

**MASTER POWER PURCHASE AND SALE AGREEMENT**  
**COVER SHEET**

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Master Agreement*") is made as of the following date: 9/15/09 ("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: PacifiCorp, an Oregon corporation ("Party A")

Name: Pacific Gas and Electric Company ("Party B"), limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions.

**All Notices:**

Street: 825 NE Multnomah Street - 600

**All Notices:**

Street: 245 Market Street

City: Portland, OR                      Zip: 97232

City: San Francisco, CA              Zip: 94105

**Attn: Contract Administration**

Phone: (503) 813-5952  
Facsimile: (503) 813-6271  
Duns: 00-790-9013  
Federal Tax ID Number: 93-0246090

**Attn: Contract Management**

Phone: (415) 973-5097  
Facsimile: (415) 973-9176  
Duns: 556650034  
Federal Tax ID Number: 94-0742640

**Invoices:**

Attn: PACA – Controller, Suite 700  
Phone: (503) 813-5705  
Facsimile: (503) 813-5580

**Invoices:**

Attn: Manager-Bilateral Settlements  
Phone: (415) 973-8660  
Facsimile: (415) 973-2151

**Scheduling:**

Attn: Resource Planning, Suite 600  
Phone: (503) 813-6090  
Facsimile: (503) 813-6265

**Scheduling:**

Attn: Kevin Coffee  
Phone: (415) 973-7631  
Facsimile: (415) 973-5333

**Payments:**

Attn: Attn: PACA – Controller, Suite 700  
Phone: Phone: (503) 813-5705  
Facsimile: Facsimile: (503) 813-5580

**Payments:**

Attn: Manager-Bilateral Settlements  
Phone: (415) 973-8660  
Facsimile: (415) 973-2151

**Wire Transfer:**



**Wire Transfer:**



**Credit and Collections:**

Attn: Credit Management, Suite 700  
Phone: (503) 813-5684  
Facsimile: (503) 813-5609

**Credit and Collections:**

Attn: Manager, Credit Risk Management  
Phone: (415) 973-9099  
Facsimile: (415) 973-7031

**Confirmations:**

Attn: Transaction System Balancing, Suite 600  
Phone: (503) 813-5074  
Facsimile: 1-800-861-6371

**Confirmations:**

Attn: Contract Management  
Phone: (415) 973-5097  
Facsimile: (415) 973-9176



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**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

5.1(g) Cross Default for Party A:

Party A: Cross Default \$100,000,000.

Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

5.1(g) Cross Default for Party B:

Party B: Pacific Gas and Electric Company Cross Default Amount \$100,000,000.

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)

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**Article Eight**

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: See Collateral Annex

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if either S&P or Moody's does not rate Party B.

Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: None

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: See Collateral Annex

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: \_\_\_\_\_

Guarantee Amount: \$ \_\_\_\_\_

**Article Ten**

Confidentiality

Confidentiality Applicable

If not checked, inapplicable.

**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: The following changes shall be applicable.

GENERAL TERMS AND CONDITIONS.

(A) Article One: General Definitions. Amend Article One as follows:

- (1) Section 1.1 is amended in its entirety to read: "Affiliate" means (i) with respect to Party A, MidAmerican Energy Holdings Company and its direct and indirect subsidiaries, and (ii) with respect to Party B, none. For purposes of this definition, "control" (including, with correlative meaning, the terms "controlling", "controlled by" and "under common control with"), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies through the ownership of voting securities, by agreement or otherwise
- (2) Section 1.12 is amended by replacing the word "issues" in the fourth line with the word "issuer."
- (3) In Section 1.50 replace the reference to Section 2.4 with reference to Section 2.5.
- (4) In Section 1.51 (i) add "for delivery" immediately before "at the Delivery Point" in the second line and (ii) replace "at Buyer's option" in the fifth line with "absent a purchase".
- (5) In Section 1.53 (i) delete "at the Delivery Point" from the second line; (ii) replace "at Seller's option" in the fifth line with "absent a sale" and (iii) insert after "commercially reasonable manner" in the sixth line, the following: "; provided, however if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0)".
- (6) A new Section 1.62 is added as follows:

"Broker or Index Quotes" means quotations solicited or obtained in good faith from (a) regularly published and widely-distributed daily forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant Products or (b) end-of-day prices for the relevant Products published by exchanges which transact in the relevant markets."
- (7) A new Section 1.63 is added as follows:

"Market Quotation Average Price" means the arithmetic mean of the quotations solicited in good faith from not less than three (3) Reference Market-Makers (as hereinafter defined); provided, however, that the Party obtaining the quotes shall use reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-Makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to each Terminated Transaction. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. Each quotation shall be obtained, to the extent reasonably practicable, as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the Party obtaining the quotations and in accordance with the notice pursuant to Section 5.2, which designates the Early Termination Date. If fewer than three quotations are obtained, it will be deemed that the Market Quotation Average Price in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined."
- (8) A new Section 1.64 is added as follows:

"Reference Market Maker" shall have the meaning as set forth in the Collateral

Annex to this Agreement.

(9) A new Section 1.65. "Specified Transaction" is added as follows

1.65 "Specified Transaction" means any contract or transaction (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between Party A (or any Guarantor of Party A) and Party B (or any Guarantor of Party B or any Affiliate of Party B). Notwithstanding the foregoing, a Specified Transaction shall not include Party B transactions with respect to the purchase and sale of natural gas for use by Party B's core natural gas retail function, and transactions relating to borrowed money indebtedness of any kind (whether matured or unmatured or whether or not contingent).

(B) Article Two: The following is added as a separate second paragraph of Section 2.2:

"Party A and Party B confirm that this Master Agreement shall supersede and replace all prior agreements between the parties hereto with respect to the subject matter hereof, including the Western Systems Power Pool Agreement. Party A and Party B confirm the terms of those Transactions referenced on Exhibit B hereto as evidenced by the written confirmations with respect thereto, and agree that such Transactions are, effective as of the Effective Date, governed by this Master Agreement, and are part of the single integrated agreement between the Parties consistent with the first paragraph of this Section 2.2."

(C) Article Three: Obligations and Deliveries. Amend Article Three as follows:

(1) Add a new Section 3.5 as follows:

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

(a) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in accordance with Section 5.2.

(b) For purposes of this Section 3.4, the following definitions shall apply:

(i) "Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

(ii) "Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

(iii) "Floating Price" means a price per unit in \$U.S. specified in a Transaction that is based upon a Price Source.

(iv) "Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options

contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

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

(vi) "Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

(c) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than ten (10) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

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

(3) Add a new Section 3.4 as follows:

"3.4: Market Redesign. In the event the current definition of the Delivery Point set forth in a Transaction is modified, redefined, replaced or eliminated in the transmission provider's or other applicable tariff, the Parties agree to promptly negotiate in good faith to designate an alternate Delivery Point that reasonably approximates the characteristics of the originally designated Delivery Point so that the Parties shall be in the same economic position after such designation as they were at the time the parties entered into such Transaction, or as mutually agreed to by the Parties. "

(D) Article Four: Add a new Section 4.3 as follows:

"4.3 Suspension of Performance. Notwithstanding, and in addition to the remedies provided pursuant to Sections 4.1, 4.2 and 5.7, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or more consecutive days, and such failure is not excused under the terms of this Agreement, by the other Party's failure to perform or by agreement of the Parties, then upon one (1) Business Day prior notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance that the failure has been cured or otherwise remedied. During the suspension period, the Performing Party may enter into a replacement contract with a term of no more than 31 days. In such case, and upon receipt

of notice of cure or remedy by the non-performing Party, the performing Party shall end the suspension and resume performance at the end of the term of such replacement contract or earlier. "

(E) Article Five: Events of Default; Remedies. Amend Article Five as follows

(1) Section 5.1(f) is amended by adding "or its Guarantor" immediately after the word "Party" on the first line and changing "of such Party under this Agreement" to "of such entity with respect to this Agreement" in line five. Section 5.1 is further amended by inserting the following new subsections (i), (j) and (k) at the end: "(i) the occurrence with respect to such Party of an Event of Default (howsoever defined) under a Specified Transaction; (j) if, during any consecutive 90 day period under any Transaction, there have occurred 5 or more "Seller Failures" as that term is used in Section 4.1, regarding which the Seller shall be deemed to be the Defaulting Party and regarding which Buyer shall also be entitled to its remedies under Section 4.1; (k) if, during any consecutive 90 day period under any Transaction, there have occurred 5 or more "Buyer Failures" as that term is used in Section 4.2, regarding which the Buyer shall be deemed to be the Defaulting Party and regarding which Seller shall also be entitled to its remedies under Section 4.2."

(2) Section 5.2 is amended to read as follows:

5.2 Effect of Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party may do one or more of the following: (a) withhold any payments due to the Defaulting Party under this Agreement; (b) suspend performance due to the Defaulting Party under this Agreement; and/or (c) by giving not more than twenty (20) days notice, designate a day and, at its option, without being obligated to do so, time of day, not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions (each referred to as a "Terminated Transaction"). 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, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Non-Defaulting Party shall determine its Gains and Losses for each Terminated Transaction by determining the Market Quotation Average Price for each Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price with respect to any Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by calculating the arithmetic mean of at least three (3) Broker or Index Quotes for transactions substantially similar to each Terminated Transaction. Such Broker or Index Quotes must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3) Broker or Index Quotes with respect to any Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying



such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information; provided, however, that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally."

(3) Section 5.3 is amended by inserting "plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party Pursuant to Article Eight," between the words "that are due to the Non-Defaulting Party," and "plus any and all other amounts" in the sixth line.

(4) The following is added to the end of Section 5.4: "Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed."; and

(5) Section 5.6 is amended by adding the following sentence to the end of the section: The Parties shall be limited to setting off only against the payment of money under transactions between the Parties with respect to the purchase and sale of natural gas and for which such transaction is solely for the purpose of procuring natural gas for the use of Party B's electric fuels management function, thereby explicitly excluding from set-off: (i) any payments of money which might arise through a transaction between the Parties for the purchase and sale of natural gas for use by Party B's core natural gas retail function; and (ii) any payments of money which arise out of a instrument relating to borrowed money indebtedness of any kind (whether matured or unmatured or whether or not contingent). Further, (i) neither Party shall set off against the other Party under this Agreement any amounts due the first Party under an agreement between it and the other Party's distribution or transmission division, department or function and (ii) no Party shall be liable under this Agreement for a breach of an agreement between it and the other Party's distribution or transmission division, department or function, unless such breach is also an express breach under this Agreement."

(6) Add the following Section 10.8: Termination of Specified Transactions. The occurrence or designation of an Early Termination Date on account of an Event of Default with respect to a party hereto ("Y") shall constitute a material breach and event of default (howsoever described) under all Specified Transactions to which Y is a party, whereupon the Non-defaulting Party ("X") shall have the right to terminate, liquidate and otherwise close out any such Specified Transactions (and Y shall be liable for any damages suffered by X as a result thereof).

(F) Article Six.

(1) Section 6.1 is amended by replacing "each Party will render to the other Party" in the last sentence with "the Party owing the lesser amount as determined pursuant to standard wholesale electric industry after-the-fact check-out procedures for the point of delivery associated with each Transaction ("check-out procedures" means the coordination between the assigned representative for each respective party as soon as practicable in the calendar

month following each delivery day pursuant to any given transaction) will transmit to the other Party"

- (2) Section 6.2 is amended by (A) replacing in the first sentence "each party's" with "the Party owing the lesser amount as determined by pursuant to standard wholesale electric industry after-the-fact check-out procedures for the point of delivery associated with each Transaction"; (B) deleting from the second sentence: ", or by other mutually agreeable method(s),"; and (C) adding the following sentence at the end: "If on the due date, the aggregate amounts payable by a Party for failing to schedule and/or deliver or receive Product under Article Four with respect to all Transactions and Agreements after the expiration of the month covered by the invoice until and including the due date exceed \$10,000.00, (i) the Party owed such amounts shall recalculate the amount payable and notify the other Party (by telephone, facsimile or other reasonable means) and (ii) the due date shall be extended by five (5) calendar days"
- (3) Section 6.4 is amended by deleting "and owing to each other on the same date".

(G) Article Seven:

(1) Section 7.1 is amended by: (a) inserting the following between the words "HEREIN," AND "THERE" in the second line: "AND EXCEPT FOR TRANSACTIONS FOR PRODUCTS WITH A PARTICULAR PURPOSE AS SET FORTH IN A CONFIRMATION, SPECIFICALLY INCLUDING BUT NOT LIMITED TO TRANSACTIONS FOR THE PURCHASE AND/OR SALE OF ELECTRICITY GENERATED FROM ELIGIBLE RENEWABLE ENERGY RESOURCES PURSUANT TO THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD PROGRAM"; and (b) by deleting the words "UNLESS EXPRESSLY HEREIN PROVIDED," from the fifteenth and sixteenth lines.

(2) The following is added to the end of Article Seven:

**"7.2. UCC/Disclaimer of Warranties.** To the extent that the provisions of the applicable Uniform Commercial Code ("UCC") are deemed to apply to Transactions hereunder, and any Products deemed to be a "good" for the purposes of the UCC, and except for Transactions for products with a particular purpose as set forth in a Confirmation, specifically including but not limited to Transactions for the purchase and/or sale of electricity generated from eligible renewable energy resources pursuant to the California Renewables Portfolio Standard Program. **PARTY A AND PARTY B EACH ACKNOWLEDGE THAT IT HAS ENTERED INTO THIS AGREEMENT AND IS CONTRACTING FOR THE PRODUCTS BASED SOLELY UPON THE EXPRESS REPRESENTATIONS AND WARRANTIES HEREIN AND, SUBJECT THERETO, ACCEPTS SUCH PRODUCTS "AS-IS" AND "WITH ALL FAULTS". PARTY A AND PARTY B EACH EXPRESSLY DISCLAIM ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, RELATING TO SUCH PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. "**

(H) Article Eight. In addition to Sections 8.1(c) and 8.2(c), the rights and obligations of the parties with respect to Performance Assurance as collateral shall be governed by the Collateral Annex, which is attached hereto and incorporated herein by reference.

(I) Article Ten: Miscellaneous. Amend Article Ten as follows:

(1) Section 10.2(i) is amended as follows: the phrase "... and is qualified to conduct its business in each jurisdiction in which it will perform a Transaction." is added to the end of

10.2(i);

(2) Section 10.2(vi) is amended by deleting the phrase "or any of its Affiliates".

(3) Section 10.2(viii) is amended by adding to the end: ";information and explanations of the terms and conditions of each such Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction; no communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;"

(4) Section 10.2 is amended by adding the following to the end: (xiii) it is a "financial institution" as defined in and pursuant to Title VI of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"). Each Party intends that this Agreement constitute a "netting contract" as defined in and subject to FDICIA, and that each payment entitlement and payment obligation under this Agreement constitutes a "covered contractual payment entitlement" and "covered contractual payment obligation," respectively, as defined in and subject to FDICIA.

(5) Section 10.5 is amended as follows: (a) the phrase "may be withheld in the exercise of its sole discretion" is deleted and replaced with "which consent may not be unreasonably withheld"; and (b) replace the word "affiliate" with the defined term "Affiliate."

(6) Add to the end of Section 10.6: EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

(7) Section 10.11 is deleted in its entirety and replaced with the following:

"10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' employees, lenders, counsel, accountants, advisors or ratings agencies who have a need to know such information and have agreed to keep such terms confidential) except: (1) in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request applicable to such Party or any of its Affiliates; (2) as Party B deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies, including, without limitation, the California Public Utilities Commission ("CPUC") or any division thereof for review; (3) to PG&E's Procurement Review Group, as defined in the CPUC Decision (D) 02-08-071; (4) to an "independent evaluator", as may be defined and specified in an applicable PG&E Solicitation Protocol, so long as such "independent evaluator" is under a written obligation of confidentiality; and (5) to index publishers that aggregate and report such data to the public in the form of indices, provided that the name of and any other identifying information relating to the other Party, including unique attributes and requirements, is redacted and otherwise not disclosed. Each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosures set forth above. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section 10.11.

(8) A new Section 10.12 is added as follows:

"10.12 Execution. A signature received via facsimile shall have the same legal effect as an original."

(J) Schedule P: Products and Definitions. Amend Schedule P as follows:

Add the following definitions, in appropriate alphabetical order:

"CAISO Energy" means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator ("CAISO") (as amended from time to time, the "Tariff") for which the only excuse for failure to deliver or receive is an Uncontrollable Force (as defined in the Tariff).

"WECC" means the Western Electricity Coordinating Council.

"WSPP" means the Western Systems Power Pool.

"WSPP Agreement" means the Western Systems Power Pool Agreement as amended from time to time.

"West Firm" or "WSPP Firm" means with respect to a Transaction, a Product that is or will be scheduled as firm energy and consistent with the most recent rules adopted by the WECC for which the only excuses for failure to deliver or receive are if an interruption is (i) due to an Uncontrollable Force as provided in Section 10 of the WSPP Agreement; or (ii) where applicable, to meet Seller's public utility or statutory obligations to its customers. Notwithstanding any other provision in this Master Agreement, if Seller exercises its right to interrupt to meet its public utility or statutory obligations, Seller shall be responsible for payment of damages for failure to deliver firm energy as provided in Article Four of this Agreement.

"Other Products and Service Levels: If the Parties agree to a service level defined by a different agreement (e.g., the WSPP Agreement, the ERCOT Wholesale Electricity Enabling Agreement, etc.) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product shall be defined by such other agreement, including, if applicable, the regional reliability requirements and guidelines as well as the excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement shall remain applicable including, without limitation, Section 2.2."

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

Party A	Party B PACIFIC GAS AND ELECTRIC COMPANY
By: <u><i>Stacey Kusters</i></u> Name: <u>Stacey Kusters</u> Title: <u>DIRECTOR, Origination</u>	By: <u><i>Garrett Jung</i></u> Name: <u>Garrett Jung</u> Title: <u>Senior Director</u>

**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 there from. 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.

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# Master Power Purchase & Sale Agreement

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# MASTER POWER PURCHASE AND SALES AGREEMENT

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**MASTER POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*” ) is made as of the following date: \_\_\_\_\_ (“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: \_\_\_\_\_

Name (“Counterparty” or “Party B”)  
All Notices:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Attn: Contract Administration  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Invoices:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Wire Transfer:**  
BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Wire Transfer:**  
BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Credit and Collections:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

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

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**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: \_\_\_\_\_

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**Article 10**

Confidentiality  Confidentiality Applicable      If not checked, inapplicable.

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**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

**Other Changes**

Specify, if any: \_\_\_\_\_

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

Party A Name

Party B Name

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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## **GENERAL TERMS AND CONDITIONS**

### **ARTICLE ONE: GENERAL DEFINITIONS**

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

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

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

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

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

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

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

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

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

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

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

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

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

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

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

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

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

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.



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

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

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

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

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

1.50 “Recording” has the meaning set forth in Section 2.4.

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

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

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

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

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

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

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

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

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

## **ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS**

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

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

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

#### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

#### **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
  - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

#### 5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

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

### **ARTICLE SIX: PAYMENT AND NETTING**

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,



each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

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

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

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

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

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

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

## **ARTICLE SEVEN: LIMITATIONS**

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

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

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

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

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

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## **ARTICLE NINE: GOVERNMENTAL CHARGES**

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

## **ARTICLE TEN: MISCELLANEOUS**

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

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

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;



- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

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

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## SCHEDULE M

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

A. The Parties agree to add the following definitions in Article One.

“Act” means \_\_\_\_\_.<sup>1</sup>

“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

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<sup>1</sup> 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 \_\_\_\_\_<sup>2</sup> SHALL APPLY.

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<sup>2</sup> Insert relevant state for Governmental Entity or Public Power System.

## **SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS**

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an



amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into \_\_\_\_\_ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall 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.

**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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_



**PARAGRAPH 10**  
**to the**  
**COLLATERAL ANNEX**  
**to the**  
**EEl MASTER POWER PURCHASE AND SALE AGREEMENT**

**CREDIT ELECTIONS COVER SHEET**

**Paragraph 10. Elections and Variables**

**I. Collateral Threshold.**

**A. Party A Collateral Threshold.**

- \$ \_\_\_\_\_ (the "Threshold Amount"); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
  
- (a) The amount (the "Threshold Amount") set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for [Party A][Party A's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

<u>Party A</u> <u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- (a) The amount (the "Threshold Amount") set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for Party A on the relevant date of determination, and if Party A's Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination if Party A does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing;

provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand. Credit Rating means the Senior Unsecured Debt Rating as issued by the respective rating agency(ies).

<u>Party A</u> <u>Collateral Threshold</u>	<u>Moody's Credit Rating</u>	<u>S&amp;P Credit Rating</u>
\$25,000,000	A3 and above)	A- and above
\$20,000,000	Baa1	BBB+
\$12,500,000	Baa2	BBB
\$ 5,000,000	Baa3	BBB-
\$0 _____	Below Baa3 or rating suspended or withdrawn _____	Below BBB- or rating suspended or withdrawn _____

- The amount of the Guaranty Agreement dated \_\_\_\_\_ from \_\_\_\_\_, as amended from time to time but in no event shall Party A's Collateral Threshold be greater than \$ \_\_\_\_\_.
- Other -- see attached threshold terms

**B. Party B Collateral Threshold.**

- \$ \_\_\_\_\_ (the "Threshold Amount"); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

<u>Party B Collateral Threshold</u>	<u>Moody's Credit Rating</u>	<u>S&amp;P Credit Rating</u>
\$ _____	_____ (or above)	
\$ _____	_____	
\$ _____	_____	
\$ _____	_____	
\$ _____	Below _____	

- (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B on the relevant date of determination, and if Party B's Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination if Party B does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand. Credit Rating means the Senior Unsecured Debt Rating as issued by the respective rating agency(ies).

<u>Party B Collateral Threshold</u>	<u>Moody's Credit Rating</u>	<u>S&amp;P Credit Rating</u>
\$25,000,000	A3 and above)	A- and above
\$20,000,000	Baa1	BBB+
\$12,500,000	Baa2	BBB
\$ 5,000,000	Baa3	BBB-
\$0 _____	Below Baa3 or rating suspended or withdrawn _____	Below BBB- or rating suspended or withdrawn _____

- The amount of the Guaranty Agreement dated \_\_\_\_\_ from \_\_\_\_\_, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than \$ \_\_\_\_\_.
- Other – see attached threshold terms

**II. Eligible Collateral and Valuation Percentage.**

The following items will qualify as "Eligible Collateral" for the Party specified:

	<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A) Cash	[ x ]	[ x ]	100%
(B) Letters of Credit	[ x ]	[ x ]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C) Other	[ ]	[ ]	_____ %

III. Independent Amount.

A. Party A Independent Amount.

- Party A shall have a Fixed Independent Amount of \$ \_\_\_\_\_. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- Party A shall have a Full Floating Independent Amount of \$ \_\_\_\_\_. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- Party A shall have a Partial Floating Independent Amount of \$ \_\_\_\_\_. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.
- Not applicable.

B. Party B Independent Amount.

- Party B shall have a Fixed Independent Amount of \$ \_\_\_\_\_. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- Party B shall have a Full Floating Independent Amount of \$ \_\_\_\_\_. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its

Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

- Party B shall have a Partial Floating Independent Amount of \$ \_\_\_\_\_. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

Not applicable.

**IV. Minimum Transfer Amount.**

- A. **Party A Minimum Transfer Amount:** \$1.00 \_\_\_\_\_
- B. **Party B Minimum Transfer Amount:** \$1.00 \_\_\_\_\_

**V. Rounding Amount.**

- A. **Party A Rounding Amount:** \$100,000.00 \_\_\_\_\_
- B. **Party B Rounding Amount:** \$100,000.00 \_\_\_\_\_

**VI. Administration of Cash Collateral.**

A. **Party A Eligibility to Hold Cash.**

- Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in accordance with a Deposit Account Agreement ("DAA"), substantially in the form as attached hereto as Exhibit A, and in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. The Bank holding the Cash pursuant to the DAA shall at all times meet the requirements for a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex.
- Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party A] [Party A's Guarantor] has a Credit Rating of BBB- or greater from S&P or Baa3 or greater from Moody's; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

**Party A Interest Rate.**

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

Other - \_\_\_\_\_

B. **Party B Eligibility to Hold Cash.**

- Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in accordance with a Deposit Account Agreement ("DAA"), substantially in the form as attached hereto as Exhibit A and in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. The Bank holding the Cash pursuant to the DAA shall at all times meet the requirements for a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex.
  
- Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party B] [Party B's Guarantor] has a Credit Rating of BBB- or greater from S&P or Baa3 or greater from Moody's; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

**Party B Interest Rate.**

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
  
- Other - \_\_\_\_\_

**VII. Notification Time.**

- Other - 10:00 a.m. Pacific Prevailing Time on a Local Business Day.

All demands, specifications and notices to Party A under this Collateral Annex will be made to the person specified under "Credit and Collections" for Party A on the Cover Sheet.

All demands, specifications and notices to Party B under this Annex will be made to the person specified under "Credit and Collections" for Party B on the Cover Sheet.

**VIII. General.**

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

**VI. Other Changes.**

- (i) *No Waiver.* Notwithstanding any other provision in this Agreement to the contrary, no full or partial failure to exercise and no delay in exercising, on the part of Party A (or its Custodian) or Party B (or its Custodian), any right, remedy, power or privilege permitted with respect to transfer timing (or any other deadline) pursuant to Paragraph 4, as modified by the preceding paragraph (or any other applicable provision), regardless of the frequency or constancy of such failure or delay, shall operate in any way as a waiver thereof by such party.

- (ii) *Calculations of Collateral Requirement.* Paragraph 3(b) is revised to add the following as the last sentence: "Provided further, due to the fact that the routine payment obligations arising in accordance with the terms of the Underlying Master Agreements may occur on a variety of dates throughout the month, and because such payment obligations are an integral part of the calculation of Exposure and associated demands for Eligible Collateral as contemplated by this Agreement, a Party otherwise obligated to remit a payment(s) of an invoice pursuant to the terms of an Underlying Master Agreement (the "Remitting Party") shall have the right, (i) one Business Day prior to the date such payment is to be made, to calculate its Exposure under the terms of this Agreement as if such payment had already been made and as a result thereof, make a written demand for Eligible Collateral as if such payment had already been made by the Remitting Party; and (ii) in the event such Remitting Party is also a Pledging Party (but only so long as such Remitting Party is not subject the subject of a Default or a Potential Event of Default), to make any payment under any Underlying Master Agreement by directing the other Party of such Underlying Master Agreement to apply cash Performance Assurance previously Transferred to the Secured Party against such amount owed, in which case the amount of Performance Assurance posted by the Pledging Party to the other Party shall be reduced by the amount of any such payment.
- (iii) The definition of "Letter of Credit" is to be deleted and replaced with the following:
- "Letter of Credit" means an irrevocable, non-transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (i) "A" by S&P and "A2" by Moody's, and (ii) shall assets (net of reserves) of at least \$10,000,000,000, and shall be substantially in the form set forth in the Schedule attached herto, with such changes to the terms in that as form as the issuing bank may require and as may be acceptable to the beneficiary thereof.
- (iv) The definition of "Letter of Credit Default" is to be deleted and replaced with the following:
- "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A" by S&P and "A2" by Moody's, and (ii) shall fail to maintain assets net of reserves of at least \$10,000,000,000; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex."
- (v) The definition of "Qualified Institution" is amended as follows:
- "Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A" by S&P and "A2" by Moody's, and (ii) having a assets (net of reserves) of at least \$10,000,000,000."

IN WITNESS WHEREOF, the parties have executed this Collateral Annex by their duly authorized officers as of the date hereof.

PACIFIC GAS AND ELECTRIC COMPANY

By: Stacy Kusters  
Name: Stacy Kusters  
Title: Director, Origination  
9/15/09.

By: Garrett Johnson  
Name: Garrett Johnson  
Title: Senior Director



**ISSUING BANK LETTERHEAD  
ADDRESS**

Issuing Bank: [insert name  
Insert address]

Date: [insert date]

Irrevocable Standby Letter of Credit Number: [insert number]

Beneficiary: [insert name  
insert address]

Applicant: [insert name  
insert address]

Advising Bank: [insert name  
insert address  
(if applicable)]

Confirming Bank: [insert name  
Insert address  
(if applicable)]

At the request of [insert name of Applicant] and for the account of [insert name of account party which may be the same as Applicant] (the "Account Party"), we, [insert name of Issuing Bank], hereby issue our irrevocable standby letter of credit Number [insert number] ("Letter of Credit"), in your favor available for draw in the amount of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] (hereinafter, as reduced from time to time in accordance with the provisions hereof, the ("Stated Amount")), effective immediately and expiring at our office at the address indicated above with our close of business at 5:00 PM [insert City] time on [insert date] ("Expiration Date") unless terminated earlier in accordance with the provisions hereof.

Funds under this Letter of Credit will be made available to you by payment against presentation of the following documents:

1. Your drawing request marked "drawn under [insert name of Issuing Bank], Letter of Credit Number [insert number], dated [insert date]";

AND

2. A Beneficiary Certificate signed by an authorized officer of the [insert name of Beneficiary] stating either:

(i) "This Letter of Credit will expire in thirty calendar days or less and [insert name of Account Party] has not provided alternate security acceptable to [insert name of Beneficiary] and the amount being drawn of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] does not exceed the amount of Performance Assurance that [insert name of Account Party] is required to post to [insert name of Beneficiary] under the terms of [insert name of agreement] by and between [insert name of Account Party] and [insert name of Beneficiary]";

OR

(ii) “[insert name of Account Party] is in default of the terms of [insert name of agreement] by and between [insert name of Beneficiary] and [insert name of Account Party] and the amount being drawn of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] does not exceed the amount that is due and owing [insert name of Beneficiary] under that agreement.”

Special Conditions:

1. Partial drawing(s) are permitted.
2. This Letter of Credit shall terminate upon the earlier of:
  - (i) the making by you of the final drawing available to be made hereunder;
  - (ii) the surrender of this original Letter of Credit accompanied by your letter acknowledging termination of this Letter of Credit; and
  - (iii) the Expiration Date.
3. All banking charges associated with this Letter of Credit are for the account of the Applicant.
4. This Letter of Credit is not transferable.
5. Each drawing request honored by us shall reduce the Stated Amount by the amount honored.

We hereby engage with you that drawing requests drawn under and in compliance with the terms of this Letter of Credit will be duly honored if drawn and presented for payment at any time before the close of business [Time], Central Standard Time at our counters located at [address] on or before the Expiration Date or in the event of a Force Majeure, as defined under Article 36 of the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (“UCP”), that interrupts our business, within fifteen (15) days after resumption of our business, whichever is later.

Except as otherwise stated herein, this Letter of Credit is subject to the UCP and, with respect to matters not so covered, this Letter of Credit is subject to and governed by the laws of the State of New York.

If you have any questions regarding this Letter of Credit, please call [Telephone No.] mentioning this Letter of Credit Number quoted above.

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Execution Version

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER  
BETWEEN PACIFICORP AND PACIFIC GAS AND ELECTRIC COMPANY  
FOR BUNDLED RPS ENERGY**

**QUARTER 4 OF 2009**

**Preamble:** This Confirmation Letter ("Confirmation" or "Agreement") is entered into as of 9/15/09, 2009 ("Execution Date") by and between Pacific Gas and Electric Company, a California corporation ("PG&E" or "Buyer"), and PacifiCorp, an Oregon corporation ("PacifiCorp" or "Seller"), each individually a "Party" and collectively the "Parties," and confirms the transaction ("Transaction") agreed to by the Parties regarding the purchase and sale of the Product (as defined below) hereunder. This Confirmation is being provided pursuant to and in accordance with the terms and provisions of the EEI Master Power Purchase and Sale Agreement between the Parties together with the Cover Sheet, Collateral Annex and Paragraph 10 to the Collateral Annex, each dated 9/15/09, 2009 (collectively, the "EEI Master Agreement"), and constitutes a Confirmation under, a part of and is subject to the terms and conditions of such EEI Master Agreement. To the extent that this Confirmation is inconsistent with any provision of the EEI Master Agreement, this Confirmation shall govern the rights and obligations of the Parties with respect to this Transaction. Capitalized terms used but not defined herein shall have the meanings assigned to them in the EEI Master Agreement.

**Transaction:** Buyer is purchasing and Seller is selling the Product under the terms and conditions of this Confirmation ("Transaction").

**Seller:** PacifiCorp

**Buyer:** PG&E

**Term and  
Binding Nature:**

(a) Subject to the terms hereof, the delivery term shall commence HE 0100 PPT on October 1, 2009 and continue through and conclude on HE 2400 PPT December 31, 2009 ("Delivery Term"); provided that, this Confirmation shall remain in effect until the Parties have fulfilled all obligations with respect to the Transaction, including the delivery of the Product and the transfer of all Green Attributes to Buyer through WREGIS, and the payment of any and all amounts due hereunder.

(b) This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Special Provisions 1 (Conditions Precedent), 2 (Failure to Meet All Conditions Precedent), 3 (Obligations Prior to Satisfaction of Conditions Precedent), 4 (Seller Representations, Warranties and Covenants), 6 (WREGIS), 7 (Payments), 12 (Confidentiality), and 13 (Governing Law), and those terms and conditions relating to the performance and enforcement of each Party's rights and obligations under the foregoing Special Provisions. Upon the occurrence of the Effective Date, this Agreement shall be in full force and effect, enforceable and binding in all respects.

**Product:**

(a) WSPP Schedule C Energy ("Firm Energy") bundled with an equal amount of Green Attributes that are produced by or associated with any Qualified Project (or Complying Facility, as applicable) identified on Appendix II attached hereto.

(b) All Green Attributes delivered by Seller pursuant to this Confirmation shall be (i) supplied and attributable to generation from a Qualified Project and (ii) generated and delivered within the same calendar year. The Firm Energy and the Green Attributes shall be referred to together as "Bundled RPS Energy" or "Product." All Bundled

RPS Energy shall comply with the requirements of the California Renewables Portfolio Standard for out-of-state renewable generation, including, without limitation, the eligibility and delivery requirements set forth in the guidelines adopted by the CEC pursuant to California Public Resources Code Section 25741. To the extent a change in Law occurs after the Execution Date that causes the preceding statement to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. For purposes of this paragraph and Special Provision 8 below, such "commercially reasonable efforts" shall mean Seller expending or incurring up to an aggregate of Five Thousand Dollars (\$5,000) on out-of-pocket costs and expenses paid to third parties (not including the need to incur additional administrative or internal staffing expenses) during the Delivery Term of this Confirmation to comply with such change in Law.

**Contract Price:** The Contract Price for Bundled RPS Energy shall consist of the Energy Price and the Green Attributes Price, as follows:

- (a) Energy Price: ICE Daily California / Oregon Border Index ("Energy Price"); plus
- (b) Green Attributes Price: The price for Green Attributes shall be \$39 per MWh ("Green Attributes Price").

No other payment shall be required for Bundled RPS Energy delivered under this Confirmation.

**Delivery Point:** The Delivery Point for Firm Energy shall be the California / Oregon Border North to South ("COB"). With regard to Green Attributes, title shall transfer from Seller to Buyer as set forth in Special Provision 7 below or in accordance with applicable Law.

**Quantity:**

- (a) For Quarter 4, Seller shall deliver to Buyer the Quantity specified in Table 1 below for Green Attributes ("Green Attributes Quantity") and Firm Energy ("Firm Energy Quantity") (together, the "Quantity of Product").
- (b) The Firm Energy Quantity shall match (upon conversion to MWh) the Green Attributes Quantity.

**TABLE 1: QUANTITY OF PRODUCT**

Delivery Term	Green Attributes Quantity (MWh)	Firm Energy Quantity (as scheduled and delivered at COB) (MW)
Consisting of Quarter 4 only	220,800 MWh in Quarter 4	100 MW for each hour of each day in each Delivery Month during Quarter 4

**Green Attributes Imbalance and Product Delivery Shortfall:**

In the event that for Quarter 4 the Firm Energy Quantity delivered is more than the Green Attributes Quantity delivered ("Green Attributes Imbalance"), then Buyer shall remain obligated to pay Seller the Energy Price for the Firm Energy that was scheduled, delivered and received by Buyer, pursuant to Special Provision 7 below, and the following provisions in this Green Attributes Imbalance and Product Delivery Shortfall section shall apply as Buyer's exclusive remedies for such Green Attributes Imbalance in Quarter 4, notwithstanding anything to the contrary in the EEI Master Agreement. If Seller does not cure the Green Attributes Imbalance in accordance with this Green Attributes Imbalance and Product Delivery Shortfall section, Buyer may, at its option, declare an Event of Default. The MWh amount of a Green Attributes Imbalance shall be referred to as the "Green Attributes Deficit Amount."

In the event that for Quarter 4 the Quantity of Product delivered is less than the applicable Quantities specified in Table 1 above for Green Attributes and Firm Energy (a "Product Delivery Shortfall"), then this Green Attributes Imbalance and Product Delivery Shortfall section shall apply as Buyer's exclusive remedies for such Product Delivery Shortfall in

Quarter 4, notwithstanding anything to the contrary in the EEI Master Agreement. If Seller does not cure the Product Delivery Shortfall in accordance with this Green Attributes Imbalance and Product Delivery Shortfall section, Buyer may, at its option, declare an Event of Default. The MWh amount of a Product Delivery Shortfall shall be referred to as the "Product Shortfall Amount."

This Green Attributes Imbalance and Product Delivery Shortfall section shall be Buyer's sole and exclusive remedy for any Green Attributes Imbalance, Green Attributes Deficit Amount (which is the MWh amount of a Green Attributes Imbalance), Product Delivery Shortfall, Product Shortfall Amount (which is the MWh amount of a Product Delivery Shortfall), or breach of subsection (b) of the Quantity section above.

(a) **Cure Provision for Green Attributes Imbalance and / or Product Delivery Shortfall.** Subject to the Shortfall Damages provision in subsection (b) immediately below, Seller shall cure a Green Attributes Imbalance and / or Product Delivery Shortfall as set forth herein ("Cure Provision"). Seller shall give Buyer Notice no later than January 15, 2010 containing Seller's best estimate of the Green Attributes Deficit Amount or Product Shortfall Amount, as applicable ("Notice of Estimated Cure"). In addition, on or before March 30, 2010, Seller shall give Notice to Buyer of the actual Green Attributes Deficit Amount and / or the actual Product Shortfall Amount as verified against the applicable metered data ("Notice of Actual Cure").

(i) To cure a Green Attributes Imbalance, Seller shall deliver to Buyer in the second Quarter of calendar year 2010 ("Cure Period") Green Attributes and Firm Energy each in an amount equal to the actual verified Green Attributes Deficit Amount (rounded down to the nearest 5 MW block). To cure a Product Delivery Shortfall, Seller shall deliver to Buyer in the second Quarter of calendar year 2010 ("Cure Period") Product in an amount equal to the actual verified Product Shortfall Amount (rounded down to the nearest 5 MW block).

(ii) The Contract Price for any Green Attributes delivered under this Cure Provision (whether for a Green Attributes Imbalance or a Product Delivery Shortfall) shall be the Green Attributes Price. The Contract Price for Firm Energy delivered under this Cure Provision shall be the Energy Price at the time scheduled, delivered and received. The Parties shall use the Notice of Estimated Cure to develop a mutually agreeable schedule for any Firm Energy that Seller delivers under this Cure Provision ("Firm Energy Cure Schedule"). The Parties shall update the Firm Energy Cure Schedule as necessary in accordance with the Notice of Actual Cure.

(iii) Seller may deliver Green Attributes pursuant to this Cure Provision from any Qualified Project or from any generating facility that (a) at the time of such delivery qualifies and is certified by the CEC as an ERR for purposes of the California Renewables Portfolio Standard, is registered with WREGIS, and has commenced initial operation after January 1, 2005, and may be an in-state or out-of-state resource but is located within the United States, and (b) otherwise complies with this Confirmation (each such generating facility, a "Complying Facility"); provided that, at least three (3) days prior to any such delivery from a Complying Facility, Seller shall give Buyer Notice identifying such Complying Facility in reasonable detail.

(b) **Failure Notice and Shortfall Damages.** In the event that Seller fails to cure a Green Attributes Imbalance and / or Product Delivery Shortfall in accordance with the Cure Provision in subsection (a) above, then Buyer shall give Seller Notice of such failure ("Failure Notice") and fifteen (15) calendar days from the delivery of such Failure Notice to either (1) cure the outstanding Green Attributes Deficit Amount or Product Delivery Shortfall (as applicable) or (2) pay Shortfall Damages to Buyer. Buyer's Failure Notice shall identify the outstanding Green Attributes Deficit Amount and / or Product Delivery Shortfall and the amount of applicable Shortfall Damages.

(i) If pursuant to Buyer's Failure Notice Seller elects to cure the outstanding Green Attributes Deficit Amount and / or Product Delivery Shortfall, Seller may deliver Green Attributes from any Qualified Project or Complying Facility for the cure. The Parties shall agree upon a schedule for any Firm Energy that Seller delivers pursuant to such cure.

(ii) If pursuant to Buyer's Failure Notice Seller elects to pay Shortfall Damages, such damages shall be paid for each MWh of the Green Attributes Deficit Amount and / or the Product Shortfall Amount that Seller failed to cure pursuant to the Cure Provision in subsection (a) above. The Parties agree that the damages sustained by Buyer as a result of a Green Attributes Deficit Amount and / or Product Delivery Shortfall would be difficult or impossible to determine or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree

that Seller shall pay the Shortfall Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay Shortfall Damages.

(iii) If within the fifteen (15) day time period following delivery of Buyer's Failure Notice Seller does not either (1) cure the Green Attributes Deficit Amount or Product Delivery Shortfall (as applicable) or (2) pay the applicable Shortfall Damages, Buyer may, at its option, declare an Event of Default.

**Delivery Rate:** Seller shall shape and deliver Firm Energy during October, November and December of calendar year 2009 (each, a "Delivery Month," and collectively, the "Delivery Months") as uniform hourly blocks of Energy deliveries over all hours of each day in each Delivery Month pursuant to Table 1 and the Quantity section above.

Green Attributes shall be delivered by Seller to Buyer in accordance with Special Provision 6 below.

**Scheduling:** (1) Except for any Firm Energy that may be delivered pursuant to the Cure Provision or a Failure Notice, Seller shall Schedule all Firm Energy in accordance with the most recent rules adopted by the Western Electricity Coordinating Council ("WECC").

(2) For any Firm Energy that Seller delivers pursuant to the Cure Provision, the Parties shall use the Notice of Estimated Cure to develop a mutually agreeable schedule for such Firm Energy (defined as the "Firm Energy Cure Schedule"). The Parties shall update the Firm Energy Cure Schedule as necessary in accordance with the Notice of Actual Cure. Seller shall Schedule all Firm Energy in accordance with the Firm Energy Cure Schedule for delivery during the same hour and within seven calendar days from the date such Energy should have been delivered pursuant the Delivery Rate section of this Confirmation. In addition, the Parties shall agree upon a schedule for any Firm Energy that Seller delivers pursuant to a Failure Notice.

(3) The Parties may also agree to additional scheduling and communication protocols necessary to implement deliveries under this Confirmation.

(4) NERC E-tags shall comply with the delivery requirements as specified by the CEC. Buyer shall be responsible, if applicable, to create NERC E-tag documentation for each confirmed day-ahead delivery, and to revise such NERC E-tags hourly, as necessary, to show that the associated schedule pertains to this Confirmation, that the REC source is a Qualified Project, and, via the NERC E-tag's physical path chain, that the sole source of the Green Attributes is a Qualified Project.

**Credit and Collateral:** As this Confirmation is being provided pursuant to and in accordance with the EEI Master Agreement, the obligations of each Party under the Confirmation shall be secured in accordance with the provisions of the EEI Master Agreement, with the following exception: Should a Party suffer a Downgrade Event such that a Party's Credit Rating falls below 'BBB-' from S&P or 'Baa3' from Moody's, it shall post Performance Assurance in an amount equal to \$12,772,992. Any such Performance Assurance shall remain in full force and effect from such date until the earlier of (a) the date the Downgrade Event ceases to be applicable or (b) the end of the Delivery Term.

#### **SPECIAL PROVISIONS:**

1. Conditions Precedent. The Effective Date of this Confirmation shall not occur until the following conditions have been satisfied (such conditions shall be referred to collectively as "Conditions Precedent," and each a "Condition Precedent"):

(a) CPUC Approval has been obtained and Buyer receives a final and non-appealable order of the CPUC that finds that Buyer's entry into this Confirmation is reasonable and that payments to be made by Buyer hereunder are recoverable in rates ("CPUC Approval Condition Precedent"); and

(b) the CEC certifies that each of the Wind Facilities listed on Appendix II is an ERR for purposes of the California Renewables Portfolio Standard ("CEC Certification Condition Precedent").

2. Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied, or waived in writing by both Parties, on or before December 29, 2009, either Party may terminate this Confirmation effective upon receipt of written notice by the other Party, such notice shall be delivered by December 29, 2009 or such later date as may be mutually agreed upon in writing by the Parties. Neither Party shall have any obligation or liability to the other by reason of such termination.

3. Obligations Prior to Satisfaction of Conditions Precedent. If as of October 1, 2009, the CEC Certification Condition Precedent has been satisfied, but the CPUC Approval Condition Precedent is pending and remains to be satisfied, then the Parties shall have the obligations set forth in this Special Provision 3.

(a) Delivery and Receipt of Firm Energy. Seller shall deliver Firm Energy as specified in the Delivery Rate section above and Buyer shall take and pay for Firm Energy delivered at the Energy Price in accordance with this Confirmation. In the event this Confirmation is later terminated pursuant to Special Provision 2, the Parties' obligations to deliver, receive and pay for Firm Energy shall simultaneously terminate as soon as they may practically be terminated with due regard to the Scheduling provisions hereof. Any Firm Energy delivered prior to a termination of this Confirmation pursuant to Special Provision 2 shall be paid for by Buyer at the Energy Price.

(b) Tracking of Green Attributes.

(i) Seller shall record and track in an internal bookkeeping account (A) the amount of Green Attributes that shall be bundled with the Firm Energy delivered pursuant to Special Provision 3(a) above ("Tracked Green Attributes") and (B) the aggregate Green Attributes Price payable with respect to such Tracked Green Attributes. Seller shall reserve and maintain all Tracked Green Attributes in Seller's internal bookkeeping account on behalf of and for the sole benefit of Buyer until the earlier to occur of either the date of the satisfaction of all Conditions Precedent or the date this Agreement is terminated pursuant to Special Provision 2. During the time period in which Seller tracks Green Attributes pursuant to this subsection (the "Tracking Period"), all metering and WREGIS obligations shall be performed in accordance with the applicable provisions of this Confirmation, and such information shall form the basis of items (A) and (B) referenced above.

(ii) Upon the first day following the Effective Date, Seller shall transfer the Tracked Green Attributes to Buyer pursuant to Special Provision 6 and invoice Buyer for the Tracked Green Attributes at the Green Attributes Price. Buyer shall pay such amount in accordance with Special Provision 7. Upon the transfer of the Tracked Green Attributes to Buyer and the payment therefor, this Special Provision 3(b) shall no longer be applicable.

(iii) If this Confirmation is terminated pursuant to Special Provision 2 above, (A) Buyer automatically relinquishes any and all rights to any Green Attributes or WREGIS Certificates hereunder; (B) Buyer shall have no payment obligations whatsoever pursuant to this Special Provision 3(b); and (C) this Special Provision 3(b) shall no longer be applicable. Upon the termination of this Confirmation pursuant to Special Provision 2, neither Party shall have any further liability or obligation to the other Party by reason of such termination other than for any Firm Energy delivered pursuant to Special Provision 3(a) above.

(iv) Nothing in this Special Provision 3(b) shall require Seller to reserve Green Attributes or WREGIS Certificates from any Qualified Project beyond December 31, 2009 if the Effective Date does not occur prior thereto.

4. Seller Representations, Warranties and Covenants. Seller hereby represents, warrants, and covenants that:

(a) Seller has the contractual right to purchase and take title to (i) the Firm Energy and (ii) the Green Attributes generated by any Qualified Project (and any Complying Facility, as applicable) delivered hereunder, and at the time of delivery to Buyer all right, title and interest in and to such Firm Energy and Green Attributes are free and clear of any liens, taxes, Claims, security interests or other encumbrances, except for any right or interest by any entity claiming through Buyer and any Governmental Charges, costs and expenses charged to or incurred by Buyer following transfer of the Green Attributes pursuant to Special Provision 6 below;

(b) Seller has not sold, and will not sell, the Firm Energy or Green Attributes to be delivered hereunder, or the RECs representing such Green Attributes, to any other person or entity;

(c) Seller and each Qualified Facility (and each Complying Facility, as applicable) shall be registered with WREGIS; and

(d) All Green Attributes delivered hereunder shall be supplied and attributable to generation from a Qualified Project (and, as applicable, a Complying Facility) and all Product shall qualify under the requirements of the California Renewables Portfolio Standard.

5. Green Attributes from Any Qualified Project and Tracking of RECs in WREGIS.

(a) Except as provided in the Cure Provision and the Failure Notice and Shortfall Damages section, in no event shall Seller have the right to procure any element of the Green Attributes from any source other than a Qualified Project for sale or delivery to Buyer under this Agreement.

(b) Seller warrants that all necessary steps have been taken to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System.

(c) Buyer warrants that all necessary steps that Buyer is responsible for undertaking pursuant to this Confirmation have been taken to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System.

6. WREGIS.

(a) Seller shall take all actions and execute all documents or instruments necessary to ensure that the Green Attributes to be sold hereunder from each Qualified Project (and each Complying Facility, as applicable) can be transferred to Buyer utilizing WREGIS and that the transfer of WREGIS Certificates shall represent the RECs attributable to or associated with such Green Attributes. Seller and Buyer shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Prior to the commencement of the Delivery Term, Seller shall register each Qualified Project with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer WREGIS Certificates to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules (as defined in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) designated in writing by Buyer ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering each Qualified Project (and each Complying Facility, as applicable) with WREGIS, establishing and maintaining Seller's WREGIS Account, and paying WREGIS Certificate issuance and transfer fees, and all charges assessed by WREGIS to transfer WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account. Buyer shall be responsible for all expenses associated with accepting and retiring WREGIS Certificates transferred to Buyer hereunder.

(b) Seller shall transfer WREGIS Certificates to Buyer on a monthly basis no later than ten (10) calendar days after their creation in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of output generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate. Seller shall use commercially reasonable efforts to (i) ensure that the WREGIS Certificates for a given calendar month correspond with the Green Attributes generated by each applicable Qualified Project for such calendar month as evidenced by such Qualified Project's metered data, and (ii) validate, adjust, and dispute data with WREGIS so that the data from each applicable Qualified Project's meter exactly corresponds with the WREGIS Certificates created for the Green Attributes in each calendar month. Seller shall provide Buyer with any copies of correspondence or documentation to or from WREGIS with respect to any such validation, adjustment, or dispute. For purposes of this Special Provision 6(b), "commercially reasonable efforts" shall mean, with respect to each WREGIS Certificate, Seller expending or incurring Five Dollars (\$5.00) per WREGIS Certificate on out-of-pocket costs and expenses paid to third parties (not including the need to incur additional administrative or internal staffing expenses) during the Delivery Term up to a maximum of Five Thousand Dollars (\$5,000) to comply with its obligations under clauses (i) and (ii) above.

(c) Without limiting Seller's obligations under this Special Provision 6, including without limitation Seller's obligations under clauses (i) and (ii) of subsection (b) above, if a WREGIS Certificate Deficit is caused solely by an error



or omission of WREGIS, it shall not constitute a Green Attributes Imbalance or Product Delivery Shortfall and the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(d) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Confirmation, the Parties promptly shall modify this Special Provision 6 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Green Attributes generated by each applicable Qualified Project in the same calendar month.

7. Payments. Buyer's payments to Seller under this Confirmation shall be made in accordance with Article 6 of the EEI Master Agreement. The following provisions shall supplement those in Article 6 of the EEI Master Agreement:

Calculation Period: Each calendar month during the Delivery Term.

Monthly Cash Settlement Amount: The Monthly Cash Settlement Amount shall be equal to the sum of the following:

(a) the applicable Energy Price pursuant to the ICE Daily California / Oregon Border Index multiplied by the quantity of Firm Energy scheduled, delivered and received by Buyer pursuant to this Confirmation during the applicable Calculation Period; and

(b) \$39.00 multiplied by the quantity of Green Attributes (in MWhs) delivered to Buyer pursuant to this Confirmation as part of the Product, as evidenced by the WREGIS Certificates for the RECS representing such Green Attributes which have been properly transferred to Buyer's WREGIS Account.

Passage of Title: All rights, title and interest in and to the Green Attributes, RECs and WREGIS Certificates will transfer to Buyer upon payment to Seller in accordance with the terms of this Special Provision 7.

WREGIS Certificate Evidence: Buyer shall not be obligated to pay for any Green Attributes that have not been evidenced as WREGIS Certificates and properly transferred to Buyer's WREGIS Account.

#### 8. Eligibility.

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

9. Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

10. Greenhouse Gas Emissions. Buyer advises that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Seller agrees to reasonably cooperate with Buyer's

fulfillment of its reporting obligations by providing information as requested in writing by Buyer with reasonable detail and specificity as reasonably necessary to permit Buyer to comply with such requirements, if any. Nothing herein shall obligate Seller to take or not take any action or omission with respect to its own reporting to any Governmental Authority, or to support or concur with any reporting by Buyer to any Governmental Authority.

11. No Sale of Capacity. The Parties hereby agree that the sale of Bundled RPS Energy hereunder shall only pertain to the Green Attributes associated with generation from a Qualified Project and the sale of Firm Energy, and shall not in any way include the sale of capacity from a Qualified Project, and Buyer hereby disclaims, negates, renounces and waives any claim to the contrary.

12. RPS Confidentiality. Notwithstanding anything to the contrary in the BEI Master Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement to the extent applicable: Party names, resource type, Delivery Term, Qualified Project locations, anticipated Initial Energy Delivery Date, Quantity, and Delivery Point.

13. Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

14. As used in Special Provision 13 above, the word "agreement" means this Agreement and the words "party" and "parties" shall have the meaning set forth in the Preamble above.

15. As used in Special Provisions 8 and 13 above, the words "law" and "laws" shall have the meaning set forth in the Glossary of Definitions for "Law."

16. As used in the Glossary of Definitions for "CPUC Approval" below, the words "eligible renewable energy resource" shall have the meaning set forth in the Glossary of Definitions for "Eligible Renewable Energy Resource."

17. As used in Special Provisions 8 and 9 above, the words "the Project" shall mean any Qualified Project. As used in the Glossary of Definitions below for "Green Attributes," the words "the Project" shall mean any Qualified Project and any Complying Facility, as applicable.

18. Counterparts. This Confirmation may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Confirmation. Delivery of an executed counterpart of this Confirmation by fax or Portable Document Format (PDF) will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Confirmation by facsimile or PDF will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Confirmation will not affect the validity or effectiveness of this Confirmation.

**GLOSSARY OF DEFINITIONS:** For purposes of this Confirmation, the following definitions shall apply:

"California Renewables Portfolio Standard" means the renewable energy program and policies established by Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"CEC" means the California Energy Commission or its successor agency.

"CPUC" means the California Public Utilities Commission, or successor entity.

"CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

- (a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

"Complying Facility" has the meaning set forth in the Cure Provision.

"Cure Provision" has the meaning set forth in subsection (a) of the Green Attributes Imbalance and Product Delivery Shortfall section.

"Effective Date" means the date on which all of the Conditions Precedent set forth in Special Provision 1 have been satisfied or waived in writing by both Parties.

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

"Energy" as used in the definition of "Green Attributes" and elsewhere in this Agreement means electric energy measured in MWh and net of auxiliary loads and station electrical uses.

"Execution Date" means the latest date of signature found on the signature page of this Agreement.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;<sup>1</sup> (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction

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<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

“HE” means the hour ending.

“ICE Daily California / Oregon Border Index” means the Intercontinental Exchange California / Oregon Border Day Ahead Peak and Off-Peak Index for the day of delivery, or any successor thereto.

“Initial Energy Delivery Date” means the date upon which all of the Conditions Precedent in Special Provision I have been satisfied or waived in writing.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing.

“MWh” means megawatt-hour.

“Notice of Actual Cure” has the meaning set forth in subsection (a) of the Green Attributes Imbalance and Product Delivery Shortfall section.

“Notice of Estimated Cure” has the meaning set forth in subsection (a) of the Green Attributes Imbalance and Product Delivery Shortfall section.

“PPT” means Pacific prevailing time.

“Qualified Project” means any of the wind energy electric generating facilities listed on Appendix II hereto that qualifies and is certified by the CEC as an ERR for purposes of the California Renewables Portfolio Standard and has commenced initial operation after January 1, 2005.

“Quarter” means one of a set of four consecutive three-month divisions of a calendar year.

“Quarter 4” means that period commencing on October 1, 2009 and concluding on December 31, 2009.

“Renewable Energy Credits,” “renewable energy credits,” or “RECs” has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended or supplemented from time to time or as further defined or supplemented by Law, is evidenced by a WREGIS Certificate, and is equivalent to one (1) MWh of electric generation.

“Shortfall Damages” means the liquidated damages payment(s) due by Seller to Buyer for a Green Attributes Imbalance and / or for a Product Delivery Shortfall pursuant to the Failure Notice and Shortfall Damages section and that is calculated pursuant to Appendix I.

“WECC” means the Western Electricity Coordinating Council or its successor organization.

“Wind Facilities” means the wind energy electric generating facilities listed on Appendix II hereto.

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

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Green Attributes generated by each applicable Qualified Project for the same calendar month.

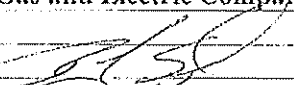
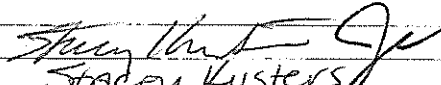
“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

“WSPP Schedule C Energy” means firm energy that complies with the terms and provisions of Service Schedule C of the Western Systems Power Pool (WSPP) Agreement or any successor to WSPP Service Schedule C that provides for the sale of firm energy, both as may be in effect at any time from and after the Execution Date; provided no terms and conditions of the WSPP Agreement are applicable to this Transaction or incorporated into this Agreement other than those schedules and provisions of the WSPP Agreement as are necessary to interpret WSPP Service Schedule C (including applicable definitions).

Please confirm that the terms and conditions stated herein accurately reflect the agreement reached by the Parties by signing and returning by facsimile to Seller at [\_\_\_\_\_].

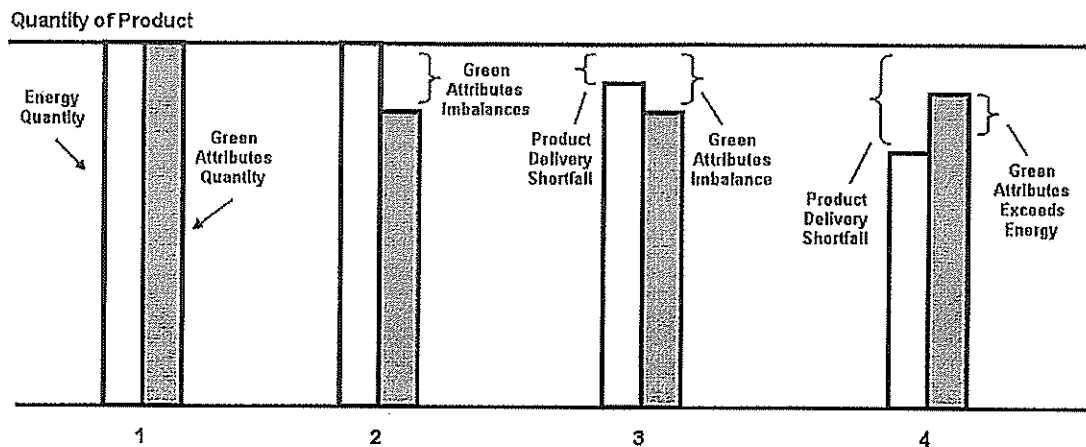
[Signature page follows.]

IN WITNESS WHEREOF, the Parties have signed this Confirmation as of the Execution Date.

Pacific Gas and Electric Company	PacifiCorp
By:  (initials)	By: 
Name: Roy Kuyala	Name: Stacey Kusters
Title: <i>Energy Supply Management</i>	Title: <i>Director, Origination</i>
Date: 9/15/09	Date: 9/15/09

*Executed with Exhibit 1  
attached JK 9/15/09*

Exhibit 1: Green Attributes Imbalance and Product Delivery Shortfall



This Exhibit is for illustrative purposes only and will not be used in the construction or interpretation of any provision of the Confirmation or Agreement. Without limiting the generality of the foregoing, and without providing that this Exhibit is to be used for construction or interpretation, in the event of any variance between the terms hereof and the terms of the Confirmation or Agreement, the terms of the Confirmation or Agreement, as applicable, control.

1. Firm Energy Quantity and Green Attributes Quantity delivered meet Quantity of Product requirements for Firm Energy Quantity and Green Attributes Quantity (as set forth in Table 1 of the Confirmation). Cure Provision and Shortfall Damages section for Green Attributes Imbalance and/or Product Delivery Shortfall are not applicable because the Firm Energy Quantity and the Green Attributes Quantities megawatt hours are equal to one another.

With respect to 2, 3, and 4 below, Seller must cure the greater of Product Delivery Shortfall or Green Attributes Imbalance in the subsequent Contract Year.

2. Firm Energy Quantity delivered is more than Green Attributes Quantity. This results in a Green Attributes Imbalance and is subject to the Cure Provision and Shortfall Damages section. Amount of Green Attributes Imbalance (Green Attributes Deficit Amount) not physically cured per Cure Provision is subject to Shortfall Damages.

For example, in 2010 the Green Attributes Imbalance is 50 GWh. This Green Attributes Deficit Amount must be physically (Firm Energy + Green Attributes) cured first and then, if not completely cured physically, financially cured in 2011 per Cure Provision and Shortfall Damages section.

3. Firm Energy Quantity and Green Attributes Quantity delivered is less than Quantity of Product which results in a Product Delivery Shortfall, and the Firm Energy

Quantity is greater than the Green Attributes Quantity which results in a Green Attributes Imbalance. Seller is required to first physically cure and then, if not completely cured physically, financially cure both the Product Delivery Shortfall and the Green Attributes Imbalance per Cure Provision and the Shortfall Damages section.

For example, in 2010 Product Delivery Shortfall is 50 GWh and Green Attributes Imbalance is 75 GWh. The 75 GWh of Green Attributes Imbalance must be physically (Firm Energy Quantity + Green Attributes Quantity) and, as applicable, financially cured in 2011 per Cure Provision and Shortfall Damages section. The amount of the Product Delivery Shortfall (Product Shortfall Amount) and Green Attributes Imbalance (Green Attributes Deficit Amount) that is not physically cured is subject to Shortfall Damages.

4. Firm Energy Quantity and Green Attributes Quantity delivered are both less than Quantity of Product, and Green Attributes Quantity delivered is greater than Firm Energy Quantity. Buyer is not obligated to pay for Green Attributes Quantity delivered in excess of the Firm Energy Quantity delivered. Seller is required to cure Product Delivery Shortfall pursuant to the Cure Provision and pay Shortfall Damages on what is not physically cured.

For example, in 2010 Product Delivery Shortfall is 80 GWh and the amount of Green Attributes Quantity delivered exceeds Firm Energy Quantity by 40 GWh. Buyer is not required to purchase the 40 GWh of Green Attributes, but Seller is required to first physically cure (Firm Energy + Green Attributes) and then, if not completely cured physically, financially cure the Product Delivery Shortfall of 80 GWh in 2011 per Cure Provision and Shortfall Damages section. The amount of the Product Delivery Shortfall that is not physically cured is subject to Shortfall Damages.



## APPENDIX I

### SHORTFALL DAMAGES

In accordance with the provisions of this Confirmation, Shortfall Damages means the liquidated damages payment(s) that Seller must pay to Buyer for a Green Attributes Imbalance and / or for a Product Delivery Shortfall no later than fifteen (15) calendar days after delivery of Buyer's Failure Notice to avoid an Event of Default if Seller does not elect to cure and cure such Green Attributes Imbalance and / or Product Delivery Shortfall within that same fifteen-day time period.

The Shortfall Damages shall be calculated as set forth below.

For a Green Attributes Imbalance: Fifty Dollars (\$50) for each MWh of the Green Attributes Deficit Amount that Seller fails to cure in accordance with the Cure Provision.

For a Product Delivery Shortfall: Fifty Dollars (\$50) for each MWh of the Product Shortfall Amount that Seller fails to cure in accordance with the Cure Provision.

## APPENDIX II

The Wind Facilities are the following seven (7) facilities:

Seven Mile Hill I (Carbon County, Wyoming, CEC number 60807A, WREGIS number W975)

Seven Mile Hill II (Carbon County, Wyoming, CEC number 60808A, WREGIS number W976)

Glenrock I (Converse County, Wyoming, CEC number 60805A, WREGIS number W964)

Rolling Hills (Converse County, Wyoming, CEC number 60806A, WREGIS number W928)

Wolverine Creek (Bonneville and Bingham Counties, Idaho, CEC number 60564A, WREGIS number W188)

Marengo II (Columbia County, Washington, CEC number 60730A, WREGIS number W772)

Glenrock III (Converse County, Wyoming, CEC number 60804A, WREGIS number W965)

“Qualified Project” means any of the foregoing wind energy electric generating facilities that qualifies and is certified by the CEC as an ERR for purposes of the California Renewables Portfolio Standard and has commenced initial operation after January 1, 2005.

“Complying Facility” means a generating facility from which Seller may deliver Green Attributes pursuant to the Cure Provision and that (a) at the time of such delivery qualifies and is certified by the CEC as an ERR for purposes of the California Renewables Portfolio Standard, is registered with WREGIS, and has commenced initial operation after January 1, 2005, and may be an in-state or out-of-state resource but is located within the United States, and (b) otherwise complies with the Confirmation.

FIRST AMENDMENT TO THE  
MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER  
BETWEEN PACIFICORP AND PACIFIC GAS AND ELECTRIC COMPANY  
FOR BUNDLED RPS ENERGY

QUARTER 4 of 2009

This First Amendment ("First Amendment") to the Master Power Purchase and Sale Agreement Confirmation Letter between PacifiCorp and Pacific Gas and Electric Company for Bundled RPS Energy is entered into this \_\_\_ day of December, 2009, by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("PG&E" or "Buyer"), and PACIFICORP, an Oregon corporation ("PacifiCorp" or "Seller"), each hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties". All initially capitalized terms used but not defined herein shall have the meanings given to them in the 2009 Agreement as defined below.

**RECITALS**

WHEREAS, PG&E and PacifiCorp entered into that certain Master Power Purchase and Sale Agreement Confirmation Letter between PacifiCorp and PG&E for Bundled RPS Energy, dated as of September 15, 2009, for the period of October 1, 2009 through December 31, 2009 (the "2009 Agreement", attached hereto as Exhibit A); and

WHEREAS, the California Public Utilities Commission (CPUC) approved the 2009 Agreement through Resolution E-4285 mailed November 24, 2009; and

WHEREAS, the CPUC's approval of Resolution E-4285 directed Buyer to modify the 2009 Agreement with respect to certain provisions regarding deliveries from unspecified Complying Facilities;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, Buyer and Seller hereby modify and amend the 2009 Agreement as follows:



**AMENDMENTS TO THE 2009 AGREEMENT**

1. The Green Attributes Imbalance and Product Delivery Shortfall section is modified and amended as follows:
  - a. The following language is inserted after the words "Green Attributes" in the first line of Section (a)(iii): "(such that the deliveries from the Qualified Projects or Complying Facilities are a bundled product or the result of PacifiCorp purchasing bundled energy and green attributes and that the deliveries comply with the terms hereof)"

- b. The following language is added to the end of Section (a)(iii): "Within 30 days from the date that the generation from the Complying Facilities is delivered, PG&E shall file a compliance filing by Tier 1 advice letter that includes the name, commercial operation date, and the amount of generation for each designated Complying Facility."
- c. The following new Section (a)(iv) is added:  
 "(iv) Any deliveries hereunder from a Complying Facility shall be a bundled product or the result of PacifiCorp purchasing bundled energy and green attributes and the deliveries shall comply with the terms hereof. A Complying Facility must be a wind facility."

2. Except as specifically amended and modified hereby, the 2009 Agreement remains unamended, in full force and effect.

IN WITNESS WHEREOF, the Parties agree to this First Amendment as of the date first above written.

Pacific Gas and Electric Company	PacifiCorp
By: 	By: 
Name: Roy M. Kiga	Name: Stacey Kusters
Title: VP - Energy Supply Management	Title: Director, Origination
Date: 12/8/09	Date: December 3 <sup>rd</sup> , 2009

CAW

SPU