
Section 4.3. Actions Pertaining to the Collateral	10
Section 4.4. Duty of Care.....	11
Section 4.5. Further Assurances.....	11
Section 4.6. Distribution of Proceeds of Collateral	11

Section 4.7.	Deposit Accounts	11
Section 4.8.	Restoration of Obligations	12
Section 4.9.	Privileged Materials	12
Section 4.10.	Action Upon Instruction	12
SECTION 5.	Bankruptcy Proceedings	12
SECTION 6.	Miscellaneous.....	13
Section 6.1.	Amendments to this Agreement and Assignments	13
Section 6.2.	Marshalling	13
Section 6.3.	Governing Law; Jurisdiction.....	13
Section 6.4.	Waiver of Jury Trial.....	14
Section 6.5.	Joinder.....	14
Section 6.6.	Counterparts	14
Section 6.7.	Termination.....	15
Section 6.8.	Controlling Terms.....	15
Section 6.9.	Notices	15
Section 6.10.	No Recourse Against Constituent Members of EBCEA	15

Exhibit A – Form of Joinder

INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

This **INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT** (this “**Agreement**”), dated as of _____, 2018 (the “**Effective Date**”), is entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely in its capacity as Collateral Agent (“**Collateral Agent**”), (ii) each of the creditors from time to time signatory hereto that are party to a Power Purchase Agreement (each such creditor defined below as a “**PPA Provider**”) and (iii) East Bay Community Energy Authority, a California joint powers authority (“**EBCEA**”).

RECITALS:

A. EBCEA has (i) entered into the Master Agreements (as defined in the Security Agreement), and (ii) may in the future enter into, a Power Purchase Agreement (as defined in the Security Agreement) with a PPA Provider pursuant to which EBCEA has agreed, or will agree, to purchase the Product from such PPA Provider.

B. EBCEA shall sell the Product it purchases from PPA Providers to EBCEA’s customers at rates established by EBCEA from time to time.

C. Pursuant to the Security Agreement (as defined below) EBCEA has pledged to Collateral Agent, for the benefit of the PPA Providers, as Secured Creditors, a first priority continuing security interest in and to the Collateral (as such terms are defined in the Security Agreement).

D. EBCEA’s customers are billed by Pacific Gas and Electric Company (“PG&E”) and instructed to remit to PG&E sums they owe for the Product provided by EBCEA.

E. As of the date hereof, EBCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of EBCEA to Collateral Agent for remittance to the Lockbox Account (as defined in the Security Agreement) maintained by the Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and EBCEA direct PG&E otherwise.

F. Collateral Agent shall have, for the benefit of the Secured Creditors, a first priority continuing security interest in and lien on such receivables, deposit accounts and related Collateral pledged to Collateral Agent for the benefit of the Secured Creditors, as provided in the Security Agreement.

G. Distributions from such Collateral shall be made by Collateral Agent as provided in this Agreement and the Security Agreement, with PPA Providers having a senior right to distributions from the Collateral.

H. Secured Creditors desire in this Agreement to appoint River City Bank as Collateral Agent to act on their behalf regarding the administration, collection and enforcement of the Collateral, all as more fully provided herein.

I. Secured Creditors also desire to enter into this Agreement to define the rights, duties, authority and responsibilities of Collateral Agent.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

Section 1.1. Definitions

Each capitalized term used herein and not defined herein shall have the meaning given to such term in the Security Agreement. The following terms shall have the meanings assigned to them in this Section 1.1 or in the provisions of this Agreement referred to below:

“**Affiliate**” means, at any time, and as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 51% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“**Agreement**” shall have the meaning assigned thereto in the Preamble hereof.

“**Bankruptcy Proceeding**” means, with respect to any Person, the institution by or against such Person of any proceeding seeking relief as a debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking the reorganization, arrangement, adjustment or composition of such Person or its debts, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property, or a general assignment by such Person for the benefit of its creditors.

“**Event of Default**” has the meaning set forth in the applicable Power Purchase Agreement.

“**Joinder**” has the meaning given to such term in Section 6.5.

“**Obligations**” has the meaning given to such term in the Security Agreement.

“**Required Secured Creditors**” means, as of any date, the Secured Creditor, or Secured Creditors, that, as of such date, have at least fifty percent (50%) of the total aggregate Sharing Percentage, as calculated on such date.

“**Secured Creditors**” means each PPA Provider that is a party to this Agreement, and its respective successors and assigns.

“**Security Agreement**” means the Security Agreement, dated as of even date herewith, between EBCEA and Collateral Agent for the benefit of Secured Creditors, granting a security

interest in the Collateral to secure the Obligations, as amended, supplemented, restated or replaced from time to time.

“Sharing Percentage” means, as of any date, with respect to each PPA Provider as calculated by EBCEA in a commercially reasonable manner, the percentage equivalent of a fraction, (a) the numerator of which is the sum of (i) the outstanding amount of the Obligations of such PPA Provider as of such date, and (ii) the calculated amount of the Termination Payment, if any, that would be owed to such PPA Provider if a Termination Event occurred on such date, and (b) the denominator of which is the sum of (i) the outstanding aggregate amount of the Obligations of all PPA Providers as of such date, and (ii) the calculated aggregate amount of the Termination Payments, if any, that would be owed to all PPA Providers if a Termination Event occurred on such date.

“Termination Payment” means, with respect to any Power Purchase Agreement, any and all Obligations arising upon or in connection with a Termination Event under such Power Purchase Agreement, including any termination fees and payments or other amounts owed by EBCEA thereunder, as of the date of such Termination Event, as calculated in a commercially reasonable manner by the PPA Provider to such Power Purchase Agreement.

“Transaction Agreements” means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Security Agreement, this Agreement and all other agreements, instruments or documents to which EBCEA is a party and which are executed and delivered from time to time in connection with or as security for EBCEA’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

Section 1.2. Other Interpretive Provisions

References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement or the Security Agreement, as applicable. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

SECTION 2. RELATIONSHIPS AMONG SECURED CREDITORS

Section 2.1. Liens in the Collateral

At all times, whether before, after or during the pendency of any Bankruptcy Proceeding and notwithstanding the priorities which would ordinarily result from the order of granting of any Liens, the order of attachment or perfection thereof, or the order of filing or recording of any financing statements or other instrument, or the priorities that would otherwise apply under Applicable Law, Collateral Agent, for the benefit of the Secured Creditors, shall have a first priority lien in the Collateral to secure the Obligations. No Secured Creditor will acquire in its own name a Lien in the assets of EBCEA to secure any Obligations arising under a Power Purchase Agreement other than Liens arising by operation of law such as setoff rights. Secured Creditors shall share in the Proceeds of the Collateral as provided for in Section 4.6.

Section 2.2. No Debt Subordination

Nothing in this Agreement shall be construed to be or operate as a subordination of any of the Obligations owed to a Secured Creditor in right of payment to the Obligations owed to any other Secured Creditor.

Section 2.3. Restrictions on Enforcement Action

So long as any Obligation is outstanding and the Security Agreement remains in effect, the provisions of this Agreement and the Security Agreement shall provide the exclusive method by which Collateral Agent or any Secured Creditor may exercise rights in or assert claims against the Collateral or EBCEA pertaining to the Obligations. Notwithstanding the foregoing, nothing in this Agreement shall prohibit or otherwise restrict a Secured Creditor from exercising any right of termination, acceleration or similar right in accordance with its Power Purchase Agreement, or prohibit or otherwise restrict a Secured Creditor from exercising any set-off rights it may have with respect to the Obligations owing to it.

Section 2.4. No Restriction on Terms of Power Purchase Agreements

This Agreement does not impose any restriction on the terms of a Power Purchase Agreement. EBCEA and any PPA Provider are free to agree on any and all of the terms for charges that may be provided for under its Power Purchase Agreement, such as the price for the Product, late fees, and early termination fees. Without limiting the foregoing, no PPA Provider shall be restricted as to the amount or output of the Product it sells to EBCEA or the length of such Power Purchase Agreement, or any amendment thereof. Upon request by the Collateral Agent, each PPA Provider will disclose to Collateral Agent the Obligations then due and owing to such PPA Provider in an itemized manner, and EBCEA consents to such disclosure to such Person or any party hereto.

Section 2.5. Representations and Warranties

Each Secured Creditor represents and warrants to the other parties hereto that:

- (a) the execution, delivery and performance by such Secured Creditor of this Agreement has been duly authorized by all necessary corporate or similar proceedings and does not and will not contravene any provision of law, its charter or by-laws or any amendment thereof, or of any indenture, agreement, instrument or undertaking binding upon such Secured Creditor;
- (b) the execution, delivery and performance by such Secured Creditor of this Agreement will result in a valid and legally binding obligation of such Secured Creditor enforceable against such Secured Creditor in accordance with its terms; and
- (c) any Termination Payment calculated by it and provided to the Collateral Agent or the other Secured Creditors shall be calculated in good faith, in accordance with its Power Purchase Agreement, and consistent with such Secured Creditor's historical practices.

Section 2.6. Cooperation; Accountings

Each Secured Creditor will, upon the reasonable request of the Collateral Agent, from time to time execute and deliver or cause to be executed and delivered such further instruments, and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions of this Agreement. Each Secured Creditor agrees to provide to the Collateral Agent upon reasonable request a statement of all payments received by it in respect of the Obligations pertaining to its Power Purchase Agreement.

SECTION 3. AGENCY PROVISIONS

Section 3.1. Appointment and Authorization of Collateral Agent

(a) Each Secured Creditor hereby designates and appoints River City Bank, as Collateral Agent of such Secured Creditor under this Agreement and River City Bank hereby accepts such designation and appointment. The Collateral Agent is a non-fiduciary agent of the Secured Creditors and does not act in a fiduciary capacity or as trustee for the Secured Creditors or Collateral.

(b) Notwithstanding any provision to the contrary elsewhere in this Agreement, Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein and in the Security Agreement, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Collateral Agent. The right or power of Collateral Agent to perform any discretionary act hereunder shall not be construed as a duty. Collateral Agent is hereby authorized, empowered and instructed to execute, deliver and perform its obligations under this Agreement, the Security Agreement, the Control Agreements and each other document as may be necessary or convenient in connection with the foregoing; provided, however, that the Collateral Agent shall not amend, modify

or terminate the Control Agreements without the prior written consent of the Secured Creditors.

(c) Collateral Agent shall not (i) be subject to any fiduciary or other implied duties, (ii) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the Security Agreement, the Control Agreements, or other agreement to which the Collateral Agent is a party, and (iii) be required to take action that, in its opinion or the opinion of its counsel, may expose Collateral Agent to liability.

(d) The Collateral Agent, hereby represents and warrants that (i) it has all requisite power and authority to execute, deliver and perform under this Agreement; (ii) the execution, delivery and performance by it of this Agreement has been duly authorized by all requisite corporate or other action; (iii) no consent or approval of any other Person and no consent, license, approval or authorization of any governmental authority is required in connection with the execution, delivery, and performance by it of this Agreement; and (iv) this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws in effect from time to time affecting the rights of creditors generally and general principles of equity regardless of whether such enforcement is considered in a proceeding in equity or at law.

Section 3.2. Collateral

(a) Deposit Accounts Subject to Collateral Agent's Control.

Collateral Agent agrees that its security interest and right of setoff in and to the Deposit Accounts is held for the benefit of all the Secured Creditors and itself as Collateral Agent, and that Collateral Agent will comply with this Agreement and the Security Agreement in distributing monies received from such Deposit Accounts.

(b) Collateral Held by Secured Creditors.

Each Secured Creditor hereby acknowledges that if any Secured Creditor (individually or through its own custodian) shall hold or control, at any time, any assets comprising Collateral, such possession or control is also held for the benefit of Collateral Agent for the benefit of the Secured Creditors. The foregoing sentence shall not be construed to impose any duty on a Secured Creditor (or any third party acting on its behalf) with respect to such Collateral if it is not perfected by possession or control.

Section 3.3. Delegation of Duties

Collateral Agent may exercise its powers and execute any of its duties under this Agreement by or through employees, agents, and attorneys-in-fact, and shall be entitled to take and to rely on advice of counsel concerning all matters pertaining to such powers and duties. Subject to Section 3.4, Collateral Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact unless Collateral Agent acted in bad faith or gross negligence in the selection of such agents or attorneys-in-fact. Collateral Agent may utilize the services of

such Persons as Collateral Agent in its reasonable discretion may determine, and shall be entitled to indemnity hereunder for all reasonable fees and expenses of such Persons.

Section 3.4. Exculpatory Provisions

Neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement (except for its or such Person's own bad faith, gross negligence (or ordinary negligence in the handling or disbursement of funds actually received by it pursuant to the terms hereof) or willful misconduct, respectively) or (b) responsible in any manner to EBCEA or any of the Secured Creditors for any recitals, statements, representations, warranties or covenants made by EBCEA or any Secured Creditor or any officer thereof contained in any certificate, report, statement or other document referred to or provided for in, or received by, Collateral Agent under or in connection with this Agreement or any other document in any way connected therewith, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Lien or the perfection or priority of any such Lien (including any Lien in the Collateral), or for any failure of EBCEA to perform its obligations thereunder.

Section 3.5. Reliance by Collateral Agent

Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing (in electronic or physical form), resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to EBCEA), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take action not provided for under this Agreement unless it shall first be indemnified to its reasonable satisfaction by EBCEA against any and all liability and expense which may be incurred by it by reason of taking, continuing to take or refraining from taking any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with the provisions of Section 4 hereof, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

Section 3.6. Knowledge

Collateral Agent shall not be deemed to have knowledge or notice of any facts regarding the Collateral or the Obligations unless Collateral Agent has received written notice from the Secured Creditor or EBCEA referring to this Agreement, describing such facts in reasonable detail.

Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors

Each Secured Creditor expressly acknowledges that except as expressly set forth in this Agreement, neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates has made any representations or warranties to it, except as expressly provided herein at Section 3.1 (d) and

that no act by Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by Collateral Agent (as such or in its individual capacity) to any Secured Creditor.

Section 3.8. Reporting

EBCEA shall provide online access for the Lockbox Account that enables the Collateral Agent and the Secured Creditors to view the balance of the Lockbox Account at any time. Collateral Agent will provide the Secured Creditors with a copy of the bank statement for the Lockbox Account no later than five (5) Business Days following receipt thereof by the Collateral Agent. Collateral Agent shall have no duty or responsibility to provide the Secured Creditors with, or otherwise monitor or review in any respect, any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of EBCEA which may come into the possession of Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact, or Affiliates. Collateral Agent shall provide to Secured Creditors copies of all notices received by it regarding the Collateral, the Security Agreement or this Agreement; provided that the failure to provide such copies shall not cause Collateral Agent (as such or in its individual capacity) to incur liability to any Person. Collateral Agent shall promptly (but in no event more than 3 Business Days) after Collateral Agent's receipt of a written request from a Secured Creditor provide a report to all Secured Creditors regarding the status of any matter relating to payments or distributions of Collateral received by Collateral Agent.

Section 3.9. Indemnification

EBCEA shall indemnify Collateral Agent (as such and in its individual capacity) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against Collateral Agent (as such or in its individual capacity) arising out of actions or omissions of Collateral Agent arising out of this Agreement; provided that neither EBCEA nor the Secured Creditors shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from Collateral Agent's fraud, willful misconduct, gross negligence or bad faith. The agreements in this Section 3.9 shall survive the repayment of the Obligations and the termination of this Agreement.

Section 3.10. Collateral Agent May Act in its Individual Capacity

River City Bank, and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with EBCEA and its Affiliates as though it was not Collateral Agent hereunder.

Section 3.11. Successor Collateral Agent

(a) Collateral Agent may resign at any time upon at least 60 days' prior written notice to the Secured Creditors and EBCEA, or may be removed by the demand of the Required Secured Creditors for cause at any time if Collateral Agent has failed to take any action that Collateral Agent is required to take hereunder after request by a Secured Creditor, or Collateral Agent has taken any action hereunder that Collateral

Agent is not authorized to take hereunder or that violates the terms hereof and, in either case, has not remedied such failure or violation with reasonable promptness after a written request for corrective action is delivered to Collateral Agent. After any resignation or removal hereunder of Collateral Agent, the provisions of this Section 3 shall continue to be binding upon and inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as Collateral Agent hereunder while it was Collateral Agent under this Agreement.

(b) Upon receiving written notice of any such resignation or removal, a successor Collateral Agent, reasonably acceptable to EBCEA, shall be appointed by the Secured Creditors provided, if an Event of Default as to EBCEA has occurred no such acceptance of the successor Collateral Agent by EBCEA shall be required. If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent's notice of resignation or upon removal of Collateral Agent, then any Secured Creditor or Collateral Agent (unless Collateral Agent is being removed) may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent (it being expressly understood and agreed that any such petition by the Collateral Agent shall be at the expense of the Secured Creditors, jointly and severally) and the Collateral Agent shall continue its functions in accordance with subsection (c) below. The appointment of a successor Collateral Agent pursuant to this Section 3.11(b) shall become effective upon the acceptance of the appointment as Collateral Agent hereunder by a successor Collateral Agent. Upon such effective appointment, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(c) The resignation or removal of a Collateral Agent shall take effect on the day specified in the notice described in Section 3.11(a), unless previously a successor Collateral Agent shall have been appointed and shall have accepted such appointment, in which event such resignation or removal shall take effect immediately upon the acceptance of such appointment by such successor Collateral Agent, and provided, further, that no resignation or removal shall be effective hereunder unless and until a successor Collateral Agent shall have been appointed and shall have accepted such appointment.

(d) Upon the effective appointment of and acceptance by a successor Collateral Agent, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the predecessor Collateral Agent hereby appoints the successor Collateral Agent the attorney-in-fact of such predecessor Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Collateral Agent hereunder and all power, duties, documents, rights and authority of the previous Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Collateral Agent shall, nevertheless, on the written request of the Secured Creditors or successor Collateral Agent, execute and deliver any other such instrument transferring to such successor Collateral Agent all the Collateral, properties, rights, power, duties, authority and title of such predecessor. In connection with the resignation or removal of Collateral Agent,

EBCEA, to the extent requested by the Secured Creditors or Collateral Agent, shall procure and execute any and all documents, conveyances or instruments requested, including any documentation appropriate to reflect the transfer of the Lien or other rights granted herein to such successor Collateral Agent.

SECTION 4. ACTIONS BY COLLATERAL AGENT

Section 4.1. Duties and Obligations

The duties and obligations of Collateral Agent are only those set forth in this Agreement and the Security Agreement. The Collateral Agent shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Collateral, or to otherwise take or refrain from taking any action hereunder, except as expressly provided by the terms hereof or in written instructions received pursuant hereto, and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. Upon the written instruction at any time and from time to time of the Required Secured Creditors, the Collateral Agent shall take such action or refrain from taking such action, not inconsistent with the provisions of this Agreement, as may be specified in such instruction. Notwithstanding the foregoing, Collateral Agent shall not be required to take, or refrain from taking, any action that, in its opinion or in the opinion of its counsel, may expose Collateral Agent (as such or in its individual capacity) to liability. Collateral Agent (as such or in its individual capacity) shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by Collateral Agent does not constitute willful misconduct, gross negligence or bad faith. The Collateral Agent shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of any of its obligations under or in connection with this Agreement, the Security Agreement, the Control Agreements or any related document.

Section 4.2. Voting; Amendments to Transaction Agreements

Collateral Agent shall act at the written instruction of the Required Secured Creditors in connection with all material actions, matters or decisions, or any actions, matters or decisions requiring a vote or instruction under this Agreement, under the Control Agreements or the Security Agreement, including with respect to Section 5.01 of the Security Agreement. Notwithstanding the foregoing or anything in any Transaction Agreement to the contrary, without the prior written consent of all of the Secured Creditors, Collateral Agent shall not enter into any amendments, modifications, restatements, extensions or supplements of this Agreement, the Control Agreements or the Security Agreement.

Section 4.3. Actions Pertaining to the Collateral

Collateral Agent has the sole and exclusive standing and right to assert claims relating to the Collateral, and no Secured Creditor may enforce or assert against EBCEA, the Deposit Accounts, the Depository Bank, or any other Person, any claims relating to the Collateral. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Security Agreement or the Control Agreements with respect to the Collateral following an Event of Default and (b) asserting any

claim under this Agreement, the Security Agreement or the Control Agreements. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

Section 4.4. Duty of Care

Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of rights pertaining to the Collateral beyond the safe custody of any Collateral in Collateral Agent's actual possession. Without limiting the generality of the foregoing, Collateral Agent shall have no duty or obligation (a) other than to instruct EBCEA as set forth in Section 4.05 of the Security Agreement, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

Section 4.5. Further Assurances

EBCEA and each Secured Creditor shall take such actions and cooperate with Collateral Agent as may be reasonably requested, and execute such documents as may be reasonably necessary, to carry out or effect the intent of the parties hereto.

Section 4.6. Distribution of Proceeds of Collateral

Collateral Agent shall distribute the Proceeds of the Collateral as provided in Section 6.02 of the Security Agreement. Collateral Agent shall rely on the provisions in Section 6 of the Security Agreement for calculating the Obligations payable from such Proceeds. Collateral Agent has no duty or obligation to make an independent inquiry regarding the foregoing calculations or the facts on which such calculations are based.

Section 4.7. Deposit Accounts

Subject to distributions permitted under the Security Agreement or this Agreement, the Proceeds of Collateral shall be maintained in the Deposit Accounts, and no such account shall be required to be interest bearing.

Section 4.8. Restoration of Obligations

In the event any payment of, or any application of any amount, asset or property to, any of the Obligations owed to any Secured Creditor or any obligations owed to Collateral Agent under the Security Agreement or this Agreement, or any part thereof, made at any time (including, without limitation, made prior to any applicable Bankruptcy Proceeding) is rescinded or are otherwise to be restored or returned by such Secured Creditor or Collateral Agent at any time after such payment or application, whether by order of any court, by settlement, or otherwise, then the respective obligations and the security interests of such Person shall be reinstated, all as though such payment or application had never been made.

Section 4.9. Privileged Materials

With respect to all materials and communications relating to the Collateral with or in the possession of Collateral Agent or its counsel that are subject to any claim of privilege in favor of Collateral Agent, each Secured Creditor agrees that Collateral Agent shall not be required to take any action under this Agreement that compromises the privileged nature of such conversations or materials, and all such privileges shall be preserved.

Section 4.10. Action Upon Instruction

Whenever the Collateral Agent is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any document, or is unsure as to the application, intent, interpretation or meaning of any provision of this Agreement or any other document, or any such provision may be ambiguous as to its application or in conflict with any other applicable provision, permits any determination by the Collateral Agent, or is silent or incomplete as to the course of action that the Collateral Agent is required to take with respect to a particular set of facts, then the Collateral Agent may give notice (in such form as shall be appropriate under the circumstances) to the Secured Creditors requesting instruction as to the course of action to be adopted, and, to the extent the Collateral Agent acts or refrains from acting in good faith in accordance with any such written instruction of the Required Secured Creditors received, the Collateral Agent shall not be personally liable on account of such action or inaction to any Person. If the Collateral Agent shall not have received appropriate instruction from the Required Secured Creditors within ten (10) days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action which is consistent, in its view, with this Agreement, the Security Agreement, and the Control Agreements or other documents, and as it shall deem to be in the best interests of the Secured Creditors, and the Collateral Agent shall have no personal liability to any Person for any such action or inaction.

SECTION 5. BANKRUPTCY PROCEEDINGS

The following provisions shall apply during any Bankruptcy Proceeding of EBCEA:

(a) Collateral Agent shall represent all Secured Creditors in connection with all matters directly relating solely to the Collateral, use of cash collateral, relief from the

automatic stay and adequate protection. In such Bankruptcy Proceeding, Collateral Agent shall act on the instruction of the Required Secured Creditors.

(b) Each Secured Creditor shall be free to act independently on any issue not directly relating solely to the Collateral.

(c) Each Secured Creditor shall file its own proof of claim in respect of the Obligations owing to it. Collateral Agent shall have the right to file (but has no obligation to file) a proof of claim in its capacity as Collateral Agent in respect of any or all of the Obligations.

(d) Each Secured Creditor shall have the sole right to vote the claims pertaining to the Obligations owing to it by EBCEA.

(e) Any Collateral received by any Secured Creditor with respect to the Obligations owing to it as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to Collateral Agent for distribution in accordance with Section 4.6.

SECTION 6. MISCELLANEOUS

Section 6.1. Amendments to this Agreement and Assignments

This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Collateral Agent, EBCEA and all the Secured Creditors. This Agreement is assignable by a Secured Creditor. Collateral Agent shall only transfer or assign its rights hereunder by operation of law or in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of this Agreement and, if required by the successor Collateral Agent, the parties agree to execute and deliver a restated Agreement in the event there is a replacement of Collateral Agent. EBCEA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of all the Secured Creditors and Collateral Agent. Any assignee of a PPA Provider under a Power Purchase Agreement shall comply with Section 6.5.

Section 6.2. Marshalling

Collateral Agent shall not be required to marshal any present or future security for (including, without limitation, the Collateral), or guaranties of the Obligations or to resort to such security or guaranties in any particular order; and all of each of such Person's rights in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising.

Section 6.3. Governing Law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR

RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

Section 6.4. Waiver of Jury Trial

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

Section 6.5. Joinder

Each time EBCEA enters into a new Power Purchase Agreement as to which the counterparty thereto is to share in the Collateral, such counterparty shall execute and deliver to Collateral Agent a Joinder to Intercreditor and Collateral Agency Agreement in the form of Exhibit A hereto (a “**Joinder**”) at the same time as such counterparty executes the Power Purchase Agreement. Further, no PPA Provider may assign or transfer its rights hereunder or under a Power Purchase Agreement without such assignees or transferees delivering an executed Joinder to Collateral Agent. By executing a Joinder, such counterparty agrees to be bound by the terms of this Agreement as though named herein and shall share in the Collateral in accordance with the provisions of this Agreement. Each such counterparty that is an assignee shall upon execution and delivery of a Joinder be the PPA Provider and Secured Creditor under this Agreement representing the holder of the assigned Obligations and shall be obligated for all obligations to Collateral Agent of its transferor, and such transferor shall cease forthwith to be a Secured Creditor hereunder.

Section 6.6. Counterparts

This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto or to any Joinder shall be as effective as an original signature.

Section 6.7. Termination

Unless earlier terminated by the parties hereto, upon termination of the Security Agreement in accordance with its terms and upon payment of all Obligations owed to Collateral Agent and Secured Creditors, this Agreement shall terminate, except for those provisions hereof that by their express terms shall survive the termination of this Agreement; provided, however, if all or any part of the Obligations are reinstated pursuant to Section 4.8, then this Agreement shall be renewed as of such date and shall thereafter continue in full force and effect to the extent of the Obligations so invalidated, set aside or repaid, or that remain outstanding.

Section 6.8. Controlling Terms

In the event of any inconsistency between this Agreement and the Security Agreement, the Security Agreement shall control.

Section 6.9. Notices

Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed as provided below their signatures to this Agreement or at such other address for notice as Collateral Agent, EBCEA or such Secured Creditor shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

Section 6.10. No Recourse Against Constituent Members of EBCEA

EBCEA hereby represents, warrants and agrees that (i) EBCEA is organized as a joint powers authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members, (ii) EBCEA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, the Security Agreement and any other agreement entered into in connection therewith. In light of the foregoing, the Collateral Agent and the Secured Creditors will have no rights and will not make any claims, take any actions or assert any remedies against any of EBCEA's constituent members, or the officers, directors, advisors, contractors, consultants or employees of EBCEA or EBCEA's constituent members, in connection with this Agreement, the Security Agreement and any other agreement entered into in connection therewith.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the Effective Date.

RIVER CITY BANK, not in its individual capacity, but solely as Collateral Agent

By: _____
Name:
Title:

Notice Address:

River City Bank
2485 Natomas Park Dr.
Sacramento, CA, 95833
Attention: Cash Management
Fax: (916) 567-2799
Email: cashmgmt@rivercitybank.com

_____, as Secured Creditor

By: _____

Name:

Title:

Notice Address:

Attention: _____

_____, as Secured Creditor

By: _____

Name:

Title:

Notice Address:

Attention: _____

_____, as Secured Creditor

By: _____

Name:

Title:

Notice Address:

Attention: _____

_____, as Secured Creditor

By: _____

Name:

Title:

Notice Address:

Attention: _____

_____, as Secured Creditor

By: _____

Name:

Title:

Notice Address:

Attention: _____

**EAST BAY COMMUNITY ENERGY
AUTHORITY**

By: _____

Name:

Title:

Notice Address:

East Bay Community Energy Authority
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Nick Chaset

EXHIBIT A

JOINDER TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

_____, in its capacity as Collateral Agent

With a copy to:

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of _____, 2018 (as amended or restated from time to time, the “**Intercreditor Agreement**”; capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Intercreditor Agreement), among _____, as Collateral Agent, and the PPA Providers party thereto, relating to East Bay Community Energy Authority, a California joint powers authority (“**EBCEA**”).

By executing and delivering this Joinder to Intercreditor and Collateral Agency Agreement (this “**Joinder**”), the undersigned holder of the Obligations arising under that certain Power Purchase Agreement between EBCEA and the undersigned, a copy of which is enclosed with this Joinder, (1) agrees to the appointment of _____ as its Collateral Agent in accordance with Section 3.1 of the Intercreditor Agreement, and (2) agrees to be bound by all of the terms and provisions of the Intercreditor Agreement. The address set forth under the signature of the undersigned constitutes its address for the purposes of Section 6.9 of the Intercreditor Agreement.

Dated as of: _____, 20__.

By: _____

Name:

Title:

[Insert address for notices]

CONFIRMATION AGREEMENT

This confirmation agreement (this "Confirmation") shall confirm the agreement reached on _____, 20__, (the "Confirmation Date") between _____ ("Party 1" or "Seller") and _____ ("Party 2" or "Buyer") (herein sometimes referred to as a "Party" and collectively as the "Parties") regarding the sale and purchase of electric capacity and/or electric energy under the terms and conditions set forth below:

Transaction Number:

Buyer:

Seller:

Trade Date:

Type of Transaction:

Term:

Delivery Period:

Contract Quantity:

Contract Price:

Delivery Point:

Scheduling Rules:

Special Terms:

Governing Terms: Unless otherwise noted in this confirmation, this transaction is governed by the terms and conditions of the WSPP Agreement dated June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement".

This Confirmation sets forth the terms of the transaction into which the Parties have entered into and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of electric energy and/or electric capacity.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

PARTY 1

PARTY 2

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

TRANSACTION CONFIRMATION

This Transaction Confirmation (the “Confirmation”) is entered into this ____ day of _____, 20__ (the “Effective Date”), by and between **Party 1**, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of the Product. This Transaction is governed by the WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement.

Contact Information:

Purchaser: Party 1	Seller: Party 2
Address:	Address:
Contact Representative:	Contact Representative:
Phone:	Phone:
Cell:	Cell:
Email:	Email:
Settlement Contact:	Settlement Contact:
Phone:	Phone:
Email:	Email:

Master Agreement: WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto. Any conflicts between or among the Master Agreement and this Confirmation shall be resolved in the following order of control: first, the Confirmation, and second, the Master Agreement.

Transaction: This transaction is intended to comply with AB32 and in particular section 95102(a) of the Regulation for Mandatory Reporting of Greenhouse Gas Emissions (title 17 California Code of Regulations (CCR), section 95100 et seq.) as a “Specified Source” under the regulation.

Product: WSPP Service Schedule C Firm Energy that is primarily produced by the Specified Source and/or Asset Control Supplier scheduled and delivered by Seller to Purchaser at the Delivery Point (“Specified Source Energy” or “SSE” and/or “Asset Control Supplier energy” or “ACS energy”).

Seller: **Party 2**

Purchaser: **Party 1**

Specified Source: Any set forth on Exhibit A. Seller has the right at any time to substitute the Specified Source with any Specified Source Energy from any other resources with a 0.0 emissions factor or with ACS Energy but will require written approval from Purchaser prior to scheduling.

Delivery Period: _____, 20__ through _____, 20__

Delivery Point: **TBD**

Scheduling: Seller shall schedule all SSE or ACS energy on a daily prescheduled basis according to the prevailing protocols of the WECC. Specified Source and CARB ID will be represented on each NERC E-Tag. Seller will create all E-Tags.

Contract Quantity: **TBD**

Contract Price: \$X.XX per MWh

Credit and Collateral Requirements: **TBD**

Seller's Information To be Provided to

Purchaser: No later than the 25th day of each calendar month during the Delivery Period, Seller shall provide Purchaser with the hourly meter data or allocation report from the Specified Source or ACS.

SSE or ACS energy delivered to Purchaser will equal the lesser of the hourly meter of the Specified Source or the hourly NERC E-Tag ("Specified Source Amount").

Purchaser agrees to pay the Contract Price for the Specified Source Amount delivered from Seller to Purchaser.

Any quantity of energy that is delivered from Seller to Purchaser, due to transmission cuts or specified source unavailability, that is not SSE or ACS energy shall be deemed "Non-Specified Source Energy", and shall be settled at a price equal to the Contract Price less \$X.XX per MWh (the "Non-Specified Source Energy Price").

Change in Law: If California ends the California Cap-and-Trade program, or a federal Judge stays the California AB32 Cap-and-Trade program and the result is that Purchaser is precluded from using the Product purchased herein as SSE or ACS energy ("Change in Law"), using commercially reasonable efforts and under the Delivery Period hereof, the Parties shall work together to attempt to maintain the intent of this Confirmation in the event of such Change in Law. Purchaser may elect to terminate this Confirmation by delivering to the Seller written notice of such termination not later than 60 days following the effective date of the Change in Law, and such notice of termination because of a Change in Law shall not be considered an Event of Default. If Purchaser does not exercise its right to terminate this Confirmation due to a Change in Law within such 60 day period, Purchaser may not thereafter terminate this Confirmation due to that applicable Change in Law.

A termination of this Confirmation due to a Change in Law shall be effective upon the delivery of written notice therefore and thereafter:

- (i) all SSE or ACS energy not then already transferred and/or delivered by Seller to Purchaser shall be terminated and Seller shall have no obligation to make any further deliveries, and Purchaser shall have no obligation to accept any deliveries, of the Product; and
- (ii) neither Party shall have any further obligations to the other hereunder (other than for performance already completed prior to such termination).

Representations and Warranties:

Rights to Product: Seller hereby provides and conveys electric power generation from the Specified Sources to Purchaser as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to the Product, and Seller agrees to convey and hereby conveys all such Product to Purchaser as included in the delivery of the Product.

Attestations and Maintenance of Records:

Seller shall provide Purchaser with all necessary documentation required to support and verify that delivery requirements have been met according to CARB regulations, including but not limited to documentation demonstrating that the source meets the CARB requirements of a specified source.

Each Party agrees to retain and make available reasonably promptly after reasonable request all records required to be retained pursuant to Cap and Trade Regulations with respect to Specified Sources. Each party is responsible for the safe, secure, and accessible storage of their own records. Upon Purchaser's request, Seller shall provide copies of its documentation and records including all documents that Purchaser is required to maintain or provide to CARB in accordance with AB32 with respect to the original purchase. Seller shall maintain adequate records to assist Purchaser or CARB in meeting any present or future reporting, verification, transfer, registration, or retirement requirements associated with the Transaction. Nothing herein limits or waives any obligations of Seller or Purchaser to keep records or provide attestations provided in AB32.

Registration and Reporting:

Purchaser will be the importer of the SSE for purposes of the AB32 Cap-and-Trade regulations. Purchaser shall be responsible for all CARB reporting obligations associated with importing the SSE or ACS energy pursuant to AB32 or the Cap and Trade Regulations. Such reporting does not relieve Seller from its responsibility of

ensuring that the Specified Source and CARB ID are valid zero-emission resources or Asset Control System energy.

Forward Contract: This Agreement constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and Commodities Future Trading Commission and Securities and Exchange Commission regulations under Title 17 of the Code of Federal Regulations Part 1 and Title 17 of the Code of Federal Regulations Parts 230, 240, and 241, respectively.

True Up: If at the end of each Calendar year the energy delivered by Seller has been less than 90% SSE or ACS energy, then the Seller will deliver an amount of California Carbon Allowances to the CITTs account of the Purchaser, by January 31st of the following year, equal to the Deficient Volume multiplied by the then current Unspecified Resource Emissions Factor. The vintage of Allowances delivered pursuant to this section will correspond to the delivery year of the Deficient Volume.

Definitions/

Interpretations: For purposes of this Confirmation, the following definitions and rules of interpretations shall apply:

“**AB32**” means the California Global Warming Solutions Act of 2006 and the Cap and Trade Regulations as each may be amended from time to time.

“**Applicable Law**” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the California Program or any one or both of the Parties or the terms hereof.

“**CAISO**” means the California Independent System Operator, or its successor.

“**Cap and Trade Regulations**” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by CARB pursuant to the California Global Warming Solutions Act of 2006.

“**CARB**” means the California Air Resources Board or its regulatory successor.

“**CPUC**” means the California Public Utilities Commission or its regulatory successor.

“**Delivery Date**” means the date on which the Product is delivered from Seller to Purchaser.

“**FERC**” means the Federal Energy Regulatory Commission or its regulatory successor.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“HE” means the hour ending.

“Off-Peak (LLH)” means all hours other than On-Peak hours.

“On-Peak (HLH)” means 6x16 (Monday through Saturday, HE 0700 – HE 2200 PPT, excluding NERC holidays).

“Specified Source” has the meaning set forth on the first page hereof.

“PPT” means Pacific prevailing time.

“Regulatorily Continuing” means the transaction complies with AB32, as amended from time to time, as of the Effective Date and the Delivery Date.

“WECC” means the Western Electricity Coordinating Council or its successor organizations.

“WSPP Service Schedule C Firm Energy” means Firm Energy as defined under Service Schedule C of the WSPP, Inc.’s WSPP Agreement effective June 20, 2017, as amended from time to time.

Please confirm that the terms and conditions stated herein accurately reflect the agreement reached by Purchaser and Seller by signing and returning by facsimile to Purchaser.

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

Party 1	Party 2
By:	By:
Name:	Name:
Title:	Title:

Exhibit A
SPECIFIED SOURCES

Source:	CARB ID:

TRANSACTION CONFIRMATION RESOURCE ADEQUACY

This Confirmation Letter (“Confirmation”) confirms the Transaction between **Party 1** (“Seller”) and **Party 2** (“Buyer”), each individually a “Party” and together the “Parties”, dated as of _____, 20__ (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 “Availability Incentive Payments” is defined in the Tariff.
- 1.4 “Availability Standards” means the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 “Buyer” is defined in the introductory paragraph hereof.
- 1.6 “CAISO” means the California Independent System Operator Corporation or its successor.
- 1.7 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the WSPP Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.8 “Confirmation” is defined in the introductory paragraph hereof.
- 1.9 “Confirmation Effective Date” is defined in the introductory paragraph hereof.

- 1.10** “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.11** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.12** “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.13** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.14** “Delivery Period” is defined in Section 4.1 hereof.
- 1.15** “Delivery Point” is defined in Section 4.2 hereof.
- 1.16** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month.
- 1.17** “Excusable Event” means any event caused by a Planned Outage that is acceptably noticed pursuant to the Notification Deadline prescribed in Section 4.5 that excuses Seller from failure to otherwise perform its obligations under this Confirmation.
- 1.18** “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

- 1.21** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. If the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28** “Monthly Delivery Period” means each calendar month during the Delivery Period and corresponds to each Showing Month.
- 1.29** “Monthly RA Capacity Payment” is defined in Section 4.9 hereof.

- 1.30** “Net Qualifying Capacity” is defined in the Tariff.
- 1.31** “Notification Deadline” is defined in Section 4.5 hereof.
- 1.32** “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.33** “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.34** “Product” is defined in Article 3 hereof.
- 1.35** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.36** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.37** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.38** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.39** “Replacement Capacity” is defined in Section 4.7 hereof.
- 1.40** “Replacement Unit” is defined in Section 4.5.
- 1.41** “Resource Category” is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.42** “Scheduling Coordinator” is defined in the Tariff.

- 1.43** “Seller” is defined in the introductory paragraph hereof.
- 1.44** “Showing Month” is the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.45** “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.46** “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.47** “Transaction” for purposes of this Confirmation means the transaction (as that term is used in the WSPP Agreement) that is evidenced by this Confirmation.
- 1.48** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.49** “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.50** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.51** “WSPP Agreement” is defined in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name:	
Location:	
CAISO Resource ID:	
Unit SCID:	
Unit NQC:	
Unit EFC:	
Resource Type:	
Resource Category (1, 2, 3 or 4):	
Flexible RAR Category (1, 2 or 3):	
Path 26 (North or South):	
Local Capacity Area (if any, as of Confirmation Effective Date):	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	
Run Hour Restrictions:	

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity of RA Attributes, LRA Attributes, and if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, Section 3.2 and Section 3.3 below (the "Product"), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 Product Attributes

- RA Attributes
- RA Attributes with Flexible RA Attributes
- LAR Attributes

- LAR Attributes with Flexible RA Attributes
- Flexible RA Attributes

3.2 Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

3.3 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as result of an Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: _____, 20____, through _____, 20____.

4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

Contract Month	RAR Contract Quantity (MWs)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract

Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The “Notification Deadline” in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a “Replacement Unit”), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than five days (5) before the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written

confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 9 of the WSPP Agreement.
- (c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Article 3, Section 4.4 and Section 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RAR Capacity Price (\$/kW-month)
January	\$X.XX
February	\$X.XX
March	\$X.XX
April	\$X.XX

Contract Month	RAR Capacity Price (\$/kW-month)
May	\$X.XX
June	\$X.XX
July	\$X.XX
August	\$X.XX
September	\$X.XX
October	\$X.XX
November	\$X.XX
December	\$X.XX

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the WSPP Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement against any future

amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder. Notwithstanding anything in this Confirmation to the contrary, to the extent any end user to which Buyer re-sells the Product ("End User") defaults (however defined) under its agreement to purchase the Product from Buyer ("End User Purchase Agreement") and such End User Purchase Agreement terminates as a result, Buyer may terminate this Confirmation upon notice to Seller and neither Party shall have any further liability to the other Party except that Buyer shall remain liable for any payment obligations owing to Seller hereunder with respect to accrued but unpaid amounts for Products delivered prior to termination, but only to the extent that Buyer has

received such payments from End User pursuant to the End User Purchase Agreement. Buyer agrees to promptly assign to Seller any and all claims that Buyer may have against End User relating to such End User's default under the End User Purchase Agreement by entering into documentation mutually agreeable to the Parties which is reasonably necessary to effectuate such assignment of claims.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

PARTY 1

PARTY 2

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Transaction Confirmation

This Transaction Confirmation (the “Confirmation”) is entered into this ____ day of _____, 20__ (the “Effective Date”), by and between **Party 1**, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of Portfolio Content Category 1 Product [**Defined Product Type**] RECs (“the Product”) pursuant to the terms and conditions contained herein. The Master Agreement, WSPP Service Schedule R and this Confirmation shall be collectively referred to herein as the “Agreement” and supersede and replace any prior oral or written confirmation regarding the Transaction (as defined below). Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule R or the CAISO Tariff.

Contact Information:

Seller:	Purchaser:
Address:	Address:
Contract Representative:	Contract Representative:
Phone:	Phone:
Email:	Email:
Settlements Contact:	Settlements Contact:
Phone:	Phone:
Email:	Email:

Master Agreement: WSPP Agreement effective June 20, 2017, as amended to date, including; WSPP Service Schedule R. Any conflicts between the Master Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the Master Agreement.

Transaction: Seller owns or procures Seller’s Entitlement Interest in the output of certain generating facilities, which are identified in this Confirmation, each of which qualifies as an eligible renewable energy resource (“ERR”) during the Delivery Term (as defined below) under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq., and Seller desires to sell to Purchaser, and Purchaser desires to accept from Seller, Product produced by such generating facilities pursuant to the terms and conditions set forth herein.

Product: [**Defined Product Type**] RECs as such is described under Section **R-XYZ** of WSPP Service Schedule R. More specifically subject to Eligibility, Transfer of RECS, and Change of Law Provisions, the Product shall comply with Section 399.16(b)(1)(A) Portfolio Content Category Product 1, as defined

by CPUC Decision 11-12-052, consisting of Service Schedule B Energy and associated Green Attributes, including RECs, produced during the Delivery Term by the Projects listed herein, each of which is: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to Seller’s Entitlement Interest of the output of the Energy and associated Green Attributes, and such output is used to source the Product delivered hereunder during the Delivery Term (collectively, the “Generating Facilities”). The Product shall include Energy and associated RECs, but does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

Seller: Party 1

Purchaser: Party 2

Delivery Term: _____, 20__ through _____, 20__.

Generating Facilities: Identified Below and further defined in Exhibit A.

Facility Name	Resource ID	WREGIS ID	Seller’s Entitlement Interest	CEC Certification No.	Estimated Annual Generation (MWh)
Resource 1	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 2	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 3	XXXX	WXXXX	X.X%	XXXX	XXXX
Total					XXXX

Delivery Points: Each Generating Facilities’ respective Point of Interconnection with the CAISO Balancing Authority Area.

Scheduling: Seller or Seller’s designee shall schedule and deliver the Energy portion of the Product, on behalf of Purchaser, to the CAISO at the applicable Delivery Point, in accordance with the requirements and the prevailing protocols of the WECC and CAISO Tariff.

Contract Quantity: Product generation from X.X% of Seller’s Entitlement Interest generated from the Generating Facilities. The amount of Product delivered from Seller to Purchaser during any applicable dispatch interval during the Delivery Term of the Transaction shall be limited to Seller’s Entitlement Interest in the output of each Generating Facility listed herein.

Contract Price: The Contract Price for Energy (“Energy Contract Price”) shall be equal to the CAISO Locational Marginal Price calculated at the Delivery Point PNode per megawatt hour (as the same may be netted in accordance with the *Payment* section below).

The Contract Price for each REC produced and transferred from Seller to Purchaser (“REC Contract Price”) shall be equal to **\$XX.XX**.

Eligibility: Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project 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 Project’s output delivered to Purchaser 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. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate “commercially reasonable efforts” expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.

Transfer of RECs: Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement the Renewable Energy Credits transferred to Purchaser 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. [STC REC-1, Non-modifiable. D.11-01-025]

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

Purchaser warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western

Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. For each month during the Delivery Term, Seller shall transfer RECs from its WREGIS account to Purchaser's WREGIS account within ten (10) Business Days of creation of the RECs. Purchaser's WREGIS account ID is _____.

Vintage: Calendar Year 20__.

Payment: Energy: To simplify the scheduling and settlement process based on the current CAISO market scheduling and settlement protocols, whereby CAISO will pay the Seller for the value of the Energy produced and delivered by the Generating Facilities at the Delivery Point on behalf of Purchaser, the Parties agree that Seller shall schedule and deliver an amount of Energy consistent with the Contract Quantity during the Delivery Period with and to the CAISO at the Delivery Point(s), and Seller shall receive payment for the Energy from the CAISO for such delivery based on the CAISO Locational Marginal Price. Consequently, and consistent with applicable netting provisions of the Master Agreement, Purchaser and Seller hereby agree to net the payment for Energy Seller receives from the CAISO against the Contract Price, such that the net payment Seller shall receive from Purchaser shall be calculated as follows:

Payment Due from Purchaser to Seller = Delivered and Accepted Contract Quantity * REC Contract Price.

RECs: Purchaser shall pay Seller for transferred RECs within (10) Business Days of receipt of Seller's invoice subsequent to the transfer of RECs. The invoices issued by Seller hereunder shall include a statement detailing the RECs conveyed via WREGIS (i.e., Project Name, Vintage Month, CEC RPS ID, Contract Quantity and REC Contract Price).

Environmental Attributes:

All Attributes. The Product is a Resource Contingent Bundled REC sourced from the Generating Facilities. The Parties agree that the Product will be sourced only from the specific Generating Facilities identified in the Confirmation with no substitutions.

Applicable Program:

State of California Renewable Portfolio Standard Program (hereinafter referred to as "California RPS", "Renewables Portfolio Standards" or "RPS

Program”), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity’s retail sales should be supplied with electricity generated by eligible ERRs.

Tracking System: RECs associated with the Product shall be tracked using WREGIS. In addition to any audit rights that Purchaser may have under the Master Agreement, Seller shall, upon Purchaser’s reasonable request, provide documentation which may include meter data as recorded by a CAISO certified meter, sufficient to demonstrate that the Product has been conveyed and delivered, in accordance with the terms of this Confirmation.

Representations and Warranties:

Each Party represents and warrants to the other (i) that it is an “eligible commercial entity” and “eligible contract participant” within the meaning of the Commodity Exchange Act; (ii) this transaction has been subject to individual negotiation by the Parties; and, (iii) all necessary steps have been taken to allow the Green Attributes to be transferred to Purchaser to be tracked in WREGIS.

Seller further represents and warrants to Purchaser that:

- (i) Seller has the right to sell the Product and holds the rights to Seller’s Entitlement Interest in all Product from the Generating Facilities;
- (ii) Seller has not sold the Product or any Green Attribute of the Product to be transferred to Purchaser to any other person or entity;
- (iii) Energy and Green Attributes to be purchased and sold pursuant to this Confirmation are not committed to another party;
- (iv) Seller represents and warrants that electricity from the Generating Facilities is available to be procured by Purchaser, and Seller is not currently selling and will not sell the electricity produced by the Generating Facilities back to the Generating Facilities;
- (v) the Product is free and clear of all liens or other encumbrances; and
- (vi) it will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC

to support the Product's classification as a Portfolio Content Category 1 Product as set forth in California Public Utilities Code Section 399.16(b)(1)(A).

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Purchaser as part of the Portfolio Content Category 1 Product being delivered.

Change in Law Provisions:

The Product shall be Regulatorily Continuing requiring that Seller make commercially reasonable efforts to obtain compliance with Changes in Law in the California RPS, provided that such costs should not be greater than \$X.XX (the "Capped Amount"). This provision shall not apply to any Product that was Delivered and Accepted prior to any Change in Law if such Product complies with the California RPS that existed when it was Delivered and Accepted.

This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(1)(A) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

Reporting Obligation:

Purchaser shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

Review:

To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and

to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

Confidentiality: Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

**Applicable Law/
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 California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, Applicable Law, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009].

FERC Standard of

Review; Mobile-Sierra Waiver:

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

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

Forward Contract:

This Confirmation constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

**Amendments
To The Master
Agreement:**

Assignment. Section 14, Transfer of Interest in Agreement, of the WSPP Agreement shall for purposes of this Confirmation be deleted in its entirety and replaced with the following: “Neither Party shall transfer, assign or sell its rights as set forth in this Confirmation, to any third party without first obtaining the prior written consent of the other Party. Notwithstanding the foregoing, no such consent shall be required to the extent that the transfer or sale occurs (i) to an affiliate of a Party by operation of law, through merger or acquisition, or as the result of the sale or transfer of all or substantially all of the transferring Party’s assets, and the resulting entity’s creditworthiness is equal to or higher than that of such Party as of the Effective Date of this Confirmation, or (ii) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Confirmation is to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date of this Confirmation.”

Confidentiality. Section 30, Confidentiality, of the WSPP Agreement is amended for purposes of this Confirmation by inserting at the end of Section 30.1(6) prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.

**Definitions/
Interpretations:**

For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders or any Governmental Authority or arbitrator that apply to RPS or any one or both of the Parties or the terms hereof.

“CAISO” means the California ISO.

“CAISO Tariff” means the CAISO FERC Electric Tariff.

“Confidential Information” means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on

a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, 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, including but not limited to 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 the Generating Facilities, (ii) production tax credits associated with the construction or operation of the Generating Facilities 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 the Generating Facilities for compliance with local, state, or federal operating and/or air quality permits. If the Generating Facilities are 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 Purchaser with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facilities.

“Point of Interconnection” means the physical point at which a Generating Facility interconnects to the CAISO Balancing Authority Area.

“WECC” means the Western Electricity Coordinating Council or its successor organizations.

“WREGIS” mean the Western Renewable Energy Generation Information System, or its successor organization.

The Parties agree that the terms and conditions stated herein accurately reflect the agreement reached by the Purchaser and Seller.

IN WITNESS WHEREOF, the Parties have signed the Confirmation effective as of the Effective Date.

Party 1	Party 2
By:	By:
Name:	Name:
Title:	Title:

EXHIBIT A

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

Transaction Confirmation

This Transaction Confirmation (the "Confirmation") is entered into this ____ day of _____, 20__ (the "Effective Date"), by and between **Party 1**, ("Purchaser") and **Party 2** ("Seller"), each referred to herein individually as a "Party" and collectively as the "Parties" regarding the purchase and sale of Portfolio Content Category 2 Product [**Defined Product Type**] RECs ("the Product") pursuant to the terms and conditions contained herein. The Master Agreement, WSPP Service Schedule R and this Confirmation shall be collectively referred to herein as the "Agreement" and supersede and replace any prior oral or written confirmation regarding the Transaction (as defined below). Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule R or the CAISO Tariff.

Contact Information:

Seller:	Purchaser:
Address:	Address:
Contract Representative:	Contract Representative:
Phone:	Phone:
Email:	Email:
Settlements Contact:	Settlements Contact:
Phone:	Phone:
Email:	Email:

Master Agreement: WSPP Agreement effective June 20, 2017, as amended to date, including; WSPP Service Schedule R. Any conflicts between the Master Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the Master Agreement.

Transaction: Seller owns or procures Seller's Entitlement Interest in the output of certain generating facilities, which are identified in this Confirmation, each of which qualifies as an eligible renewable energy resource ("ERR") during the Delivery Term (as defined below) under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq., and Seller desires to sell to Purchaser, and Purchaser desires to accept from Seller, Product produced by such generating facilities pursuant to the terms and conditions set forth herein.

Product: [**Defined Product Type**] RECs as such is described under Section **R-XYZ** of WSPP Service Schedule R. More specifically subject to Eligibility, Transfer of RECS, and Change of Law Provisions, the Product shall comply with Section 399.16(b)(2) Portfolio Content Category Product 2, as defined by

CPUC Decision 11-12-052, consisting of Service Schedule B Energy and associated Green Attributes, including RECs, produced during the Delivery Term by the Projects listed herein, each of which is: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to Seller’s Entitlement Interest of the output of the Energy and associated Green Attributes, and such output is used to source the Product delivered hereunder during the Delivery Term (collectively, the “Generating Facilities”). The Product shall include Energy and associated RECs, but does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

Seller: Party 1

Purchaser: Party 2

Delivery Term: _____, 20__ through _____, 20__.

Generating Facilities: Identified Below and further defined in Exhibit A.

Facility Name	Resource ID	WREGIS ID	Seller’s Entitlement Interest	CEC Certification No.	Estimated Annual Generation (MWh)
Resource 1	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 2	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 3	XXXX	WXXXX	X.X%	XXXX	XXXX
Total					XXXX

Delivery Points: TBD

Scheduling: Seller or Seller’s designee shall schedule and deliver the Energy portion of the Product, on behalf of Purchaser, to the CAISO at the applicable Delivery Point, in accordance with the requirements and the prevailing protocols of the WECC and CAISO Tariff.

Contract Quantity: Product generation from **X.X%** of Seller’s Entitlement Interest generated from the Generating Facilities. The amount of Product delivered from Seller to Purchaser during any applicable dispatch interval during the Delivery Term of the Transaction shall be limited to Seller’s Entitlement Interest in the output of each Generating Facility listed herein.

Contract Price: The Contract Price for Energy (“Energy Contract Price”) shall be equal to the CAISO Locational Marginal Price calculated at the Delivery Point PNode per megawatt hour (as the same may be netted in accordance with the *Payment* section below).

The Contract Price for each REC produced and transferred from Seller to Purchaser (“REC Contract Price”) shall be equal to **\$XX.XX**.

Eligibility: Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project 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 Project’s output delivered to Purchaser 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. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate “commercially reasonable efforts” expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.

Transfer of RECs: Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement the Renewable Energy Credits transferred to Purchaser 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. [STC REC-1, Non-modifiable. D.11-01-025]

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

Purchaser warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western

Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. For each month during the Delivery Term, Seller shall transfer RECs from its WREGIS account to Purchaser's WREGIS account within ten (10) Business Days of creation of the RECs. Purchaser's WREGIS account ID is _____.

Vintage: Calendar Year 20__.

Payment: Energy: To simplify the scheduling and settlement process based on the current CAISO market scheduling and settlement protocols, whereby CAISO will pay the Seller for the value of the Energy produced and delivered by the Generating Facilities at the Delivery Point on behalf of Purchaser, the Parties agree that Seller shall schedule and deliver an amount of Energy consistent with the Contract Quantity during the Delivery Period with and to the CAISO at the Delivery Point(s), and Seller shall receive payment for the Energy from the CAISO for such delivery based on the CAISO Locational Marginal Price. Consequently, and consistent with applicable netting provisions of the Master Agreement, Purchaser and Seller hereby agree to net the payment for Energy Seller receives from the CAISO against the Contract Price, such that the net payment Seller shall receive from Purchaser shall be calculated as follows:

Payment Due from Purchaser to Seller = Delivered and Accepted Contract Quantity * REC Contract Price.

RECs: Purchaser shall pay Seller for transferred RECs within (10) Business Days of receipt of Seller's invoice subsequent to the transfer of RECs. The invoices issued by Seller hereunder shall include a statement detailing the RECs conveyed via WREGIS (i.e., Project Name, Vintage Month, CEC RPS ID, Contract Quantity and REC Contract Price).

Environmental Attributes:

All Attributes. The Product is a Resource Contingent Bundled REC sourced from the Generating Facilities. The Parties agree that the Product will be sourced only from the specific Generating Facilities identified in the Confirmation with no substitutions.

Applicable Program:

State of California Renewable Portfolio Standard Program (hereinafter referred to as "California RPS", "Renewables Portfolio Standards" or "RPS

Program”), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity’s retail sales should be supplied with electricity generated by eligible ERRs.

Tracking System: RECs associated with the Product shall be tracked using WREGIS. In addition to any audit rights that Purchaser may have under the Master Agreement, Seller shall, upon Purchaser’s reasonable request, provide documentation which may include meter data as recorded by a CAISO certified meter, sufficient to demonstrate that the Product has been conveyed and delivered, in accordance with the terms of this Confirmation.

Representations and Warranties:

Each Party represents and warrants to the other (i) that it is an “eligible commercial entity” and “eligible contract participant” within the meaning of the Commodity Exchange Act; (ii) this transaction has been subject to individual negotiation by the Parties; and, (iii) all necessary steps have been taken to allow the Green Attributes to be transferred to Purchaser to be tracked in WREGIS.

Seller further represents and warrants to Purchaser that:

- (i) Seller has the right to sell the Product and holds the rights to Seller’s Entitlement Interest in all Product from the Generating Facilities;
- (ii) Seller has not sold the Product or any Green Attribute of the Product to be transferred to Purchaser to any other person or entity;
- (iii) Energy and Green Attributes to be purchased and sold pursuant to this Confirmation are not committed to another party;
- (iv) Seller represents and warrants that electricity from the Generating Facilities is available to be procured by Purchaser, and Seller is not currently selling and will not sell the electricity produced by the Generating Facilities back to the Generating Facilities;
- (v) the Product is free and clear of all liens or other encumbrances; and
- (vi) it will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC

to support the Product's classification as a Portfolio Content Category 2 Product as set forth in California Public Utilities Code Section 399.16(b)(2).

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Purchaser as part of the Portfolio Content Category 2 Product being delivered.

Change in Law Provisions:

The Product shall be Regulatorily Continuing requiring that Seller make commercially reasonable efforts to obtain compliance with Changes in Law in the California RPS, provided that such costs should not be greater than \$X.XX (the "Capped Amount"). This provision shall not apply to any Product that was Delivered and Accepted prior to any Change in Law if such Product complies with the California RPS that existed when it was Delivered and Accepted.

This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(2) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

Reporting Obligation:

Purchaser shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

Review:

To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and

to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

Confidentiality: Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

**Applicable Law/
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 California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, Applicable Law, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009].

FERC Standard of

Review; Mobile-Sierra Waiver:

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

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

Forward Contract:

This Confirmation constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

**Amendments
To The Master
Agreement:**

Assignment. Section 14, Transfer of Interest in Agreement, of the WSPP Agreement shall for purposes of this Confirmation be deleted in its entirety and replaced with the following: “Neither Party shall transfer, assign or sell its rights as set forth in this Confirmation, to any third party without first obtaining the prior written consent of the other Party. Notwithstanding the foregoing, no such consent shall be required to the extent that the transfer or sale occurs (i) to an affiliate of a Party by operation of law, through merger or acquisition, or as the result of the sale or transfer of all or substantially all of the transferring Party’s assets, and the resulting entity’s creditworthiness is equal to or higher than that of such Party as of the Effective Date of this Confirmation, or (ii) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Confirmation is to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date of this Confirmation.”

Confidentiality. Section 30, Confidentiality, of the WSPP Agreement is amended for purposes of this Confirmation by inserting at the end of Section 30.1(6) prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.

**Definitions/
Interpretations:**

For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

“**Applicable Law**” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders or any Governmental Authority or arbitrator that apply to RPS or any one or both of the Parties or the terms hereof.

“**CAISO**” means the California ISO.

“**CAISO Tariff**” means the CAISO FERC Electric Tariff.

“**Confidential Information**” means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on

a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, including but not limited to 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 the Generating Facilities, (ii) production tax credits associated with the construction or operation of the Generating Facilities 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 the Generating Facilities for compliance with local, state, or federal operating and/or air quality permits. If the Generating Facilities are 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 Purchaser with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facilities.

“WECC” means the Western Electricity Coordinating Council or its successor organizations.

“WREGIS” mean the Western Renewable Energy Generation Information System, or its successor organization.

The Parties agree that the terms and conditions stated herein accurately reflect the agreement reached by the Purchaser and Seller.

IN WITNESS WHEREOF, the Parties have signed the Confirmation effective as of the Effective Date.

Party 1	Party 2
By:	By:
Name:	Name:
Title:	Title:

EXHIBIT A

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

Transaction Confirmation

This Transaction Confirmation (the “Confirmation”) is entered into this ____ day of _____, 20__ (the “Effective Date”), by and between **Party 1**, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of Portfolio Content Category 3 Product [**Defined Product Type**] RECs (“the Product”) pursuant to the terms and conditions contained herein. The Master Agreement, WSPP Service Schedule R and this Confirmation shall be collectively referred to herein as the “Agreement” and supersede and replace any prior oral or written confirmation regarding the Transaction (as defined below). Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule R or the CAISO Tariff.

Contact Information:

Seller:	Purchaser:
Address:	Address:
Contract Representative:	Contract Representative:
Phone:	Phone:
Email:	Email:
Settlements Contact:	Settlements Contact:
Phone:	Phone:
Email:	Email:

Master Agreement: WSPP Agreement effective June 20, 2017, as amended to date, including; WSPP Service Schedule R. Any conflicts between the Master Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the Master Agreement.

Transaction: Seller owns unbundled RECs produced from certain generating facilities, which are identified in this Confirmation, each of which qualifies as an eligible renewable energy resource (“ERR”) during the Delivery Term (as defined below) under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq., and Seller desires to sell to Purchaser, and Purchaser desires to accept from Seller, Product produced by such generating facilities pursuant to the terms and conditions set forth herein.

Product: [**Defined Product Type**] RECs as such is described under Section **R-XYZ** of WSPP Service Schedule R. More specifically subject to Eligibility, Transfer of RECS, and Change of Law Provisions, the Product shall comply with Section 399.16(b)(3) Portfolio Content Category 3 Product, as defined by

CPUC Decision 11-12-052, consisting of unbundled RECs produced by the Projects listed herein, each of which is: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to Seller’s Entitlement Interest of the output of the Energy and associated Green Attributes, and such output is used to source the Product delivered hereunder (collectively, the “Generating Facilities”). The Product shall include unbundled RECs, but does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

Seller: Party 1

Purchaser: Party 2

Delivery Term: _____, 20__ through _____, 20__.

Generating Facilities: Identified Below and further defined in Exhibit A.

Facility Name	Resource ID	WREGIS ID	Seller’s Entitlement Interest	CEC Certification No.	Estimated Annual Generation (MWh)
Resource 1	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 2	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 3	XXXX	WXXXX	X.X%	XXXX	XXXX
Total					XXXX

Delivery Points: TBD

Contract Quantity: TBD

Contract Price: The Contract Price for each REC produced and transferred from Seller to Purchaser (“REC Contract Price”) shall be equal to **\$XX.XX**.

Eligibility: Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project 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 Project’s output delivered to Purchaser 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. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate “commercially reasonable efforts” expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.

Transfer of RECs: Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement the Renewable Energy Credits transferred to Purchaser 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. [STC REC-1, Non-modifiable. D.11-01-025]

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

Purchaser warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. For each month during the Delivery Term, Seller shall transfer RECs from its WREGIS account to Purchaser’s WREGIS account within ten (10) Business Days of creation of the RECs. Purchaser’s WREGIS account ID is _____.

Vintage: Calendar Year 20__.

Payment: Payment Due from Purchaser to Seller = Delivered and Accepted Contract Quantity * REC Contract Price.

RECs: Purchaser shall pay Seller for transferred RECs within (10) Business Days of receipt of Seller’s invoice subsequent to the transfer of RECs. The

invoices issued by Seller hereunder shall include a statement detailing the RECs conveyed via WREGIS (i.e., Project Name, Vintage Month, CEC RPS ID, Contract Quantity and REC Contract Price).

**Environmental
Attributes:**

All Attributes. The Product is a Resource Contingent Bundled REC sourced from the Generating Facilities. The Parties agree that the Product will be sourced only from the specific Generating Facilities identified in the Confirmation with no substitutions.

**Applicable
Program:**

State of California Renewable Portfolio Standard Program (hereinafter referred to as "California RPS", "Renewables Portfolio Standards" or "RPS Program"), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity's retail sales should be supplied with electricity generated by eligible ERRs.

Tracking System:

RECs associated with the Product shall be tracked using WREGIS. In addition to any audit rights that Purchaser may have under the Master Agreement, Seller shall, upon Purchaser's reasonable request, provide documentation which may include meter data as recorded by a CAISO certified meter, sufficient to demonstrate that the Product has been conveyed and delivered, in accordance with the terms of this Confirmation.

**Representations and
Warranties:**

Each Party represents and warrants to the other (i) that it is an "eligible commercial entity" and "eligible contract participant" within the meaning of the Commodity Exchange Act; (ii) this transaction has been subject to individual negotiation by the Parties; and, (iii) all necessary steps have been taken to allow the Green Attributes to be transferred to Purchaser to be tracked in WREGIS.

Seller further represents and warrants to Purchaser that:

- (i) Seller has the right to sell the Product and holds the rights to Seller's Entitlement Interest in all Product from the Generating Facilities;
- (ii) Seller has not sold the Product or any Green Attribute of the Product to be transferred to Purchaser to any other person or entity;

- (iii) Unbundled RECs to be purchased and sold pursuant to this Confirmation are not committed to another party;
- (iv) the Product is free and clear of all liens or other encumbrances;
and
- (v) it will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 3 Product as set forth in California Public Utilities Code Section 399.16(b)(3).

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Purchaser as part of the Portfolio Content Category 3 Product being delivered.

**Change in Law
Provisions:**

The Product shall be Regulatorily Continuing requiring that Seller make commercially reasonable efforts to obtain compliance with Changes in Law in the California RPS, provided that such costs should not be greater than \$X.XX (the "Capped Amount"). This provision shall not apply to any Product that was Delivered and Accepted prior to any Change in Law if such Product complies with the California RPS that existed when it was Delivered and Accepted.

This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(3) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

Reporting**Obligation:**

Purchaser shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

Review:

To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

Confidentiality:

Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

**Applicable Law/
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 California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, Applicable Law, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009].

**FERC Standard of
Review; Mobile-
Sierra Waiver:**

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

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

shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

Forward Contract: This Confirmation constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

**Amendments
To The Master
Agreement:**

Assignment. Section 14, Transfer of Interest in Agreement, of the WSPP Agreement shall for purposes of this Confirmation be deleted in its entirety and replaced with the following: “Neither Party shall transfer, assign or sell its rights as set forth in this Confirmation, to any third party without first obtaining the prior written consent of the other Party. Notwithstanding the foregoing, no such consent shall be required to the extent that the transfer or sale occurs (i) to an affiliate of a Party by operation of law, through merger or acquisition, or as the result of the sale or transfer of all or substantially all of the transferring Party’s assets, and the resulting entity’s creditworthiness is equal to or higher than that of such Party as of the Effective Date of this Confirmation, or (ii) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Confirmation is to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date of this Confirmation.”

Confidentiality. Section 30, Confidentiality, of the WSPP Agreement is amended for purposes of this Confirmation by inserting at the end of Section 30.1(6) prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.

**Definitions/
Interpretations:**

For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders or any Governmental Authority or arbitrator that apply to RPS or any one or both of the Parties or the terms hereof.

“CAISO” means the California ISO.

“CAISO Tariff” means the CAISO FERC Electric Tariff.

“Confidential Information” means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, including but not limited to 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 the Generating Facilities, (ii) production tax credits associated with the construction or operation of the Generating Facilities 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 the Generating Facilities for compliance with local, state, or federal operating and/or air quality permits. If the Generating Facilities are 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 Purchaser with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facilities.

“**WECC**” means the Western Electricity Coordinating Council or its successor organizations.

“**WREGIS**” mean the Western Renewable Energy Generation Information System, or its successor organization.

The Parties agree that the terms and conditions stated herein accurately reflect the agreement reached by the Purchaser and Seller.

IN WITNESS WHEREOF, the Parties have signed the Confirmation effective as of the Effective Date.

Party 1	Party 2
By:	By:
Name:	Name:
Title:	Title:

EXHIBIT A

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:



ENERGY SUPPLY AGREEMENTS

PRESENTED BY: Supria Ranade

DATE: 02/07/18



TRANSACTIONS: EEs and WSPP

Edison Electric Institute Master Agreement (EEI)

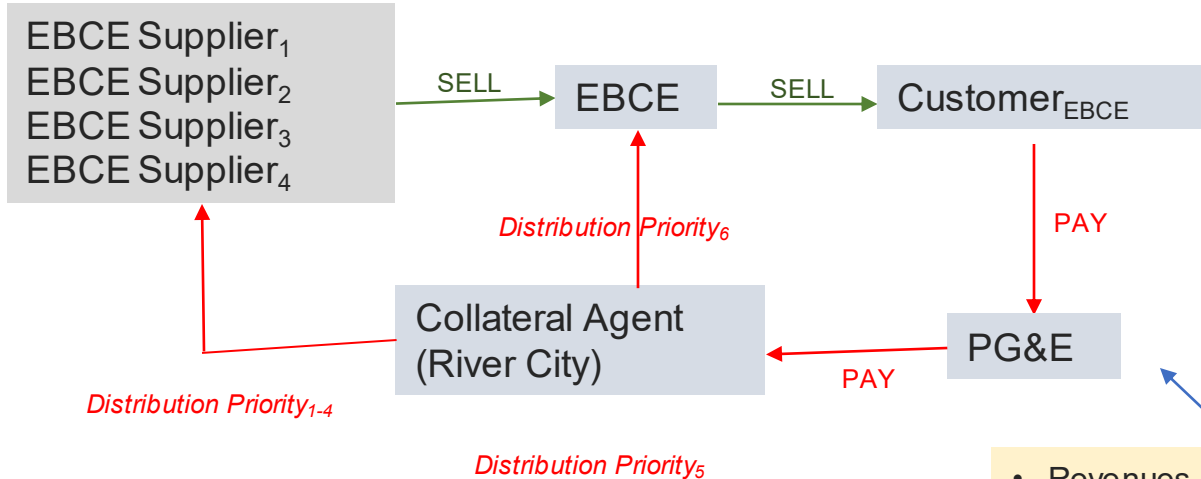
- Utilized by over 200 US utilities
- Establishes a trading relationship, provides **real-time credit provisions**, **standardizes product definitions**,
- Focuses load serving entities on the transaction's basic negotiable elements, e.g., **price, quantity, location, and duration**.
- Directly address counterparty credit

Western System Power Pool (WSPP) Agreement

- Utilized by over 300 members and utilities
- WSPP Agreement is used to allow transactions to occur **without constant renegotiations of contract terms** and to standardize terms
- Most commonly used standardized power sales contract
- Counterparty credit not directly addressed

LOCKBOX AGREEMENTS

- EBCE recommends utilizing a lockbox structure that has been used successfully by numerous other CCA entities as a form of credit support.
- The lockbox structure will be used for larger transactions that impose significant credit exposure to the seller



- Revenues collected by PG&E on EBCE's behalf will be deposited into a dedicated account
- Suppliers will be paid for energy deliveries from that account, administered by the bank acting as collateral agent on behalf of the supplier.

TRANSACTIONS: CONTRACT STRUCTURE

Master Agreements

Key Criteria:

Party Identification, Collateral, Reserve, Default, Credit Requirements

Confirmations

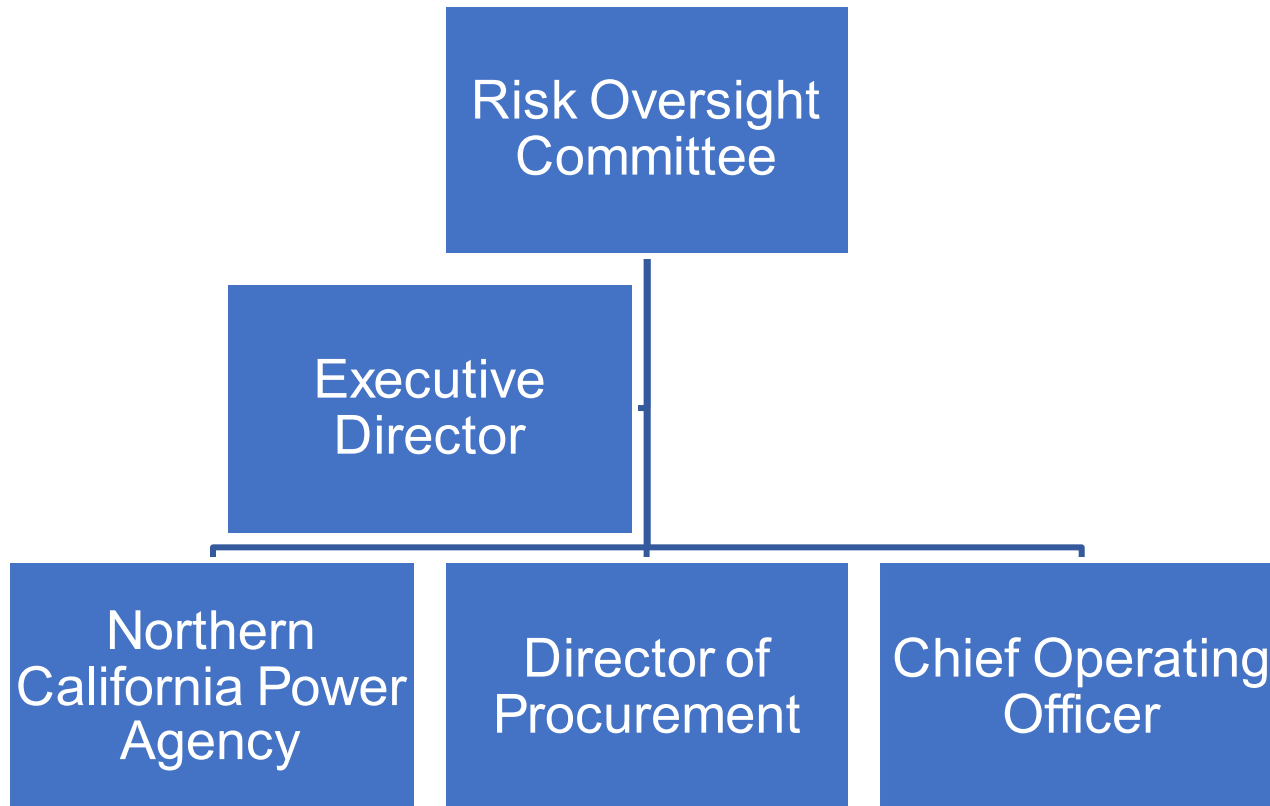
Key Criteria:

Salient Commercial Terms of Individual Transactions

Additional Criteria:
Treatment of pending regulatory change

DELEGATION OF TRANSACTION AUTHORITY

Approval authorities are based on the level of business experienced by EBCE on a historical and current basis within limits allowed under the Regulations.





Staff Report Item 13

TO: East Bay Community Energy Board of Directors

FROM: Annie Henderson, Vice President of Marketing and Account Services

SUBJECT: Discussion of Initial NEM Policy

DATE: February 7, 2018

Recommendation

Review and discuss staff proposal for initial Net Energy Metering (NEM) Policy. Updated policy, per Board feedback, to be brought to the February 21st meeting for vote.

Background

Net Energy Metering is a policy offered by PG&E and all active Community Choice Energy programs. The key components to a policy are:

- **Export Value:** Value assigned to a kWh exported at any point, which will be applied as a bill credit
- **Billing Mechanics:** Frequency of when a customer is charged for net consumption of electricity
- **Enrollment:** The timing for when a NEM customer is enrolled for CCA service
- **Surplus value:** Value assigned to kWh generated in excess of kWh usage on an annual basis, which results in a cash-out payment
- **True-Up:** Payment for any surplus electricity generated over the course of a year

Table 1 below is a sample of other CCE policies.

Table 1

	MCE	SCP	PCE	CleanPowerSF	SVCE
Export Credit per kWh	Default Product Retail + \$0.01	Default Product Retail + \$0.01	Default Product Retail + \$0.01	Retail	Retail
Billing	Monthly Cash Out in April	Monthly Cash Out in May	Monthly Cash Out in April	Monthly Cash Out in April	Monthly Cash Out in April
Enrollment	At enrollment	At enrollment	Bi-monthly based on True-Up Date	Quarterly based on True-Up Date	Quarterly based on True-Up Date
Surplus Credit	Same as Export Credit	Same as Export Credit	Same as Export Credit	Premium Retail	Same as Export Credit

Context: Phase 1 Outreach

EBCE staff is actively engaging with Phase 1 customers - our largest customers in the Alameda County territory of the program. Many of these customers have multiple accounts, some of which will be enrolled in Phase 1 and others that are on standby or NEM rate schedules, which will not be enrolled until Phase 3. However, it is critical that we can discuss the entire account portfolio with these customers.

In order to represent future enrollment phases and clearly describe the full EBCE value proposition, staff recommends a baseline NEM policy be established prior to the final adoption of the Local Development Business Plan (LDBP). This policy will be revisited to incorporate feedback in the Local Development Business Plan and other stakeholder input. Additionally, the policy will need to be further flushed out to include more details that impact the execution of the policy, such as surplus thresholds and payment mechanics.

Highlights of Initial NEM Policy

Table 2 below summarizes the proposed Initial NEM Policy, with additional detail provided in the attached presentation.

Table 2

Export Credit	Retail* based on service selected (Bright Choice/ Brilliant 100)
Billing	<ul style="list-style-type: none">• Monthly bill for generation• Monthly application of credit• Annual cash out in April
Enrollment	Bi-monthly enrollment based on True-Up date with PG&E
Surplus Credit	Match PG&E Net Surplus Compensation (NSC) offering**

* Export credit depends on the vintage and category of customer.

** Surplus credit depends on the vintage and category of customer.

Please see the attached slides for additional detail.

Future Action

EBCE staff requests that the Board provide feedback on this proposal. Based on Board and stakeholder feedback, staff can update the policy and return at the February 21st meeting for approval by the Board.

Attachment

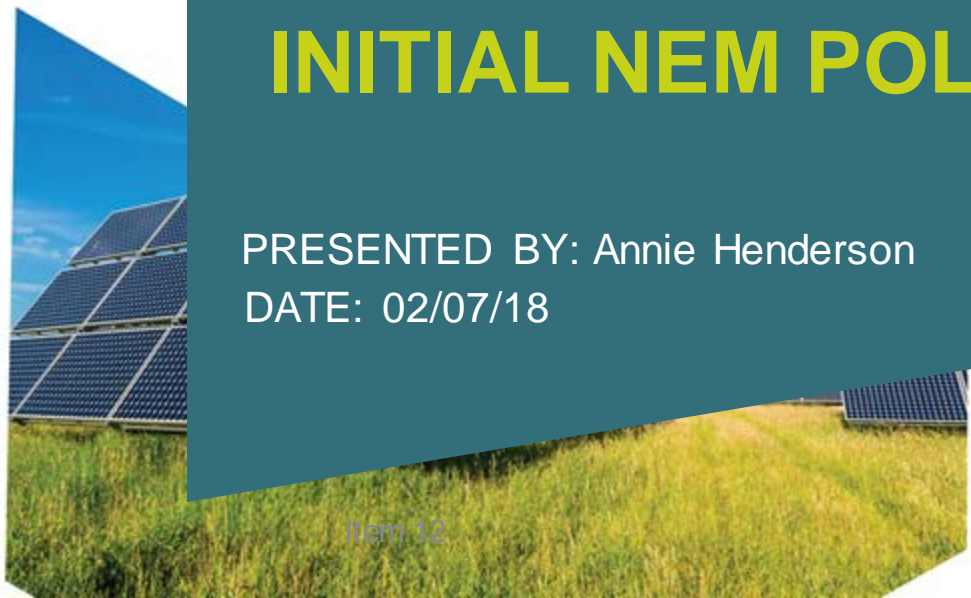
- A. Presentation on Initial NEM Policy



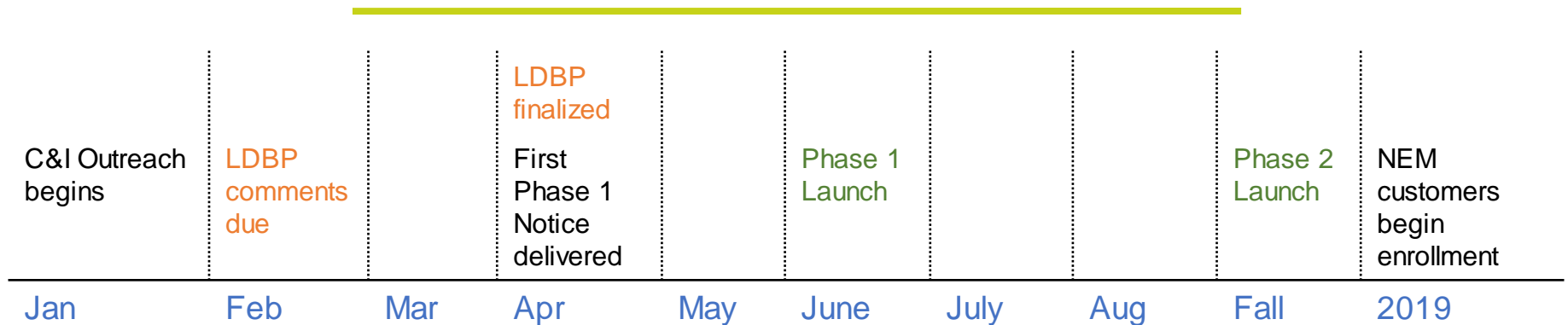
INITIAL NEM POLICY

PRESENTED BY: Annie Henderson

DATE: 02/07/18



WHY AN INITIAL NEM POLICY?



- NEMcustomers will not be enrolled until 2019
- However, some C&I customers have portfolios with Phase 1 and NEMaccounts
- Adopting a baseline NEMpolicy allows staff to have initial discussion with portfolio customers and establish a minimum value proposition
- After April 2018 but before NEMenrollment, EBCE will refine and expand NEMpolicy in response to LDBP and stakeholder feedback

INITIAL NEM POLICY BASICS

Export Credit

Retail* based on service selected (Bright Choice/Brilliant 100)

Billing

- Monthly bill for generation
- Monthly application of credit
- Annual cash out in April

Enrollment

Bi-monthly enrollment based on True-Up date with PG&E

Surplus Credit

Match PG&E Net Surplus Compensation (NSC) offering**

EXPORT AND SURPLUS CREDIT

NEM Customer	EXPORT Credit	SURPLUS Credit	Compared to PG&E
Existing at Enrollment	Retail based on product selected	Match PG&E NSC offer (\$0.026-\$0.035/kWh)	Same
New after Enrollment	Retail	Retail capped at \$2.5k <i>or</i> NSC without a cap	Better
Low Income (New only)	Retail + \$0.01/kWh	Retail + \$0.01/kWh	Better
Municipal (New only)	Retail + \$0.01/kWh	Retail + \$0.01/kWh	Better
Workforce (New only)	Implementation considerations under review		Better
Supply-Shift (New only)	Implementation considerations under review		Better

- Limited resources should be focused on
 - **New** installations
 - **Hard-to-reach communities** where the market has failed to deliver significant penetration
 - Municipal customers where savings is immediately reinvested into **community services**, like schools
 - Supporting **local workforce**

CCA NEM POLICIES

	MCE	SCP	PCE	CleanPowerSF	SVCE
Export Credit per kWh	Default Product Retail + \$0.01	Default Product Retail + \$0.01	Default Product Retail + \$0.01	Retail	Retail
Billing	Monthly Cash Out in April	Monthly Cash Out in May	Monthly Cash Out in April	Monthly Cash Out in April	Monthly Cash Out in April
Enrollment	At enrollment	At enrollment	Bi-monthly based on True-Up Date	Quarterly based on True-Up Date	Quarterly based on True-Up Date
Surplus Credit	Same as Export Credit	Same as Export Credit	Same as Export Credit	Premium Retail	Same as Export Credit

EXPORT CREDIT VALUE

	Default Product	Premium Product
MCE	LightGreen Retail + 0.01 = DeepGreen Retail	LightGreen Retail + 0.01 = DeepGreen Retail
SCP	CleanStart Retail + 0.01 = Evergreen Retail	CleanStart Retail + 0.01 = Evergreen Retail
PCE	EcoPlus Retail + 0.01 = Eco100 Retail	EcoPlus Retail + 0.01 = Eco100 Retail
CleanPowerSF	Green Retail	SuperGreen Retail
SVCE	GreenStart Retail	GreenPrime Retail

FUTURE: REFINE AND EXPAND

- Refine and expand based on final LDBP and stakeholder feedback
- Consider adders (cents/kWh) for
 - Additional income-qualified customers beyond CARE/FERA
 - Projects that support local labor
 - Technologies beyond solar photovoltaics
- Refine surplus valuation for new installations
- Address other program considerations such as
 - Data management
 - Marketing and outreach
 - Operational mechanics of cash-out payment
 - Billing system configuration and functionality
 - Surplus cash-out threshold and cap
 - REC ownership

DRAFT LDBP NEM PROGRAM

- Adders on export credit:

Adder	Amount/ kWh	Eligibility	Proposed Initial NEM Policy
Standard	\$0.005	All NEM customers	No adder, but improve surplus credit
Community <ul style="list-style-type: none"> • <i>Income-qualified</i> • <i>Non-profit/gov't</i> 	\$0.005	New NEM customers	\$0.010
Workforce <ul style="list-style-type: none"> • <i>Livable wage</i> 	\$0.005	New NEM customers	TBD but noted in initial policy
Supply-Shift <ul style="list-style-type: none"> • <i>West-facing solar</i> • <i>Small wind</i> • <i>Energy storage</i> 	\$0.005	New NEM customers	TBD but noted in initial policy

- Monthly billing with annual cash-out in Spring
- Enrollment per True-Up date

REQUEST OF BOARD

- Review proposed policy and provide feedback to EBCE staff
 - Staff will make updates per board direction
- Vote on Initial NEM Policy at next board meeting on 2/21/18
- Revisit NEM Policy in May/June 2018