**Community Advisory Committee**
September 14, 2026
6:00 pm

**In Person**:
Board Room
Ava Community Energy
1999 Harrison St, Ste 2300
Oakland, CA 94612

**Or from the following remote locations:**
1319 Solano Ave, Albany, CA 94706
4563 Meyer Park Circle, Fremont, CA 94536
1234 W Oak St., Stockton, CA 95204
1531 El Pinal Dr, Stockton, CA 95205
2277 Pyrenees Ave., Stockton, CA 95210
639 Martis Peak Dr, Incline Village, NV 89451

**Via Zoom:**
https://us02web.zoom.us/j/84794506189

**Or join by phone**:
Dial(for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or 877 853 5257 (Toll Free)
Webinar ID: 847 9450 6189

*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) 906-0491 or cob@avaenergy.org.*

*If you have anything that you wish to be distributed to the Committee, please email it to the clerk by 5:00 pm the day prior to the meeting.*

*Public comment letters received for Ava Community Energy meetings are posted at https://app.box.com/v/avapubliccomment.*

**C1. Welcome & Roll Call**

**C2. Public Comment**

*This item is reserved for persons wishing to address the Committee on any Ava Community Energy-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 Committee are customarily limited to two minutes per speaker and must complete an electronic speaker slip. The Committee Chair may increase or decrease the time allotted to each speaker.*

**C3. CAC Chair Report**

**C4. Minutes from July 13, 2026 meeting**

**C5. Update on Customer Programs Strategy, formerly called Roadmap (BOD Informational Item)**

Updating the board on the status of the Customer Programs Strategy development process.

**C6. Approve a resolution on a suite of power related products with Sentinel Energy Center, LLC from a hybrid battery project (BOD Action Item)**

Approving a Resolution of the Board of Directors of Ava Community Energy for the CEO to negotiate and execute agreements for BESS, RA and Financially Settled products.

**C7. Vice-Chair Appointment (CAC Action Item)**

**C8. CAC Member and Staff Announcements including requests to place items on future Community Advisory Committee Meeting Agendas**

- Upcoming CPUC meeting on 9/17/2026 with a consent item (#11) regarding the Power Charge Indifference Adjustment (PCIA) fee. See https://www.cpuc.ca.gov/events-and-meetings/cpuc-voting-meeting-09-17-26 for information and how to participate.

**C9. Adjourn**

The next Community Advisory Committee meeting will be held on Monday, October 19, 2026 at 6:00 pm.

Ava Community Energy

1999 Harrison Street, Suite 2300, Oakland, CA 94612

# Board Meeting Access Instructions

**If you need help finding or accessing the building, please call our Ava representative who is stationed in the building lobby: 510-393-0492.**

## Directions

### Directions via BART

If you are taking BART: the 19th Street station is the closest stop to our office and is about a 5 minute walk away. Use the 20th St / Thomas L. Berkeley Way station exit.

### Directions via Bike

Bike riders wanting to park their bike inside the parking garage can enter through the main building lobby. Bike parking is available on the parking garage first level right in front of the garage elevators.

### Directions to Parking Garage via Car

The entrance to the building's attached garage is located on Harrison Street. If you're driving northbound on Harrison Street, as soon as you cross 19th St. the garage entrance is 3/4 down on your left-hand side. If you're heading east on Thomas L Berkeley Way/20th St. Continue East then make a right turn on Harrison Street, and the garage entrance is a quarter block up on your right-hand side.

When you arrive, enter via the gate labeled "Public Parkers". There are four floors of the parking garage, and you will need to take the elevator in the parking garage to the first floor. The parking attendant or an Ava representative will provide access into the building lobby.

The parking garage entry gate will be open until 8pm for CAC and BOD meetings. Attendees can exit the parking garage until 11pm.

**Note that the garage's parking fee is $30 per use. Street parking is widely available near the building and free after 6pm.**


## Check-in at Security Desk

When you arrive at our building, please check in with the security desk in the lobby to get access to the elevators. If you have questions or need assistance, an Ava representative will be stationed and identifiable in the lobby. They can be reached at: 510-393-0492.

Draft Minutes

**Community Advisory Committee**
July 13, 2026
6:00 pm

**In Person:**
Board Room
Ava Community Energy
1999 Harrison St, Ste 2300
Oakland, CA 94612

**Or from the following remote locations:**
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**C1. (0:09) Welcome & Roll Call**

**Present: Members:** Bierce (North), Riley (North), Edmunds (East), Lakshman (South), Epperson (Central – Alternate), Harper (San Joaquin County), Halaufia (San Joachin County), Knodt (San Joachin County), Raj (At-Large), Roberts (At-Large), Vice-Chair Balkissoon (North) and Chair Souza (Central)
**Not Present: Members:** Swaminathan (South)

**Alternate Member Epperson** served as a voting member for Central Region (DiFranco).

**C2. (1:58) Public Comment**

*This item is reserved for persons wishing to address the Committee on any Ava Community Energy-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 Committee are customarily limited to two minutes per speaker and must complete an electronic speaker slip. The Committee Chair may increase or decrease the time allotted to each speaker.*

**(2:04) Public Comment - Jim Lutz,** a former CAC member, encouraged the Committee to engage actively in Ava's planning process for long-term local development programs. He noted that local development was a foundational goal of the Joint Powers Authority that created Ava and urged that the agency expand its revenue streams beyond electricity charges. He proposed programs—such as leasing balcony solar and storage systems—designed to reduce customers' total energy bills at no upfront cost, and stated that any such planning process must be inclusive and broad-based to build sustainable, community-supported programs.

**(5:31) Public Comment - Douglas Spaulding,** an Ava customer in San Leandro and a beneficiary of the Ava Bike Electric program, raised two issues: the prospect of installing local EV charging stations, and concerns about the proliferation of AI data centers in communities served by Ava, including San Leandro and Hayward. He expressed concern about the environmental impacts of data centers and called on Ava to consider a moratorium on new data centers pending a fuller understanding of their ramifications.

**C3. (9:43) CAC Chair Report**

**C4. (25:56) Minutes from June 15, 2026 meeting**

**There were no speakers for public comment.**

**Member Bierce noted a minor internal staff notation on page 3 that required correction.**

**Vice-Chair Balkissoon motioned to approve the minutes from the June 15, 2026 CAC meeting as corrected. Member Riley seconded the motion, which was approved 11/0/1/0/1 (yes/no/abstain/recuse/not present):**
**Yes: Members: Bierce, Riley, Edmunds, Lakshman, Epperson, Harper, Halaufia, Raj, Roberts, Vice-Chair Balkissoon and Chair Souza**
**No: none**
**Abstain: Member Knodt**
**Recuse: none**
**Not Present: Member Swaminathan**

**C5. (28:07) Ava Bike Electric Extension (BOD Action Item)**
Approving a Resolution to add funding and extend the e-bike rebate program for one additional year

**Transportation Electrification Manager Brett Wiley** presented a staff proposal to extend the Ava Bike Electric program by 12 months through calendar year 2027 and to add $2 million to the program budget, drawn from already board-approved but unearmarked vehicle electrification funds.

**(42:14) Public Comment – Jim Lutz** spoke in support for the e-bike program and asked whether staff had data on the number of miles participants have ridden and the amount of additional electricity sales associated with charging e-bikes.

**(44:22) Public Comment – Jessica Tovar** expressed concern about allocating additional Local Development Business Plan funds to the e-bike program without first providing a detailed accounting of the remaining fund balance. Tovar also noted that e-bikes may remain unaffordable for some community members even with rebates and encouraged consideration of the overall allocation of remaining local development funds before approving additional program funding.

**Member Riley motioned to approve the staff recommendation. Member Bierce seconded the motion, which was approved 12/0/0/0/1 (yes/no/abstain/recuse/not present):**
**Yes: Members: Bierce, Riley, Edmunds, Lakshman, Epperson, Harper, Halaufia, Knodt, Raj, Roberts, Vice-Chair Balkissoon and Chair Souza**
**No: none**
**Abstain: none**
**Recuse: none**
**Not Present: Member Swaminathan**

**C6. (1:08:49) EcoBlock Grant (BOD Action Item)**
Approving a Resolution Authorizing Funding for the EcoBlock Neighborhood Electrification Project

**Vice President of Local Development JP Ross** presented a consent item appearing on the upcoming Board of Directors agenda.

**(1:13:44) Public Comment – Fangxue Zheng**
**(1:15:31) Public Comment – Jim Lutz**
**(1:17:53) Public Comment – Jessica Tovar**

**Fangxue Zheng, Jim Lutz, and Jessica Tovar** spoke in support of the EcoBlock project while raising concerns about allocating Local Development Fund resources outside of a transparent and competitive public grant process. They encouraged Ava to provide adequate public notice and opportunities for review before significant funding decisions, ensure equitable access to grant funding throughout Ava's service territory, and consider mechanisms to replenish funds used for projects such as EcoBlock or establish a reserve for similar funding needs.

**Member Bierce motioned to approve the EcoBlock grant with a request that the Chair make sure to express the CAC's numerous reservations about the process around transparency. Vice-Chair Balkissoon seconded the motion.**

**Member Harper added the friendly amendment that the Chair request that the Board directs staff to create a first draft policy framework for rapid response grant making, including:**

a. **roles and responsibilities,**
b. **key points of contact,**
c. **recommend if there's an ad-hoc group that needs to be set up.**

**Member Bierce and Vice-Chair Balkissoon accepted Member Harper's friendly amendment.**
**The amended motion was approved 9/1/2/0/1 (yes/no/abstain/recuse/not present):**
**Yes: Members: Bierce, Riley, Harper, Halaufia, Knodt, Raj, Roberts, Vice-Chair Balkissoon and Chair Souza**
**No: Member Edmunds**
**Abstain: Members Lakshman and Epperson**
**Recuse: none**
**Not Present: Member Swaminathan**

**C7. (1:56:36) Ad Hoc Discussion (CAC Informational Item)**

**Chair Souza** introduced a discussion on the formation of new CAC ad hoc committees.

**C8. CAC Member and Staff Announcements including requests to place items on future Community Advisory Committee Meeting Agendas**

- **Vice Chair Balkissoon** requested a future agenda item on the comparison of Ava's Bright Choice and 100% Renewable product offerings, including costs, emissions, and the implications of any municipal reconsideration of those products for Ava.
- **Member Roberts** noted that he would be meeting with Ava's Community Engagement team to explore partnership opportunities with K–12 schools and offered to report back at the September meeting.
- **Member Riley** requested a future discussion on the impact of recent federal DOE guidance that eliminated consumer rebates for replacing gas appliances with electric ones, and the implications for customers midway through electrification. She also inquired whether Ava had a mechanism to proactively communicate which incentive programs are at risk from federal policy changes versus those protected under California or county-level authority.

**C9. Adjourn**

**The meeting was adjourned at 8:25 PM.**

The next Community Advisory Committee meeting will be held on Monday, September 14, 2026 at 6:00 pm.

**CAC Item C5**
**Staff Report Item 14**

| | |
|---|---|
| **To:** | Ava Community Energy Authority |
| **From:** | Annie Henderson, Chief Customer Officer |
| **Subject:** | Updating the board on the status of the Customer Programs Strategy development process, formerly referred to as the Roadmap. |
| **Date:** | September 16, 2026 |

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## Summary/Recommendation

This Staff Report provides an update on the proposed process, timeline, and engagement strategy for developing Ava's Customer Programs Strategy. This item is informational, but staff welcome Board feedback on the recommended level of engagement.

## Financial Impact

There is no financial impact with this update item.

## Analysis and Context

### Background

Staff are developing a Customer Programs Strategy.

The foundational strategic framework establishes the objective, priorities, and targeted outcomes that will guide customer programs. It also defines a portfolio composition so that individual program decisions add up to an intentional and balanced whole.

Using the framework, staff will develop and evaluate a pipeline of program concepts and identify a rolling portfolio of initiatives that best advances the strategy based on current market, regulatory, and organizational conditions. The portfolio will be reviewed and adjusted as programs perform, customer needs change, and new opportunities emerge.

## Glossary

| Terms | Definition |
|---|---|
| **Objective** | Ava's goal with local programs. Every program would contribute to the objective. |
| **Strategic Priorities** | Things that are important to Ava stakeholders. Not every program will address each priority, but across a portfolio all priorities are addressed. |
| **Success Metrics** | How we measure our impact and progress towards objective and strategic priorities |
| **Portfolio Composition Targets** | Identifies various sectors or characteristics and their level of representation across a portfolio |
| **Strategic Framework** | Combination of Objective + Priorities + Portfolio Targets |
| **Stakeholder Engagement** | Outreach and engagement with interested parties and impacted groups to identify priorities, concerns, and desired outcomes |
| **Program Concepts Pipeline** | Market sector, customer segment, mechanism/approach, targeted impact, estimated budget, estimated duration |
| **Portfolio Scenarios** | Various combinations of programs that align with the strategic framework but have slightly different outcomes. Includes an assessment of how a combination of programs support each other to achieve a greater impact than individual, stand-alone programs. |
| **Adaptive Program Portfolio** | Selected portfolio of program concepts that is reviewed and adjusted as part of the iterative implementation of customer programs |

## Timeline

The Customer Programs Strategic Framework is anticipated to be completed in Spring 2027. An Adaptive Program Portfolio Roadmap is anticipated to be completed in Fall 2027.

| Timing | Key Activities |
|---|---|
| Fall 2026 | • Continue development of the Strategic Framework<br>• Select external engagement consultant<br>• Engage Board, CAC, and member agencies on the Strategic Framework |
| Winter 2026/2027 | • Begin external stakeholder and public engagement<br>• Develop and refine objectives, strategic priorities, portfolio distribution, and success metrics |
| Spring 2027 | • Complete Strategic Framework<br>• Complete external stakeholder and public engagement with selected consultant<br>• Incorporate engagement findings and internal feedback into the framework<br>• Present Strategic Framework to the Board |
| Summer 2027 | • Develop program concepts<br>• Estimate program costs and impacts<br>• Develop and evaluate potential program portfolio scenarios |
| Fall 2027 | • Select and refine proposed program portfolio<br>• Identify initial Adaptive Program Portfolio<br>• Present initial Adaptive Program Portfolio to the Board |

**Proposed Approach**

Staff proposes a multi-phase development process with structured opportunities for input from the Board, CAC, member agencies, external stakeholders, and the public throughout the process. The first phase will produce the Customer Programs Strategy, while a second phase will generate the living expression of the strategy as an adaptive programs portfolio. An iterative third phase follows with execution, monitoring, and adjustments. Rather than beginning with individual program ideas, the proposed approach first establishes a shared strategic framework to guide Ava's customer program investment decisions. That framework would then be used to develop and evaluate a portfolio of customer programs, while allowing for adjustments over time to meet current needs and conditions.

**1- Strategic Framework:** The first phase will establish the guiding principles and decision-making framework for customer programs. This includes:

- Defining what Ava is ultimately seeking to accomplish through its customer programs;
- Identifying the outcomes that should be prioritized when investment decisions require trade-offs;
- Clarifying where Ava can provide the greatest value given its role and available funding;
- Determining how investments should be balanced across customer groups, needs, and strategic priorities; and
- Establishing metrics for measuring success.

Development of the Strategic Framework will be iterative and informed by multiple sources of input. Staff will build on feedback already collected through member agency meetings, local Climate Action Plans, and surveys, while creating additional opportunities for the Board, CAC, member agencies, external stakeholders, and the public to inform key elements as they are developed. The intent is to establish a framework that reflects community and customer needs while also recognizing the practical trade-offs associated with funding, staff capacity, implementation feasibility, need for focus to drive impacts, and Ava's ability to meaningfully influence outcomes.

**2 - Adaptive Program Portfolio:** Once the Strategic Framework is established, staff will use it to develop the actual portfolio of customer programs. This phase will assess gaps and opportunities in the existing market, identify potential program concepts, estimate their costs and potential impacts, and evaluate different combinations of programs against the objectives, priorities, and success metrics established in the Strategic Framework. Stakeholder and internal feedback will continue to inform the development and refinement of the portfolio.

The outcome will be a portfolio of program concepts, including the customers and markets served, anticipated timing and funding, delivery approaches, expected outcomes, and adaptation guidelines for when we need to make adjustments based on various market, economic, and other conditions.

**3 - Execution and Adaptation**: Following development of the initial Adaptive Program Portfolio, staff will focus on implementation and ongoing management of the portfolio. Individual program concepts identified as part of the initial Adaptive Program Portfolio will move through Ava's typical program development and board approval processes before implementation. Staff will monitor program performance against the success metrics established through the strategy, report on progress over time, and adapt within programs and across the portfolio as necessary.

**Engagement Strategy**

Engagement is a core input to this process. Ava staff will lead engagement with the Board, CAC, and member agency staff, including proposed working sessions with ad hoc groups throughout phases of development. These discussions will provide opportunities to inform and provide feedback on the Strategic Framework's objective and priorities, portfolio distribution, and program concepts.

**External Engagement Consultant**

Additionally, Ava issued a public request for proposals (RFP) in July 2026 for a consultant to facilitate engagement with external stakeholders and the broader public. The consultant will support targeted stakeholder meetings and public workshops designed to gather input on customer and community needs, identify gaps and opportunities, and test and refine elements of the Strategic Framework and Adaptive Program Portfolio as they are developed.

The RFP requested pricing for two levels of engagement:

| Engagement Activity | Option 1 | Option 2 |
|---|---|---|
| Targeted Stakeholder Meetings | 3 | 6 |
| In-person Public Workshops | 2 | 5 |
| Virtual Public Workshops | 1 | 2 |
| Total Engagements | 6 | 13 |

Based on the proposals received, staff recommends proceeding to negotiate an agreement for Option 2, which provides a more robust engagement process with additional opportunities to hear from stakeholders across Ava's service territory. The expanded scope will support broader geographic and stakeholder representation and provide more opportunities to gather community input. Across the proposals received, the average cost for Option 1 is approximately $172,000 compared to approximately $267,000 for Option 2. Staff believes the expanded engagement under Option 2 is warranted given the importance of stakeholder and community engagement input in shaping the Customer Programs Strategy.

**Work completed to date**

Over the past year, staff has completed significant foundational work to better understand the priorities of Ava's member agencies, customers, and internal teams and to inform the development of a strategy that will ultimately provide a clear, holistic guide for how future program investments should be prioritized and deployed across Ava's service area.

In Spring 2026, staff reviewed 21 historical Ava customer surveys representing approximately 7,600 responses, to identify longer-term trends in customer priorities.

This analysis found that reliability and affordability have consistently ranked as top priorities, with programs and incentives emerging as an increasingly important consideration.

Staff also reviewed member jurisdictions' Climate Action Plans (CAPs) and related community feedback and met individually with member agencies to better understand their local climate and energy priorities, planned initiatives, and opportunities for Ava support. The CAP review helped inform these conversations, allowing staff to build on existing local planning and community input while hearing directly from member agencies about their current needs and priorities. Across these efforts, common themes included affordability, building and transportation electrification, interconnection and capacity needs, municipal funding needs, and staff capacity.

These inputs provide the foundation for the next phase of developing a strategy and will be supplemented by additional Board, Community Advisory Committee (CAC), member agency, stakeholder, and public engagement.

## Attachments

**A.** Slide Deck: Customer Programs Strategy Overview

Attachment Staff Report Item 14A

Ava Community Energy

# Customer Programs Strategy

Board of Directors
September 16, 2026

# Purpose and Ask of the Board

With this presentation, Staff is

- Providing an overview of the process to create a Customer Programs Strategy that will establish what we are trying to achieve and inform programmatic decisions over the next 5 years
- Highlighting the engagement approach

Staff is seeking Board feedback on:

- The proposed process timeline and key deliverables
- The recommended level of external, public engagement

# Agenda

- Background, Glossary, & Timeline
- Overview of Development Process
- Overview of Stakeholder Engagement
- What We've Heard So Far
- Requests of the Board

# Background, Glossary, & Timeline

# Background

Ava is developing a **Customer Programs Strategy**.

The strategic framework establishes the objective, priorities, and targeted outcomes that will guide customer programs. It also defines portfolio composition targets so that individual program decisions **add up to an intentional and balanced whole.**

Using the framework, Ava will develop and evaluate a pipeline of program concepts and identify a rolling portfolio of initiatives that best advances the strategy based on current market, regulatory, and organizational conditions. The portfolio will be **reviewed and adjusted as programs perform, customer needs change, and new opportunities emerge**.

# Glossary



| Terms | Definition | Example (only an example!) |
|---|---|---|
| **Objective** | Ava's goal with local programs. Every program would contribute to the objective. | Reduce greenhouse gas emissions across our service area |
| **Strategic Priorities** | Things that are important to Ava stakeholders. Not every program will address each priority, but across a portfolio all priorities are addressed. | • Affordability - lowering costs for customers<br>• Equity - delivering electrification benefits for priority communities |
| **Success Metrics** | How we measure our impact and progress towards objective and strategic priorities | • Tons of CO2e<br>• Reduction in participating customers' bills<br>• % funding allocated to vulnerable communities |
| **Portfolio Composition Targets** | Identifies various sectors or characteristics and their level of representation across a portfolio | • 60/40 split of focus on commercial vs. residential<br>• 70/30 split focus on transportation vs. building electrification<br>• 80/20 split on quick wins vs. longer term initiatives<br>• % dedicated funding to priority communities<br>• % dedicated funding to municipal facilities/support |
| **Strategic Framework** | Combination of Objective + Priorities + Portfolio Targets | Enduring architecture that guides future decisions |
| **Stakeholder Engagement** | Outreach and engagement with interested parties and impacted groups to identify priorities, concerns, and desired outcomes | • Internal: Board, CAC, Municipal Staff<br>• External: Labor, CBOs, Industry, Customers, General Public |
| **Program Concepts Pipeline** | Market sector, customer segment, mechanism/approach, targeted impact, estimated budget, estimated duration | EV financing program for renters to increase adoption of EVs, reduce emissions, drive utilization of public charging; ~$1M over 3 years |
| **Portfolio Scenarios** | Various combinations of programs that align with the strategic framework but have slightly different outcomes. Includes an assessment of how a combination of programs support each other to achieve a greater impact than individual, stand-alone programs. | • High Risk Scenario: majority of programs are first-of-the-kind, leveraging R&D stage technology<br>• High Reach Scenario: weighted towards programs with largest possible customer reach, providing a lower level of individual benefits across a wider population of customers |
| **Adaptive Program Portfolio** | Selected portfolio of program concepts that is reviewed and adjusted as part of the iterative implementation of customer programs | Adjustments based on changes to the market, regulations, legislation, economic conditions, technology advancements, resource allocation. |

# Timeline

**Summer 2025**

- Budget approval to develop a holistic view of customer programs
- Presentations on the process to executive committee and Community Advisory Committee (CAC)

**Fall 2025**

- Request for Proposals (RFP) for development consultant
- Contract did not moved forward due to procurement policy updates needed

**Spring 2026**

- Procurement policy updated and approved by the Board
- Initiated outreach for individual meetings with each member jurisdiction

**Summer 2026**

- 17 of 18 member jurisdiction meetings complete
- Issued an RFP for an engagement consultant
- Further project planning by Ava staff
- Analysis of local climate action plan (CAP) measures and community engagement feedback

**Fall 2026**

- Complete final member jurisdiction meeting
- Presentation of process to Board and CAC
- Selection of an engagement consultant
- Continue strategic framework development

**Winter 2026/2027**

- Stakeholder engagement begins
- Concurrent research and analysis

**Spring 2027**

- Consultant-supported public engagement complete
  - Public engagement will continue through regular reporting to the board and request for approval of budget allocation, contracts, and associated programmatic work
- Strategic Framework presented to the Board

**Summer 2027**

- Market analysis
- Program concept pipeline

**Fall 2027**

- Adaptive Program Portfolio identified and presented to the Board

**On-Going**

- Budget approval
- Program design, contract approvals
- Program and portfolio adjustments

# Proposed Process

## Critical Foundation: Strategic Framework

## Implementation Planning

The critical foundation that guides decisions.

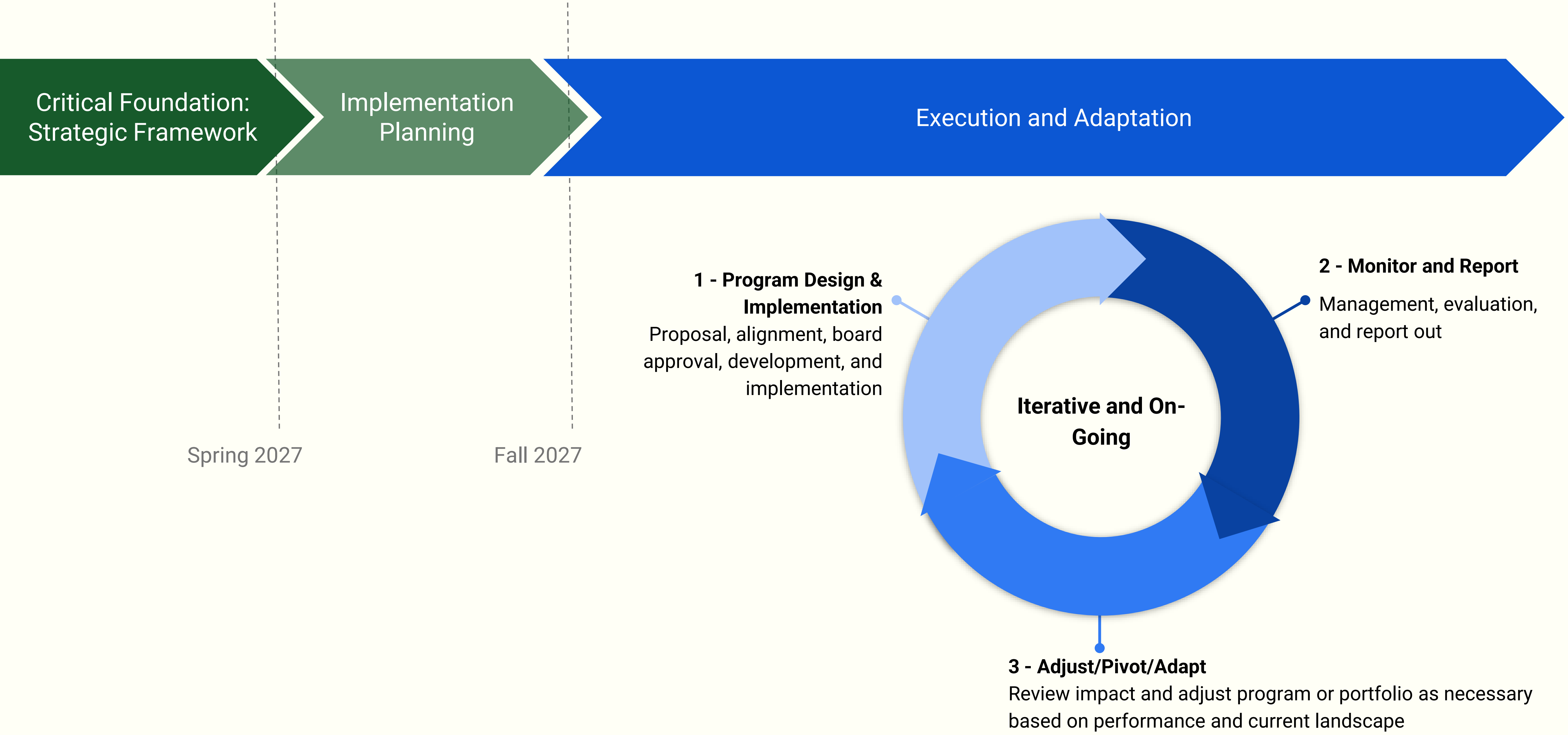
**Outcomes**:
1. Objective + Strategic Priorities
2. Ava's Unique Role + Operational Constraints
3. Portfolio Composition Targets
4. Success Metrics

The practical application of the strategic framework.

**Outcomes:**

5. Market Gap Analysis
6. Program Concepts Pipeline
7. Portfolio Scenarios
8. Adaptive Program Portfolio

# Full Life Cycle for Programs



# Stakeholder Engagement

# Overview of Engagement

- Ava staff will facilitate all internal engagement with ad hoc groups and subject matter experts and external engagement through presentations at regular public meetings and customer surveys.
- A consultant will facilitate external engagement through focused group discussions and public workshops.

| Internal |
|---|
| Ad Hoc Group of Board |
| Ad Hoc Group of CAC |
| Ad Hoc Group of Local Municipal Staff |
| Ava Staff Subject Matter Experts |

| External |
|---|
| Targeted Stakeholder Meetings<br>*(still TBD, below are likely groups)*<br>● Local Community Based Organizations<br>● Labor<br>● Industry<br>● Agriculture Customers<br>● Large Commercial Customers<br>● Small & Medium Commercial Customers |
| General Public<br>● Survey Data<br>● Public Workshops |
| Regular Public Meetings of Board and CAC |

# External Engagement Activities and Scope Options

- An RFP for a consultant was issued in July 2026 and due in late August 2026.
- Staff is currently in the process of making a final consultant selection and negotiating an agreement.
- The RFP requested bids on two different engagement scenarios.

| Engagement Activity | Option 1 | Option 2 |
|---|---|---|
| Targeted Stakeholder Meetings | 3 | 6 |
| In-Person Public Workshops | 2 | 5 |
| Virtual Public Workshops | 1 | 2 |
| *Total Engagements* | *6* | *13* |

- **Targeted Stakeholder Meetings:** Gather stakeholder perspectives on customer and community needs, implementation barriers, market opportunities, and other considerations that will inform future customer program concepts. Potential participants include CBOs, labor organizations, industry representatives, specific customer segments (such as agriculture), etc.
- **Public Workshops:** Combination of in-person and virtual workshops across Ava's service territory, primarily focused on presenting potential program portfolios and gathering feedback to inform the final Roadmap.

# Summary of Responses & Recommendation

| Total Responses | |
|---|---|
| Conforming | 9 |
| Non-Conforming | 0 |

| Location of Bidders |
|---|
| Berkeley<br>El Sobrante<br>Monterey<br>Sacramento<br>San Francisco<br>Texas |

| Of conforming bids | Option 1 | Option 2 |
|---|---|---|
| Minimum Bid Response | $74,000 | $124,000 |
| Maximum Bid Response | $364,000 | $507,000 |
| Average | $172,000 | $267,000 |

Staff recommends proceeding with a consulting agreement for **Option 2** that includes

- 6 stakeholder meetings
- 5 geographically diverse in-person public workshops
- 2 virtual workshops

# What we’ve heard so far

# Building on Prior Community Engagement



Initial focus on most recently published Climate Action Plans (CAPs):

- Stockton MSA (2026)
- BAAD (2025)
- Hayward (2024)
- Fremont (2023)
- Pleasanton (2023)
- Livermore (2022)
- Oakland (2021)

By a rough estimation, existing CAPs incorporate feedback from at least:

- 3,800 survey responses
- 1,150 workshops, town halls, focus groups, or events
- 110 stakeholder organizations
- 950 written public comments
- 195 public meetings
- 10,900 community participants

This foundational understanding informed individual discussions with all 18 Ava member jurisdictions conducted from May to September.

**Areas of community interest/concern**

# Trends in Member Feedback

- **Interconnection and capacity** constraints are an issue across the Ava service territory, which negatively impacts local economic development.
- While many jurisdictions have electrification and climate-related plans, the barrier is **staff capacity** and funding.
- Many members have **municipal electrification projects** that need financial support.
- **Building electrification** is a common priority with local needs ranging from Building Performance Standards to residential panel upgrades to HPWH rebates and contractor support.
- **Transportation electrification** is also a common priority. Local efforts are at different stages of development from shovel-ready charging projects in need of financing to technical assistance on legislative compliance.
- **Affordability** is an overarching theme. We heard about related needs for rate stability, energy efficiency, general education, and customer outreach on financial support programs.

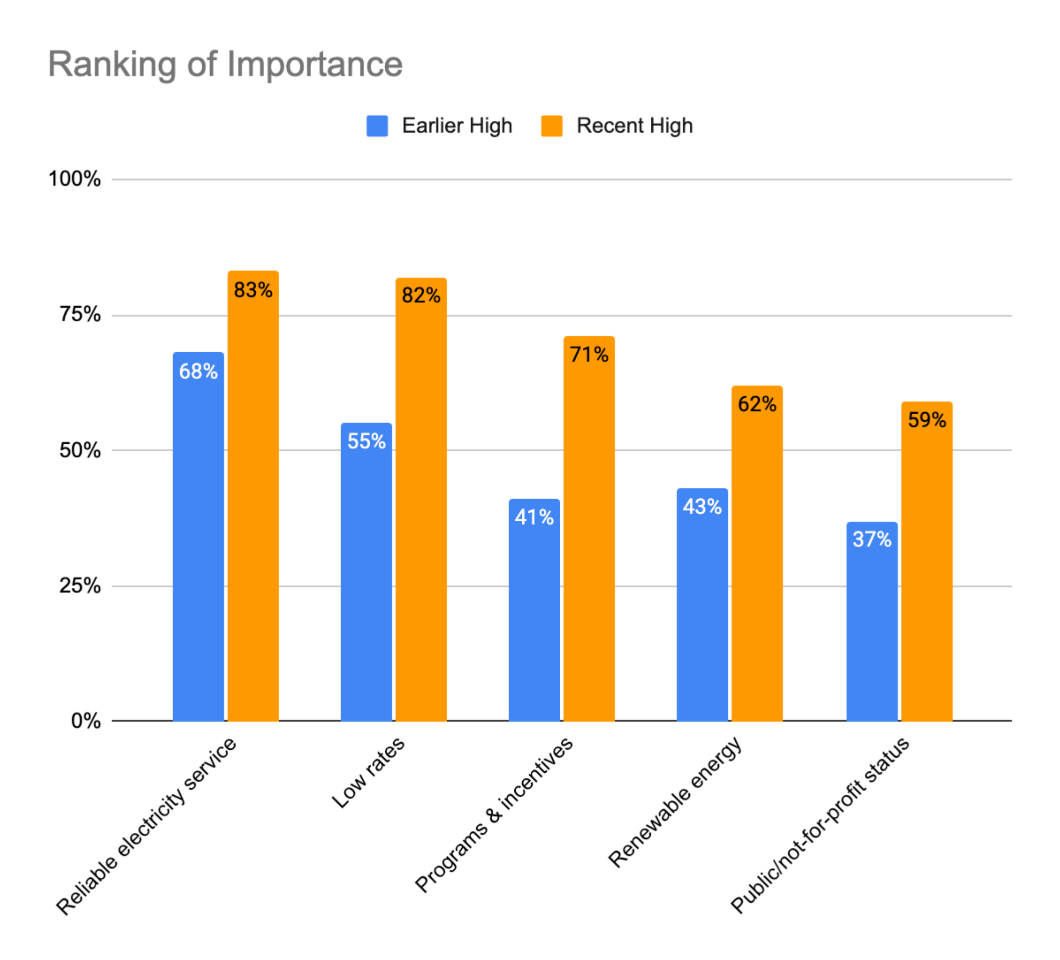
# Customer Survey Data from 2020-2025

21 online customer surveys = 7,600 survey responses

Included the following question:

> "In terms of your electricity provider, how important are the following qualities?" with ranking given to each of the below qualities. A user did not have to stack rank these qualities, meaning a user could select Extremely Important for every selection.

- Reliable electricity service
- Low rates
- Offers energy-related programs and incentives
- Electricity comes from renewable sources like wind and solar power
- Is a public agency (not a for-profit company)




## Summary Analysis:

- ✓ Reliability and low rates are most critical over time.
- ✓ Recent responses indicate an increased importance of programs.

# Conclusion

# Requests of the Board

Staff asks the Board to:

- Confirm alignment on the proposed process timeline and key deliverables
- Confirm the recommended level of external, public engagement

**CAC Item C6**
**Staff Report Item 13**

| | |
|---|---|
| **To:** | Ava Community Energy Authority |
| **From:** | Director of Origination, Power Resources |
| **Subject:** | Approving a Resolution of the Board of Directors of Ava Community Energy Authority Authorizing the CEO to Negotiate and Execute Agreements with Sentinel Energy Center, LLC for a Bess Facility, Financial Hedges and Resource Adequacy products |
| **Date:** | September 16, 2026 |

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## Summary/Recommendation

This Staff Report proposes the Board authorize the Chief Executive Officer ("CEO") to finalize negotiations and execute agreements with the contracting entity Sentinel Energy Center, LLC ("Sentinel") for the multiple products described herein. In order to reduce emissions, support Ava's Resource Adequacy ("RA") compliance obligations and provide valuable hedges, protecting Ava's customers against market volatility, the proposed contracts are necessary.

## Analysis and Context)

Ava Community Energy ("Ava") operates under the jurisdiction of the California Public Utilities Commission ("CPUC") and must comply with its RA compliance obligations. Ava also maintains internal compliance standards designed to mitigate risk and exposure to the markets for different commodity products Ava must procure. The proposed transactions are structured to support Ava's RA compliance obligations and contribute to the Risk Oversight Committee-approved hedging strategies for both energy/financial transactions and for RA. They are also intended to reduce greenhouse gas emissions.

The proposed transactions are comprised of multiple agreements, each with a start date of January 1, 2031, and terms that vary by product: (1) an Edison Electric Institute ("EEI") Master

Agreement; (2) a battery “Top 4 / Bottom 4” Financial Settlement confirmation to the EEI Master; (3) a Resource Adequacy (“RA”) confirmation to the EEI Master for the Sentinel gas plant; (4) a RA confirmation to the EEI Master for the Sentinel battery storage facility; (5) a RA confirmation to the EEI Master for a year-ahead call option for two years; (6) an International Swaps and Derivatives (“ISDA”) Master Agreement; and (7) an ISDA confirmation for the Heat Rate based financial settlement transaction for five years.

The multi-product agreements are comprised of RA from an existing natural gas plant and an incremental battery storage project that will be co-located with the gas plant, as well as two financial hedges. The physical resources are contracted from the Sentinel gas plant and an incremental battery storage facility in Desert Hot Springs, California. The battery storage facility is being developed by Diamond Generating Corporation, the parent company of Sentinel Energy Center, LLC and a subsidiary of Mitsubishi Corporation.

The proposed transactions were offered to Ava and negotiated bilaterally. They were, nonetheless, evaluated for portfolio fit and value against projects offered in the May 2026 Ava & San Jose Clean Energy (“SJCE”) Long-Term Resource Request for Offers (“RFO”), and were found to be of unique value and portfolio fit as Ava integrates higher levels of renewables to achieve emissions reductions. If approved, all contracts will begin delivery on January 1, 2031.

Staff seeks Board approval for the CEO to finalize negotiations and execute the contracts. The contracts must be executed promptly to enable Sentinel to order battery components and begin construction in advance of the start date of contract delivery.

## Attachments

a. Board Resolution
b. PowerPoint presentation
c. Sample EEI Thermal RA Confirmation
d. Sample EEI Bess RA Confirmation
e. Sample EEI Top 4/ Bottom 4 Confirmation
f. Sample EEI Year Ahead RA Call Option
g. Sample ISDA Financial Settlement Confirmation
h. Sample EEI Master Agreement
i. Sample ISDA Master Agreement

# RESOLUTION NO. R-2026-XX

## A RESOLUTION OF THE BOARD OF DIRECTORS

## OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE AGREEMENTS WITH SENTINEL ENERGY CENTER, LLC FOR FINANCIAL HEDGES AND RESOURCE ADEQUACY

**WHEREAS** Ava Community Energy Authority ("Ava") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Powers Act, California Government Code sections 6500 *et seq.,* among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The Cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of Ava and parties to the Joint Powers Agreement ("JPA") in March of 2020. The City of Stockton was added as a member to Ava in September of 2022. The City of Lathrop was added as a member to Ava in October of 2023. San Joaquin County was added as a member to Ava in July 2024. On October 24, 2023, Ava legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception;

**WHEREAS** Ava issued the 2026 Long-Term Resource Request for Offers ("RFO") in May 2026 and observed bi-lateral offers simultaneously;

**WHEREAS** Ava evaluated bilaterally offered products and saw new value in the unique commercial structure offered by Sentinel Energy Center, LLC;

**WHEREAS** Sentinel Energy Center, LLC proposed two financial hedges, one based on implied heat rate and the other based on a battery's top 4 and bottom 4 operating hours each day, and three Resource Adequacy ("RA") agreements: 50 megawatts ("MW") of thermal RA from the Sentinel gas plant, 50 MW of battery RA from an incremental battery storage facility to be developed by Diamond Generating Corporation (the parent company of Sentinel Energy Center, LLC and a subsidiary of Mitsubishi Corporation), and a 50 MW year-ahead RA call option from the Sentinel Gas plant; and

**WHEREAS** the contracts are expected to begin delivery on January 1, 2031, and provide financial hedges and RA for a period of 10 years for the battery energy storage system RA, top 4 / bottom 4 financial hedge, and the thermal RA agreements; 5 years for the implied heat rate financial settlement; and 2 years for the year-ahead RA call option.

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

Section 1. The Chief Executive Officer is hereby authorized to negotiate and execute, subject to approval of General Counsel, the following agreements: an ISDA Master Agreement, an EEI Master Agreement, and five confirmations to the Master Agreements, with varying terms: a 50 MW thermal RA confirmation for 10 years, a 50 MW battery RA confirmation for 10 years, a 50 MW battery top 4 / bottom 4 financial settlement for 10 years, a 50 MW year-ahead RA call option for 2 years, and a 100 MW ISDA financial settlement for the implied heat rate transaction for 5 years. The final agreements will be structured similarly to the documents attached to the Staff Report associated with this Resolution.

ADOPTED AND APPROVED this 16th day of September, 2026.

________________________________________

Betsy Andersen, Chair

ATTEST:

______________________________

Adrian Bankhead, Clerk of the Board

Ava Community Energy

# Sentinel Hybrid Project Approval

Scott Harding | Sept. 16th, 2026

# Agenda

1. Glossary of Terms
2. Introduction
3. Overview: Proposed Products for Transaction
4. Sentinel (Diamond Gen Co.) – Company Overview
5. Importance of Portfolio Diversification
6. Different Types of Hedges
7. Example Portfolio
8. Sentinel Energy Center – Facility Detail
9. CEJA Report & Benefits of Ava Transaction

# Glossary of Terms

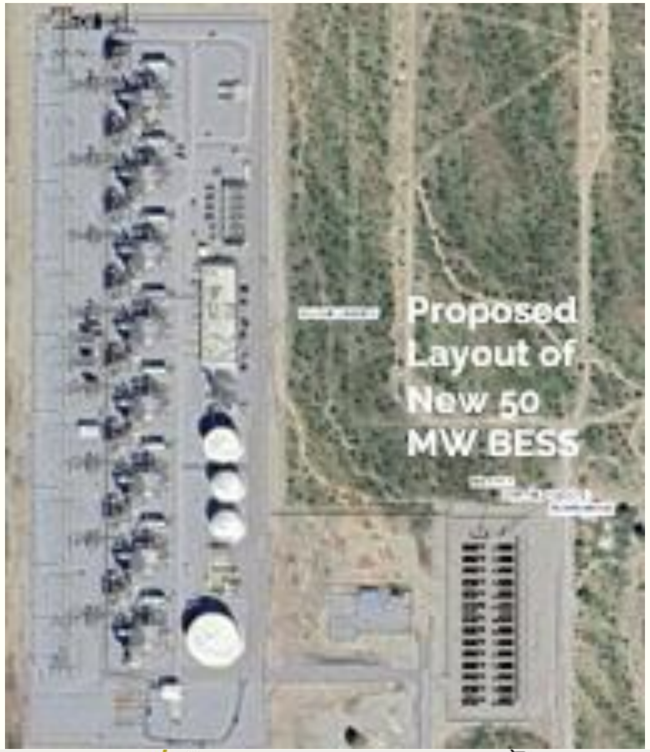
- **BESS** – Battery Energy Storage System
- **MW** – megawatt; equivalent to 1000 kilowatts
- **T4/B4** – refers to the 4 highest priced hours (top) and 4 lowest priced hours (bottom) in a day. The difference between these top and bottom hours are used to calculate the spread.
- **Spread** - The financial gap ($/MWh) found by subtracting the lowest price from the highest price
- **Heat Rate** – Measure efficiency of the creation of electricity. Is applied to thermal resources; also used to describe overall efficiency of *all* resources generating electricity in an energy market at a point in time. High heat rate indicates inefficient generation of electricity, occurs during periods of high demand.
- **Metric Tons of $CO_2$ –** Unit of measure for power plant green house gas emissions
- **RA** – Resource Adequacy. A compliance product
- **Thermal RA –** RA from traditional, dispatchable heat-based power generators
- **AQMD** – Air Quality Management District
- **Heat Rate Financial Settlement** – A form of hedge or financial insurance policy that provide a defined amount (eg 100 MW) of coverage against volatility in the energy market; without taking physical deliveryof electricity.

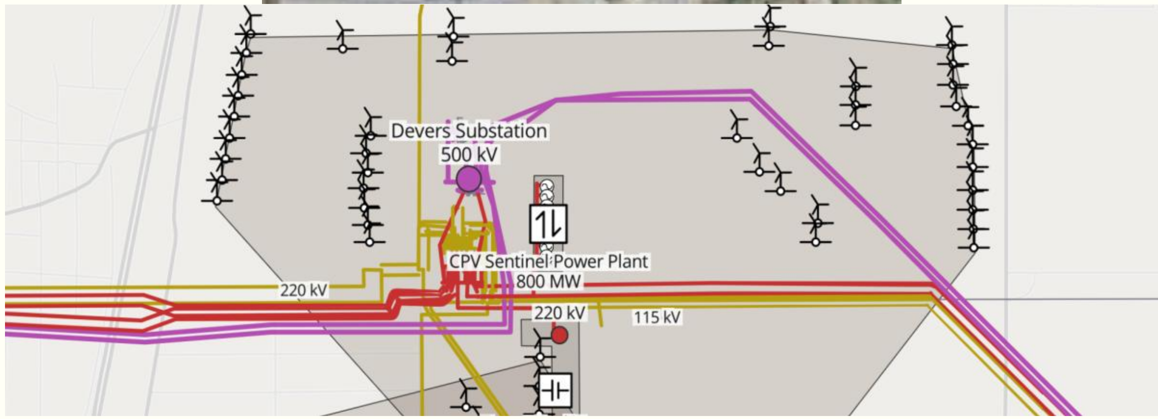
# Introduction

1. Daimond Generating Co (DGC) is proposing the installation of a Battery Energy Storage System (BESS) to hybridize an existing natural gas plant, the Sentinel Plant
   - This hybridization does not extend the useful life of the gas plant. It reducing emissions and enables a longer term transition towards cleaner generation
2. Staff is requesting approval for a suite of transactions associated with the RA and Financial Hedge products
3. Ava has approved two similar battery/gas plant hybridizations and the associated energy transactions historically This project augmentation and set of energy products is the same structure of two prior deals the board approved in 2025 and 2023
   - MRP Malaga was brought forward to the board in September 2023, which augmented the Malaga gas plant with 16MW / 4 hr duration
   - MRP Tracy was brought forward to the board in April 2025, which augmented the Tracy Combined Cycle Power plant with 13.3 MW/8 hr duration
4. The contracting entity under DGC is Sentinel Energy Center, LLC.

# Sentinel Energy Center – Facility Detail

- **Location:** Desert Hot Springs, CA (North Palm Springs)
- **Facility Overview:** 850 MW made up of 8 LMS100 thermal combustion turbine power plants
- Online August of 2013 - Useful life of ~30 years
  - Seeks to add 50 MW, 4 hour duration storage; increases total plant capacity to 900 MW
  - BESS Start Date: 1/1/2031
- **Anticipated impact of adding BESS:**
  - Battery estimated to reduce NOx pollution by ~7% per year; reduce 2,000 MT of $CO_2$ annually
  - Battery development: 24 construction jobs at prevailing wage
  - Battery will secure existing property tax & add over $1.04 million tax annually
  - Adding a Bess is NOT for the purpose of extending the useful life of the Gas Plant



# Proposed Products for Transaction



- Seeking approval for five products with a single counterparty, Sentinel Energy Center, LLC
- All products were offered bilaterally:

| Recommended Products for Transaction | | | |
|---|---|---|---|
| **Product Type** | **Product Description** | **Tenor** | **Purpose** |
| Resource Adequacy (RA) | RA – New BESS resource | 10 years | RA compliance, emissions reduction |
| | RA – existing thermal (gas) plant | 10 years | RA compliance |
| | 2031-32 Year-Ahead RA Call Option | 2 years | Flexibility in forward RA compliance planning; ideal given uncertainty in future compliance obligation |
| Financial Hedges | New BESS T4/B4 Financial Hedge | 10 years | Protection against price volatility |
| | Heat Rate Financial Settlement | 5 years | Protection against volatility and periods of high demand |

- Products offer cost-effective flexibility and/or compliance value to the Ava portfolio
- Supports enhanced renewables integration to the CAISO market
- Expected Initial Contract Delivery Date is January 1st, 2031
- Project has an executed interconnection agreement.
- The contracting entity under DGC is Sentinel Energy Center, LLC.

# CEJA Report & Benefits of Ava Transaction

**Report: "The Noxious Nine"**

- Published by Regenerate California coalition led by California Environmental Justice Alliance (CEJA ) & Sierra Club
- Studied emission of nitrogen dioxides (NOx)
    - 30 California natural gas power plants reviewed
- **Sentinel:** ranked #3
    - Report cites emissions as a concern because area also deals with transportation and agricultural pollution
    - Add'l contributing environmental factors: 3 major freeways (111, 10, 62)
    - Capacity factor very low at 5-7%
    - NOx emissions 16% less than CA Avg peaking plant
    - NOx/MWh is 27% lower than the GT fleet average

https://ceja.org/wp-content/uploads/2024/12/Regenerate-NOx-Emissions-Full-Report.pdf

| **Report Recommendations** | |
|---|---|
| • Reduce Reliance on Gas Plants; develop clean energy alternatives | ✓ |
| Improve Data Reporting | |
| • Make info accessible to Air Quality Mgmt Districts (AQMDs) | ✓ |
| • Inform impacted communities of spikes in NOx | ✓ |
| Increase NOx Monitoring | |
| • AQMDs require add'l NOx ambient monitoring | ✓ |
| Conduct further analysis | |
| • AQMD should perform analysis on add'l sources of NOx beyond gas plants | ? |
| Broaden Impact analysis | |
| • Expand analysis to include other pollutants (ammonia, formaldehyde, PM2.5) | ? |

# Role of BESS in Gas Plant Emissions Reduction



- Adding a BESS to a thermal power plant reduces emissions by decoupling the plant's mechanical operations from immediate grid fluctuations, allowing the turbines to run at peak thermodynamic efficiency.
  - The BESS modifies *how* and *when* the plant interacts with the grid, maximizing efficiency and eliminating fossil fuel burn
- The BESS helps the Gas Plant avoid:
  - Prevents inefficient low-load burn/facility start stop optimization
  - Grid level emissions arbitrage when renewable generation is high

| BESS Reduction Methods at Sentinel Energy Center | | | |
|---|---|---|---|
| **Operational Phase** | **Without BESS** | **With BESS** | **Emission Impact** |
| **Brief Demand Spikes** | Fires up gas turbines; inefficient fuel-heavy startup. | Instantly discharges battery power. | Prevents short-duration turbine emissions. |
| **Midday Solar Surplus** | Ignores grid surplus; wait for evening peak. | Absorbs and stores excess grid renewables. | Displaces fossil fuel generation during peak hours. |

# Importance of Portfolio Diversification

- **Types of Hedge Diversification:**
  - Fixed Price, Index-based Price, Options
  - Generation “shape” or delivery hours

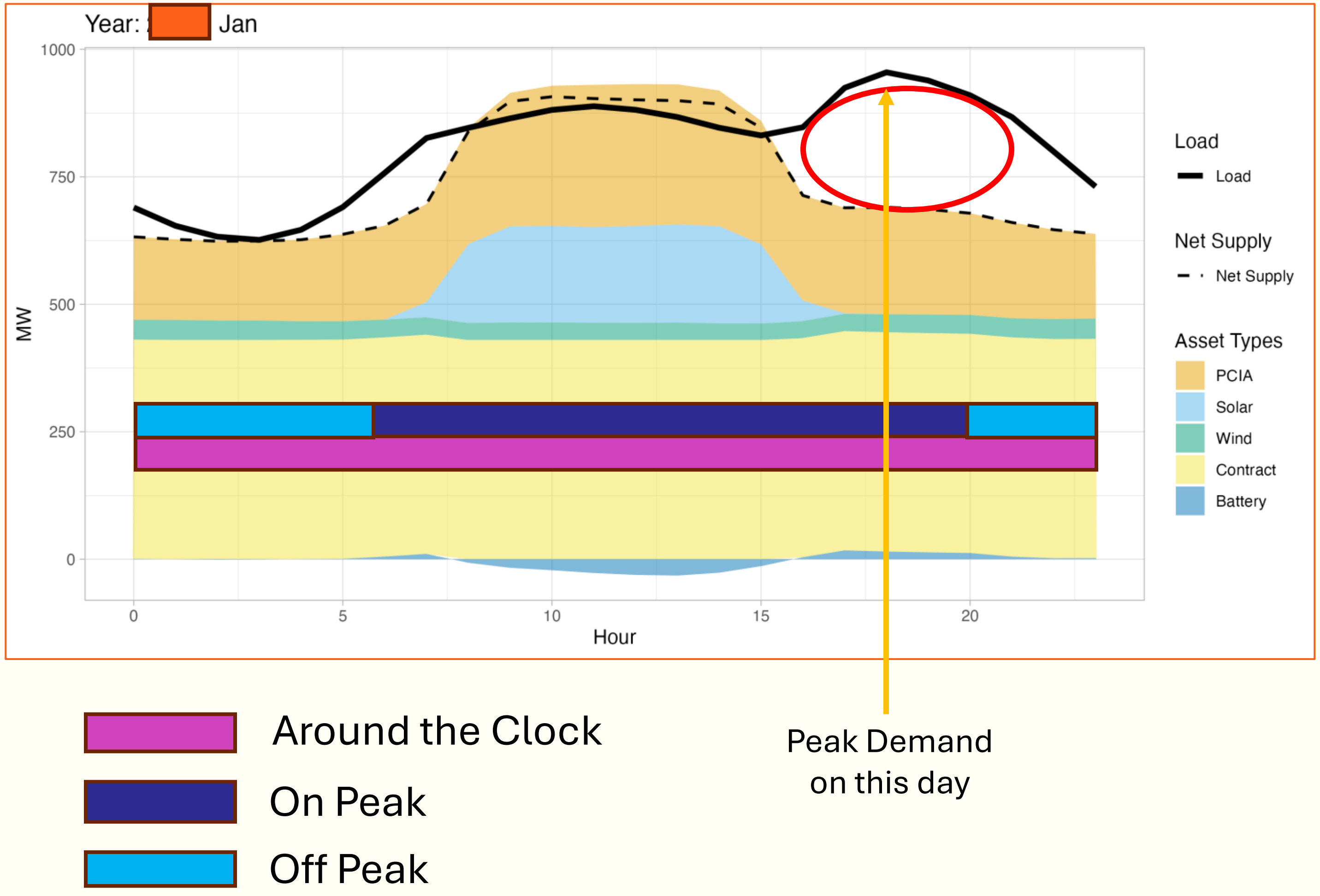
- **Why Diversify:**
  - Mitigate market risk
  - Minimize exposure to market volatility
  - Price stability
  - Technology and associated risk
  - Geographical risk

| Ava’s Portfolio Includes | |
|---|---|
| PPAs | Fixed price; electricity liquidated in CAISO market |
| Battery “tolls” | Fixed price; electricity liquidated in CAISO |
| Traditional short-term financial hedge | Fixed price |
| Proposed Deals | Has fixed price element, index-based element (nat gas mkt prices)<br>Similarity to “Heat Rate Call Option” |

**Heat Rate Call Option:**

- Financial instrument that hedges against electricity market price fluctuation.
- Guarantees power plant a minimum profit margin. Protects Buyer and Seller against fluctuation in fuel prices.
- But power plant gives up potential upside gains in electricity market prices

# Different Types of Hedges

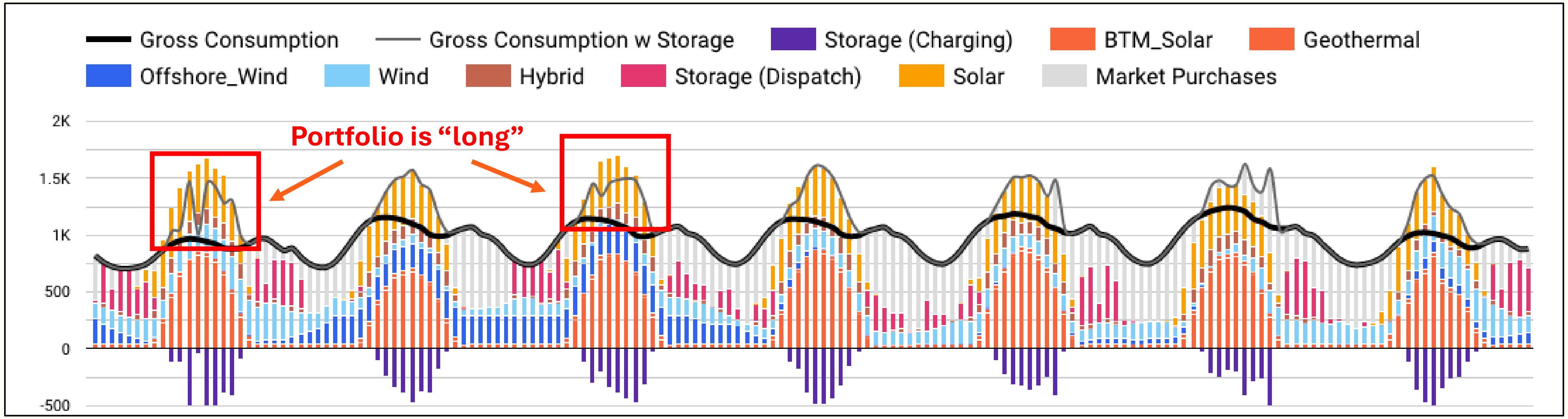



- Ava's exposure to market volatility varies by season, year, & even day of the week.
- Hedges take different forms:
  - Physical generation; e.g. solar farm
  - Storage: shifting supply (e.g. excess solar) or demand (e.g. behind the meter resi storage)
  - Financial: an insurance policy against volatility
- Traditional financial hedges:
  - "Around the clock"
  - "On Peak": Mon-Sat, 6am – 10pm
  - "Off Peak": 12:00am – 6am, 10pm – 12am, and all day Sunday

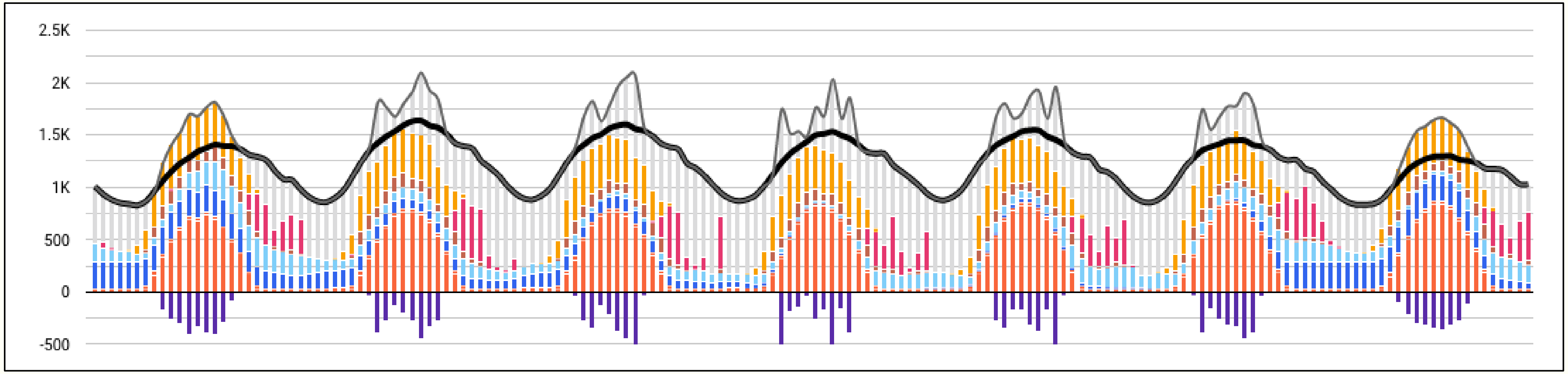
# Example Portfolio - Market Exposure

- **Modeling exhibits a preference for portfolios that, on average, limit Ava's sales of excess electricity into the market. This leads to periods of market reliance in "high load" months to limit exposure to low / negative prices in "lower load" months**

**Sample week – April, 2030**




**Sample week – July, 2030**



# Sentinel and Diamond Generating Corporation (DGC) Company Overview

- Sentinel Energy Center is a joint venture; ownership is 50% by Diamond Generating & 50% by a collective: Meridian Clean Energy, Climate Adaptive Infrastructure, and FJ Management
- Diamond Generating Corporation (DGC) is Mitsubishi Corporation's subsidiary for power business in the U.S. and Latin America.
  - Mitsubishi Corporation (MC) is a 100+ year-old global trading and investment company with a market capitalization of over $100 billion, operating across diverse industries including energy, metals, chemicals, food, and infrastructure.
- DGC's affiliates also serve as Operations & Maintenance Operator and Asset Manager
- DGC is involved in development, construction, and operation of utility-scale power, power solution services, distributed power, power trading, and energy solution services.
- DGC has ownership in 11 operating generation assets in the U.S. and Mexico, with a total output capacity of ~5.2 GW and net equity of ~2.5 GW.
- Other co-owners have significant development and investment experience across renewable energy and thermal generation with over 3 GWs of direct clean energy project investments

# Conclusion

- Staff is seeking board approval on:

The Chief Executive Officer is hereby authorized to negotiate and execute, subject to approval of General Counsel, the following agreements: an ISDA Master Agreement, an EEI Master Agreement, and five confirmations to the Master Agreements , with varying terms: a 50 MW thermal RA confirmation for 10 years, a 50 MW battery RA confirmation for 10 years, a 50 MW battery top 4 / bottom 4 financial settlement for 10 years, a 50 MW year-ahead RA call option for 2 years, and a 100 MW ISDA financial settlement for the implied heat rate transaction for 5 years. The final agreements will be structured similarly to the documents attached to the Staff Report associated with this

Resolution.

**CONFIRMATION**

**RESOURCE ADEQUACY**

**COVER SHEET**

**(Sentinel Energy Center Thermal Resource)**

This Confirmation Resource Adequacy Cover Sheet is entered into between Ava Community Energy Authority, a California joint powers authority ("**Buyer**") and Sentinel Energy Center, LLC, a Delaware limited liability company ("**Seller**"), each individually a "**Party**" and together the "**Parties**," dated as of __________ ("**Effective Date**") by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product. This Transaction is governed by, constitutes part of, and is subject to the terms and provisions of that certain Edison Electric Institute Master Power Purchase and Sale Agreement dated ___________ by and between the Parties, as amended from time to time (the "**Master Agreement**"). The Master Agreement and this Confirmation, including any appendices, exhibits or amendments thereto, shall collectively be referred to herein as the "**Agreement**" and shall constitute a single agreement between the Parties with respect to the Transaction.

**Facility Descriptions:** A natural gas-fired power plant with a nameplate capacity of 850 MW located in North Palm Springs, California, as further described in Exhibit A (the "**Facility**").

**RA Contract Quantity:** 50 MW

**RA Price:** [redacted]

**RA Payment:** RA Price x RA Contract Quantity x 1,000 (kW/MW)

| **Milestone** | **Completion Date** |
|---|---|
| **System RA Start Date** | 1/1/2030 |

| **Facility Specifications** | |
|---|---|
| **Generating Capacity (MW)** | 850 |
| **Point of Interconnection** | |
| **Facility Resource ID** | [redacted] |

**Delivery Period:** Ten (10) Contract Years beginning on the System RA Start Date.

**Product:**

☒ RA Product
☐ Facility Energy
☐ Ancillary Services

**Scheduling Coordinator:** Seller or Seller's designee.

**Payment Security:** By this reference, Exhibit C of the Master Agreement is applicable to this Transaction in the amounts set forth below.

**Seller Payment Security:**

Development Security: N/A

Performance Security: [redacted]

**Schedule P:** The terms and conditions of Schedule P to the Master Agreement are not applicable to this Transaction.

**Cross-Defaults and Termination**: N/A

[1] [redacted].

# TABLE OF CONTENTS

Page

**<u>Exhibits:</u>**

# ARTICLE 1
# DEFINITIONS

1.1 **Contract Definitions**. By this reference, the definitions set forth in Exhibit D of the Master Agreement (Hybrid Tolling Agreement Supplemental Definitions) are hereby incorporated into this Confirmation. In addition, the following terms, when used herein with initial capitalization, shall have the meanings set forth below. In the event of a conflict between the Hybrid Tolling Agreement Supplemental Definitions and the defined terms herein, the defined terms in this Confirmation shall govern.

"**BESS Resource**" means the "Facility" as defined in that certain Confirmation Resource Adequacy (BESS Resource) between the Parties dated as of the Effective Date.

"**Change in Law**" has the meaning set forth in Section 3.4.

"**Commercial Operation Date**" means the "Commercial Operation Date" as defined in that certain Confirmation Resource Adequacy (BESS Resource) between the Parties dated as of the Effective Date.

"**Compliance Obligations**" means, as applicable, RAR, Local RAR, FCR and the Slice-of-Day Requirements.

"**Contract Price**" has the meaning set forth in Section 6.1.

"**Contract Quantity Availability Hours**" means the hours, in the amount set forth in Exhibit A, that will be used in Buyer's compliance filings and which represent the hours the Shown Unit is available for production and satisfaction of the Shown Unit's must-offer obligation.

"**Contract Term**" has the meaning set forth in Section 2.1(a).

"**CPUC Filing Guide**" is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**Cross-collateralized Transactions**" means (a) this Transaction, (b) that certain Transaction pursuant to that certain Confirmation Financial Settlement (BESS Resource) between the Parties dated as of the Effective Date, (c) that certain Transaction pursuant to that certain Confirmation Resource Adequacy (BESS Resource) between the Parties dated as of the Effective Date, and (d) that certain Confirmation Resource Adequacy Option between the Parties dated as of the Effective Date.[3]

"**DAME Transitional Measures**" means the process for the allocation and settlement of overlapping capacity revenue associated with IRU, IRD, RCU, and RCD set forth in Tariff Section 11.2.6.

3 [redacted].

"**Day**" means each calendar day starting at 00:00:00 and ending at 23:59:59.

"**Delivery Period**" has the meaning set forth on the Cover Sheet.

"**Dispatchable Energy**" means the Energy delivered by the Facility.

"**Facility**" has the meaning set forth on the Cover Sheet.

"**FCR**" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"**FCR Attributes**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's FCR.

"**Flexible Capacity Category**" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"**Force Majeure Event**" has the meaning set forth in Section 7.1.

"**Forced Outage**" means an unexpected failure of one or more components of the Facility or any outage of the Transmission System that prevents Seller from providing RA Product and that is not the result of a Force Majeure Event.

"**Governmental Body**" means any federal, state, local, municipal or other government; 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 any court or governmental tribunal.

"**Hold-Back Capacity**" has the meaning set forth in Section 4.6(a).

"**Imbalance Reserves**" means Imbalance Reserves Up ("**IRU**") and Imbalance Reserves Down ("**IRD**"), each having the meaning set forth in the Tariff, and any successor or replacement product or construct.

"**IR Lost Opportunity Costs**" means the opportunity cost component of overlapping Imbalance Reserves revenue as set forth in the Tariff Section 11.2.6.3.

"**Interconnection Agreement**" means the interconnection agreement among Seller (or Seller's Affiliate), the CAISO, and the Participating Transmission Owner, pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the RA Contract Quantity and pursuant to which the Interconnection Facilities have or will be constructed, operated and maintained during the Delivery Period.

"**<u>Interconnection Facilities</u>**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the applicable Interconnection Agreement.

"**<u>Local RAR</u>**" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"**<u>Local RAR Attributes</u>**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's Local RAR.

"**<u>LSE</u>**" means "Load Serving Entity" as such term is used in the Tariff.

"**<u>Maintenance Plan</u>**" has the meaning set forth in Section 4.4(a).

"**<u>Major Overhaul</u>**" has the meaning set forth in Section 4.4(d).

"**<u>Net Qualifying Capacity</u>**" (or "**<u>NQC</u>**") has the meaning set forth in the CAISO Tariff.

"**<u>Notification Deadline</u>**" means twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"**<u>Planned Outage</u>**" has the meaning set forth in Section 4.4.

"**<u>RA Contract Quantity</u>**" has the meaning set forth on the Cover Sheet, as may be reduced pursuant to Section 4.4.

"**<u>RA Payment</u>**" has the meaning set forth on the Cover Sheet.

"**<u>RA Price</u>**" has the meaning set forth on the Cover Sheet.

"**<u>RA Product</u>**" has the meaning set forth in Section 4.2(a).

"**<u>RAR Attributes</u>**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's RAR.

"**<u>RA Shortfall</u>**" has the meaning set forth in Section 4.2(d).

"**RA Shortfall Amount**" shall be determined by first, calculating [redacted] provided, if the CPUC adopts another methodology for calculating a load serving entity's procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. [redacted].

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Reliability Capacity**" means Reliability Capacity Up ("**RCU**") and Reliability Capacity Down ("**RCD**"), each having the meaning set forth in the Tariff, and any successor or replacement product or construct.

"**Relevant Day**" means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Requirements.

"**Replacement RA**" means RA Product that Seller has elected to provide from a Replacement Unit in accordance with Section 4.3.

"**Replacement Unit**" means a generating facility having the same capacity attributes as the Facility, including the Contract Quantity Availability Hours, RAR Attributes, and, as applicable, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified in Section 4.3.

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, including the Slice-of-Day Requirements, but not including Local RAR or FCR.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

"**Shared Facilities Agreements**" has the meaning set forth in Section 5.3.

"**Shared Interconnection Capacity**" has the meaning set forth on the Cover Sheet.

"**Shared Resource(s)**" has the meaning set forth on the Cover Sheet.

"**Shown Unit(s)**" means the Facility or any Replacement Unit providing Replacement RA.

"**Site**" means the applicable real property on which the Facility is or will be located, as further described in Exhibit A.

"**Slice-of-Day**" or "**SOD**" means the CPUC's 24-hour Slice-of-Day Framework established in D.22-06-050 and D.23-04-010 and D. 24-06-004, as may be modified by the CPUC from time to time.

"**Slice-of-Day Requirements**" means the Slice-of-Day framework, or any successor program thereof as may be established and modified by the CPUC from time to time.

"**SOD NQC**" means the lesser of the hourly Net Qualifying Capacity value of the Unit as determined by the CPUC pursuant to the Slice-of-Day Requirements as of the Effective Date and that of the Unit on a subsequent date of determination.

"**Station Power**" means:

(a) the Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) the Energy produced or discharged by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"**Subsequent Buyer**" means the purchaser of RA Product from Buyer in a re-sale of RA Product by Buyer.

"**Substitute Capacity**" means "RA Substitute Capacity" as defined in the CAISO Tariff.

"**Substitute Capacity Request**" has the meaning set forth in Section 4.6(b).

"**Supply Plan**" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.

"**System RA Start Date**" has the meaning set forth in the Cover Sheet.

## ARTICLE 2
## TERM

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Period, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Section 10.11 of the Master Agreement and all indemnity and audit rights shall remain in full force and effect for four (4) years following the termination of this Agreement.

## ARTICLE 3
## PRODUCT

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Period, Buyer will purchase the Product at the Contract Price, and Seller shall supply and deliver to Buyer the Product.

3.2 **Capacity Attributes and RA Shortfall Damages**.

(a) Capacity Attributes other than RA Product. Seller shall own and may assign or sell, in its sole discretion, all right, title and interest to any Capacity Attributes associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the Dispatchable Energy, in each case that currently exist or as may become available due to any change in Law, except to the extent such Capacity Attributes are necessary to deliver the RA Product. Buyer shall cooperate with Seller in connection with Scheduling any such Capacity Attributes sold to third parties.

(b) RA Shortfall Damages. With respect to any RA Shortfall Amount commencing on or after the System RA Start Date, Seller shall pay to Buyer an amount equal to [redacted]

3.3 **RA Payment**. During each month of the Delivery Period, Buyer shall pay the monthly RA Payment to Seller pursuant to the invoicing and payment provisions set forth in Article 6.

3.4 **Change in Law**. If any action by the CPUC, CAISO or any other Governmental Body having jurisdiction, or any change in applicable law, occurring after the Effective Date (including changes to unforced capacity (UCAP) rules or the Slice-of-Day Requirements) results in (i) material changes to Buyer's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be fully counted towards Buyer's Resource Adequacy Requirements (a "**Change in Law**"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent of the Parties under this Confirmation.

## ARTICLE 4
## OBLIGATIONS AND DELIVERIES

4.1 **RA Product Delivery**. Subject to the provisions of this Agreement, during the Delivery Period:

(a) Seller shall supply and deliver the RA Product to Buyer, and Buyer shall accept and pay for the RA Product, in accordance with the terms of this Agreement.

Notwithstanding anything herein to the contrary, Seller shall have no obligation to deliver any Resource Adequacy Benefits prior to the System RA Start Date.

(b) Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with Station Power.

(c) Buyer shall have exclusive rights to the RA Product and all benefits derived therefrom, including the exclusive right to use, market or sell the RA Product and the right to all revenues generated from the use, resale or remarketing of the RA Product.

(d) Throughout the Delivery Period, Buyer and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (i) Buyer's rights to the RA Product for the sole benefit of Buyer or any Subsequent Buyer and (ii) that Buyer may use the RA Product to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, 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 Compliance Obligations, including to demonstrate that the RA satisfies the Slice-of-Day Requirements and can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

(e) Seller shall, and shall cause the Shown Unit's SC to, offer and bid the Product into all applicable CAISO markets in accordance with applicable Resource Adequacy Requirements, including the zero-dollar bidding requirements of CPUC D.05-10-042 for Reliability Capacity products. Seller shall, and shall cause the Shown Unit's SC to, take such actions as are necessary to ensure the allocation of revenues to Buyer in accordance with Section 4.1(g), including making any elections, designations, submissions, certifications, or other requests available under the Tariff or applicable market rules.

(f) Seller is entitled to receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) ancillary services, (iii) energy sales, (iv) IR Lost Opportunity Costs, (v) flexible ramping product, and (vi) black start or reactive power services.

(g) Buyer is entitled to receive and retain all revenues associated with the capacity, availability, resource adequacy, reliability, or similar attributes of the Contract Quantity of Product during the Delivery Period, including any (i) capacity or availability revenues from the Capacity Procurement Mechanism or its successor, (ii) RUC Availability Payments and all revenues associated with Reliability Capacity or any successor product, (iii) all revenues associated with Imbalance Reserves, other than IR Lost Opportunity Costs, and (iv) all other revenues, payments, credits, settlements, compensation, or other economic benefits arising from, attributable to, derived from, or awarded in respect of the capacity, availability, resource adequacy, reliability, flexibility, deliverability, resource sufficiency, or similar attributes of the Contract Quantity, including any successor, replacement, modified, redesignated, restructured, or newly created product, market construct, tariff provision, or compensation mechanism, provided that Buyer shall not be entitled to the revenues and costs described in Section 4.1(f)(i)-(vi) and 4.1(h). Seller shall promptly report receipt of any such revenues to Buyer and shall pay to Buyer, within thirty (30) days of receipt, any such amounts received by Seller or a Shown Unit's SC, owner, or operator. Seller shall, and shall cause the Shown Unit's SC to, implement all procedures available to it to ensure that, to the extent within the control of Seller or the Shown Unit's SC, such revenues are directed to Buyer, including through the use of available CAISO procedures, elections, or mechanisms necessary to effectuate such allocation. Without prejudice to its other rights and remedies, Buyer may set off and recoup any such unpaid amounts against amounts owed to Seller under this Confirmation or the Master Agreement. For the avoidance of doubt, the allocation of revenues under this Section 4.1(g) applies regardless of whether such amounts are initially received by Seller, its SC, or any other entity, and regardless of how such products are characterized under the Tariff or by any Governmental Body. In the event of any overlap, inconsistency, or ambiguity between this Section 4.1(f) and Section 4.1(g), the provisions of Section 4.1(g) shall control. Availability Incentive Payments and Non-Availability Charges are governed by Section 4.1(h) and are not subject to this Section 4.1(g).

(h) Seller shall be entitled to receive and retain all Availability Incentive Payments and shall be responsible for and pay all Non-Availability Charges.

(i) Both Seller and Buyer shall elect, or cause their respective SC to elect, to apply DAME Transitional Measures for the RA Contract Quantity of Product associated with the Facility, prior to the first Compliance Showing. If for any reason the DAME Transitional Measures are not applied to this Agreement, or CAISO no longer provides an allocation methodology identifying the Reliability Capacity, IR Lost Opportunity Costs, and other Imbalance Reserves revenues applicable for purposes of Section 4.1(g) of this Confirmation, then within fifteen (15) Business Days following Seller's receipt of the CAISO Initial Settlement Statement for the applicable Showing Month, Seller shall provide such information through an attestation in the form of Exhibit C, signed by a supervisor or manager of Seller responsible for settlement of energy or capacity products. Seller shall provide updated attestations with respect to any adjustments reflected in subsequent Recalculation Settlement Statements or Settlement Rerun Adjustments within fifteen (15) Business Days after receipt thereof.

(j) Any payment made pursuant to Section 4.1(g) shall be accompanied by reasonable supporting documentation sufficient to verify the calculation of such payment. Upon reasonable request, Seller shall provide records, CAISO statements, settlement data, and other documentation reasonably necessary to verify amounts payable to Buyer under Section 4.1(g).

4.2 **Transfer of Resource Adequacy Benefits**.

(a) Seller shall transfer the RA Contract Quantity and, if applicable, Replacement RA from the Facility or any Replacement Units (the "**RA Product**") to Buyer by submitting Supply Plans to CAISO for the Shown Unit(s).

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the RA Product transferred in accordance with Buyer's instructions for each Showing Month of the Delivery Period, subject to Section 3.2.

(c) If CAISO rejects the Supply Plan or the Resource Adequacy Plan with respect to any part of the RA Product for the Facility in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan for validation before the applicable deadline for the Showing Month.

(d) The RA Product is received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the RA Product for such Showing Month, has been accepted for the RA Product from the Shown Unit(s) by CAISO. Seller has failed to transfer the RA Product under this Section 4.2 if (i) Buyer has elected to submit the RA Product from the Shown Unit(s) in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO due to the acts or omissions of Seller notwithstanding performance of the Parties' obligations in Section 4.2(c) or (ii) Seller fails to submit the volume of RA Product up to the RA Contract Quantity for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month (an "**RA Shortfall**"). Seller will not have failed to properly transfer the RA Product if Buyer fails or chooses not to submit the Shown Unit(s) and the RA Product in its Resource Adequacy Plan with the CPUC or CAISO or submits the incorrect volumes.

(e) Hold-Back Capacity, if any, is deemed RA Product received by Buyer, unless utilized under Section 4.6 as Substitute Capacity, in which case RA Product is considered received according to the timeline requirements therein.

(f) To the extent Seller reduces deliveries of RA Product pursuant to Section 4.4 prior to the Facility being included in the applicable Supply Plan and does not elect to provide Replacement RA, Buyer shall be responsible for the costs associated with procuring Substitute Capacity to the extent Buyer directs Seller to include the Facility in the applicable Supply Plan. To the extent Seller reduces deliveries of Product either pursuant to Section 4.4 or otherwise after the Facility is included in the Supply Plan, Seller shall be responsible for the costs associated with procuring Substitute Capacity.

4.3 **Seller's Option To Provide Alternate Capacity**. If Seller is unable to provide the Resource Adequacy Benefits from the Facility for a Showing Month for any reason, including, without limitation, as provided in Section 4.4, then Seller may, at no cost to Buyer, provide Buyer with Replacement RA from one or more Replacement Units having the same Capacity Attributes as the Facility in an amount such that the total amount of RA Product provided to Buyer from the Facility and any Replacement Unit(s) for each Showing Month is not more than the RA Contract Quantity, provided that in each case:

(a) Seller shall notify Buyer in writing of its intent to provide Replacement RA and shall identify the proposed Replacement Units from which such Replacement RA shall be provided no later than the Notification Deadline for Buyer's Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit, a Supply Plan for each Showing Month and, if applicable, an annual filing, no later than the Notification Deadline for Buyer's Compliance Showings;

(d) If Seller does not comply with the requirements of Sections 4.3(a), (b) and (c) for the applicable Showing Month and, if applicable, an annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Agreement for that Showing Month; and

(e) The designation of any Replacement Unit(s) that meets the requirements of this Section 4.3 shall be automatic. In no event shall a Replacement Unit utilize coal or coal materials as a source of fuel. A Replacement Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Replacement Unit may not be an unspecified import.

(f) Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 4.3, then any such Replacement Units shall be deemed a Shown Unit for purposes of this Agreement for that Showing Month.

4.4 **Reduction in Delivery Obligation**.

(a) Facility Maintenance. Not later than [redacted] before the beginning of each Contract Year the Seller shall prepare and submit to the Buyer its proposed maintenance plan (a "**Maintenance Plan**") for that Contract Year. Seller shall periodically update the Maintenance Plan as necessary or appropriate during the applicable Contract Year. Each outage reflected in the Maintenance Plan (as updated) is referred to herein as a "**Planned Outage**". The Parties shall coordinate, acting reasonably and in good faith, to establish reasonable maintenance schedules for the various components of the Facility. The Planned Outages will follow Prudent Industry Practice.

(b) Scheduled Outages. Between June 1st and September 30th, Seller shall not schedule non-emergency maintenance as a Planned Outage that reduces the energy generation or storage capability of the Facility unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of [redacted], (iii) such outage is required in accordance with Prudent Industry Practice, or (iv) the Parties agree otherwise in writing.

(c) Forced Outage. Seller shall be permitted to reduce deliveries of RA Product during any Forced Outage. Seller shall provide Buyer with prompt written notice and expected duration (if known) of any Forced Outage.

(d) Major Overhauls During Peak Summer Months.[4] Major Overhauls may not be scheduled during [redacted]. As used herein "**Major Overhaul**" means a major overhaul or its equivalent as defined in the applicable original equipment manufacturer's manual.

(e) Reporting Scheduled Maintenance. The Buyer must be informed, in advance, any time Seller is planning to perform scheduled maintenance on the Facility. The advance notification requirements are as follows:

| | |
|---|---|
| [redacted] | [redacted] |

(f) Limited Generation Due to Maintenance. Maintenance may be performed while the Facility is operating at reduced (limited) generation. Maintenance may be performed on the Facility, or a unit thereof, while the other unit(s) thereof is operating.

(g) Allowance for Planned Outages. Outage periods for scheduled maintenance shall not exceed [redacted] in any 12-month period except as described in this paragraph. This allowance may be used in increments of an hour or longer on a consecutive or non-consecutive basis. In the event the full [redacted] Maintenance Hours is not used during a 12-month period, up to [redacted] Maintenance Hours may be rolled over from one 12-month period to the next. Thus, a total of [redacted] is the maximum scheduled maintenance allowance for a 12-month period.[5]

(h) Force Majeure Event. Seller shall be permitted to reduce deliveries of RA Product during any Force Majeure Event.

(i) Health and Safety. Seller shall be permitted to reduce deliveries of RA Product as necessary to maintain health and safety pursuant to Section 5.2.

4.5 **Buyer's Re-Sale of RA Product**.

(a) Buyer may re-sell all or part of the RA Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 4.5. For any such resale, the Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of the Subsequent Buyer. Seller shall, or shall cause the Shown Unit's SC, to follow Buyer's instructions with respect to providing such resold RA Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller shall, and shall cause the Shown Unit's SC to, take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold RA Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Shown Unit's

[4] [redacted]

SC to comply with this Agreement, Seller will be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the RA Product.

(b) Buyer shall notify Seller in writing of any resale of RA Product and the Subsequent Buyer no later than ten (10) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product. Buyer shall notify Seller of any subsequent changes or further resales no later than five (5) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product for re-sale into such market, and Seller and the Shown Unit's SC shall comply with the Buyer's direction and Buyer shall retain and receive all revenues from such re-sale.

(d) Buyer shall have the exclusive right to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Shown Unit's SC shall comply with the Buyer's direction and, to the extent that the CAISO designates the RA Product as CPM Capacity, Buyer shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Buyer, (i) Seller shall not, and shall cause the Shown Unit's SC to not, offer any portion of the RA Product to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the RA Product as CPM Capacity, then Seller shall, and shall cause the Shown Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Buyer of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Shown Unit's SC to not, accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

4.6 **Hold-Back and Substitute Capacity**.

(a) No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Shown Unit's SC not to list, in the Shown Unit's Supply Plan a portion or all of the RA Product for such Showing Month ("**Hold-Back Capacity**"). The amount of RA Product that is the subject of Buyer's request for Hold-Back Capacity shall be deemed RA Product received by Buyer consistent with Section 4.2 for purposes of calculating the payments due hereunder, unless utilized under Section 4.6(b) as Substitute Capacity, then RA Product is considered received according to the requirements therein. Seller shall, or shall cause the Shown Unit's SC to, comply with Buyer's request under this Section 4.6.

(b) In any Showing Month in which Buyer has designated Hold-Back Capacity, Buyer may request, in writing, that Seller make the Hold-Back Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month (such request a "**Substitute Capacity Request**") with the following schedule:

(i) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO prior to the Showing Month (e.g., through the CAISO RA Substitute Capacity

Assessment), the Substitute Capacity Request shall be received by Seller at least two (2) Business Days prior to the applicable CAISO scheduling deadline. Seller shall, or shall cause the Facility's Scheduling Coordinator to, comply with Buyer's request under this Section 4.6(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

(ii) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO after the commencement of the Showing Month, the Substitute Capacity Request shall be received by Seller at least five (5) Business Days before Buyer submits its Substitute Capacity in the CIRA Tool. Seller shall, or shall cause the Replacement Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 4.6(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

4.7 **Interconnection Capacity**. Throughout the Delivery Period, Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the RA Contract Quantity. Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System.

4.8 **CPUC Reporting**. Seller shall cooperate, acting reasonably and in good faith, with Buyer to provide such information as is necessary or appropriate to permit Buyer to comply with those reporting requirements associated with the Product, including those set forth in the CPUC Filing Guide. Such cooperation shall not require Seller to modify its obligations under this Agreement, including with respect to delivery of any Product, calculating the quantity of Product delivered or payment for any Product delivered.

## ARTICLE 5
## MAINTENANCE OF THE FACILITY

5.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Industry Practice relating to the operation and maintenance of the Facility and the generation and sale of RA Product.

5.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give notice to Buyer's emergency contact identified on Exhibit B of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility or suspending the supply of Energy or Dispatchable Energy to Buyer.

5.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating

Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder.

## ARTICLE 6
## INVOICING AND PAYMENT; CREDIT

6.1 **Contract Price**. The contract price (the "**Contract Price**") shall be calculated monthly and shall equal the RA Payment.

6.2 **Statements and Invoicing**. Commencing on the first month of the Delivery Period, Seller shall deliver an invoice to Buyer on or before the tenth ($10^{th}$) day of each month. Each invoice shall (i) include records of the applicable RA Price, the RA Contract Quantity, and the total Contract Price; (ii) reflect any CAISO costs passed through to Buyer and (iii) be in a format reasonably acceptable to Buyer, covering the services for the applicable Showing Month determined in accordance with the applicable provisions of this Agreement. Notwithstanding the foregoing, Seller's initial invoice shall reflect solely the RA Payments associated with the Supply Plans for the delivery of the RA Contract Quantity submitted prior to the System RA Start Date in accordance with this Confirmation. The invoice shall be delivered by electronic mail in accordance with Exhibit B.

6.3 **Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest at the Interest Rate, until settled in full, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twelve (12) months from the date of the invoice.

6.4 **Performance Security**. Notwithstanding anything in the Master Agreement to the contrary, including Exhibit C thereof, if Buyer draws any amount from the Performance Security under any of the Cross-Collateralized Transactions, Seller shall not be required to replenish any such amount, and the Performance Security amount shall be reduced to the remaining balance held by Buyer, if any.

# ARTICLE 7
# FORCE MAJEURE[6]

7.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; epidemic; pandemic; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy the Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (v) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

7.2 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the System RA Start Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written notice to the other Party. In addition,

6 [redacted]

if a Force Majeure Event causes the Facility to be materially damaged such that returning the Facility to the full operational status that existing prior to the Force Majeure Event is reasonably expected to take more than [redacted], Seller may terminate this Agreement upon written notice to Buyer. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b). Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

7.3 **Notice for Force Majeure**. Within two (2) Business Days of the Party becoming aware that a Force Majeure Event will impact the Party's performance under this Agreement, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within [redacted] thereafter the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice shall not constitute a waiver of the Force Majeure Event, but the relief granted shall be based on the date notice is provided rather than the date of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

## ARTICLE 8
## INSURANCE

8.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [redacted]0) per occurrence, and an annual aggregate of not less than [redacted] endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [redacted] Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest (or separation of insureds) provisions.

(b) Employer's Liability Insurance. Seller shall maintain Employers' Liability insurance in a minimum amount not to be less than [redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [redacted] policy limit will apply to each employee for [redacted]

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [redacted] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Evidence of Insurance. Within [redacted] after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

## ARTICLE 9
## MISCELLANEOUS

9.1 **Community Investment**. Seller shall provide a lump sum payment of [redacted] for workforce development and community investment activities. The funds shall be transferred in two installments starting at [redacted] after the Commercial Operation Date and then made on the [redacted] thereafter. Funds will be utilized for workforce development or community investment activities, subject to mutual agreement by the Parties as to the use of the funds (to be agreed before the initial disbursement of funds), which shall not be unreasonably withheld.

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

**AVA COMMUNITY ENERGY AUTHORITY, a California joint powers authority**

By: ___________________________
Name: _________________________
Title: _________________________

**SENTINEL ENERGY CENTER, LLC, a Delaware limited liability company**

By: ______________________________
Name: ____________________________
Title: ____________________________

**Approved as to form:**

_______________________________

## EXHIBIT A

## FACILITY DESCRIPTION

| **Site Name** | Sentinel Energy Center |
|---|---|
| County | Riverside County, CA |
| Site APNs | [redacted] |
| Facility Type | Natural gas-fired plant |
| **Facility** | |
| Description | 850 MW combined cycle gas turbine |
| Generating Capacity (MW) | 850 |
| Heat Rate | [redacted] |
| Resource ID | |

| **Additional Facility Information** | |
|---|---|
| **Resource Name** | Sentinel Energy Center |
| Physical Location | North Palm Springs, CA |
| CAISO Resource ID | [redacted] |
| SCID of Resource | |
| Unit NQC by month (e.g., Jan=50, Feb=65) | [336,04 or 296 after BESS COD] |
| Unit EFC by month (e.g., Jan=30, Feb=50) | [247.24 or 207 after BESS] |
| Unit SOD NQC by month (e.g., Jan=50, Feb=65) | [336,04 or 296 after BESS COD] |
| Unit SOD NQC by hour | [247.24 or 207 after BESS] |
| Resource Type (e.g., gas, hydro, solar, battery, etc.) | Thermal |
| Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3) | 1 |
| TAC Area (e.g., PG&E, SCE) | SCE |
| Prorated Percentage of Unit Factor | [redacted] |
| Prorated Percentage of Unit Flexible Factor | [redacted] |
| Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt) | LA Basin |
| Resource Category as defined by the CPUC (DR) (yes/no) | No |
| Nameplate Capacity for Unit/Pmax | [redacted] |
| Percentage of Nameplate Capacity/Pmax | [redacted] |
| Contract Quantity Availability Hours | All hours |
| Availability Restrictions of Unit, if any (e.g., start and end hour, run time, etc.) | n/a |

# EXHIBIT B

# NOTICES

| Sentinel Energy Center, LLC | Ava Community Energy Authority |
|---|---|
| **All Notices:**<br>[redacted] | **All Notices:**<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Attn: Power Resources<br>Email: powernotices@avaenergy.org |
| **Reference Numbers:**<br>[redacted] | **Reference Numbers:**<br>[redacted] |
| **Invoices:**<br>[redacted] | **Invoices & Payments:**<br>Attn: Jason Bartlett, Senior Finance Manager<br>Phone: (510) 650-7584<br>Email: ap@avaenergy.org |
| **Scheduling:**<br>[redacted] | **Scheduling:**<br>Attn: NCPA c/o Mojtaba Khanabadi, Manager, Portfolio and Pool Administration<br>Phone: (916) 781-4290<br>Email: powerscheduling@avaenergy.org |
| **Confirmations:**<br>[redacted] | **Confirmations:**<br>Attn: Power Resources<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org |
| **Payments:**<br>[redacted] | **Settlements:**<br>Attn: Power Resources<br>Email: powersettlements@avaenergy.org; settlements@ncpa.com |

| | |
|---|---|
| **Wire Transfer:**<br>[redacted] | **Wire Transfer:**<br>[redacted] |
| **Credit and Collections:**<br>[redacted] | **Credit and Collections:**<br>Attn: Rusty Mills, Chief Financial Officer<br>Phone: (916) 337-9704<br>Email: powernotices@avaenergy.org;<br>powersettlements@avaenergy.org;<br>ap@avaenergy.org |
| **With additional Notices of an Event of Default or Potential Event of Default to:**<br>[redacted]<br><br>[redacted] | **With additional Notices of an Event of Default or Potential Event of Default to:**<br>Attn: Power Resources<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org;<br>legal@avaenergy.org<br><br>**With an additional copy to:**<br>Hall Energy Law PC<br>Attn: Stephen Hall<br>Email: steve@hallenergylaw.com |

# EXHIBIT C

# SELLER ATTESTATION

*Ava Draft*
*2 September 2026*

**CONFIRMATION**

**RESOURCE ADEQUACY**

**COVER SHEET**

**(Sentinel BESS Resource)**

This Confirmation Resource Adequacy Cover Sheet is entered into between Ava Community Energy Authority, a California joint powers authority ("**Buyer**") and Sentinel Energy Center, LLC, a Delaware limited liability company ("**Seller**"), each individually a "**Party**" and together the "**Parties**," dated as of ___________ ("**Effective Date**") by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive the Product. This Transaction is governed by, constitutes part of, and is subject to the terms and provisions of that certain Edison Electric Institute Master Power Purchase and Sale Agreement dated ___________ by and between the Parties, as amended from time to time (the "**Master Agreement**"). The Master Agreement and this Confirmation, including any appendices, exhibits or amendments thereto, shall collectively be referred to herein as the "**Agreement**" and shall constitute a single agreement between the Parties with respect to the Transaction.

**Facility Description:** A battery energy storage system (BESS) with a nameplate capacity of 50 MW, located in North Palm Springs, California, as further described in Exhibit A (the "**Facility**").

**RA Contract Quantity:** 50 MW

**RA Price:** [redacted]

**RA Payment:** [redacted]

| Milestone | Completion Date |
|---|---|
| **Expected Commercial Operation Date** | 10/1/2029 |
| **RA Start Date** | 1/1/2030[1] |

| Facility Specifications | |
|---|---|
| **Storage Contract Capacity (MW)** | 50 MW |
| **Storage Energy (MWh)** | 200 MWh |
| **Point of Interconnection** | [redacted] |
| **Facility Resource ID** | [redacted] |

**Delivery Period:** Ten (10) Contract Years following the Commercial Operation Date.

**Product:**

☒ RA Product

[1] [redacted]

- ☐ Facility Energy
- ☐ Ancillary Services

**<u>Scheduling Coordinator</u>:** Seller or Seller's designee.

**<u>Payment Security</u>:** By this reference, Exhibit C of the Master Agreement is applicable to this Transaction in the amounts set forth below.

**Seller Payment Security:**

Development Security: [redacted]

Performance Security: [redacted]

**<u>Schedule P</u>:** The terms and conditions of Schedule P to the Master Agreement are not applicable to this Transaction.

**<u>Cross-Defaults and Termination</u>:** N/A

2 [redacted]

# TABLE OF CONTENTS

**Exhibits:**

# ARTICLE 1
# DEFINITIONS

1.1 **Contract Definitions**. By this reference, the definitions set forth in Exhibit D of the Master Agreement (Hybrid Tolling Agreement Supplemental Definitions) are hereby incorporated into this Confirmation. In addition, the following terms, when used herein with initial capitalization, shall have the meanings set forth below. In the event of a conflict between the Hybrid Tolling Agreement Supplemental Definitions and the defined terms herein, the defined terms in this Confirmation shall govern.

"**Capacity Damages**" has the meaning set forth in Exhibit B.

"**Change in Law**" has the meaning set forth in Section 3.5.

"**Commercial Operation**" means the conditions for commercial operation of the Facility set forth in Section 2.2 and Exhibit B have been satisfied.

"**Commercial Operation Date**" means the later of (i) the Expected Commercial Operation Date or (ii) the date in the COD Certificate on which Seller confirmed to Buyer that Commercial Operation was achieved.

"**Compliance Obligations**" means, as applicable, RAR, Local RAR, FCR and the Slice-of-Day Requirements.

"**Contract Price**" has the meaning set forth in Section 6.1.

"**Contract Quantity Availability Hours**" means the hours, in the amount set forth in Exhibit A, that will be used in Buyer's compliance filings and which represent the hours the Shown Unit is available for production and satisfaction of the Shown Unit's must-offer obligation.

"**Contract Term**" has the meaning set forth in Section 2.1.

"**CPUC Filing Guide**" is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**Cross-collateralized Transactions**" means (a) this Transaction, (b) that certain Transaction pursuant to that certain Confirmation Financial Settlement (BESS Resource) between the Parties dated as of the Effective Date, (c) that certain Transaction pursuant to that certain Confirmation Resource Adequacy (Thermal Resource) between the Parties dated as of the Effective Date, and (d) that certain Confirmation Resource Adequacy Option between the Parties dated as of the Effective Date.[5]

[5] [redacted]

"**Damages Payment**" means the dollar amount that equals the amount of the Development Security.

"**DAME Transitional Measures**" means the process for the allocation and settlement of overlapping capacity revenue associated with IRU, IRD, RCU, and RCD set forth in Tariff Section 11.2.6.

"**Day**" means each calendar day starting at 00:00:00 and ending at 23:59:59.

"**Delivery Period**" has the meaning set forth on the Cover Sheet.

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" has the meaning set forth on the Cover Sheet.

"**Expected Commercial Operation Date**" has the meaning set forth on the Cover Sheet.

"**Facility**" has the meaning set forth on the Cover Sheet.

"**FCR**" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"**FCR Attributes**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's FCR.

"**Flexible Capacity Category**" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"**Force Majeure Event**" has the meaning set forth in Section 7.1.

"**Forced Outage**" means an unexpected failure of one or more components of the Facility or any outage of the Transmission System that prevents Seller from making RA Product available and that is not the result of a Force Majeure Event.

"**Governmental Body**" means any federal, state, local, municipal or other government; 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 any court or governmental tribunal.

"**Guaranteed Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Hold-Back Capacity**" has the meaning set forth in Section 4.6(a).

"**Imbalance Reserves**" means Imbalance Reserves Up ("**IRU**") and Imbalance Reserves Down ("**IRD**"), each having the meaning set forth in the Tariff, and any successor or replacement product or construct.

"**IR Lost Opportunity Costs**" means the opportunity cost component of overlapping Imbalance Reserves revenue as set forth in the Tariff Section 11.2.6.3.

"**Installed Capacity**" means the nameplate capacity of the Facility at the Point of Interconnection, as evidenced by a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto, as it may be updated from time to time by delivery of a subsequent certificate from a Licensed Professional Engineer in the form attached as Exhibit G hereto solely as permitted pursuant to Section 4 of Exhibit B.

"**Interconnection Agreement**" means the interconnection agreements among Seller (or Seller's Affiliate), the CAISO, and the Participating Transmission Owner, pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility no less than the RA Contract Quantity and pursuant to which the applicable Interconnection Facilities have or will be constructed, operated and maintained during the Delivery Period.

"**Interconnection Delay**" means any delay in achieving Commercial Operation due to any delay in obtaining the Interconnection Agreement or completing the Interconnection Facilities under the Interconnection Agreement provided that in either case Seller has taken actions consistent with Prudent Industry Practice to obtain the Interconnection Agreement and cause the applicable Interconnection Facilities to be completed.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the applicable Interconnection Agreement.

"**Licensed Professional Engineer**" means either (i) Power Engineers, Incorporated, an Idaho Corporation, or (ii) the independent engineer retained by the Financing Parties, or on their behalf under customary terms and conditions, in connection with a financing of the Facility, which engineer, or employee or principal thereof (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Facility, (c) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility other than as the independent engineer for the Financing Parties, and (d) is licensed in an appropriate engineering discipline for the required certification being made, or (iii) a person acceptable to Buyer in its reasonable judgment.[6]

"**Local RAR**" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

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[6] [redacted]

"**Local RAR Attributes**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's Local RAR.

"**LSE**" means "Load Serving Entity" as such term is used in the Tariff.

"**Maintenance Plan**" has the meaning set forth in Section 4.4(a).

"**Meter Service Agreement**" has the meaning set forth in the CAISO Tariff.

"**Net Qualifying Capacity**" (or "**NQC**") has the meaning set forth in the CAISO Tariff.

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Notification Deadline**" means twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"**Other Development-Related Delays**" means any delay or reasonably anticipated delay in achieving Commercial Operation due to circumstances beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of Seller (including time to procure equipment, secure permits, or contract for construction), and which is not the result of a Force Majeure Event, or Interconnection Delay.

"**Participating Generator Agreement**" has the meaning set forth in the CAISO Tariff.

"**Participating Load Agreement**" has the meaning set forth in the CAISO Tariff.

"**Planned Outage**" has the meaning set forth in Section 4.4(a).

"**RA Contract Quantity**" has the meaning set forth on the Cover Sheet, as may be reduced pursuant to Section 4.4.

"**RA Payment**" has the meaning set forth on the Cover Sheet.

"**RA Price**" has the meaning set forth on the Cover Sheet.

"**RA Product**" has the meaning set forth in Section 4.2(a).

"**RAR Attributes**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's RAR.

"**RA Shortfall**" has the meaning set forth in Section 4.2(d).

"**RA Shortfall Amount**" shall be determined by first, calculating [redacted] delivered to Buyer by Seller in accordance with Section 4.2 for each hour of the Relevant Day in the applicable Showing Month and, second, [redacted] provided, if the CPUC adopts another methodology for calculating a load serving entity's procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. [redacted]

**"RA Start Date"** has the meaning set forth on the Cover Sheet.[7]

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Relevant Day**" means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Requirements.

"**Reliability Capacity**" means Reliability Capacity Up ("**RCU**") and Reliability Capacity Down ("**RCD**"), each having the meaning set forth in the Tariff, and any successor or replacement product or construct.

"**Replacement RA**" means RA Product that Seller has elected to provide from a Replacement Unit in accordance with Section 4.3.

"**Replacement Unit**" means a resource having the same or better capacity attributes as the Facility, including the Contract Quantity Availability Hours, RAR Attributes, and, as applicable, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified in Section 4.3.

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, including the Slice-of-Day Requirements, but not including Local RAR or FCR.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

"**Shared Facilities Agreements**" has the meaning set forth in Section 5.3.

---

7 [redacted]

"**Shared Interconnection Capacity**" has the meaning set forth on the Cover Sheet.

"**Shown Unit(s)**" means the Facility or any Replacement Unit providing Replacement RA.

"**Site**" means the applicable real property on which the Facility is or will be located, as further described in Exhibit A.

"**Site Control**" has the meaning set forth in the CAISO Tariff.

"**Slice-of-Day**" or "**SOD**" means the CPUC's 24-hour Slice-of-Day Framework established in D.22-06-050 and D.23-04-010 and D. 24-06-004, as may be modified by the CPUC from time to time.

"**Slice-of-Day Requirements**" means the Slice-of-Day framework, or any successor program thereof as may be established and modified by the CPUC from time to time.

"**SOD NQC**" means the lesser of the hourly Net Qualifying Capacity value of the Unit as determined by the CPUC pursuant to the Slice-of-Day Requirements as of the Effective Date and that of the Unit on a subsequent date of determination.

"**Standalone Energy Storage Incentives**" means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction or ownership of the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not an Environmental Attribute associated with charging energy.

"**Station Power**" means:

(a) the Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) the Energy produced or discharged by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"**Storage Capacity**" means the maximum dependable capability of the Facility to discharge Energy at a particular moment.

"**Storage Contract Capacity**" has the meaning set forth on the Cover Sheet.

"**Subsequent Buyer**" means the purchaser of RA Product from Buyer in a re-sale of RA Product by Buyer.

"**Substitute Capacity**" means "RA Substitute Capacity" as defined in the CAISO Tariff.

"**Substitute Capacity Request**" has the meaning set forth in Section 4.6(b).

"**Supply Plan**" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.

## ARTICLE 2
## TERM

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Period, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Section 10.11 of the Master Agreement and all indemnity and audit rights shall remain in full force and effect for four (4) years following the termination of this Agreement.

2.2 **Conditions Precedent**.[8] The Delivery Period shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit F certifying that the technical conditions set forth in Section 5 of Exhibit B have been satisfied, and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit G setting forth the Installed Capacity of the Facility on the Commercial Operation Date;

(b) A Participating Generator Agreement and/or a Participating Load Agreement and a Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) for the Facility between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement for the Facility between Seller (or its Affiliate or a third-party transmission entity, if a sharing arrangement permitted by this Agreement is in effect) and the PTO shall have been executed and delivered and be in full force and effect, including with respect to any required amendments, and a copy of the Interconnection Agreement and any amendments delivered to Buyer;

(d) Seller has completed CAISO certification of the Facility, and has provided a copy of the CAISO certification to Buyer;

(e) Seller has provided Buyer with a copy of written notice from the CAISO confirming that the Facility has achieved Full Capacity Deliverability Status;

[8] CPs under review by Sentinel team.

(f) All applicable regulatory authorizations, approvals and permits required for commencement of operations of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(g) Seller has obtained all real property rights, including Site Control, required for the operation of the Facility during the Delivery Period, and Seller has provided evidence of such rights to Buyer;

(h) Insurance requirements for the Facility pursuant to Article 9 have been met, with evidence provided in writing to Buyer; and

(i) Seller has delivered the Performance Security to Buyer in accordance with Exhibit C of the Master Agreement.

## ARTICLE 3
## PRODUCT

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Period, Buyer will purchase the Product at the Contract Price, and Seller shall supply and deliver to Buyer the Product.

3.2 **Ownership of Standalone Energy Storage Incentives**. Seller shall own and may assign or sell, in its sole discretion, all right, title and interest to any Standalone Energy Storage Incentives associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the charging energy or discharging energy, in each case that currently exist or as may become available due to any change in Law.

3.3 **Capacity Attributes and RA Shortfall Damages**.

(a) Capacity Attributes other than RA Product. Seller shall own and may assign or sell, in its sole discretion, all right, title and interest to any Capacity Attributes associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the charging energy, in each case that currently exist or as may become available due to any change in Law, except to the extent such Capacity Attributes are necessary to deliver the RA Product. Buyer shall cooperate with Seller in connection with Scheduling any such Capacity Attributes sold to third parties.

(b) RA Shortfall Damages. With respect to any RA Shortfall Amount commencing on or after the RA Start Date, Seller shall pay to Buyer an amount equal to the product of the RA Shortfall Amount, multiplied by the [redacted]

3.4 **RA Payment**. During each month of the Delivery Period, Buyer shall pay the monthly RA Payment to Seller pursuant to the invoicing and payment provisions set forth in Article 6.

3.5 **Change in Law**. If any action by the CPUC, CAISO or any other Governmental Body having jurisdiction, or any change in applicable law, occurring after the Effective Date (including changes to unforced capacity (UCAP) rules or the Slice-of-Day Requirements) results in (i) material changes to Buyer's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be fully counted towards Buyer's Resource Adequacy Requirements (a "**Change in Law**"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent of the Parties under this Confirmation.

## ARTICLE 4
## OBLIGATIONS AND DELIVERIES

4.1 **RA Product Delivery**. Subject to the provisions of this Agreement, during the Delivery Period:

(a) Seller shall supply and deliver the RA Product to Buyer, and Buyer shall accept and pay for the RA Product, in accordance with the terms of this Agreement. Notwithstanding anything herein to the contrary, Seller shall have no obligation to deliver any Resource Adequacy Benefits prior to the RA Start Date.

(b) Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with Station Power.

(c) Buyer shall have exclusive rights to the RA Product and all benefits derived therefrom, including the exclusive right to use, market or sell the RA Product and the right to all revenues generated from the use, resale or remarketing of the RA Product.

(d) Throughout the Delivery Period, Buyer and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (i) Buyer's rights to the RA Product for the sole benefit of Buyer or any Subsequent Buyer and (ii) that Buyer may use the RA Product to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, 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 Compliance Obligations, including to demonstrate that the RA satisfies the Slice-of-Day Requirements and can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

(e) Seller shall, and shall cause the Shown Unit's SC to, offer and bid the Product into all applicable CAISO markets in accordance with applicable Resource Adequacy Requirements, including the zero-dollar bidding requirements of CPUC D.05-10-042 for Reliability Capacity products. Seller shall, and shall cause the Shown Unit's SC to, take such actions as are necessary to ensure the allocation of revenues to Buyer in accordance with Section 4.1(g), including making any elections, designations, submissions, certifications, or other requests available under the Tariff or applicable market rules.

(f) Seller is entitled to receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) ancillary services, (iii) energy sales, (iv) IR Lost Opportunity Costs, (v) flexible ramping product, and (vi) black start or reactive power services.

(g) Buyer is entitled to receive and retain all revenues associated with the capacity, availability, resource adequacy, reliability, or similar attributes of the Contract Quantity of Product during the Delivery Period, including any (i) capacity or availability revenues from the Capacity Procurement Mechanism or its successor, (ii) RUC Availability Payments and all revenues associated with Reliability Capacity or any successor product, (iii) all revenues associated with Imbalance Reserves, other than IR Lost Opportunity Costs, and (iv) all other revenues, payments, credits, settlements, compensation, or other economic benefits arising from, attributable to, derived from, or awarded in respect of the capacity, availability, resource adequacy, reliability, flexibility, deliverability, resource sufficiency, or similar attributes of the Contract Quantity, including any successor, replacement, modified, redesignated, restructured, or newly created product, market construct, tariff provision, or compensation mechanism, provided that Buyer shall not be entitled to the revenues and costs described in Section 4.1(f)(i)-(vi) and 4.1(h). Seller shall promptly report receipt of any such revenues to Buyer and shall pay to Buyer, within thirty (30) days of receipt, any such amounts received by Seller or a Shown Unit's SC, owner, or operator. Seller shall, and shall cause the Shown Unit's SC to, implement all procedures available to it to ensure that, to the extent within the control of Seller or the Shown Unit's SC, such revenues are directed to Buyer, including through the use of available CAISO procedures, elections, or mechanisms necessary to effectuate such allocation. Without prejudice to its other rights and remedies, Buyer may set off and recoup any such unpaid amounts against amounts owed to Seller under this Confirmation or the Master Agreement. For the avoidance of doubt, the allocation of revenues under this Section 4.1(g) applies regardless of whether such amounts are initially received by Seller, its SC, or any other entity, and regardless of how such products are characterized under the Tariff or by any Governmental Body. In the event of any overlap, inconsistency, or ambiguity between Section 4.1(f) and Section 4.1(g), the provisions of this Section 4.1(g) shall control. Availability Incentive Payments and Non-Availability Charges are governed by Section 4.1(h) and are not subject to this Section 4.1(g).

(h) Seller shall be entitled to receive and retain all Availability Incentive Payments and shall be responsible for and pay all Non-Availability Charges.

(i) Both Seller and Buyer shall elect, or cause their respective SCs to elect, to apply DAME Transitional Measures for the RA Contract Quantity of Product associated with the Facility, prior to the first Compliance Showing. If for any reason the DAME Transitional Measures are not applied to this Agreement, or CAISO no longer provides an allocation methodology identifying the Reliability Capacity, IR Lost Opportunity Costs, and other Imbalance Reserves revenues applicable for purposes of Section 4.1(g) of this Confirmation, then within fifteen (15) Business Days following Seller's receipt of the CAISO Initial Settlement Statement for the applicable Showing Month, Seller shall provide such information through an attestation in the form of Exhibit C, signed by a supervisor or manager of Seller responsible for settlement of energy or capacity products. Seller shall provide updated attestations with respect to any adjustments reflected in subsequent Recalculation Settlement Statements or Settlement Rerun Adjustments within fifteen (15) Business Days after receipt thereof.

(j) Any payment made pursuant to Section 4.1(g) shall be accompanied by reasonable supporting documentation sufficient to verify the calculation of such payment. Upon reasonable request, Seller shall provide records, CAISO statements, settlement data, and other documentation reasonably necessary to verify amounts payable to Buyer under Section 4.1(g).

4.2 **Transfer of Resource Adequacy Benefits**.

(a) Seller shall transfer the RA Contract Quantity and, if applicable, Replacement RA from the Facility or any Replacement Units (the "**RA Product**") to Buyer by submitting Supply Plans to CAISO for the Shown Unit(s).

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the RA Product transferred in accordance with Buyer's instructions for each Showing Month of the Delivery Period, subject to Section 3.3.

(c) If CAISO rejects the Supply Plan or the Resource Adequacy Plan with respect to any part of the RA Product for the Facility in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan for validation before the applicable deadline for the Showing Month.

(d) The RA Product is received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the RA Product for such Showing Month, has been accepted for the RA Product from the Shown Unit(s) by CAISO. Seller has failed to transfer the RA Product under this Section 4.2 if (i) Buyer has elected to submit the RA Product from the Shown Unit(s) in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO due to the acts or omissions of Seller notwithstanding performance of the Parties' obligations in Section 4.2(c) or (ii) Seller fails to submit the volume of RA Product up to the RA Contract Quantity for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month (an "**RA Shortfall**"). Seller will not have failed to properly transfer the RA Product if Buyer fails or chooses not to submit the Shown Unit(s) and the RA Product in its Resource Adequacy Plan with the CPUC or CAISO or submits the incorrect volumes.

(e) Hold-Back Capacity, if any, is deemed RA Product received by Buyer, unless utilized under Section 4.6 as Substitute Capacity, in which case RA Product is considered received according to the timeline requirements therein.

(f) To the extent Seller reduces deliveries of RA Product pursuant to Section 4.4 prior to the Facility being included in the applicable Supply Plan and does not elect to provide Replacement RA, Buyer shall be responsible for the costs associated with procuring Substitute Capacity to the extent Buyer directs Seller to include the Facility in the applicable Supply Plan. To the extent Seller reduces deliveries of Product either pursuant to Section 4.4 or otherwise after the Facility is included in the Supply Plan, Seller shall be responsible for the costs associated with procuring Substitute Capacity.

4.3 **Seller's Option To Provide Alternate Capacity**. If Seller is unable to provide the Resource Adequacy Benefits from the Facility for a Showing Month for any reason, including, without limitation, as provided in Section 4.4, then Seller may, at no cost to Buyer, provide Buyer with Replacement RA from one or more Replacement Units in an amount such that the total amount of RA Product provided to Buyer from the Facility and any Replacement Unit(s) for each Showing Month is not more than the RA Contract Quantity, provided that in each case:

(a) Seller shall notify Buyer in writing of its intent to provide Replacement RA and shall identify the proposed Replacement Units from which such Replacement RA shall be provided no later than the Notification Deadline for Buyer's Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit, a Supply Plan for each Showing Month and, if applicable, an annual filing, no later than the Notification Deadline for Buyer's Compliance Showings;

(d) If Seller does not comply with the requirements of Sections 4.3(a), (b) and (c) for the applicable Showing Month and, if applicable, an annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Agreement for that Showing Month; and

(e) The designation of any Replacement Unit(s) that meets the requirements of this Section 4.3 shall be automatic. In no event shall a Replacement Unit utilize coal or coal materials as a source of fuel. A Replacement Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Replacement Unit may not be an unspecified import.

(f) Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 4.3, then any such Replacement Units shall be deemed a Shown Unit for purposes of this Agreement for that Showing Month.

4.4 **Reduction in Delivery Obligation**.

(a) Facility Maintenance. Not later than ninety (90) days before the beginning of each Contract Year the Seller shall prepare and submit to the Buyer its proposed maintenance plan (a "**Maintenance Plan**") for that Contract Year; provided that the Maintenance Plan for the first Contract Year shall be prepared and submitted by the Seller to the Buyer not later than sixty (60) days after the Commercial Operation Date. Seller shall periodically update the Maintenance Plan as necessary or appropriate during the applicable Contract Year. Each outage reflected in the Maintenance Plan (as updated) is referred to herein as a "**Planned Outage**". The Parties shall coordinate, acting reasonably and in good faith, to establish reasonable maintenance schedules for the various components of the Facility. The Planned Outages will follow Prudent Industry Practice.

(b) Scheduled Outages. Between June 1st and September 30th, Seller shall not schedule non-emergency maintenance as a Planned Outage that reduces the energy generation or storage capability of the Facility unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st and September 30th, (iii) such outage is required in accordance with Prudent Industry Practice, or (iv) the Parties agree otherwise in writing.

(c) Forced Outage. Seller shall be permitted to reduce deliveries of RA Product during any Forced Outage. Seller shall provide Buyer with prompt Notice and expected duration (if known) of any Forced Outage.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of RA Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of RA Product as necessary to maintain health and safety pursuant to Section 5.2.

4.5 **Buyer's Re-Sale of RA Product**.

(a) Buyer may re-sell all or part of the RA Product; provided that any such re- sale must not increase Seller's obligations hereunder other than as set forth in this Section 4.5. For any such resale, the Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of the Subsequent Buyer. Seller shall, or shall cause the Shown Unit's SC, to follow Buyer's instructions with respect to providing such resold RA Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller shall, and shall cause the Shown Unit's SC to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold RA Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Shown Unit's SC to comply with this Agreement, Seller will be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the RA Product.

(b) Buyer shall notify Seller in writing of any resale of RA Product and the Subsequent Buyer no later than ten (10) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product. Buyer shall notify Seller of any subsequent changes or further resales no later than five (5) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product for re-sale into such market, and Seller and the Shown Unit's SC shall comply with the Buyer's direction and Buyer shall retain and receive all revenues from such re-sale.

(d) Buyer shall have the exclusive right to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Shown Unit's SC shall comply with the Buyer's direction and, to the extent that the CAISO designates the RA Product as CPM Capacity, Buyer shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Buyer, (i) Seller shall not, and shall cause the Shown Unit's SC to not, offer any portion of the RA Product to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the RA Product as CPM Capacity, then Seller shall, and shall cause the Shown Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Buyer of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Shown Unit's SC to not, accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

4.6 **Hold-Back and Substitute Capacity**.

(a) No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Shown Unit's SC not to list, in the Shown Unit's Supply Plan a portion or all of the RA Product for such Showing Month ("**Hold-Back Capacity**"). The amount of RA Product that is the subject of Buyer's request for Hold-Back Capacity shall be deemed RA Product received by Buyer consistent with Section 4.2 for purposes of calculating the payments due hereunder, unless utilized under Section 4.6(b) as Substitute Capacity, then RA Product is considered received according to the requirements therein. Seller shall, or shall cause the Shown Unit's SC to, comply with Buyer's request under this Section 4.6.

(b) In any Showing Month in which Buyer has designated Hold-Back Capacity, Buyer may request, in writing, that Seller make the Hold-Back Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month (such request a "**Substitute Capacity Request**") with the following schedule:

(i) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO prior to the Showing Month (e.g., through the CAISO RA Substitute Capacity Assessment), the Substitute Capacity Request shall be received by Seller at least two (2) Business Days prior to the applicable CAISO scheduling deadline. Seller shall, or shall cause the Facility's Scheduling Coordinator to, comply with Buyer's request under this Section 4.6(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

(ii) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO after the commencement of the Showing Month, the Substitute Capacity Request shall be received by Seller at least five (5) Business Days before Buyer submits its Substitute Capacity in the CIRA Tool. Seller shall, or shall cause the Replacement Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 4.6(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

4.7 **Interconnection Capacity**. Throughout the Delivery Period, Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity. Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System.

4.8 **CPUC Reporting**. Seller shall cooperate, acting reasonably and in good faith, with Buyer to provide such information as is necessary or appropriate to permit Buyer to comply with those reporting requirements associated with the Product, including those set forth in the CPUC Filing Guide. Such cooperation shall not require Seller to modify its obligations under this Agreement, including with respect to delivery of any Product, calculating the quantity of Product delivered or payment for any Product delivered.

## ARTICLE 5
## MAINTENANCE OF THE FACILITY

5.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Industry Practice relating to the operation and maintenance of the Facility and the generation and sale of RA Product.

5.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give notice to Buyer's emergency contact identified on Exhibit D of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility or suspending the supply of Energy to Buyer.

5.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder.

## ARTICLE 6
## INVOICING AND PAYMENT; CREDIT

6.1 **Contract Price**. The contract price (the "**Contract Price**") shall be calculated monthly and shall equal the RA Payment.

6.2 **Statements and Invoicing**. Commencing on the first month of the Delivery Period, Seller shall deliver an invoice to Buyer on or before the tenth ($10^{th}$) day of each month. Each invoice shall (i) include records of the applicable RA Price, the RA Contract Quantity, and the total Contract Price; (ii) reflect any CAISO costs passed through to Buyer and (iii) be in a format reasonably acceptable to Buyer, covering the services for the applicable Showing Month determined in accordance with the applicable provisions of this Agreement. The invoice shall be delivered by electronic mail in accordance with Exhibit D.

6.3 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a storage capacity test conducted as mutually agreed upon, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest at the Interest Rate until settled in full, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twelve (12) months from the date of the invoice.

6.4 **Performance Security**. [redacted]

## ARTICLE 7
## FORCE MAJEURE[9]

7.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from

[9] [redacted]

complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; epidemic; pandemic; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy the Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (v) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

7.2 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written notice to the other Party. In addition, if a Force Majeure Event causes the Facility to be materially damaged such that returning the Facility to the full operational status that existing prior to the Force Majeure Event is reasonably expected to take more than twelve (12) months, Seller may terminate this Agreement upon written notice to Buyer. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b). Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 8.1 and receive a Damages Payment upon exercise of Buyer's default right pursuant to Section 8.2.

7.3 **Notice for Force Majeure**. Within two (2) Business Days of the Party becoming aware that a Force Majeure Event will impact the Party's performance under this Agreement, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks thereafter the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice shall not constitute a waiver of the Force Majeure Event, but the relief granted shall be based on the date notice is provided rather than the date of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

## ARTICLE 8
## DEFAULTS; REMEDIES; TERMINATION

8.1 **Event of Default**. Notwithstanding anything in the Master Agreement or this Confirmation to the contrary, and solely for purposes of this Transaction, Seller's failure to achieve Commercial Operation for the Facility on or before the Guaranteed Commercial Operation Date shall constitute an Event of Default by Seller with respect to this Transaction only.

8.2 **Remedies; Declaration of Early Termination Date**.

(a) If an Event of Default as described in Section 8.1 has occurred and is continuing, Buyer may, by Notice to Seller, designate a day, no earlier than the day such Notice is deemed received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Transaction only (the "Early Termination Date"). Effective as of the Early Termination Date, this Transaction shall terminate and shall be the sole Terminated Transaction resulting from such Event of Default. For the avoidance of doubt, the occurrence of such Event of Default shall not result in an Event of Default, Early Termination Date, Terminated Transaction, acceleration, close-out, liquidation, setoff, suspension or termination of the Master Agreement or any other confirmation or Transaction between the Parties.

(b) Upon such termination, Buyer may accelerate all amounts owing between the Parties under this Transaction and collect as liquidated damages the Damages Payment, including by drawing on or applying the Development Security. Buyer may also withhold payments due to Seller under this Transaction and suspend performance under this Transaction. Payment by Seller of the Damages Payment shall constitute liquidated damages and Buyer's sole and exclusive remedy for the termination of this Transaction and the Event of Default described in Section 8.1, except for Buyer's rights to receive amounts accrued and unpaid under this Transaction before termination and to draw on or apply Development Security to the Damages Payment.

## ARTICLE 9
## INSURANCE

9.1 **Insurance**.[10]

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [redacted] per occurrence, and an annual aggregate of not less than [redacted], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [redacted] Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest (or separation of insureds) provisions.

(b) Employer's Liability Insurance. Seller shall maintain Employers' Liability insurance in a minimum amount not to be less than [redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [redacted] policy limit will apply to each employee for [redacted]

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [redacted] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

*[Signatures on following page]*

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10 [redacted]

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

**SENTINEL ENERGY CENTER, LLC,**
**a Delaware limited liability company**

By: ____________________________
Name: __________________________
Title: __________________________

**AVA COMMUNITY ENERGY AUTHORITY,**
**a California joint powers authority**

By: ____________________________
Name: __________________________
Title: __________________________

**Approved as to form:**

________________________________

# EXHIBIT A

# FACILITY DESCRIPTION

| **Site Name** | Sentinel |
|---|---|
| County | Riverside County, CA |
| Site APNs | [redacted] |
| Facility Type | Battery energy storage system (BESS) |
| **Facility** | |
| Type | Lithium Ion Battery |
| Storage Capacity (MW) | 50 |
| Maximum Charging Capacity (MWh) | 200 |
| Maximum Discharging Capacity (MWh) | 200 |
| Maximum Stored Energy Level (MWh) | 200 |
| Resource ID | To be assigned by CAISO |

| **Additional Facility Information** | |
|---|---|
| **Resource Name** | Sentinel Energy Center |
| Physical Location | North Palm Springs, CA |
| CAISO Resource ID | [redacted] |
| SCID of Resource | [redacted] |
| Unit NQC by month (e.g., Jan=50, Feb=65) | 50 |
| Unit EFC by month (e.g., Jan=30, Feb=50) | 50 |
| Unit SOD NQC by month (e.g., Jan=50, Feb=65) | 50 |
| Unit SOD NQC by hour | 50 |
| Resource Type (e.g., gas, hydro, solar, battery, etc.) | BESS |
| Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3) | 1 |
| TAC Area (e.g., PG&E, SCE) | 100% |
| Prorated Percentage of Unit Factor | [redacted] |
| Prorated Percentage of Unit Flexible Factor | [redacted] |
| Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt) | LA Basin |
| Resource Category as defined by the CPUC (DR) (yes/no) | No |
| Nameplate Capacity for Unit/Pmax | 50 |
| Percentage of Nameplate Capacity/Pmax | 100% |
| Contract Quantity Availability Hours | All hours |
| Availability Restrictions of Unit, if any (e.g., start and end hour, run time, etc.) | n/a |
| | |
| **Additional information for battery and other storage resources:** | |
| Paired resource (yes/no) | No |

| | |
|---|---|
| If a paired resource, does it charge exclusively from the paired resource or is grid charging allowed? | |
| Efficiency Rate | [redacted] |
| Co-located or hybrid resource | Stand-alone |
| Interconnection limit (if part of co-located or hybrid resource) | [redacted] |
| Number of cycles per day | [redacted] |
| | |

# EXHIBIT B

## COMMERCIAL OPERATION

1. Commercial Operation.

   a. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of this Agreement and provided Notice to Buyer substantially in the form of Exhibit F (the "**COD Certificate**"), (ii) Seller has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation and provided Notice to Buyer to that effect and (iii) Buyer has acknowledged to Seller in writing that the Commercial Operation Date has been achieved.

   b. Seller shall cause Commercial Operation for the Facility to occur by October 1, 2029, as such date may be extended by the Development Cure Period, the "**Guaranteed Commercial Operation Date**". Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

2. Extension of the Guaranteed Commercial Operation Date. Seller may, on written notice to Buyer, extend the Guaranteed Commercial Operation Date for Other Development-Related Delays for up to [redacted] In addition, the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:

   a. a Force Majeure Event;

   b. Interconnection Delay; and

   c. Event of Default of Buyer.

3. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed two hundred ten (210) days, for any reason, including a Force Majeure Event. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay.

4. Failure to Reach Storage Contract Capacity. If, at Commercial Operation, the Installed Capacity is less than [redacted] of the Storage Contract Capacity, Seller shall have [redacted] after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) [redacted] of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit K hereto specifying the new Installed Capacity. If Seller fails to construct the Storage

Contract Capacity by such date, Seller shall pay damages to Buyer, in an amount equal to [redacted] and the Storage Contract Capacity and other applicable portions of the Agreement, including the Storage Contract Capacity table in the Cover Sheet, shall be adjusted accordingly.

5. Commercial Operation Conditions: For purposes of the COD Certificate required under Section 2.2(a), the Licensed Professional Engineer shall certify that the following conditions are satisfied with respect to the Facility:

a. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

b. Seller has installed the equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.

c. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

d. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.

e. The Facility is fully capable of charging, storing and discharging energy and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable operating procedures.

f. Authorization was received from the CAISO and the Participating Transmission Owner to operate the Facility in parallel with the Transmission System.

g. The Transmission Provider has provided documentation supporting Commercial Operation.

h. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

# EXHIBIT C

# SELLER ATTESTATION

# EXHIBIT D

## NOTICES

| Sentinel Energy Center, LLC | Ava Community Energy Authority |
|---|---|
| **All Notices:**<br>[redacted] | **All Notices:**<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Attn: Power Resources<br>Email: powernotices@avaenergy.org |
| **Reference Numbers:**<br>[redacted] | **Reference Numbers:**<br>[redacted]0 |
| **Invoices:**<br>[redacted] | **Invoices & Payments:**<br>Attn: Jason Bartlett, Senior Finance Manager<br>Phone: (510) 650-7584<br>Email: ap@avaenergy.org |
| **Scheduling:**<br>[redacted] | **Scheduling:**<br>Attn: NCPA c/o Mojtaba Khanabadi, Manager, Portfolio and Pool Administration<br>Phone: (916) 781-4290<br>Email: powerscheduling@avaenergy.org |
| **Confirmations:**<br>[redacted] | **Confirmations:**<br>Attn: Power Resources<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org |
| **Payments:**<br>[redacted] | **Settlements:**<br>Attn: Power Resources<br>Email: powersettlements@avaenergy.org; settlements@ncpa.com |

| | |
|---|---|
| **Wire Transfer:**<br>[redacted] | **Wire Transfer:**<br>[redacted] |
| **Credit and Collections:**<br>[redacted] | **Credit and Collections:**<br>Attn: Rusty Mills, Chief Financial Officer<br>Phone: (916) 337-9704<br>Email: powernotices@avaenergy.org; powersettlements@avaenergy.org; ap@avaenergy.org |
| **With additional Notices of an Event of Default or Potential Event of Default to:**<br>[redacted]<br><br>[redacted] | **With additional Notices of an Event of Default or Potential Event of Default to:**<br>Attn: Power Resources<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org; legal@avaenergy.org<br><br>**With an additional copy to:**<br>Hall Energy Law PC<br>Attn: Stephen Hall<br>Email: steve@hallenergylaw.com |

# EXHIBIT E

# RESERVED

# EXHIBIT F

## FORM OF COMMERCIAL OPERATION DATE CERTIFICATE[11]

This certification ("**Certification**") of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER]* ("**Engineer**") to Ava Community Energy Authority ("**Buyer**") in accordance with the terms of that certain Confirmation- Resource Adequacy Cover Sheet (Sentinel - BESS Resource) dated ____________ by and between Sentinel Energy Center, LLC ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of *[DATE],* Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. The equipment for the Facility has been installed with a nameplate capacity of no less than [redacted] of the Storage Contract Capacity.
3. All equipment has been commissioned in accordance with its respective manufacturer's specifications.
4. The functionality of the Facility' communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO has been demonstrated.
5. The Facility is fully capable of charging, storing and discharging energy up to no less than [redacted] of the Storage Contract Capacity.
6. Authorization to parallel the Facility with the Transmission System was obtained from the Participating Transmission Owner and the CAISO.
7. The Transmission Provider has granted any necessary approvals for Commercial Operation.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of ________, 2,0__.

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

[11] Under technical review by SEC.

Printed Name: ___________________________
Title: ___________________________________

# EXHIBIT G

## FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by *[LICENSED PROFESSIONAL ENGINEER]* ("**Engineer**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Confirmation-Resource Adequacy Cover Sheet (Sentinel- BESS Resource) dated [ ] by and between Sentinel Energy Center, LLC ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

> The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for four (4) hours to discharge electric energy of ___ MW AC to the Delivery Point for the Facility (the "**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of ________, 2,0__.

[LICENSED PROFESSIONAL ENGINEER]

By: ___________________________________
Printed Name: __________________________
Title: __________________________________

*Ava Draft*
*2 September 2026*

# CONFIRMATION
# FINANCIAL SETTLEMENT
# COVER SHEET
# (BESS Resource)[1]

This Confirmation Financial Settlement Cover Sheet ("**Confirmation**") is entered into between Ava Community Energy Authority, a California joint powers authority ("**Buyer**") and Sentinel Energy Center, LLC, a Delaware limited liability company ("**Seller**"), each individually a "**Party**" and together the "**Parties**," dated as of ___________ ("**Effective Date**") and governs the terms for a financial settlement based on the value of the Energy Settlement Quantity, without any obligation for the physical delivery of Energy to Buyer. This Transaction is governed by, constitutes part of, and is subject to the terms and provisions of that certain Edison Electric Institute Master Power Purchase and Sale Agreement dated _________, by and between the Parties, as amended from time to time (the "**Master Agreement**"). The Master Agreement and this Confirmation, including any appendices, exhibits or amendments thereto, shall collectively be referred to herein as the "**Agreement**" and shall constitute a single agreement between the Parties with respect to the Transaction.

**Calculation Agent:** Seller

**Energy Settlement Quantity:** 50 MW

**Contract Price:** [redacted]

**Settlement Point**: [redacted]

**Settlement Term**: Ten (10) Contract Years commencing on the Start Date.

**Payment Security:** By this reference, Exhibit C of the Master Agreement is applicable to this Transaction in the amounts set forth below.

---

[1] [redacted]

[2] [redacted]

**Seller Payment Security:**[3]

Development Security: [redacted]

Performance Security: [redacted]

**Buyer Payment Security:** N/A

**<u>Schedule P</u>:** The terms and conditions of Schedule P to the Master Agreement are not applicable to this Transaction.

**<u>Cross-Defaults and Termination</u>:** N/A

3 [redacted].

# TABLE OF CONTENTS

## ARTICLE 1
## DEFINITIONS

1.1 **Contract Definitions**. By this reference, the definitions set forth in Exhibit D of the Master Agreement (Hybrid Tolling Agreement Supplemental Definitions) are hereby incorporated into this Confirmation. In addition, the following terms, when used herein with initial capitalization, shall have the meanings set forth below. In the event of a conflict between the Hybrid Tolling Agreement Supplemental Definitions and the defined terms herein, the defined terms in this Confirmation shall govern.

"**Bottom 4 Day-Ahead Price**" means the [redacted]

"**Charging Cost**" means the sum of [redacted]

"**Clearing Price**" means the [redacted]

"**Commercial Operation Date**" has the meaning set forth in that certain Confirmation Resource Adequacy (Sentinel BESS Resource) between the Parties dated as of the Effective Date.

"**Contract Term**" has the meaning set forth in Section 2.1(a).

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Cross-collateralized Transactions**" means (a) this Transaction, (b) that certain Transaction pursuant to that certain Confirmation Resource Adequacy (Sentinel BESS Resource) between the Parties dated as of the Effective Date, (c) that certain Transaction pursuant to that certain Confirmation Resource Adequacy (Sentinel Energy Center Thermal Resource) between the Parties dated as of the Effective Date, and (d) that certain Confirmation Resource Adequacy Option between the Parties dated as of the Effective Date.[7]

"**Day-Ahead Market**" has the meaning set forth in the CAISO Tariff.

"**Discharge Revenue**" means the [redacted]

"**Energy Settlement**" has the meaning set forth in Section 4.1.

"**Energy Settlement Quantity**" has the meaning set forth on the Cover Sheet.

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[7] [redacted]nder the precedent transaction, the ISDA confirmation was collateralized separately from the EEI confirmations.

"**ES Payment**" has the meaning set forth in Section 4.1(a).

"**Force Majeure Event**" has the meaning set forth in Section 6.1(a).

"**Monthly Product Payment**" has the meaning set forth in Section 4.1(b).

"**Monthly Settlement Amount**" has the meaning set forth in Section 4.1(c).

"**Monthly Settlement Payment**" has the meaning set forth in Section 4.1(c).

"**Round-Trip Efficiency Hours Price**" means the [redacted]

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Settlement Point**" has the meaning set forth on the Cover Sheet.

"**Settlement Term**" has the meaning set forth on the Cover Sheet.

"**Start Date**" means January 1, 2030; provided, that Seller may, upon not less than ninety (90) days prior written notice to Buyer, delay the Start Date by up to six (months).

"**Storage Contract Capacity**" has the meaning set forth on the Cover Sheet.

"**Top 4 Day-Ahead Price**" means the [redacted]

"**Transaction**" has the meaning set forth in the Master Agreement.

## ARTICLE 2
## TERM

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Settlement Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Section 10.11 of the Master Agreement and all indemnity and audit rights shall remain in full force and effect for five (5) years following the termination of this Agreement.

## ARTICLE 3
## [RESERVED]

## ARTICLE 4
## ENERGY SETTLEMENT

4.1 **Financially Settled Energy**. Subject to the terms and conditions of this Agreement, during the Settlement Term, Seller shall calculate, on a monthly basis, financial settlements with respect to the Energy Contract Quantity during each Settlement Period (the "**Energy Settlement**") as follows:

(a) For each Day during Settlement Term, an amount equal to [redacted]

(b) For each month during the Settlement Term, Buyer shall pay to Seller an amount equal to [redacted]

(c) For each month during the Settlement Term, Seller shall calculate an amount (the "**Monthly Settlement Amount**") equal to [redacted]

4.2 **Dodd-Frank Compliance**.[8]

(a) **Delegation of Reporting Party**. Pursuant to CFTC Regulation 45.8(d)(2), to the extent permitted by the CFTC Regulations, Seller shall be the "reporting counterparty" for purposes of this Agreement and reporting the Energy Settlement. Buyer shall notify Seller if Buyer becomes obligated to be the reporting counterparty under CEC Regulation Part 45.

(b) **Representations**. Each Party hereby represents and warrants to the other as of the Effective Date that (i) it is not a "financial entity" within the meaning of the Commodity Exchange Act, (ii) it is entering into this Agreement to hedge or mitigate its own commercial risk pursuant to CFTC regulations, and (iii) it is not entering into this Agreement for investment or speculative purposes.

(c) **Cooperation**. Each Party will provide to the other Party any information reasonably requested by such other Party to enable such other Party to comply with CFTC Regulations in connection with the Energy Settlement.

(d) **Permitted Disclosure**. Notwithstanding anything contained in Article 10 of the Master Agreement to the contrary, Buyer and Seller hereby acknowledge and agree that the Parties shall be entitled, each at its own expense, to report and disclose information concerning

[8] [redacted]

any or all transactions under this Agreement (including information regarding the economic terms and valuations of such transactions) to any applicable Governmental Authority (or a third party repository as required by a Governmental Authority), from time to time, as may be required by Laws or as such Party may determine, in its reasonable discretion, to be necessary or advisable for it to comply with Laws. Additionally, to the extent either Party needs additional information or details from the other Party in order to comply with any such Laws (including information concerning such other Party's organization, corporate status, status under the CFTC's regulations and/or unique entity identifier), such other Party shall promptly provide such additional information or details to the first Party upon request therefor.

(e) **No Event of Default**. Notwithstanding any provision of this Agreement to the contrary, each Party agrees that an Event of Default, termination event or similar event shall not occur under this Agreement or any other contract between the Parties solely on the basis of a breach of any covenant or agreement in Sections 4.2(a-b) so long as the Parties maintain compliance with applicable Law; provided, however, that, without limiting any duty to mitigate, nothing in this Section 4.2(e) shall prejudice any other right or remedy of a Party at law or under this Agreement or any other contract in respect of any misrepresentation or breach hereunder or thereunder.

## ARTICLE 5
## INVOICING AND PAYMENT; CREDIT

5.1 **Statements and Invoicing**. Commencing in the first month of the Settlement Term, Seller shall deliver an invoice to Buyer on or before the tenth ($10^{th}$) day of each month. Each invoice shall be in a format reasonably acceptable to Buyer, covering the Product for the preceding month determined in accordance with the applicable provisions of this Agreement. The invoice shall be delivered by electronic mail in accordance with Exhibit A.

5.2 **Payments**. Each month in which Seller submits an invoice to Buyer, the Party owing the Monthly Settlement Payment shall make such payment (and any other amounts due and owing pursuant to this Agreement) to the other Party, by wire transfer or ACH payment to the bank account provided by such Party. Any Party owing an amount to the other Party shall pay the undisputed amounts by the later of (a) ten (10) Business Days after such Party's receipt of the invoice from the other Party, and (b) the last day of the month after the month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the Interest Rate. If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

5.3 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest at the Interest Rate, until settled in full, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twelve (12) months from the date of the invoice.

5.4 **Performance Security**. [redacted]

## ARTICLE 6
## FORCE MAJEURE[9]

6.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; epidemic; pandemic; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, or Buyer or Seller's ability to enter into a financial settlement at a more favorable price than under this Agreement); (ii) the inability of a Party to make payments when

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[9] [redacted]

due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above.

6.2 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b). Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

6.3 **Notice for Force Majeure**. Within two (2) Business Days of the Party becoming aware that a Force Majeure Event will impact the Party's performance under this Agreement, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks thereafter the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice shall not constitute a waiver of the Force Majeure Event, but the relief granted shall be based on the date notice is provided rather than the date of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

*[Signatures on following page]*

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

**AVA COMMUNITY ENERGY AUTHORITY,**
**a California joint powers authority**

By: ___________________________
Name: _________________________
Title: _________________________

**SENTINEL ENERGY CENTER, LLC,**
**a Delaware limited liability company**

By: ______________________________
Name: ____________________________
Title: ____________________________

**Approved as to form:**

_______________________________

# EXHIBIT A

## NOTICES

| Sentinel Energy Center, LLC | Ava Community Energy Authority |
|---|---|
| **All Notices:**<br>[redacted] | **All Notices:**<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Attn: Power Resources<br>Email: powernotices@avaenergy.org |
| **Reference Numbers:**<br>[redacted] | **Reference Numbers:**<br>[redacted] |
| **Invoices:**<br>[redacted] | **Invoices & Payments:**<br>Attn: Jason Bartlett, Senior Finance Manager<br>Phone: (510) 650-7584<br>Email: ap@avaenergy.org |
| **Scheduling:**<br>[redacted] | **Scheduling:**<br>Attn: NCPA c/o Mojtaba Khanabadi, Manager, Portfolio and Pool Administration<br>Phone: (916) 781-4290<br>Email: powerscheduling@avaenergy.org |
| **Confirmations:**<br>[redacted] | **Confirmations:**<br>Attn: Power Resources<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org |
| **Payments:**<br>[redacted] | **Settlements:**<br>Attn: Power Resources<br>Email: powersettlements@avaenergy.org; settlements@ncpa.com |

| | |
|---|---|
| **Wire Transfer:**<br>[redacted] | **Wire Transfer:**<br>[redacted] |
| **Credit and Collections:**<br>[redacted] | **Credit and Collections:**<br>Attn: Rusty Mills, Chief Financial Officer<br>Phone: (916) 337-9704<br>Email: powernotices@avaenergy.org; powersettlements@avaenergy.org; ap@avaenergy.org |
| **With additional Notices of an Event of Default or Potential Event of Default to:**<br>[redacted]<br><br>Additional notices of an Event of Default to:<br>[redacted] | **With additional Notices of an Event of Default or Potential Event of Default to:**<br>Attn: Power Resources<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org; legal@avaenergy.org<br><br>**With an additional copy to:**<br>Hall Energy Law PC<br>Attn: Stephen Hall<br>Email: steve@hallenergylaw.com |

*Ava Draft*
*10 August 2026*

# CONFIRMATION

# RESOURCE ADEQUACY OPTION

This Confirmation Resource Adequacy Option is entered into between Ava Community Energy Authority, a California joint powers authority ("**Buyer**") and Sentinel Energy Center, LLC, a Delaware limited liability company ("**Seller**"), each individually a "**Party**" and together the "**Parties**," dated as of __________ ("**Effective Date**") by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product. This Transaction is governed by, constitutes part of, and is subject to the terms and provisions of that certain Edison Electric Institute Master Power Purchase and Sale Agreement dated ___________ by and between the Parties, as amended from time to time (the "**Master Agreement**"). The Master Agreement and this Confirmation, including any appendices, exhibits or amendments thereto, shall collectively be referred to herein as the "**Agreement**" and shall constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff.

## ARTICLE 1
## TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Quantity Availability Hours, Contract Price, and other specifics of the Product are in Exhibit B. Exhibits A, B, C, and D are incorporated into this Confirmation.

**☒ Firm RA Product:**

Subject to Section 2.1(a), Seller shall provide Buyer with the Product from any one or more of the Units selected by Seller in the amount of the Contract Quantity. If a Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the right to supply Alternate Capacity pursuant to Section 2.2 to fulfill the remainder of the Contract Quantity during such period. Subject to Section 2.1(a) , 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, then Seller shall be liable for damages and/or for penalties or fines actually incurred by Buyer pursuant to the terms of Section 2.3.

## ARTICLE 2
## DELIVERY OBLIGATIONS AND ADJUSTMENTS

### 2.1 Sale and Delivery of Product

(a) The Parties' obligations to deliver and/or receive Product hereunder are subject to (i) Buyer's payment of the Premium Amount and (ii) delivery of the applicable Exercise Notice to Seller by the applicable Exercise Deadline. Each Exercise Notice shall be irrevocable upon delivery and shall constitute a firm and binding obligation of Buyer to purchase, and Seller to provide, the full Contract Quantity for each Showing Month set forth in Exhibit B for the calendar year to which such Exercise Notice relates.

(b) Following Buyer's delivery of an Exercise Notice, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, the Contract Quantity of Product for the applicable Showing Month. Seller's obligation to deliver the Contract Quantity is firm and shall not be excused for any reason other than Force Majeure. Upon Buyer's delivery of an Exercise Notice, Seller shall reserve sufficient Capacity Attributes to satisfy the Contract Quantity and shall not sell, assign, transfer, encumber, reserve, or otherwise commit any portion of such Contract Quantity or the associated Capacity Attributes to any third party. Seller acknowledges that, upon delivery of an Exercise Notice, the Contract Quantity shall be deemed exclusively dedicated to Buyer for the applicable Showing Month, and Seller shall bear all risk and responsibility for ensuring that sufficient Capacity Attributes remain available to satisfy such Contract Quantity, including through the provision of Alternate Capacity pursuant to Section 2.2, and Seller's obligation to provide the Contract Quantity shall not be reduced by any subsequent decrease in the Net Qualifying Capacity, Effective Flexible Capacity, Slice of Day qualification, or other qualifying capacity metric of a Shown Unit, except as expressly provided in Section 5.4(b).

(c) Seller shall deliver the Contract Quantity by submitting, or causing to be submitted, to CAISO the Supply Plans for the Shown Unit(s), identifying in each case the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for the relevant period, as further specified in Exhibit B, all in compliance with this Confirmation.

(d) Seller shall cause all Supply Plans for the Shown Unit(s) to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, (i) monthly Supply Plans for such Shown Unit(s) and (ii) annual Supply Plans for such Shown Unit(s) if the Effective Date is prior to the year-ahead Compliance Showing Deadline applicable for the Showing Months specified in Exhibit B for such Shown Unit(s), in accordance with the Tariff and CPUC requirements and no later than the initial Compliance Showing Deadline for such Showing Month, identifying and confirming the transfer of the Contract Quantity of Product to Buyer for each Showing Month. The total amount of Product identified and confirmed for such Showing Month, including a request for Hold-Back Capacity pursuant to Section 2.5, shall equal the Contract Quantity.

(e) Seller shall, and shall cause the Shown Unit's SC to, offer and bid the Product into all applicable CAISO markets in accordance with applicable Resource Adequacy Requirements, including the zero-dollar bidding requirements of CPUC D.05-10-042 for Reliability Capacity products. Seller shall, and shall cause the Shown Unit's SC to, take such actions as are necessary to ensure the allocation of revenues to Buyer in accordance with Section 3.2(b), including making any elections, designations, submissions, certifications, or other requests available under the Tariff or applicable market rules.

(f) In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import.

(g) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(h) The Product is delivered and received when the CIRA Tool shows that the Supply Plan for any Shown Units submitted in compliance with this Confirmation, including Buyer's instructions to withhold all or part of the Contract Quantity from the Supply Plan for such Units for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Buyer has timely elected to submit the Product from the Shown Unit(s) in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool as a result of Seller's failure to perform its obligations in Section 2.1 or (ii) Seller fails to submit the volume of Contract Quantity for any Showing Month in such amount as timely instructed in writing by Buyer for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to timely submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(i) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Section 2.5 as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.

(j) The Shown Unit(s) must not have characteristics that would trigger the need for Buyer or Seller to file an advice letter or other request for authorization with the CPUC or for Buyer to make a compliance filing pursuant to California Public Utilities Code Section 380.

(k) If Buyer fails to pay any Premium Amount when due, Seller shall provide written notice thereof to Buyer. If such failure continues for five (5) Business Days following receipt of such notice, then (i) any Option Year for which the applicable Exercise Deadline has not yet occurred shall automatically terminate and be of no further force or effect and (ii) Seller shall have no further obligation to keep available the Product or Contract Quantity that would have been deliverable pursuant to such Option Year. For the avoidance of doubt, (i) the foregoing shall not affect Buyer's rights with respect to any Option Year that has been validly exercised prior to such termination, (ii) Seller shall continue to perform its obligations with respect to any exercised Option Year in accordance with this Confirmation, (iii) Buyer shall remain obligated to pay any Premium Amounts that accrued prior to such termination, and (iv) such termination shall apply solely to this Confirmation and shall not constitute a termination, Event of Default, or other impairment of either Party's rights or obligations under the Master Agreement or any other transaction thereunder.

## 2.2 Provision of Alternate Capacity

If Seller is unable to provide the full Contract Quantity for a Showing Month for any reason, then Seller may elect, at no cost to Buyer, provide Buyer with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Buyer from the Unit(s) and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

(a) Seller shall notify Buyer in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Buyer's Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units shall (i) be accepted by the CAISO, (ii) shall provide Product that is no less valuable to Buyer than the Product originally required to be delivered, taking into account Resource Adequacy Requirements, Local RAR Attributes, Flexible Capacity attributes, Slice of Day Requirements, Capacity Area, deliverability characteristics, and all other Capacity Attributes associated with the original Unit, and (iii) otherwise satisfy the requirements of this Confirmation;

(c) Seller shall, or shall cause the Unit's SC to, submit a Supply Plan that includes the Replacement Units for each applicable Showing Month and, if applicable, annual filing, no later than the Compliance Showing Deadline for Buyer's Compliance Showings; and

(d) If Seller does not comply with the requirements of Subsections 2.2(a), (b) and (c) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in Sections 2.2(a), (b) and (c), once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.2, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Notwithstanding any provision to the contrary herein, Seller shall provide Alternate Capacity sufficient to ensure delivery of the Contract Quantity in full for each Showing Month, and Alternate Capacity shall not be optional, except to the extent excused by Force Majeure.

## 2.3 Buyer's Remedies for Seller's Failure to Deliver Contract Quantity

(a) If Seller fails to deliver any part of the Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 4.1 of the Master Agreement except to the extent such delivery failure is excused by Force

Majeure. In addition, if Seller is unable to deliver any portion of the Contract Quantity for any reason, including due to Force Majeure, Seller shall promptly (but in no event later than ten (10) Business Days thereafter) refund to Buyer the portion of the Premium Amount allocable to such undelivered portion.

(b) Seller shall reimburse Buyer from any penalties, fines or costs, including Environmental Costs, actually incurred by Buyer to the CPUC, CAISO or other Governmental Body to the extent resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans for any Shown Units in accordance with the Tariff and this Confirmation, except to the extent such delivery failure is excused by Force Majeure. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs.

**2.4 Buyer's Re-Sale of Product**

(a) Buyer may re-sell all (but not less than all) of the Product to a single permitted Subsequent Buyer; provided that any such re-sale must not increase Seller's obligations hereunder other than as expressly set forth in this Section 2.4(a) and Seller shall have no obligations to any party other than Seller, including (without limitation) to such Subsequent Buyer. For any such a resale to a permitted Subsequent Buyer and provided such information is timely provided to Seller, the Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of such Subsequent Buyer. Seller shall, or shall cause the Shown Unit's SC, to follow Buyer's timely instructions with respect to providing such resold Product to such Subsequent Buyer, to the extent such instructions are timely and consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyer to use such resold Product in a manner consistent with Buyer's rights under this Confirmation; provided, that for the avoidance of doubt, where Buyer resells the Product, Buyer shall retain all revenues allocated to it under Section 3.2(b) unless otherwise expressly agreed in such resale. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be only liable to Buyer for the amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product and Buyer shall be solely responsible for any liabilities to any Subsequent Buyer.

(b) Buyer shall promptly notify Seller in writing of any resale of Product and the Subsequent Buyer (but in any event not later than two (2) Business Days before the Compliance Showing Deadline for each Showing Month for which Buyer has resold the Product).

*Ava Draft*
*10 August 2026*

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights as between Buyer and Seller to offer, bid, or otherwise submit, or if necessary to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Contract Quantity of Product for each Showing Month for re-sale into such market, and Seller shall comply (and direct the Unit's SC to comply) with Buyer's timely and otherwise reasonable directions with respect to same and Buyer shall retain and receive all revenues or losses from such re-sale.

(d) As between Buyer and Seller, Buyer shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller shall comply, and shall direct the Unit's SC to comply, with Buyer's timely and otherwise reasonable directions with respect to same and, to the extent that the CAISO designates the Contract Quantity as CPM Capacity, Buyer shall be entitled to retain and receive the CPM Capacity Payment and shall be responsible for any costs or losses resulting therefrom. Unless otherwise instructed by Buyer, (i) Seller shall not, and shall not authorize the Unit's SC to, offer any portion of the Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Quantity as CPM Capacity, then Seller shall, or shall direct the Unit's SC to, promptly notify Buyer of such designation, and if CAISO makes such a designation, Seller shall not, and shall instruct the Unit's SC to not, accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

**2.5 <u>Hold-Back and Substitute Capacity</u>**

No later than three (3) Business Days before the Compliance Showing Deadline with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Shown Unit's SC not to list, in the Shown Unit's Supply Plan all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("**<u>Hold-Back Capacity</u>**"). Along with such request, Buyer shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan for such Shown Unit. Following Buyer's request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Buyer seeks to use such Substitute Capacity as required by the CAISO. The amount of Contract Quantity that is the subject of Buyer's request for Hold-Back Capacity shall be [redacted]

*Ava Draft*
*10 August 2026*

## ARTICLE 3
## PAYMENTS

### 3.1 Payments

(a) As a condition precedent to Seller's obligations hereunder, Buyer shall pay the Premium Amount to Seller in accordance with this Section 3.1(a). Commencing on January 1, 2028 and continuing through August 31, 2030, Buyer shall pay a Premium Amount of [redacted] per month. Upon Buyer's timely delivery of an Exercise Notice for the 2030 Option Year, the Premium Amount shall be reduced to [redacted] per month beginning on the first day of the calendar month immediately following such exercise and continuing through August 31, 2030. If Buyer does not exercise the 2030 Option Year but timely delivers an Exercise Notice for the 2031 Option Year, the Premium Amount shall be reduced to [redacted] per month beginning on the first day of the calendar month immediately following such exercise and continuing through August 31, 2030. Upon Buyer's timely delivery of Exercise Notices for both the 2030 Option Year and the 2031 Option Year, no further Premium Amounts shall be payable and the Premium Amount shall be deemed paid in full. For the avoidance of doubt, following the exercise of both Option Years, no further Premium Amounts shall be payable regardless of whether the January 1, 2028 payment commencement date has occurred. Each monthly Premium Amount shall be invoiced and paid in accordance with Article Six of the Master Agreement and shall be due on the later of (i) the first day of the applicable calendar month or (ii) ten (10) Business Days after receipt of a properly rendered invoice.

(b) Buyer shall pay for the Product as provided in Article Six of the Master Agreement and this Confirmation. For each Unit, the monthly payment due from Buyer to Seller for a Showing Month (the "**Monthly RA Capacity Payment**") shall be due on the later of (a) the twenty-fifth (25th) day of the applicable Showing Month or (b) the tenth ($10^{th}$) day after receipt of a properly rendered invoice, and if such day is not a Business Day, then on the next Business Day. The Monthly RA Capacity Payment shall equal the product of [redacted]

### 3.2 Allocation of Other Payments and Costs

(a) Seller is entitled to receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) ancillary services, (iii) energy sales, (iv) IR Lost Opportunity Costs, (v) flexible ramping product, and (vi) black start or reactive power services.

*Ava Draft*
*10 August 2026*

(b) Buyer is entitled to receive and retain all revenues associated with the capacity, availability, resource adequacy, reliability, or similar attributes of the Contract Quantity of Product during the Delivery Period, including any (i) capacity or availability revenues from the Capacity Procurement Mechanism or its successor, (ii) RUC Availability Payments and all revenues associated with Reliability Capacity or any successor product, (iii) all revenues associated with Imbalance Reserves, other than IR Lost Opportunity Costs, and (iv) all other revenues, payments, credits, settlements, compensation, or other economic benefits arising from, attributable to, derived from, or awarded in respect of the capacity, availability, resource adequacy, reliability, flexibility, deliverability, resource sufficiency, or similar attributes of the Contract Quantity, including any successor, replacement, modified, redesignated, restructured, or newly created product, market construct, tariff provision, or compensation mechanism, provided that Buyer shall not be entitled to the revenues and costs described in Section 3.2(a)(i)-(vi) and 3.2(c). Seller shall promptly report receipt of any such revenues to Buyer and shall pay to Buyer, within thirty (30) days of receipt, any such amounts received by Seller or a Shown Unit's SC, owner, or operator. Seller shall, and shall cause the Shown Unit's SC to, implement all procedures available to it to ensure that, to the extent within the control of Seller or the Shown Unit's SC, such revenues are directed to Buyer, including through the use of available CAISO procedures, elections, or mechanisms necessary to effectuate such allocation. Without prejudice to its other rights and remedies, Buyer may set off and recoup any such unpaid amounts against amounts owed to Seller under this Confirmation or the Master Agreement. For the avoidance of doubt, the allocation of revenues under this Section 3.2(b) applies regardless of whether such amounts are initially received by Seller, its SC, or any other entity, and regardless of how such products are characterized under the Tariff or by any Governmental Body. In the event of any overlap, inconsistency, or ambiguity between Section 3.2(a) and Section 3.2(b), the provisions of this Section 3.2(b) shall control. Availability Incentive Payments and Non-Availability Charges are governed by Section 3.2(c) and are not subject to this Section 3.2(b).

(c) Seller shall be entitled to receive and retain all Availability Incentive Payments and shall be responsible for and pay all Non-Availability Charges.

(d) Both Seller and Buyer shall elect, or cause their respective SCs to elect, to apply DAME Transitional Measures for the RA Contract Quantity of Product associated with (i) the Unit, prior to the first Compliance Showing. If for any reason the DAME Transitional Measures are not applied to this Agreement, or CAISO no longer provides an allocation methodology identifying the Reliability Capacity, IR Lost Opportunity Costs, and other Imbalance Reserves revenues applicable for purposes of Section 3.2(b) of this Confirmation, then within fifteen (15) Business Days following Seller's receipt of the CAISO Initial Settlement Statement for the applicable Showing Month, Seller shall provide such information through an attestation in the form of <u>Exhibit D</u>, signed by a supervisor or manager of Seller responsible for settlement of energy or capacity products. Seller shall provide updated attestations with respect to any adjustments reflected in subsequent

Recalculation Settlement Statements or Settlement Rerun Adjustments within fifteen (15) Business Days after receipt thereof.

(e) Any payment made pursuant to Section 3.2(b) shall be accompanied by reasonable supporting documentation sufficient to verify the calculation of such payment. Upon reasonable request, Seller shall provide records, CAISO statements, settlement data, and other documentation reasonably necessary to verify amounts payable to Buyer under Section 3.2(b).

(f) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Buyer and not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

## ARTICLE 4
## OTHER BUYER AND SELLER COVENANTS

### 4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product delivered from the relevant Shown Unit. Buyer is not liable for, and Seller shall be responsible for, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for such noncompliance. Seller shall remain fully responsible for the performance of its obligations under this Confirmation notwithstanding any delegation of duties to a Scheduling Coordinator, asset manager, operator, owner, affiliate, or other third party. No act, omission, error, delay, default, or failure of any such person shall relieve Seller of any obligation or liability under this Confirmation.

### 4.2 Seller's and Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller shall take all commercially reasonable actions within their power and execute all documents or instruments reasonably necessary, at no cost to Seller, to ensure (a) Buyer's rights to the Contract Quantity for the sole benefit of Buyer or any permitted Subsequent Buyer and (b) that Buyer may use the Contract Quantity to meet Buyer's Compliance Obligations. Such commercially reasonable actions shall include, without limitation, cooperating with and providing, and directing each Shown Unit's SC, 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 Compliance Obligations, including to demonstrate that the Contract Quantity satisfies the Slice of Day Requirements and can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of this Transaction to both Parties.

**4.3 Seller's Representations, Warranties and Covenants**

Seller covenants to Buyer throughout the Delivery Period that:

(a) Seller owns or has the exclusive right to the Product sold under this Confirmation from a Shown Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) Seller shall comply with applicable laws relating to the Product;

(c) the resource attributes and capacity capabilities associated with the Contract Quantity applicable to a Shown Unit are and shall remain bundled across the applicable Showing Month and Seller has not and will not sell separate hourly products associated with such Contract Quantity;

(d) no part of the Contract Quantity from a Shown Unit during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(e) the Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product in accordance with this Confirmation;

(f) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for a Shown Unit during the Delivery Period does not exceed such Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for such Shown Unit, or the SOD NQC for such Shown Unit;

(g) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Buyer;

(h) to the extent not caused by Buyer's breach hereof or other fault of Buyer, Buyer shall have no liability for the failure of Seller or the failure of the Unit's SC, owner, or operator to comply with provisions of the Tariff applicable to such party, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance; and

(i) Seller has notified or will notify the Shown Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues as directed by Seller, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 5
## AMENDMENTS TO THE MASTER AGREEMENT; GENERAL PROVISIONS

### 5.1 Termination Payment

For this Transaction, the following is inserted at the end Section 5.2 of the Master Agreement:

> "If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Buyer or a permitted Subsequent Buyer is not able to include the applicable Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its calculation of the Settlement Amount, subject to promptly accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties, fines or costs, Buyer must promptly remit to Seller the excess amount with interest in accordance with Section 6.2 of the Master Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained."

### 5.2 Confidentiality

Notwithstanding anything in the Master Agreement:

(a) Buyer may disclose information to the CAISO, the CPUC or a Governmental Body of competent jurisdiction as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations;

(b) Seller may disclose information as necessary to a Shown Unit's SC or as necessary for submitting any Supply Plans or any information required by the CIRA Tool in connection with this Transaction;

(c) each Party may disclose information as necessary to CAISO or any Governmental Body or, so long as such evaluator or administrator is only allowed to use such information for the sole purpose of advising the Buyer in connection with the Buyer's competitive solicitation process, the independent evaluator or other administrator of any competitive solicitation process of Buyer, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and

(d) so long as such Subsequent Buyer requires such information to meet its Compliance Obligations, Buyer may disclose information to any Subsequent Buyer as necessary for such Subsequent Buyer to benefit from the Product and meet its Compliance Obligations.

## 5.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

## 5.4 Change in Law

(a) Change in Law. If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Effective Date (including changes to the UCAP framework and the Slice of Day Requirements) results in (i) material changes to Buyer's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be fully counted towards Buyer's Resource Adequacy Requirements (a "**Change in Law**"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent of the Parties under this Confirmation and comply with any applicable CPUC requirements governing resource adequacy transactions of load serving entities.

(b) UCAP and Successor Capacity Methodologies. If, during the Delivery Period, the CAISO, CPUC, or other Governmental Body modifies, replaces, supplements, or supersedes the methodology used to determine the qualifying capacity of a Unit, including the modification of UCAP or any successor qualifying capacity methodology, Seller shall convey to Buyer a pro rata share of the Unit's qualifying capacity under the applicable methodology. Seller's delivery obligation for each Showing Month shall be the Adjusted Contract Quantity determined pursuant to the applicable methodology. For purposes of determining the Adjusted Contract Quantity, Buyer shall be entitled to the same percentage share of the Unit's qualifying capacity under the applicable methodology as Buyer would have received based on the Contract Quantity and Unit NQC as of the Effective Date. Seller shall not be required to (1) convey Product in excess of the capacity available from the Unit as determined under the applicable methodology or (2) modify or augment the Unit to increase its qualifying capacity, and Seller shall not be liable for damages or indemnification solely as a result of actions taken or not taken in accordance with the foregoing clauses (1) and (2); provided that nothing herein limits Seller's liability for failure of the Unit to perform in accordance with Prudent Operating Practice or otherwise comply with this Agreement. To the extent the Adjusted Contract Quantity exceeds the applicable Contract Quantity, Seller shall make such excess quantity available to Buyer, but Buyer shall have no obligation to purchase such excess quantity unless Buyer affirmatively elects to do so no later than ten (10) Business Days prior to the applicable Compliance Showing Deadline. For the avoidance of doubt, the Contract Price shall apply to the Adjusted Contract Quantity purchased by Buyer pursuant to this Section 5.4(b).

**5.5** **Payment Security** By this reference, Exhibit C of the Master Agreement is applicable to this Transaction in the amounts set forth below.

**Seller Payment Security:**

Development Security: [redacted]

Performance Security: [redacted]

[*Signatures appear on the following page.*]

1 [redacted]

**AGREED AS OF THE EFFECTIVE DATE:**

**SENTINEL ENERGY CENTER, LLC,**
**a Delaware limited liability company**

By: ____________________________
Name: __________________________
Title: __________________________

**AVA COMMUNITY ENERGY AUTHORITY,**
**a California joint powers authority**

By: ____________________________
Name: __________________________
Title: __________________________

**Approved as to form:**

________________________________

# EXHIBIT A

## DEFINED TERMS

"**Adjusted Contract Quantity**" means, following any adjustment pursuant to Section 5.4(b), the product of (a) the Contract Quantity divided by the Unit NQC as of the Effective Date and (b) the Unit's qualifying capacity as determined under the applicable methodology.

"**Alternate Capacity**" means replacement Product provided by Seller from one or more Replacement Units pursuant to Section 2.2.

"**CAISO**" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"**Capacity Attributes**" means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"**CIRA Tool**" means the CAISO Customer Interface for Resource Adequacy or any subsequent platform or interface used to perform similar schedule of Resource Adequacy products in CAISO.

"**Compliance Obligations**" means, as applicable, RAR, Local RAR, FCR and the Slice of Day Requirements.

"**Compliance Showing Deadline**" means, for each Showing Month, the Compliance Showing plan submission due date for such Showing Month. For illustrative purposes only, as of the Effective Date, the applicable Compliance Showing plan submission due dates are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan, such dates may be modified by the CAISO from time to time throughout the Delivery Period.

"**Compliance Showings**" means the applicable LSE's compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"**Contract Quantity Availability Hours**" means the hours, in the amount set forth in Exhibit B, that will be used in Buyer's compliance filings and which represent the hours the Shown Unit is available for production and satisfaction of the Shown Unit's must-offer obligation.

"**CPUC Decisions**" means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

"**CPUC Filing Guide**" is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program, as such may be modified, amended, supplemented or updated from time to time.

"**Cross-collateralized Transactions**" means (a) this Transaction, (b) that certain Transaction pursuant to that certain Confirmation Financial Settlement (BESS Resource) between the Parties dated as of the Effective Date, (c) that certain Transaction pursuant to that certain Confirmation Resource Adequacy (BESS Resource) between the Parties dated as of the Effective Date, and (d) that certain Confirmation Resource Adequacy (Thermal Resource) between the Parties dated as of the Effective Date.

"**DAME Transitional Measures**" means the process for the allocation and settlement of overlapping capacity revenue associated with IRU, IRD, RCU, and RCD set forth in Tariff Section 11.2.6.

"**Delivery Period**" has the meaning set forth in Exhibit B.

"**Effective Flexible Capacity**" has the meaning given in the Tariff.

"**Environmental Costs**" means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product's compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

"**Exercise Deadline**" means the day that is the third (3rd) Thursday of September immediately preceding the calendar year for which Buyer is electing the Contract Quantity.

"**Exercise Notice**" means an irrevocable written notice delivered by electronic mail to the Exercise Notice contact(s) specified in Exhibit C on or before the applicable Exercise Deadline. An Exercise Notice shall be effective upon transmission, provided that the sender does not receive an automated notice of delivery failure. An Exercise Notice shall constitute Buyer's election to purchase the full Contract Quantity for each Showing Month set forth in Exhibit B for the calendar year covered by such Exercise Notice. Each of the 2030 Option Year and the 2031 Option Year constitutes a separate Option Year under this Confirmation. Partial exercises are not permitted. If Buyer does not timely deliver an Exercise Notice, the option shall expire unexercised with respect to such calendar year. For clarity, a separate Exercise Notice shall be required for each calendar year. Delivery of an Exercise Notice to any designated Exercise Notice email address shall constitute effective delivery regardless of whether a copy is delivered to any other designated recipient.

"**FCR**" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"**FCR Attributes**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's FCR.

"**Firm RA Product**" has the meaning set forth in Article 1 herein.

"**Flexible Capacity Category**" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"**Governmental Body**" means any federal, state, local, municipal or other government; 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 any court or governmental tribunal.

"**Imbalance Reserves**" means Imbalance Reserves Up ("**IRU**") and Imbalance Reserves Down ("**IRD**"), each having the meaning set forth in the Tariff, and any successor or replacement product or construct.

"**IR Lost Opportunity Costs**" means the opportunity cost component of overlapping Imbalance Reserves revenue as set forth in the Tariff Section 11.2.6.3.

"**Local RAR**" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"**Local RAR Attributes**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's Local RAR.

"**LSE**" means "Load Serving Entity" as such term is used in Section 40.9 of the Tariff.

"**MW**" means megawatt.

"**Net Qualifying Capacity**" has the meaning given in the Tariff.

"**Notification Deadline**" is twenty (20) Business Days before the Compliance Showing Deadline.

"**Option Year**" means each of the 203 Option Year and the 2031 Option Year.

"**Premium Amount**" means the monthly option premium pursuant to Section 3.1(a).

"**Product**" means RAR Attributes, Local RAR Attributes and/or FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and/or any other specifications as specified and contained in Exhibit B.

"**Prorated Percentage of Unit Factor**" means the percentage, as specified in Exhibit B, of the Unit NQC as of the Effective Date that is dedicated to Buyer under this Transaction.

"**Prorated Percentage of Unit Flexible Factor**" means the percentage, as specified in Exhibit B, of the Unit EFC as of the Effective Date that is dedicated to Buyer under this Transaction.

"**Prudent Operating Practice**" means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

"**RAR Attributes**" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's RAR.

"**Reliability Capacity**" means Reliability Capacity Up ("**RCU**") and Reliability Capacity Down ("**RCD**"), each having the meaning set forth in the Tariff, and any successor or replacement product or construct.

"**Replacement Unit**" means a generating unit having the same capacity attributes as the Unit(s) originally identified in Exhibit B hereof, including the Contract Quantity Availability Hours, RAR Attributes, and, as applicable, Local RAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified in Section 2.2 hereof. A Replacement Unit shall not utilize coal or coal materials as a source of fuel, must be a specific resource that is connected directly to the CAISO controlled grid, or be under the operational control of CAISO, and may not be an unspecified import.

"**Resource Adequacy Availability Incentive Mechanism**" has the meaning given in the Tariff.

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, including the Slice of Day Requirements, but not including Local RAR or FCR.

"**SC**" means Scheduling Coordinator as defined in the Tariff.

"**Showing Month**" means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

"**Shown Unit**" means the Unit, or any Replacement Unit meeting the requirements of Section 2.2 of this Confirmation and specified by Seller in a Supply Plan for such Unit.

"**Slice of Day**" or "**SOD**" means the CPUC's 24-hour Slice-of-Day Framework established in D.22-06-050 and D.23-04-010 and D. 24-06-004, as may be modified by the CPUC from time to time.

"**Slice of Day Requirements**" means the Slice of Day framework, or any successor program thereof as may be established and modified by the CPUC from time to time.

"**SOD NQC**" means the lesser of the hourly Net Qualifying Capacity value of a Unit as determined by the CPUC pursuant to the Slice of Day Requirements as of the Effective Date and that of such Unit on a subsequent date of determination.

"**Subsequent Buyer**" means the buyer of Product from Buyer in a re-sale of Product by Buyer.

"**Substitute Capacity**" means "RA Substitute Capacity" as defined in the Tariff.

"**Tariff**" means the tariff of the California Independent System Operator Corporation, as accepted by FERC and effective from time to time, together with any Business Practice Manuals, Operating Procedures, protocols, market rules and successor documents implemented pursuant thereto.

"**2030 Option Year**" means the option to purchase the Product for the Delivery Period from January 1, 2030, through December 31, 2030.

"**2031 Option Year**" means the option to purchase the Product for the Delivery Period from January 1, 2031, through December 31, 2031.

"**UCAP**" means unforced capacity, as determined pursuant to the applicable Resource Adequacy Requirements, as such methodology may be modified, replaced, or otherwise revised from time to time.

"**Unit**" means any of the generation unit(s) described in Exhibit B.

"**Unit EFC**" means the lesser of a Unit's Effective Flexible Capacity as set by CAISO as of the Effective Date and that of such Unit on a subsequent date of determination.

"**Unit NQC**" means the lesser of a Unit's Net Qualifying Capacity as set by CAISO as of the Effective Date and that of such Unit on a subsequent date of determination.

# EXHIBIT B

## PRODUCT AND UNIT INFORMATION

**Product:**

☐ RAR ☐ Local RAR ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone:
MCC Bucket:
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): N/A

**Delivery Period**: Each of the following calendar-year periods, as applicable to the calendar year elected by Buyer pursuant to an Exercise Notice: (i) January 1, 2030 through December 31, 2030; (ii) January 1, 2031 through December 31, 2031.

**Contract Quantity and Contract Price**

| Showing Month and Year | RAR Contract Quantity (MW) | Local RAR Contract Quantity (MW) | Flexible Capacity Contract Quantity (MW) | Contract Quantity Availability Hours | Contract Price ($/kW-mo.) |
|---|---|---|---|---|---|
| Jan – Dec 2030 | | | | HE 1-24 | [redacted] |
| Jan – Dec 2031 | | | | HE 1-24 | [redacted] |

**Unit 1**[3]

| Unit Specific Information | |
|---|---|
| **Resource Name** | |
| Physical Location | |
| CAISO Resource ID | |
| SCID of Resource | |
| Unit NQC by month (e.g., Jan=50, Feb=65) | |
| Unit EFC by month (e.g., Jan=30, Feb=50) | N/A |
| Unit SOD NQC by month (e.g., Jan=50, Feb=65) | |
| Unit SOD NQC by hour | |
| Resource Type (e.g., gas, hydro, solar, battery, etc.) | |
| Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3) | N/A |
| TAC Area (e.g., PG&E, SCE) | |
| Prorated Percentage of Unit Factor | |
| Prorated Percentage of Unit Flexible Factor | N/A |
| Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt) | CAISO System |
| Resource Category as defined by the CPUC (DR) (yes/no) | |
| Nameplate Capacity for Unit/Pmax | |
| Percentage of Nameplate Capacity/Pmax | |
| Hours Available for Production | 24/7 |
| Availability Restrictions of Unit, if any (e.g., start and end hour, run time, etc.) | N/A |
| | |
| **Additional information for battery and other storage resources:** | |
| Paired resource (yes/no) | |
| If a paired resource, does it charge exclusively from the paired resource or is grid charging allowed? | |
| Efficiency Rate | |
| Co-located or hybrid resource | |
| Interconnection limit (if part of co-located or hybrid resource) | |
| Number of cycles per day | |
| | |
| **Additional information for solar and wind resources:** | |
| Part of co-located or hybrid resource (yes/no) | |
| For calculation of correct SOD hourly QC based on exceedance values: | |
| Region | |
| Solar type (tracking, fixed) | |

[3] Ava NTD: At least one Unit needs to be specified before Confirmation is executed.

| | |
|---|---|
| Interconnection limit (if part of co-located or hybrid resource) | |

(*Repeat for additional Units)*

# EXHIBIT C

## NOTICES

| Sentinel Energy Center, LLC | Ava Community Energy Authority |
|---|---|
| **All Notices:**<br>[redacted] | **All Notices:**<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Attn: Power Resources<br>Email: powernotices@avaenergy.org |
| **Reference Numbers:**<br>[redacted] | **Reference Numbers:**<br>[redacted] |
| **Invoices:**<br>[redacted] | **Invoices & Payments:**<br>Attn: Jason Bartlett, Senior Finance Manager<br>Phone: (510) 650-7584<br>Email: ap@avaenergy.org |
| **Scheduling:**<br>[redacted] | **Scheduling:**<br>Attn: NCPA c/o Mojtaba Khanabadi, Manager, Portfolio and Pool Administration<br>Phone: (916) 781-4290<br>Email: powerscheduling@avaenergy.org |
| **Confirmations:**<br>[redacted] | **Confirmations:**<br>Attn: Power Resources<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org |
| **Payments:**<br>[redacted] | **Settlements:**<br>Attn: Power Resources<br>Email: powersettlements@avaenergy.org; settlements@ncpa.com |

| | |
|---|---|
| **Wire Transfer:**<br>[redacted] | **Wire Transfer:**<br>[redacted] |
| **Credit and Collections:**<br>[redacted] | **Credit and Collections:**<br>Attn: Rusty Mills, Chief Financial Officer<br>Phone: (916) 337-9704<br>Email: powernotices@avaenergy.org; powersettlements@avaenergy.org; ap@avaenergy.org |
| **With additional Notices of an Event of Default or Potential Event of Default to:**<br>[redacted] | **With additional Notices of an Event of Default or Potential Event of Default to:**<br>Attn: Power Resources<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org; legal@avaenergy.org<br><br>**With an additional copy to:**<br>Hall Energy Law PC<br>Attn: Stephen Hall<br>Email: steve@hallenergylaw.com |

# EXHIBIT D

# SELLER ATTESTATION

*Ava Draft*
*2 September 2026*

**CONFIRMATION**

**FINANCIAL HEDGE SETTLEMENT**

**COVER SHEET**[1]

This Financial Hedge Settlement Confirmation ("**Confirmation**") is entered into by and between Ava Community Energy Authority, a California joint powers authority ("**Party A**" or "**Buyer**"), and Sentinel Energy Center, LLC, a Delaware limited liability company ("**Party B**" or "**Seller**"), each individually a "**Party**" and together the "**Parties**," dated as of ________ (the "**Effective Date**"). This Confirmation constitutes a "Confirmation" as referred to in the 2002 ISDA Master Agreement and Schedule thereto, each dated __________, between the Parties, as amended from time to time (the "**ISDA Master Agreement**"), and is governed by, constitutes part of, and is subject to the terms and provisions of the ISDA Master Agreement. This Confirmation governs the terms for a financial settlement Transaction based on the value of the Hedge Contract Quantity (as set forth below), without any obligation for the physical delivery of energy or any other Product to Buyer (the "**Transaction**"). The ISDA Master Agreement and this Confirmation, including any appendices, exhibits or amendments thereto, shall collectively be referred to herein as the "**Agreement**" and shall constitute a single agreement between the Parties with respect to the Transaction.

**Calculation Agent:** Party B

**Contract Price:** [redacted]

**Hedge Contract Quantity:** 100 MW

**Settlement Point**: [redacted]][2]

**Settlement Term:** Five (5) Contract Years commencing on January 1, 2030; provided, that Buyer shall have a one-time option, exercisable by written notice to Seller no later than twelve (12) months prior to the expiration of the initial Settlement Term, to extend the Settlement Term for one additional period of five (5) Contract Years on the same terms and conditions set forth in this Agreement.

**Product:** As this is a financially settled transaction, in no event shall Party B have any obligation to sell or deliver to Party A under this Transaction any product, commodity or attribute.

**Performance Security:** [redacted]

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[1] [redacted]

# TABLE OF CONTENTS

# ARTICLE 1
# DEFINITIONS

1.1 **Contract Definitions**. By this reference, the definitions set forth in the ISDA Master Agreement are hereby incorporated into this Confirmation. In addition, the following terms, when used herein with initial capitalization, shall have the meanings set forth below. In the event of a conflict between the ISDA Master Agreement and the defined terms herein, the defined terms in this Confirmation shall govern.

[“**Cap-and-Trade Cost Exemption Credit**” has the meaning set forth in the PG&E Gas Schedule G-EG (Gas Transportation Service to Electric Generation) and applicable PG&E gas tariff. Seller shall provide Buyer with thirty (30) days’ prior written notice and supporting documentation of any changes to the Cap-and-Trade Cost Exemption Credit.]

“**Contract Price**” means [redacted].

“**Contract Term**” has the meaning set forth in Section 2.1 of this Confirmation.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply. [4]

“**Day**” or “**Daily**” means each calendar day starting at 00:00:00 and ending at 23:59:59.

“**Day-Ahead**” has the meaning set forth in the CAISO Tariff.

“**Day-Ahead Market**” has the meaning set forth in the CAISO Tariff.

“**Day-Ahead Price**” means the CAISO Day-Ahead Market Locational Marginal Price in each applicable Settlement Period (including the energy, congestion, and losses components) at the Settlement Point.

“**Daily Exercise Price**” means [redacted]

(a) [redacted]

(b) [redacted]

[redacted]

[4] [redacted]

[redacted]

“**ES Payment**” has the meaning set forth in Section 4.1(b) of this Confirmation.

“**Extension Term**” means the additional five (5) Contract Year period of the Settlement Term that Buyer may elect pursuant to Section 2.1(c).

“**Fixed Daily Exercise Price**” means the Daily Exercise Price that has been fixed pursuant to Section 4.2 of this Confirmation.

“**Fixed Price Agreement**” has the meaning set forth in Exhibit C.

“**Fixed Price Period**” has the meaning set forth in Exhibit C.

“**Fixed Price Hours**” means the specific set of hours per Day during which the Fixed Daily Exercise Price applies, which shall be considered ON-Settlement Period hours, which shall not be less than two (2) consecutive hours over a period of not less than one (1) month and such Daily hours shall be the same for each day of the applicable month.

“**Fixed Price Notice**” has the meaning set forth in Exhibit B.

“**Gas Index Price**” or “**GIP**” means the [redacted]

“**Gas Transportation Charges**” or “**GTC**” means the gas transportation charges, expressed in \$/MMBtu, applicable to the Hedge Contract Quantity and reflected on the applicable SoCalGas monthly invoice for the applicable settlement month.

“**GHG Conversion Rate**” or “**GHGCR**” means 0.0539 metric tons of $CO_2e$ per MMBtu.

“**GHG Price**” or “**GHGP**” means the Greenhouse Gas Allowance Price.

"**Greenhouse Gas Allowance Price**" [means the settlement price from the most recently completed California Air Resources Board quarterly greenhouse gas allowance auction. The Greenhouse Gas Allowance Price shall be updated following each quarterly auction and applied for the prior quarter on a retrospective basis. As of July 5, 2026, the GHGP was [redacted]

"**Heat Rate**" **or** "**HR**" means 9.50 MMBtu/MWh.

"**Hedge Contract Quantity**" has the meaning set forth on the Cover Sheet.

"**Hedge Settlement**" has the meaning set forth in Section 4.1(b) of this Confirmation.

"**Hedge Settlement Quantity**" means (i) with respect to an ON-Settlement Period, the Hedge Contract Quantity and (ii) with respect to an OFF-Settlement Period, 0 MW.

"**Interest Rate**" [redacted]

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank, or U.S. branch of a Canadian bank, with such bank having a Credit Rating of at least [redacted] with an outlook designation of "stable" from S&P or [redacted] with an outlook designation of "stable" from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit D.

"**Locational Marginal Price**" has the meaning set forth in the CAISO Tariff.

"**MMBtu**" means millions of British thermal units.

"**Monthly Product Payment**" has the meaning set forth in Section 4.1(a) of this Confirmation.

"**Monthly Settlement Amount**" has the meaning set forth in Section 4.1(c) of this Confirmation.

"**Monthly Settlement Payment**" has the meaning set forth in Section 4.1(c) of this Confirmation.

"**Moody's**" means Moody's Investors Service, Inc.

"**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**OFF-Settlement Period**" has the meaning set forth in Section 4.1(b)(i) of this Confirmation.

"**ON-Settlement Period**" has the meaning set forth in Section 4.1(b)(i) of this Confirmation.

"**Performance Security**" means [redacted]

"**Pricing Period**" means a period of consecutive Settlement Periods commencing with a Start-Up Hour and ending with a Shutdown Hour.

"**Product**" has the meaning set forth on the Cover Sheet.

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

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Settlement Point**" means [redacted]

"**Settlement Term**" has the meaning set forth on the Cover Sheet.

"**Shutdown Hour**" means the last Settlement Period within a Pricing Period designated as an ON-Settlement Period.

"**Start Charge**" means [redacted]

"**Start Fuel Quantity**" means (a) where the number of hours between a Shutdown Hour and the immediately following Start-Up Hour is less than or equal to [redacted] the Start Fuel Quantity shall equal [redacted] (b) where the number of hours between a Shutdown Hour and the immediately following Start-Up Hour is greater than [redacted] and less than or equal to [redacted], the Start Fuel Quantity shall equal [redacted] and (c) where the number of hours between a Shutdown Hour and the immediately following Start-Up Hour is greater than [redacted] the Start Fuel Quantity shall equal [redacted]

"**Start-Up Hour**" means the first ON-Settlement Period that immediately follows an OFF-Settlement Period; provided, however, that a Start-Up Hour (i) shall not be any Settlement Period that is less than two (2) hours following the immediately preceding Shutdown Hour, and (ii) must be followed by at least one (1) additional ON-Settlement Period.

"**Start-Up Payment**" means [redacted]

"**Transaction**" has the meaning set forth in the ISDA Master Agreement.

"**Variable O&M Rate**" or "**VOM**" means the [redacted]

## ARTICLE 2
## TERM

2.1 **Contract Term**.

(a) The term of this Transaction shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Settlement Term, provided that this Confirmation shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Confirmation, including any ES Payments during the Settlement Term, subject to any early termination provisions and any contract term extension provisions set forth in this Confirmation ("**Contract Term**").

(b) Applicable provisions of this Confirmation shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Part 5(f) of the Schedule and all indemnity and audit rights shall remain in full force and effect for five (5) years following the last day of the Contract Term.

(c) Buyer shall have a one-time option in its sole discretion to extend the Settlement Term for the Extension Term by delivering written notice to Seller at least six (6) months prior to the expiration of the then-current Settlement Term. Upon delivery of such notice, the Settlement Term shall automatically be extended for the Extension Term, and all terms and conditions of this Agreement shall continue in full force and effect during such Extension Term unless otherwise expressly provided herein.

## ARTICLE 3
## PERFORMANCE SECURITY[5]

3.1 **Seller's Performance Security**.

(a) To secure its obligations under this Confirmation, Seller shall deliver Performance Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within [redacted] after any draw thereon replenish the Performance Security in the event Buyer properly collects or draws down any portion of the Performance Security for any reason permitted under this Confirmation, until the following have occurred: (A) the Contract Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Confirmation (other than indemnities and other contingent obligations not then due and payable with respect to which a claim has not been made), including compensation for penalties, Early Termination Amount, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires without being renewed prior to the end of the Contract

[5] [redacted]

Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall [redacted] either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

(b) To secure its obligations under this Confirmation, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest in, and lien on (and right to net against), and assignment of the Performance Security to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Section 3.1(a) of this Confirmation and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's security interest granted under this Section 3.1(b) in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

3.2 **Use of Financial Security**. Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Confirmation where Buyer is authorized to retain all or a portion of the Performance Security provided by Seller, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 3.2):

(a) Exercise any of its rights and remedies with respect to the Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and

(c) Liquidate the applicable Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under this Confirmation and Seller shall remain liable for any amounts owing to Buyer after such application, subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

3.3 **Limited Recourse**. The Performance Security provided in connection with this Transaction is solely available to be used to satisfy Party B's obligations under this Transaction and not any other Transactions under the Agreement, and only to the extent of Party B's liabilities under this Confirmation. Party A's sole and exclusive recourse for any breach of the Agreement with respect to this Transaction by Party B, its Credit Support Provider or any applicable Specified Entity of Party B and any liabilities of Party B with respect thereto shall be against the Performance Security, and Party B's liability under this Transaction, will not exceed, in the aggregate, an amount equal to the Performance Security then available to Party A at such time. Without limiting the generality of the foregoing, under no circumstance shall any Financing Party or its successor(s), assignee(s) and/or designee(s), be deemed to have assumed any of the obligations or liabilities of this Agreement solely by virtue of having undertaken to cure a default, notwithstanding such action may prove to be in whole, or in part, inadequate or invalid, and the sole recourse of Party A against any such Financing Party, successor, assignee and/or designee in seeking enforcement of the obligations of Party B under the Agreement, shall be limited to the interest of such Financing Party, successor, assignee and/or designee in the Performance Security.

## ARTICLE 4
## MONTHLY FINANCIAL SETTLEMENT

4.1 **Monthly Financial Settlement**.

(a) Fixed Payment. For each month during the Settlement Term, Buyer shall pay to Seller an amount equal [redacted]

(b) Floating Payment. Subject to the terms and conditions of this Confirmation, for each Day during the Settlement Term, Seller shall calculate [redacted]:[6]

[redacted]

[redacted]

[redacted]

[redacted]

(i) Designation of Monthly Hedge Settlement Quantity. Following each month during the Settlement Term, Buyer shall provide Notice to Seller on or before the [redacted] of the month in a form reasonably acceptable to each Party designating each Settlement Period during the prior month as either "ON" (each, an "**ON-Settlement Period**") or "OFF" (each, an "**OFF-Settlement Period**"); provided, however, that each Settlement Period designated as an ON-Settlement Period must be consecutive to at least one other Settlement Period that is designated as an ON-Settlement Period (other than a Start-Up Hour).[7]

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[6] [redacted].

(c) Monthly Settlement Payment. For each month during the Settlement Term, Seller shall calculate an amount (the "**Monthly Settlement Amount**") equal [redacted]

4.2 **Fixed Price Conversion**. No less than [redacted] prior to any month that would include a Fixed Price Start Date (as proposed in the applicable Fixed Price Notice), Buyer may provide a Fixed Price Notice to Seller, requesting the Daily Exercise Price to become the Fixed Daily Exercise Price during the Fixed Price Hours as specified in the Fixed Price Notice. For any Day that the Fixed Daily Exercise Price is applicable, the Daily Exercise Price shall apply for any ON-Settlement Period hours that are not Fixed Price Hours. Within [redacted] receiving the Fixed Price Notice, Seller shall provide a Fixed Price Agreement, in substantially the form set forth in Exhibit C, which shall include the Gas Index Price, the Gas Transportation Charges and the GHG Price to be used for the calculation of the Fixed Daily Exercise Price during the term specified in the Fixed Price Notice. Within [redacted] receipt the Fixed Price Agreement, Buyer shall either (a) reject in writing the Fixed Price Agreement, or (b) countersign the Fixed Price Agreement. The Fixed Daily Exercise Price shall become effective upon Buyer's countersignature and shall apply during the Fixed Price Hours as specified in the Fixed Price Notice. The Daily Exercise Price for all Fixed Price Hours during the months which are included in a Fixed Price Period of any Fixed Price Agreement(s) shall be governed exclusively by such Fixed Price Agreement(s) and the Daily Exercise Price for all other hours shall continue to be determined without regard to this Section 4.2.

## ARTICLE 5
## INVOICING AND PAYMENT; CREDIT

5.1 **Statements and Invoicing**. Commencing in the first month of the Settlement Term, Seller shall deliver an invoice to Buyer five (5) Business Days after Seller receives the data required pursuant to Section 4.1(b)(i) above. Each invoice shall be in a format reasonably acceptable to Buyer, covering the preceding month of the Settlement Term determined in accordance with the applicable provisions of this Confirmation. The invoice shall be delivered by electronic mail in accordance with Exhibit A.

5.2 **Payments**. Each month in which Seller submits an invoice to Buyer, the Party owing the Monthly Settlement Payment shall make such payment (and any other amounts due and owing pursuant to this Confirmation) to the other Party, by wire transfer or ACH payment to the bank account provided by such Party. Any Party owing an amount to the other Party shall pay the undisputed amounts by the later of (a) ten (10) Business Days after such Party's receipt of the invoice from the other Party, and (b) the last day of the month after the month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the Interest Rate. If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

5.3 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest at the Interest Rate, until settled in full, accruing from the date on which the adjusted amount should have been due; provided, that no interest shall be due on adjustments arising from CAISO resettlements. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twelve (12) months from the date of the invoice.

*[Signatures on following page]*

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

**AVA COMMUNITY ENERGY AUTHORITY,**
**a California joint powers authority**

By: ____________________________
Name: __________________________
Title: __________________________

**SENTINEL ENERGY CENTER, LLC,**
**a Delaware limited liability company**

By: ______________________________
Name: ____________________________
Title: ____________________________

**Approved as to form:**

________________________________

# EXHIBIT A

## NOTICES

| Sentinel Energy Center, LLC | Ava Community Energy Authority |
|---|---|
| **All Notices:**<br>[redacted] | **All Notices:**<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Attn: Power Resources<br>Email: powernotices@avaenergy.org |
| **Reference Numbers:**<br>[redacted] | **Reference Numbers:**<br>[redacted] |
| **Invoices:**<br>[redacted] | **Invoices & Payments:**<br>Attn: Jason Bartlett, Senior Finance Manager<br>Phone: (510) 650-7584<br>Email: ap@avaenergy.org |
| **Scheduling:**<br>[redacted] | **Scheduling:**<br>Attn: NCPA c/o Mojtaba Khanabadi, Manager, Portfolio and Pool Administration<br>Phone: (916) 781-4290<br>Email: powerscheduling@avaenergy.org |
| **Confirmations:**<br>[redacted] | **Confirmations:**<br>Attn: Power Resources<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org |
| **Payments:**<br>[redacted] | **Settlements:**<br>Attn: Power Resources<br>Email: powersettlements@avaenergy.org; settlements@ncpa.com |

| | |
|---|---|
| **Wire Transfer:**<br>[redacted] | **Wire Transfer:**<br>[redacted] |
| **Credit and Collections:**<br>[redacted] | **Credit and Collections:**<br>Attn: Rusty Mills, Chief Financial Officer<br>Phone: (916) 337-9704<br>Email: powernotices@avaenergy.org; powersettlements@avaenergy.org; ap@avaenergy.org |
| **With additional Notices of an Event of Default or Potential Event of Default to:**<br>[redacted] | **With additional Notices of an Event of Default or Potential Event of Default to:**<br>Attn: Power Resources<br>1999 Harrison Street, Suite 2300<br>Oakland, CA 94612<br>Phone: (510) 361-6247<br>Email: powernotices@avaenergy.org; legal@avaenergy.org<br><br>**With an additional copy to:**<br>Hall Energy Law PC<br>Attn: Stephen Hall<br>Email: steve@hallenergylaw.com |

# EXHIBIT B

## FORM OF FIXED PRICE NOTICE

This **FIXED PRICE NOTICE** ("**Fixed Price Notice**") is delivered by Ava Community Energy Authority, a California joint powers authority to Sentinel Energy Center, LLC in accordance with the terms of that certain Financial Hedge Settlement Confirmation by and between Ava Community Energy Authority, as Buyer, and Sentinel Energy Center, LLC, as Seller, dated as of [____] (the "**Confirmation**"). All capitalized terms used in this Fixed Price Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Confirmation.

Pursuant to Section 4.2 of the Confirmation, Buyer elects a Fixed Price Conversion as follows:

> Fixed Price Start Date: [Specify the first day of a calendar month during the remainder of the Settlement Term, which date is no less than thirty (30) days prior to the delivery of this notice to Seller and is after the End Date specified in any prior Fixed Price Notice or Fixed Price Agreement.]
>
> Fixed Price End Date: [Specify the last day of a calendar month during the remainder of the Settlement Term.]
>
> First Start-Up Hour: [Specify the Settlement Period each Day for the first Pricing Period to commence. Must be no less than two (2) consecutive hours after the immediately preceding Shutdown Hour.]
>
> First Shutdown Hour: [Specify the Settlement Period each Day for the first Pricing Period to end. Must be no less than two (2) consecutive hours after the first Start-Up Hour of each Day.]
>
> Second Start-Up Hour: [Specify the Settlement Period each Day for the second Pricing Period to commence. Must be no less than two (2) consecutive hours after the immediately preceding Shutdown Hour.]
>
> Second Shutdown Hour: [Specify the Settlement Period each Day for the second Pricing Period to end. Must be no less than two (2) consecutive hours after the second Start-Up Hour of each Day.]

Buyer has caused this Fixed Price Notice to be duly executed and delivered by a duly authorized representative on the date written below.

**AVA COMMUNITY ENERGY AUTHORITY,**
**a California joint powers authority**

By: ________________________________
Name: ______________________________
Title: _______________________________
Date: _______________________________

# EXHIBIT C

## FORM OF FIXED PRICE AGREEMENT

This **FIXED PRICE AGREEMENT** ("**Fixed Price Agreement**") is delivered by Sentinel Energy Center, LLC to Ava Community Energy Authority, a California joint powers authority, in accordance with the terms of that certain Financial Hedge Settlement Confirmation by and between Ava Community Energy Authority, as Buyer, and Sentinel Energy Center, LLC, as Seller, dated as of [____] (the "**Confirmation**"). All capitalized terms used in this Response to the Fixed Price Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Confirmation.

Pursuant to Section 4.2 of the Confirmation and Buyer's Fixed Price Notice dated [____] for the period commencing [Fixed Price Start Date] and ending [Fixed Price End Date] (the "**Fixed Price Period**"), the Parties agree to fix the amount of the Gas Index Price, Gas Transportation Charges and GHG Price during the Fixed Price Period as follows:

Gas Index Price:

Gas Transportation Charges:

GHG Price:

Seller has caused this Fixed Price Agreement to be duly executed and delivered by a duly authorized representative of Seller on the date written below.

**SENTINEL ENERGY CENTER, LLC**

By: ________________________________
Name: ______________________________
Title: _______________________________
Date: _______________________________

Buyer accepts and agrees to the Fixed Price Agreement, which has been duly executed and delivered by an authorized representative of Buyer on the date written below.

**AVA COMMUNITY ENERGY AUTHORITY,**
**a California joint powers authority**

By: ___________________________________
Name: _________________________________
Title: _________________________________
Date: _________________________________

# EXHIBIT D

## FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: ____________________
Bank Ref.: ________________
Amount: US$______________
Expiration Date: ___________

Beneficiary:
Ava Community Energy Authority
1999 Harrison Street, Suite 2300
Oakland, CA 94612
Attn: Marie Fontenot, Senior Vice President of Power Resources
and Jason Bartlett, Senior Finance Manager

Ladies and Gentlemen:

By the order of [*Entity name, state of formation, type of entity*] ("Applicant"), we, [*Bank name and address*] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [*XXXXXX*] (the "Letter of Credit") in favor of Ava Community Energy Authority, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[*XXXXXX*] (United States Dollars [*XXXXXX*] and 00/100), pursuant to that certain Financial Hedge Settlement Confirmation dated as of [*Date*] and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [*Date*] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by Beneficiary's duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [*XXXXXX*] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an email to [*Bank email address*] or (c) facsimile to [*Bank fax number*] confirmed by [email to [*Bank email address*]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the

Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on such Expiration Date, or such later date as may be specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (or such later date, if applicable) will be honored.

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of California.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements (other than as set forth in the immediately preceding paragraph), this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*Bank name and address*], referring specifically to Issuer's Letter of Credit No. [*XXXXXX*]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*Bank phone number*] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Ava Community Energy Authority, Attn: Marie Fontenot, Senior Vice President of Power Resources and Jason Bartlett, Senior Finance Manager, 1999 Harrison Street, Suite 2300, Oakland, CA 94612. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[*Bank Name*]

______________________________
[*Officer name*]
[*Officer title*]

Exhibit A:

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[*Bank name and address*]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Ava Community Energy Authority, a California joint powers authority, 1999 Harrison Street, Suite 2300, Oakland, CA 94612, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [*XXXXXX*] (the "Letter of Credit") issued by [*Bank name*] (the "Bank") by order of [*Entity name, state of formation, type of entity*] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Financial Hedge Settlement Confirmation dated as of [*Date*] (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[*XXXXXX*] because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[*XXXXXX*], which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of Ava Community Energy Authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Ava Community Energy Authority by wire transfer in immediately available funds to the following account: [*Specify account information*].

Ava Community Energy Authority

______________________________
[*Name and Title of Authorized Representative*]
Date__________________________

# Master Power Purchase & Sale Agreement

Version 2.1 (modified 4/25/00)

# MASTER POWER PURCHASE AND SALES AGREEMENT

## TABLE OF CONTENTS

# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*" ) is made as of the following date: _________________ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("__________________" or "Party A")

All Notices:

Street: ______________________________________

City: _________________________Zip: ___________

Attn: Contract Administration
Phone: ______________________________________
Facsimile: ___________________________________
Duns: _______________________________________
Federal Tax ID Number: ______________________

**Invoices:**
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

**Scheduling:**
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

**Payments:**
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

**Wire Transfer:**
BNK: ____________________________________
ABA: ____________________________________
ACCT: ___________________________________

**Credit and Collections:**
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

Name ("Counterparty" or "Party B")

All Notices:

Street: ______________________________________

City: ______________________Zip: ____________

Attn: Contract Administration
Phone: ______________________________________
Facsimile: ___________________________________
Duns: _______________________________________
Federal Tax ID Number: ______________________

**Invoices:**
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

**Scheduling:**
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

**Payments:**
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

**Wire Transfer:**
BNK: ____________________________________
ABA: ____________________________________
ACCT: ___________________________________

**Credit and Collections:**
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: ____________________________________
Phone: ___________________________________
Facsimile: ________________________________

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

| | | | |
|---|---|---|---|
| Party A Tariff | Tariff ________________ | Dated ________________ | Docket Number ______________ |
| Party B Tariff | Tariff ________________ | Dated ________________ | Docket Number ______________ |

---

**Article Two**

Transaction Terms and Conditions — [] Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

Remedies for Failure to Deliver or Receive — [] Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies

[] Cross Default for Party A:

[] Party A:__________________ Cross Default Amount $_________

[] Other Entity:______________ Cross Default Amount $_________

[] Cross Default for Party B:

[] Party B:__________________ Cross Default Amount $_________

[] Other Entity:______________ Cross Default Amount $_________

5.6 Closeout Setoff

[] Option A (Applicable if no other selection is made.)

[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:______________
_____________________________________________________

[] Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: ________________
[] Option C Specify: ________________

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party B Collateral Threshold: $ __________; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $_____________

Party B Rounding Amount: $_______________

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below __________ from S&P or __________ from Moody's or if Party B is not rated by either S&P or Moody's

[] Other:
Specify:_______________________________________________

(e) Guarantor for Party B:________________________________________

Guarantee Amount:_______________________________________

8.2 Party B Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _________________
[] Option C Specify: _________________

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $ __________; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____________

Party A Rounding Amount: $_______________

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below __________ from S&P or __________ from Moody's or if Party A is not rated by either S&P or Moody's

[] Other:
Specify:_______________________________________________

(e) Guarantor for Party A:_______________________________________

Guarantee Amount:______________________________________

---

**<u>Article 10</u>**

Confidentiality [] Confidentiality Applicable If not checked, inapplicable.

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**<u>Schedule M</u>**

[] Party A is a Governmental Entity or Public Power System
[] Party B is a Governmental Entity or Public Power System
[] Add Section 3.6. If not checked, inapplicable
[] Add Section 8.6. If not checked, inapplicable

**<u>Other Changes</u>** Specify, if any: _______________________________________________

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

| | |
|---|---|
| Party A Name | Party B Name |
| By: ______________________ | By: ______________________ |
| Name: ____________________ | Name: ____________________ |
| Title: _____________________ | Title: _____________________ |

**DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.**

# GENERAL TERMS AND CONDITIONS

## ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

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

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

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

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

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

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

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

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

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

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

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

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

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

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

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

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

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

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

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

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

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

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

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

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

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

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

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

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

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

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

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

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

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

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

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

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

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

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

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

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

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

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

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

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

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

## ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

## ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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

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

## ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

## ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

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

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

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

## ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

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

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

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

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

(a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and

(b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

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

## ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.l(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

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

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

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

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

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

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

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

## ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

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

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;

(xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

(xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

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

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## SCHEDULE M

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

A. The Parties agree to add the following definitions in Article One.

"Act" means ______________________________.[1]

"Governmental Entity or Public Power System" means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

"Special Fund" means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System's obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System's obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of "Force Majeure" in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

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

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

[1] Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

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

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

> NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____________[2] SHALL APPLY.

[2] Insert relevant state for Governmental Entity or Public Power System.

## SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

"Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

"Capacity" has the meaning specified in the Transaction.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Firm (LD)" means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

"Firm Transmission Contingent - Contract Path" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary.

"Firm Transmission Contingent - Delivery Point" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

"Firm (No Force Majeure)" means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

"Into _____________ (the "Receiving Transmission Provider"), Seller's Daily Choice" means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface ("Interface") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An "Into" Product shall be subject to the following provisions:

1. <u>Prescheduling and Notification</u>. 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. <u>Availability of "Firm Transmission" to Buyer at Designated Interface; "Timely Request for Transmission," "ADI" and "Available Transmission</u>." 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. <u>Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission</u>.

A. <u>Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer</u>. 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: ______________ |

International Swaps and Derivatives Association, Inc.

# 2002 MASTER AGREEMENT

dated as of ......................................................................

...................................................................................... and ......................................................................................

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:―

## 1. Interpretation

(a) ***Definitions.*** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.

(b) ***Inconsistency.*** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.

(c) ***Single Agreement.*** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

## 2. Obligations

(a) ***General Conditions.***

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) ***Change of Account.*** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) ***Netting of Payments.*** If on any date amounts would otherwise be payable:—

(i) in the same currency; and

(ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) ***Deduction or Withholding for Tax.***

(i) ***Gross-Up.*** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

(1) promptly notify the other party ("Y") of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) ***Liability.*** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

## 3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any "Additional Representation" is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) ***Basic Representations.***

(i) ***Status.*** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) ***Powers.*** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) ***No Violation or Conflict.*** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) ***Consents.*** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) ***Obligations Binding.*** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) ***Absence of Certain Events.*** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) ***Absence of Litigation.*** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) ***Accuracy of Specified Information.*** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) ***Payer Tax Representation.*** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) ***Payee Tax Representations.*** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) ***No Agency.*** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

## 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) ***Furnish Specified Information.*** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) ***Maintain Authorisations.*** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) ***Comply With Laws.*** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) ***Tax Agreement.*** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) ***Payment of Stamp Tax.*** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction"), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

**5. Events of Default and Termination Events**

(a) ***Events of Default.*** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an "Event of Default") with respect to such party:—

(i) ***Failure to Pay or Deliver.*** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) ***Breach of Agreement; Repudiation of Agreement.***

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any

Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) ***Misrepresentation.*** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default Under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(l) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) ***Cross-Default.*** If "Cross-Default" is specified in the Schedule as applying to the party, the occurrence or existence of:—

(l) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) ***Bankruptcy.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(l) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (l) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) ***Merger Without Assumption.*** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

(l) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) ***Termination Events.*** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) ***Illegality.*** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) ***Force Majeure Event.*** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) ***Tax Event.*** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) ***Tax Event Upon Merger.*** The party (the "Burdened Party") on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) ***Credit Event Upon Merger.*** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, "X") and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A "Designated Event" with respect to X means that:―

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) ***Additional Termination Event.*** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) ***Hierarchy of Events.***

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) ***Deferral of Payments and Deliveries During Waiting Period.*** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) ***Inability of Head or Home Office to Perform Obligations of Branch.*** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

**6. Early Termination; Close-Out Netting**

(a) ***Right to Terminate Following Event of Default.*** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) ***Transfer to Avoid Termination Event.*** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) ***Two Affected Parties.*** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) ***Right to Terminate.***

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

(d) ***Calculations; Payment Date.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (l) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) ***Payment Date.*** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) ***Termination Events.*** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party*. Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) *Two Affected Parties*. Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events*. If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:―

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) ***Adjustment for Bankruptcy.*** In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) ***Adjustment for Illegality or Force Majeure Event.*** The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) ***Pre-Estimate.*** The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) ***Set-Off.*** Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

**7. Transfer**

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

**8. Contractual Currency**

(a) ***Payment in the Contractual Currency.*** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) ***Judgments.*** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) ***Separate Indemnities.*** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) ***Evidence of Loss.*** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

**9. Miscellaneous**

(a) ***Entire Agreement.*** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) ***Amendments.*** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) ***Survival of Obligations.*** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) ***Remedies Cumulative.*** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) ***Counterparts and Confirmations.***

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) ***No Waiver of Rights.*** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) ***Headings.*** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(h) ***Interest and Compensation.***

(i) ***Prior to Early Termination.*** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) *Interest on Defaulted Payments.* If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) *Compensation for Defaulted Deliveries.* If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) *Interest on Deferred Payments.* If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) ***Early Termination.*** Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) ***Interest Calculation.*** Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

**10. Offices; Multibranch Parties**

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

**11. Expenses**

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

**12. Notices**

(a) ***Effectiveness.*** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;

(v) if sent by electronic messaging system, on the date it is received; or

(vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

(b) ***Change of Details.*** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

**13. Governing Law and Jurisdiction**

(a) ***Governing Law.*** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) ***Jurisdiction.*** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("Proceedings"), each party irrevocably:―

(i) submits:―

(1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

(2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

(iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

(c) ***Service of Process.*** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

(d) ***Waiver of Immunities.*** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 14. Definitions

As used in this Agreement:—

***"Additional Representation"*** has the meaning specified in Section 3.

***"Additional Termination Event"*** has the meaning specified in Section 5(b).

***"Affected Party"*** has the meaning specified in Section 5(b).

***"Affected Transactions"*** means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

***"Affiliate"*** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

***"Agreement"*** has the meaning specified in Section 1(c).

***"Applicable Close-out Rate"*** means:—

(a) in respect of the determination of an Unpaid Amount:—

(i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;

(iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and

(iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and

(b) in respect of an Early Termination Amount:—

(i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—

(1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;

(2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and

(3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

***"Applicable Deferral Rate"*** means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

***"Automatic Early Termination"*** has the meaning specified in Section 6(a).

***"Burdened Party"*** has the meaning specified in Section 5(b)(iv).

***"Change in Tax Law"*** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

***"Close-out Amount"*** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

(i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or

(iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

(1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

***"Confirmation"*** has the meaning specified in the preamble.

***"consent"*** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

***"Contractual Currency"*** has the meaning specified in Section 8(a).

***"Convention Court"*** means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

***"Credit Event Upon Merger"*** has the meaning specified in Section 5(b).

***"Credit Support Document"*** means any agreement or instrument that is specified as such in this Agreement.

***"Credit Support Provider"*** has the meaning specified in the Schedule.

***"Cross-Default"*** means the event specified in Section 5(a)(vi).

***"Default Rate"*** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

***"Defaulting Party"*** has the meaning specified in Section 6(a).

***"Designated Event"*** has the meaning specified in Section 5(b)(v).

***"Determining Party"*** means the party determining a Close-out Amount.

***"Early Termination Amount"*** has the meaning specified in Section 6(e).

***"Early Termination Date"*** means the date determined in accordance with Section 6(a) or 6(b)(iv).

***"electronic messages"*** does not include e-mails but does include documents expressed in markup languages, and ***"electronic messaging system"*** will be construed accordingly.

***"English law"*** means the law of England and Wales, and ***"English"*** will be construed accordingly.

***"Event of Default"*** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

***"Force Majeure Event"*** has the meaning specified in Section 5(b).

***"General Business Day"*** means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

***"Illegality"*** has the meaning specified in Section 5(b).

***"Indemnifiable Tax"*** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

***"law"*** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and ***"unlawful"*** will be construed accordingly.

***"Local Business Day"*** means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

***"Local Delivery Day"*** means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

***"Master Agreement"*** has the meaning specified in the preamble.

***"Merger Without Assumption"*** means the event specified in Section 5(a)(viii).

***"Multiple Transaction Payment Netting"*** has the meaning specified in Section 2(c).

***"Non-affected Party"*** means, so long as there is only one Affected Party, the other party.

***"Non-default Rate"*** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

***"Non-defaulting Party"*** has the meaning specified in Section 6(a).

***"Office"*** means a branch or office of a party, which may be such party's head or home office.

***"Other Amounts"*** has the meaning specified in Section 6(f).

***"Payee"*** has the meaning specified in Section 6(f).

***"Payer"*** has the meaning specified in Section 6(f).

***"Potential Event of Default"*** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

***"Proceedings"*** has the meaning specified in Section 13(b).

***"Process Agent"*** has the meaning specified in the Schedule.

***"rate of exchange"*** includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

***"Relevant Jurisdiction"*** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

***"Schedule"*** has the meaning specified in the preamble.

***"Scheduled Settlement Date"*** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

***"Specified Entity"*** has the meaning specified in the Schedule.

***"Specified Indebtedness"*** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

***"Specified Transaction"*** means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

***"Stamp Tax"*** means any stamp, registration, documentation or similar tax.

***"Stamp Tax Jurisdiction"*** has the meaning specified in Section 4(e).

***"Tax"*** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

***"Tax Event"*** has the meaning specified in Section 5(b).

***"Tax Event Upon Merger"*** has the meaning specified in Section 5(b).

***"Terminated Transactions"*** means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

***"Termination Currency"*** means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

***"Termination Currency Equivalent"*** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

***"Termination Event"*** means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

***"Termination Rate"*** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

***"Threshold Amount"*** means the amount, if any, specified as such in the Schedule.

***"Transaction"*** has the meaning specified in the preamble.

***"Unpaid Amounts"*** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

***"Waiting Period"*** means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

| | |
|---|---|
| ........................................................................ | ........................................................................ |
| (Name of Party) | (Name of Party) |
| By: ........................................................................ | By: ........................................................................ |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

International Swaps and Derivatives Association, Inc.

# SCHEDULE
# to the
# 2002 Master Agreement

dated as of ....................................................................

between ...................................................................... and ..................................................................................
("Party A") ("Party B")

| | |
|---|---|
| [*established as a [COUNTERPARTY TYPE]*] | [*established as a [COUNTERPARTY TYPE]*] |
| [*with company number [NUMBER]*] | [*with company number [NUMBER]*] |
| [*under the laws of [JURISDICTION]*] | [*under the laws of [JURISDICTION]*] |
| [*acting through its [BRANCH]*][*] | [*acting through its [BRANCH]*][*] |

Part 1. **Termination Provisions.**

(a) ***"Specified Entity"*** means in relation to Party A for the purpose of:—

Section 5(a)(v), ..............................................................................................................................

Section 5(a)(vi), ..............................................................................................................................

Section 5(a)(vii), ..............................................................................................................................

Section 5(b)(v), ..............................................................................................................................

and in relation to Party B for the purpose of:—

Section 5(a)(v), ..............................................................................................................................

Section 5(a)(vi), ..............................................................................................................................

Section 5(a)(vii), ..............................................................................................................................

Section 5(b)(v), ..............................................................................................................................

* Include if applicable.

(b) ***"Specified Transaction"*** [will have the meaning specified in Section 14 of this Agreement.][means ............
..........................................................................................................................................................
.......................................................................................................................................................... ]*

(c) The ***"Cross-Default"*** provisions of Section 5(a)(vi) [will][will not]* apply to Party A
[will][will not]* apply to Party B

[***"Specified Indebtedness"*** [will have the meaning specified in Section 14 of this Agreement.][means ..........
.......................................................................................................................................................... ]*

***"Threshold Amount"*** means ..........................................................................................................................
..........................................................................................................................................................]**

(d) The ***"Credit Event Upon Merger"*** provisions of Section 5(b)(v) [will][will not]* apply to Party A
[will][will not]* apply to Party B

(e) The ***"Automatic Early Termination"*** provision of Section 6(a) [will][will not]* apply to Party A
[will][will not]* apply to Party B

(f) ***"Termination Currency"*** [will have the meaning specified in Section 14 of this Agreement.][means ...........
.......................................................................................................................................................... ]*

(g) ***Additional Termination Event*** [will][will not]* apply. [The following will constitute an Additional Termination Event:— ..........................................................................................................................
..........................................................................................................................................................
..........................................................................................................................................................
..........................................................................................................................................................

For the purpose of the foregoing Termination Event, the Affected Party or Affected Parties will be:— .........
.......................................................................................................................................................... ]***

Part 2. **Tax Representations.******

(a) ***Payer Representations.*** For the purpose of Section 3(e) of this Agreement[, Party A and Party B do not make any representations.][:—

[[(i)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to

* Delete as applicable.

** Include if Cross-Default will apply to either Party A or Party B.

*** Include if Additional Termination Event will apply.

**** N.B.: the following representations may need modification if either party is a Multibranch Party.

be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.]*

[[(ii)] [Party A] [and] [Party B] [each] make[s] the following representation[s]:— ....................................

..........................................................................................................................................

..........................................................................................................................................

.......................................................................................................................................]]*

(b) ***Payee Representations.*** For the purpose of Section 3(f) of this Agreement[, Party A and Party B do not make any representations.][:—

[[(i)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "interest" provision or the "Other Income" provision, if any, of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

***"Specified Treaty"*** means with respect to Party A ..........................................................................................

***"Specified Jurisdiction"*** means with respect to Party A ...................................................................................

***"Specified Treaty"*** means with respect to Party B ..........................................................................................

***"Specified Jurisdiction"*** means with respect to Party B ................................................................................ ]*

[[(ii)] [Party A] [and] [Party B] [each] make[s] the following representation:—

Each payment received or to be received by it in connection with this Agreement will be effectively connected with its conduct of a trade or business in the Specified Jurisdiction.

***"Specified Jurisdiction"*** means with respect to Party A ...................................................................................

***"Specified Jurisdiction"*** means with respect to Party B ................................................................................ ]*

[[(iii)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]*

* Delete as applicable.

[[(iv)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is a "non-U.S. branch of a foreign person" (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]*

[[(v)] [Party A] [and] [Party B] [each] make[s] the following representation:—

With respect to payments made to an address outside the United States or made by a transfer of funds to an account outside the United States, it is a "non-U.S. branch of a foreign person" (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]*

[[(vi)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is a "foreign person" (as that term is used in section 1.6041-4(a)(4) of United States Treasury Regulations) for United States federal income tax purposes.]*

[[(vii)] [Party A] [and] [Party B] [each] make[s] the following representation[s]:—

..........................................................................................................................................................

..........................................................................................................................................................

.......................................................................................................................................................]]*

Part 3. **Agreement to Deliver Documents.**

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:—

(a) Tax forms, documents or certificates to be delivered are[: none][:—

| **Party required to deliver document** | **Form/Document/ Certificate** | **Date by which to be delivered** |
|---|---|---|
| .............................. | ................................................................. | ...................................................................... |
| .............................. | ................................................................. | ...................................................................... |
| .............................. | ................................................................. | ...................................................................... |
| .............................. | ................................................................. | ...................................................................... |
| .............................. | ................................................................. | .................................................................... ]* |

* Delete as applicable.

(b) Other documents to be delivered are[: none][:—

| **Party required to deliver document** | **Form/Document/ Certificate** | **Date by which to be delivered** | **Covered by Section 3(d) Representation** |
|---|---|---|---|
| ............................. | ............................................................... | .................................... | [Yes][No] |
| ............................. | ............................................................... | .................................... | [Yes][No] |
| ............................. | ............................................................... | .................................... | [Yes][No] |
| ............................. | ............................................................... | .................................... | [Yes][No] |
| ............................. | ............................................................... | .................................... | [Yes][No]]* |

Part 4. **Miscellaneous.**

(a) ***Addresses for Notices.*** For the purpose of Section 12(a) of this Agreement:—

Address for notices or communications to Party A:—

Address: ..........................................................................................................................................

Attention: ........................................................................................................................................

Telex No.: ................................................................... Answerback: ..........................................................

Facsimile No.: ............................................................ Telephone No.: .....................................................

E-mail: .............................................................................................................................................

Electronic Messaging System Details: .........................................................................................

Specific Instructions: ....................................................................................................................

Address for notices or communications to Party B:—

Address: ..........................................................................................................................................

Attention: ........................................................................................................................................

Telex No.: ................................................................... Answerback: ..........................................................

Facsimile No.: ............................................................ Telephone No.: .....................................................

E-mail: .............................................................................................................................................

Electronic Messaging System Details: .........................................................................................

Specific Instructions: ....................................................................................................................

* Delete as applicable.

(b) ***Process Agent.*** For the purpose of Section 13(c) of this Agreement:—

Party A appoints as its Process Agent: [not applicable][ ............................................................................. ]*

Party B appoints as its Process Agent: [not applicable][ ............................................................................. ]*

(c) ***Offices.*** The provisions of Section 10(a) [will][will not]* apply to this Agreement.

(d) ***Multibranch Party.*** For the purpose of Section 10(b) of this Agreement:—

Party A [is not a Multibranch Party.][is a Multibranch Party and may enter into a Transaction through any of the following Offices:—

.................................................... .................................................... ....................................................
.................................................... .................................................... ................................................ ]*

Party B [is not a Multibranch Party.][is a Multibranch Party and may enter into a Transaction through any of the following Offices:—

.................................................... .................................................... ....................................................
.................................................... .................................................... ................................................ ]*

[(e) ***Calculation Agent.*** The Calculation Agent is ..................................................................., unless otherwise specified in a Confirmation in relation to the relevant Transaction.]**

[(f)] ***Credit Support Document.*** Details of any Credit Support Document:— [none][ ...........................................
....................................................................................................................................................
....................................................................................................................................................
.................................................................................................................................................. ]*

[(g)] ***Credit Support Provider.*** Credit Support Provider means in relation to Party A, [none][ ..............................
....................................................................................................................................................
.................................................................................................................................................. ]*

Credit Support Provider means in relation to Party B, [none][..........................................................................
....................................................................................................................................................
.................................................................................................................................................. ]*

[(h)] ***Governing Law.*** This Agreement will be governed by and construed in accordance with [English law][the laws of the State of New York (without reference to choice of law doctrine)]*.

* Delete as applicable.

** Include if applicable.

[(i)] ***Netting of Payments.*** "Multiple Transaction Payment Netting" [will not apply for the purpose of Section 2(c) of this Agreement.][will apply for the purpose of Section 2(c) of this Agreement to [all Transactions][the following Transactions or groups of Transactions:— ..........................................................
.............................................................................................................................................]
(in each case starting from [the date of this Agreement][ ..............................................................................])]*

[(j)] ***"Affiliate"*** [will have the meaning specified in Section 14 of this Agreement.][means ..................................
............................................................................................................................................ ]*

[(k)] ***Absence of Litigation.*** For the purpose of Section 3(c):—

***"Specified Entity"*** means in relation to Party A, ..............................................................................................

***"Specified Entity"*** means in relation to Party B, ..............................................................................................

[(l)] ***No Agency.*** The provisions of Section 3(g) [will][will not]* apply to this Agreement.

[(m)] ***Additional Representation*** [will][will not]* apply. [For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation:—

[[(i)] ***Relationship Between Parties.*** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):—

[(1)] *Non-Reliance.* It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.

[(2)] *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

[(3)] *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.]]*

[[(n)] ***Recording of Conversations.*** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.]**

---

* Delete as applicable.
** Include if applicable.

Part 5. **Other Provisions.**

| | |
|---|---|
| ........................................................................................ | ........................................................................................ |
| (Name of Party) | (Name of Party) |
| By: .............................................................................. | By: .............................................................................. |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |