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Simi Valley
QF 1095

POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

WM ENERGY SOLUTIONS, INC.

COVER SHEET

The attached *Master Power Purchase and Sale Agreement* (Edison Electric Institute Version 2.1; modified 4/25/00), General Terms and Conditions (the "Master Agreement") together with this Cover Sheet, including Special Conditions, the Addendum to the Master Agreement attached hereto, and any exhibits, attachments, and/or any referenced collateral, credit support or margin agreement or similar arrangement between the Parties (collectively, the "Agreement") is made as of the following date: December 20, 2002 ("Effective Date"). The Parties to this Agreement (each, a "Party," collectively "Parties") are the following:

Parties:

Name: WM ENERGY SOLUTIONS, INC. ("Seller" or "Party A")

Name: SOUTHERN CALIFORNIA EDISON COMPANY ("Buyer", "SCE" or "Party B")

All Notices are deemed provided in accordance with Section 10.7 if made to the address and/or facsimile numbers provided below:

Street: 1001 Fannin, #400
City: Houston, Texas Zip: 77002
Attn: Contract Administration

Phone: (480) 624-8400
Facsimile: (480) 951-5280
Duns: 194672085 (parent company)
Federal Tax ID Number: 76-0695139

All Notices are deemed provided in accordance with Section 10.7 if made to the address and/or facsimile numbers provided below:

Street: 2244 Walnut Grove Ave., G.O. 1
City: Rosemead, CA Zip: 91770
Attn: Director, QF Resources

Phone: (626) 302-8514
Facsimile: (626) 302-1103
Duns: 006900818
Federal Tax ID Number: 95-1240335

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Invoices:

Attn: Autumn Belfiore, Western
Group Accountant
Phone: (480) 624-8442
Facsimile: (480) 596-9418

Invoices:

Attn: Paul Amero
Phone: (626) 302-9567
Facsimile: (626) 302-1102

Scheduling:

Attn: Frank Mazanec, Consulting
Project Manager
Phone: (760) 931-2400
Facsimile: (760) 931-2405

Scheduling:

Attn: Manager of Energy
Operations
Phone: (626) 302-5730
Facsimile: (626) 302-3254

Payments:

Attn: Autumn Belfiore, Western
Group Accountant
Phone: (480) 624-8442
Facsimile: (480) 596-9418

Payments:

Attn: Cindy Shindle
Phone: (626) 302-9272
Facsimile: (626) 302-1102

Wire Transfer:

BNK: Bank One
ABA: Routing No. [REDACTED]
ACCT: [REDACTED]

Wire Transfer:

BNK: City National Bank
ABA: [REDACTED]
ACCT: [REDACTED]

Credit and Collections:

Attn: Ginger Kaladas, Credit &
Collections Manager
Phone: (510) 613-2838
Facsimile: (510) 284-1336

Credit and Collections:

Attn: Manager of Finance
Phone: (626) 302-3242
Facsimile: (626) 302-3276

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

Attn: Western Group General
Counsel
Phone: (480) 624-8400
Facsimile: (480) 951-5280

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

Attn: General Counsel
Phone: (626) 302-1903
Facsimile: (626) 302-2970

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Special Conditions¹

A. Seller and Project:

- (i) Net Nameplate Capacity: **2,490 kW**. [Net Nameplate Capacity is the net output available for sale to SCE after deducting auxiliary load/station use from the Generating Facility's power production capacity and applicable transformer and electrical losses in accordance with Section 3.1(a), subject to the provisions in Special Condition A (ii) below for reducing Net Nameplate Capacity.]
- (ii) Reduction of Net Nameplate Capacity: If the Generating Facility consists of more than one electrical generator, the Net Nameplate Capacity of the Generating Facility shall be the sum of the Net Nameplate Capacity ratings of the electrical generators which are actually operating in parallel with the SCE electrical system and delivering power to the Point of Delivery as of the date of Firm Operation. Any installation at the Project by Seller of additional Net Nameplate Capacity after the date of Firm Operation, without the written consent of SCE, shall constitute an Event of Default.
- (iii) Project Name and Address (the "Site"):
**Simi Valley Gas-to-Energy Project
Simi Landfill
2801 N. Madera Road
Simi Valley, California**
- (iv) This Agreement is Project and Site specific; however, Seller may, with SCE's prior written consent, adjust the location of Seller's Generating Facility within the proximity of the Site specified in this Special Condition A if necessary for project development.
- (v) Eligible Renewable Resource ("ERR") Type: (Check one only)
 - Solar Photovoltaic
 - Solar Thermal
 - Wind
 - Small Hydroelectric (30 MW or less)
 - Geothermal
 - Solid Fuel Biomass

¹ Capitalized terms, if not otherwise defined in these Special Conditions, shall have the meaning set forth in the attached Addendum and/or Master Power Purchase & Sale Agreement.

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- Landfill Gas
- Digester Gas

- (vi) Delivery of power to SCE shall be at a nominal 12,000 volts.
- (vii) Expected annual net Energy production is 20.214 GWh.

B. Firm Contract Capacity:

- (i) Firm Contract Capacity is 2,490 kW (subject to the deration provisions in Section 3.3(e)).
- (ii) Maximum Firm Contract Capacity for ERR projects shall be based on an ERR-specific factor applied to such project's Net Nameplate Capacity, as follows:

<u>Technology</u>	<u>ERR-Specific Factor</u>
Wind	0.10
Small Hydroelectric	0.50
Geothermal, Photovoltaic Solar Thermal, Solid-Fuel Biomass Landfill Gas, Digester Gas, Other Biogas	1.00

C. ISO Interface Delivery Point:

SP 15 Royal Substation via the Rejado 16 kV Circuit.

D. Name and Location of SCE Designated Switching Center:

Royal Substation.

E. Term:

- (i) 5 Years 10 Years 15 Years (check one)
- (ii) Subject to Article Eleven, the Term of this Agreement shall commence upon the date of Initial Operation of the Generating Facility. This Agreement shall terminate automatically as of the Startup Deadline if the Project does not achieve Initial Operation by the Startup Deadline.
 - (a) If the date of commencement of the Term of this Agreement is other than the first day of a calendar month, then the Term of this

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Agreement shall terminate on the last day of the calendar month which is five, ten, or fifteen years, as applicable in accordance with Special Condition E (i), from the end of the calendar month in which the Term commences. Any such additional days shall be considered part of the last year of the Term of the Agreement.

- (b) SCE has certain rights to terminate the Agreement under the terms and conditions set forth in Article Twelve.
- (c) Seller has the right, in its sole discretion, to unilaterally terminate the Agreement effective as of the first day of the sixth year of the Agreement's term, without liability of any kind for such termination, by providing SCE with written Notice of Seller's intention to terminate under this Special Condition E(ii)(c) at least nine (9) months before the effective date of such termination. |

F. Fixed Energy Price and Fixed Energy Price Period:

- (j) Fixed Energy Price Period: [] 5 Years [X] 10 Years (check one)
- (ii) The Fixed Energy Price Period commences concurrently with the Term of this Agreement, as specified above in Special Condition E.
- (iii) The Fixed Energy Price is \$42.50 per MWh.
- (iv) [] [check if applicable]

During any remaining Term of this Agreement as specified in Special Condition E, Seller will receive a monthly Energy payment equal to the sum of the Period Energy Payments for all TOD Periods in the month in accordance with Section 3.1(d).

G. Public Goods Charge Funding Requirements:

- (i) [X] Public Goods Charge Funding Required (check if applicable)
- (ii) The Agreement shall be subject to termination by either Party, as set forth in Article Twelve, in the event that Seller is unable to obtain a Satisfactory PGC Commitment.
- (iii) The PGC Funds level required shall be equal to the difference between (a) the market price of electricity calculated for the Term of the Agreement in accordance with the principles set forth in Senate Bill 1078 (Section 399.15), and (b) the price of electricity to be paid under this Agreement for all anticipated electrical deliveries from the Generating Facility. The minimum PGC Funds level required shall be \$10.00 per MWh for all

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anticipated electrical deliveries from the Generating Facility during the Term of this Agreement.

Other Project – Specific Terms

Article Two

Transaction Terms and Conditions

Optional provision in Section 2.4. If not checked, inapplicable.

[THIS SECTION IS NOT APPLICABLE]

Article Four

Remedies for Failure to Deliver or Receive

Accelerated Payment of Damages. If not checked, inapplicable.

[THIS SECTION IS NOT APPLICABLE]

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)

[THIS SECTION IS NOT APPLICABLE]

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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:

Until Party B attains an investment grade credit rating (as evidenced by a credit rating on Party B's outstanding long term senior unsecured, unsubordinated debt of either BBB- from S&P or Baa3 from Moody's), Party B's Collateral Threshold will be zero. After Party B has attained an investment grade credit rating, Party B's Collateral Threshold shall be the amount set forth below opposite the applicable Credit Rating for Party B's outstanding long-term senior unsecured, unsubordinated debt, as determined by Moody's or S&P, as the case may be:

Collateral Threshold (in thousands of dollars)	Credit Rating (Moody's)	Credit Rating (S&P)
\$40,000	A3 or better	A- or better
\$30,000	Baa1	BBB+
\$20,000	Baa2	BBB
\$10,000	Baa3	BBB-
\$0	Below Baa3	Below BBB-

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: \$ 0

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Party B Rounding Amount: \$ 250,000

(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: Not Applicable

Guarantee Amount: Not Applicable

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's Collateral Threshold shall be the amount set forth below opposite the applicable Credit Rating for Party A Guarantor's outstanding long-term senior unsecured, unsubordinated debt, as determined by Moody's or S&P, as the case may be:

Collateral Threshold (in thousands of dollars)	Credit Rating (Moody's)	Credit Rating (S&P)
---	----------------------------	------------------------

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\$40,000	A3 or better	A- or better
\$30,000	Baa1	BBB+
\$20,000	Baa2	BBB
\$10,000	Baa3	BBB-
\$0	Below Baa3	Below BBB-

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 Guarantor has occurred and is continuing.

Party A Independent Amount: \$ 0

Party A Rounding Amount: \$ 250,000

(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: **Waste Management, Inc.**
Guarantee Amount: **\$6,000,000**

Article 10

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.

[THIS SCHEDULE IS NOT APPLICABLE]

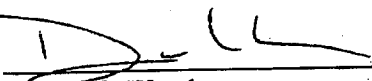
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Other Changes
See attached Addendum

Agreement Execution

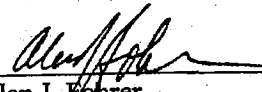
In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date of last signature provided below:

WM ENERGY SOLUTIONS, INC.,
a Delaware corporation

By: 
Duane C. Woods
Vice President and General Counsel
Western Group

Date: 12/20/02

**SOUTHERN CALIFORNIA EDISON
COMPANY,** a California corporation

By: 
Alan J. Fohrer
Chairman and Chief Executive
Officer

Date: 12/20/02

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ADDENDUM
TO
MASTER POWER PURCHASE AND SALE AGREEMENT
between
SOUTHERN CALIFORNIA EDISON COMPANY
and
WM ENERGY SOLUTIONS, INC.

This Addendum modifies the General Terms and Conditions of the Master Agreement as set forth below.

ARTICLE ONE: GENERAL DEFINITIONS

The following definitions are deleted in their entirety.

- 1.6 "Call Option"
- 1.9 "Confirmation"
- 1.10 "Contract Price"
- 1.11 "Costs"
- 1.12 "Credit Rating"
- 1.13 "Cross Default Amount"
- 1.15 "Delivery Period"
- 1.17 "Downgrade Event"
- 1.24 "Gains"
- 1.26 "Interest Rate"
- 1.28 "Losses"
- 1.31 "NERC Business Day"
- 1.33 "Offsetting Transactions"
- 1.34 "Option"
- 1.35 "Option Buyer"

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- 1.36 "Option Seller"
- 1.43 "Party A Tariff"
- 1.44 "Party B Tariff"
- 1.46 "Potential Event of Default"
- 1.48 "Put Option"
- 1.49 "Quantity"
- 1.50 "Recording"
- 1.51 "Replacement Price"
- 1.53 "Sales Price"
- 1.56 "Settlement Amount"
- 1.57 "Strike Price"
- 1.58 "Terminated Transaction"

The following definitions are amended as follows:

1.5 "Buyer"

The definition of "Buyer" in the Master Agreement shall be deleted in its entirety and replaced with the following: " 'Buyer' means the sole Party that is obligated to purchase and receive, or cause to be received, the Product as specified in this Agreement. As used in this Agreement, Buyer shall be Party B."

1.7 "Claiming Party"

The definition of "Claiming Party" in the Master Agreement is deleted in its entirety and replaced with the following: " 'Claiming Party' is the Party claiming that a Force Majeure event has occurred pursuant to the provisions of Section 3.5."

1.16 "Delivery Point"

The definition of "Delivery Point" in the Master Agreement is deleted in its entirety and replaced with the following: " 'Delivery Point' means the location on the ISO Grid within SCE's geographic service territory as set forth in Special Condition C at which title to the Product will transfer from Seller to Buyer."

1.23 "Force Majeure"

The definition of "Force Majeure" in the Master Agreement is deleted in its entirety and replaced with the following: " 'Force Majeure' means any event or circumstance that

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prevents a Party from performing its obligations hereunder, other than Forced Outages, which event or circumstance was not anticipated as of the date the Agreement was entered into, which is not within the reasonable control of, or the result of negligence of, the claiming Party and which the Claiming Party has been unable to overcome or avoid by the exercise of due diligence, including but not limited to flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike or labor dispute, or actions, delay or failures to act of governmental authorities. Lack of wind, sun or other fuel source of an inherently intermittent nature shall not constitute a Force Majeure under this Agreement. Damage or destruction of the facilities providing landfill gas to the Generating Facility Units, which prevent the delivery of landfill gas to the Generating Facility for the production of Energy and Firm Contract Capacity, that could not have been prevented by the exercise of due diligence by Seller, and that was not foreseeable and was caused by forces outside the control of Seller, shall be considered a qualifying Force Majeure event.”

1.25 “Guarantor”

The definition of “Guarantor” in the Master Agreement is deleted in its entirety and replaced with the following: “ ‘Guarantor’ means, with respect to a Party, the guarantor, if any, specified for such Party under any security, collateral or similar agreement between the Parties as contemplated in Section 3.2.”

1.47 “Product”

The definition of “Product” in the Master Agreement is deleted in its entirety and replaced with the following: “ ‘Product’ means all Energy and, if applicable, capacity generated by Seller’s Generating Facility and delivered to SCE for sale under this Agreement.”

1.54 “Schedule” or “Scheduling”

The definition of “Schedule” or “Scheduling” in the Master Agreement is deleted in its entirety and replaced with the following: “ ‘Schedule’ or ‘Scheduling’ means the action of Seller, or its designated representatives, including any third party provider of transmission services, if applicable, of notifying, requesting, and confirming to each other and/or to the ISO, as appropriate the quantity of Product to be delivered on any given day, hour, or relevant period at the Delivery Point.”

1.55 “Seller”

The definition of “Seller” in the Master Agreement is deleted in its entirety and replaced with the following: “ ‘Seller’ means the Party that is obligated to sell and deliver to the Delivery Point, or cause to be delivered to the Delivery Point, Energy and, if applicable, Firm Contract Capacity generated by Party’s Generating Facility as specified in this Agreement. As used in this Agreement, Seller shall be Party A.”

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1.59 "Termination Payment"

The definition of "Termination Payment" in the Master Agreement is deleted in its entirety and replaced with the following: " 'Termination Payment' has the meaning used in Section 5.4."

1.60 "Transaction"

The definition of "Transaction" in the Master Agreement is deleted in its entirety and replaced with the following: " 'Transaction' means any sale of Energy and, if applicable, Firm Contract Capacity to SCE from Seller under this Agreement."

1.61 "Transmission Provider"

The definition of "Transmission Provider" in the Master Agreement is deleted in its entirety and replaced with the following: " 'Transmission Provider' means any entity or entities transmitting or transporting Energy or capacity on behalf of Seller to the Delivery Point pursuant to the terms of this Agreement."

The following definitions are added to Article One:

"1.62 'Capacity Attributes' means any defined characteristic, certificate, tag, credit or accounting construct associated with a unit of generating capacity. An example of a Capacity Attribute would be an ACAP credit as defined in the ISO's Market Design '02 Proposal."

"1.63 'CPUC' or 'Commission' means the California Public Utilities Commission."

"1.64 'CPUC Approval' means that the CPUC has issued a final decision, no longer subject to appeal, without conditions or modifications unacceptable to the Parties, or either of them, that: (1) approves as reasonable all aspects of the solicitation of renewable power ("RFP") which was the basis for this Agreement, and of SCE's conduct in respect of the RFP, (2) finds that any procurement pursuant to this Agreement is deemed transitional procurement by SCE from a renewable resource for purposes of determining SCE's compliance with any obligation that it may have pursuant to CPUC Decisions ("D.") 02-08-071 and 02-10-062, or other applicable law to procure an additional one percent (1%) of its annual electricity sales from renewable resources, (3) finds that any procurement pursuant to this Agreement be deemed part of SCE's "baseline" quantity of eligible renewable resources for purposes of Section 399.15 of the Public Utilities Code or other applicable law; and (4) approves this Agreement, or, in the alternative, any form agreement upon which this Agreement is substantially based if SCE submits that form instead to the CPUC, and contains findings to the effect that this Agreement (or any standardized form) and SCE's entry into this Agreement (or any agreement based substantially on the standardized form) are reasonable and prudent for all purposes, including, but not limited to, recovery of all payments

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made pursuant hereto in rates, subject only to review with respect to the reasonableness of SCE's administration of the Agreement."

- "1.65 'Designated Switching Center' means the SCE facility identified in Special Condition D."
- "1.66 'DLF' or 'Distribution Loss Factor' as approved by the CPUC (or such successor measure as may be determined from time-to-time) means a measure of all net electrical losses associated with the transmission of power through the SCE electric system from the high voltage side of the Generating Facility Substation to the interface with the ISO Grid."
- "1.67 'Emergency' means an actual or imminent condition or situation which jeopardizes SCE Electric System Integrity or the integrity of other systems to which SCE is connected, as determined by SCE in its reasonable discretion, or any condition so defined and declared by the ISO."
- "1.68 'Energy' means kilowatt-hours generated by the Generating Facility as measured in accordance with Sections 3.1(a) and 3.11 that are purchased by SCE and delivered to the Delivery Point."
- "1.69 'Environmental Attributes' means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Generating Facility. Environmental Attributes include but are not limited to (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by any legitimate governmental body or association of governmental representatives, such as, but not limited to, the United Nations Intergovernmental Panel on Climate Change, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights, such as, but not limited to, Green Tag Reporting Rights, to these avoided emissions. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the Generating Facility nor production tax credits or certain other financial incentives existing now or in the future associated with the construction or operation of electric generating projects."
- "1.70 'ERR' or 'Eligible Renewable Resource' means any of the following, all of which must be located in California, or near California and having a first point of connection to the Western Electricity Coordinating Council transmission system located in California, and which are not providing energy or capacity under an existing power purchase agreement with SCE or any other party that does not terminate by its own terms, without further action of the Parties, on or before December 31, 2003:
- A. a photovoltaic generating facility,
 - B. a wind generating facility,

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- C. a geothermal generating facility,
- D. a solar thermal generating facility,
- E. a hydroelectric generating facility of 30 MW or less, provided that a new hydroelectric generating facility will not require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code,
- F. a thermal electric generating facility whose thermal energy input comes from the combustion of biomass fuel, digester gas, or landfill gas,
- G. an ocean wave, ocean thermal, or tidal current generating facility, or
- H. a municipal solid waste conversion generating facility as defined by Senate Bill 1038."

"1.71 'Firm Contract Capacity' means, if Firm Contract Capacity is specified in Special Condition B to this Agreement, the electric power producing capability of the Generating Facility which is committed to SCE as specified in Special Condition B (i) as may be modified from time to time pursuant to Section 3.3 of this Agreement."

"1.72 'Firm Operation' means, if Seller is providing Firm Contract Capacity from the Generating Facility as specified in Special Condition B to this Agreement, the date on or after Initial Operation upon which Seller, having performed the required testing in accordance with the procedures described in Exhibit A, passes such tests or, otherwise, the date SCE, in its sole judgment, determines that Seller's Generating Facility has the ability to provide and deliver to the Delivery Point the Firm Contract Capacity specified in this Agreement (or any reduced level of Firm Contract Capacity pursuant to the provisions of Section 3.3(c)) in accordance with the procedures described in Exhibit A attached hereto. A Seller electing to provide Firm Contract Capacity pursuant to Special Condition B that does not achieve Firm Operation within six months of Initial Operation shall not be entitled to be paid for Capacity pursuant to this Agreement and is subject to the deration/damage provisions in Sections 3.3(e) and 3.3(f)."

"1.73 'Forced Outage' means any outage of the Generating Facility or Seller's Interconnection Facilities resulting from a design defect, inadequate construction, operator error, or a breakdown of the mechanical or electrical equipment that fully or partially curtails the electrical output of the Generating Facility."

"1.74 'Generating Facility' means all of Seller's generators, together with all protective and other associated equipment and improvements necessary to produce electrical power at Seller's Project, excluding associated land, land rights and interests in land."

"1.75 'GMMs' or 'Generation Meter Multipliers,' as determined by the ISO, (or such successor factor as the ISO may develop from time-to-time) means the calculation of all electrical losses associated with the transmission of power delivered by the Generating Facility over the ISO Grid."

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- "1.76 'Initial Operation' means any date selected by Seller and provided in a written Notice to Buyer at least 72 hours in advance of 12:01 am on the date selected (the "Selected Time"), *provided that*, as of the Selected Time, the Generating Facility (or, in the case of a Generating Facility with more than one electrical generator, at least one electrical generator installed at the Generating Facility) is: (i) actually operating in parallel with the ISO Grid or SCE electrical system, *and* (ii) delivering Product to the Delivery Point."
- "1.77 'ISO' means the California Independent System Operator Corporation, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all participating transmission owners and dispatches certain electric generation units and loads."
- "1.78 'ISO Control Area' means the electrical regions under operational control of the ISO."
- "1.79 'ISO Grid' means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the ISO's operational control."
- "1.80 'Interconnection Facilities' means all means required, and apparatus installed, to interconnect and deliver power from the Generating Facility to the Delivery Point by means of either the SCE electric system or the ISO Grid, including, but not limited to, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the SCE electric system (or other systems to which the SCE electric system is connected, including the ISO Grid) and SCE's customers from faults occurring at the Generating Facility, and (b) the Generating Facility from faults occurring on the SCE electric system or on the systems of others to which the SCE electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements by SCE to the SCE electric system required as a result of the interconnection of the Generating Facility to the SCE system, the ISO Grid, or systems of others to which the SCE electric system is directly or indirectly connected."
- "1.81 'KVAR' means reactive kilovolt-ampere, a unit of measure of reactive power."
- "1.82 'Lease' means an agreement whereby Seller leases the site described in Special Condition A (iii) (the "Site") and/or the Generating Facility from a third party, the term of which lease begins on or before the Term of this Agreement and extends at least through the last day of the Term."
- "1.83 'Market Quotation Average Price' means the average of the quotations solicited in good faith from not less than three (3) Reference Market Makers; provided, however, that the Party soliciting such quotations 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

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Price shall be determined by disregarding the highest and lowest quotations and averaging the remaining quotations. The quotations shall be based on the midpoint (average) of firm and transactable offers to sell and bids to buy. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Parties are unable to obtain such quotations, the Parties shall negotiate in good faith to reach agreement on a valuation of the relevant product. In the event the Parties calculate differing Market Quotation Average Prices based on the above procedure for the equivalent relevant product, then the average of the two Market Quotation Average Prices shall be used in implementing provisions of this Agreement that reference Market Quotation Average Prices.”

- “1.84 ‘Notice’ means notices, requests, statements or payments provided in accordance with the Cover Sheet and Section 10.7.”
- “1.85 ‘Operate’ means to provide the engineering, purchasing, repair, supervision, training, inspection, testing, protection, operation, use, management, replacement, retirement, reconstruction, and maintenance of or for the Generating Facility in accordance with applicable California electric utility standards and Prudent Electrical Practices.”
- “1.86 ‘Participating Transmission Owner’ or ‘Participating TO’ means an entity that (i) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (ii) has transferred to the ISO operational control of such facilities and/or entitlements to be made part of the ISO Grid.”
- “1.87 ‘Party A Guarantor’ means Waste Management, Inc., a Delaware corporation.”
- “1.88 ‘Peak Months’ means those months defined as summer months in SCE Tariff Schedule No. TOU-8, Special Condition 15, ‘Qualifying Facilities Time Periods.’”
- “1.89 ‘PGC Funds’ means any Public Goods Charge funding as such term is used in CPUC Decision 02-03-056 dated March 21, 2002 (Rulemaking 01-08-028). PGC Funds do not include funds provided to Seller under the Innovative Peak Load Reduction Program operated under the auspices of the California Energy Commission, which funds shall be and remain Seller’s sole property.”
- “1.90 ‘Project’ means Seller’s Generating Facility and Interconnection Facilities required to permit operation of Seller’s Generating Facility in parallel with the SCE electric system or the ISO Grid, as applicable.”
- “1.91 ‘Project Fee’ means the fee paid as described in Section 3.9(a).”
- “1.92 ‘Protective Apparatus’ means all relays, meters, power circuit breakers, synchronizers, and other control devices as shall be agreed to by the Parties in accordance with the requirements of SCE as necessary for proper and safe

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operation of the Generating Facility in parallel with the SCE electric system and/or the ISO Grid.”

- “1.93 ‘Prudent Electrical Practices’ means those practices, methods, and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to design and operate electrical equipment lawfully and with safety, dependability, efficiency, and economy.”
- “1.94 ‘Qualifying Facility’ has the same meaning as in the Public Utility Regulatory Policies Act of 1978 (“PURPA”) (16 U.S.C.A § 796 *et seq.*) and in the regulations of the Federal Energy Regulatory Commission.”
- “1.95 ‘Reference Market-Maker’ means any unaffiliated (a) marketer, trader or dealer in energy products (1) whose long-term senior unsecured debt is rated BBB- or better by S&P and Baa3 or better by Moody’s, or (2) who is providing sufficient credit support such that the Party obtaining the quote has included, and currently includes, such marketer, trader, or dealer among the companies with which it has management pre-approval to transact for the relevant products or (b) broker representing quotes from such marketers, traders, or dealers meeting the foregoing criteria.”
- “1.96 ‘Satisfactory PGC Commitment’ means that Seller has obtained from the California Energy Commission or other applicable governmental entity, in a form acceptable to SCE in its sole discretion, a binding commitment without material conditions not contemplated in this Agreement to pay to Seller or SCE PGC Funds in at the level specified in Special Condition G for all anticipated deliveries from the Generating Facility under this Agreement.”
- “1.97 ‘SCE Creditworthiness’ means that following execution of this Agreement, both of the following have occurred: (i) S&P has issued a credit-rating of at least BBB- for SCE’s senior unsecured debt instruments and (ii) Moody’s has issued a credit rating of at least Baa3 for SCE’s senior unsecured debt instruments.”
- “1.98 ‘SCE Electric System Integrity’ means the state of operation of the SCE electric system in a manner which is deemed to minimize the risk of injury to persons and/or property and enables SCE to provide adequate and reliable electric service to its customers.”
- “1.99 ‘Site Control’ means that Seller satisfies one or more subcategories of Section 3.9(c)(i)(1).”
- “1.100 ‘Startup Deadline’ means the later of (i) 11:59 p.m. Pacific Time on December 31, 2003; (ii) the last day of the tenth calendar month after the month that Seller obtains a Satisfactory PGC Commitment, or (iii) the last day of the tenth calendar month after the month of CPUC Approval.”
- “1.101 ‘Tariff Schedule No. TOU-8’ means SCE’s time-of-use tariff for retail electric service provided to those customers with demand exceeding 500 kW or any

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successor thereto as updated from time to time by the CPUC, as now in effect or as may hereafter be authorized by the CPUC.”

“1.102 ‘Term’ has the meaning used in Special Condition E to this Agreement.”

“1.103 ‘SCE Outage’ has the meaning set forth in Section 3.4(a).”

“1.104 ‘Station Use’ means energy produced by the Generating Facility that is used to operate the Generating Facility’s auxiliary equipment and other direct on-site uses by Seller or its Affiliates, that were in use as of December 31, 2002. The auxiliary equipment includes, but is not limited to, forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps.”

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

Article Two is deleted in its entirety and replaced with the following:

“2.1 Transaction.

- (a) The only Transaction contemplated in this Agreement is the sale to SCE from Seller of all Energy, including, if applicable, associated Firm Contract Capacity from the Generating Facility during the Term of this Agreement, all as set forth herein. This Agreement is intended to govern only the terms of SCE’s power purchases from Seller and is not intended to provide interconnection, scheduling, distribution and/or transmission services.
- (b) Seller agrees to dedicate the entire electrical output of the Project during the Term of this Agreement, net of Station Use and electrical losses as provide in Section 3.1(a), to SCE and, accordingly, Seller may not sell, deed, grant, convey, transmit, or otherwise provide any energy, capacity, ancillary services or any other related electricity product, including Environmental Attributes, or Capacity Attributes associated with the Generating Facility to a party other than SCE.
- (c) The Parties intend that Seller will arrange and pay independently for any and all necessary electrical interconnection, scheduling, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver power to the Delivery Point.”

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

Article Three is deleted in its entirety and replaced with the following:

“3.1 Energy and Capacity; Payments.

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- (a) Seller shall sell and deliver, and Buyer shall purchase and receive, Firm Contract Capacity, if any, and Energy generated by the Generating Facility and delivered to the Delivery Point. SCE will make separate monthly payments to Seller for Firm Contract Capacity, if any, and Energy actually delivered by Seller during the Term of this Agreement. These payments shall be calculated in the manner described below. SCE shall not be obligated to pay Seller for Firm Contract Capacity and Energy that is not delivered as a result of any circumstance, including, without limitation, an Interruption of Deliveries under Section 3.4 or a Force Majeure under Section 3.5, or Firm Contract Capacity and Energy that was not generated by the Generating Facility. Payment for Firm Contract Capacity, if any, and Energy delivered by Seller to SCE will be based upon the net electrical output measured by meters installed at the Generating Facility as set forth in Section 3.11 adjusted for (i) transformer and electrical losses to the high voltage side of the Generating Facility substation, if applicable, (ii) electrical losses between the Generating Facility substation and the Generating Facility Unit's ISO Grid Delivery Point, if applicable, (iii) application of a Distribution Loss Factor ("DLF"), if applicable, and (iv) electrical losses at and from the Delivery Point as determined by utilizing GMM assigned to the Delivery Point or the Generating Facility's resource identification, notwithstanding that title to the Product passes to the Buyer at the Delivery Point. Seller shall provide Buyer access to all meter data both in real time, and at later times as may be required.
- (b) The Firm Contract Capacity, if any, and Energy payments shall be time-differentiated according to the time-of-delivery and season as those terms are defined in Tariff Schedule No. TOU-8, Special Conditions 1 and 15. Each time-of-delivery and seasonal period defined in Tariff Schedule No. TOU-8 is referred to in this Agreement as a "TOD Period." The Energy and capacity allocation factors used to time-differentiate the Firm Contract Capacity and Energy payments shall be the factors approved by the CPUC for use in SCE's standard power purchase contracts with Qualifying Facilities for each TOD Period, as such factors are updated from time-to-time by the CPUC ("Allocation Factor").
- (c) During the Fixed Energy Price Period specified in Special Condition F to this Agreement, Seller will receive a monthly Energy payment equal to the sum of the Period Energy Payments for all TOD Periods in the month. Seller shall not earn an Energy payment prior to the commencement of the Fixed Energy Price Period as set forth in Special Condition F. During the Fixed Energy Price Period, for each TOD Period in the month, a Monthly Period Energy Payment shall be calculated pursuant to the following formula:

$$\text{MONTHLY PERIOD ENERGY PAYMENT} = A \times B \times C \times D \times E$$

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- Where A = Fixed Energy price specified in Special Condition F to this Agreement in \$/kWh (i.e., \$/MWh/1000).
- B = Energy payment Allocation Factor for the TOD Period.
- C = Generation- weighted average GMM for all hours of the TOD Period in the month.
- D = DLF for Seller's Project (if applicable).
- E = Sum of all kWh of Energy delivered by Seller to the Delivery Point in all hours of the TOD Period in the month, adjusted for transformer and electrical losses as may be applicable in accordance with Section 3.1(a), but not including the adjustment for GMM which is included as variable C.

- (d) In accordance with Special Condition F (iv), during the remaining Term, if any, Seller will receive a monthly Energy payment equal to the sum of the Period Energy Payments for all TOD Periods in the month. For each TOD Period in the month, a monthly Period Energy Payment shall be calculated pursuant to the following formula:

$$\text{MONTHLY PERIOD ENERGY PAYMENT} = \frac{\{(A + B + C) \times D\} + E}{F \times G \times H \times I}$$

- Where A = Basin Gas price (\$/MMBtu), where Basin Gas = average of San Juan and Permian basin gas prices from the publications *Natural Gas Week*, *Natural Gas Intelligence* and *BTU Daily Gas Wire*.
- B = Firm Interstate Transportation charge (\$/MMBtu).
- C = Intrastate Transportation charge (\$/MMBtu).
- D = 7,200 Btu/kWh/1,000,000.
- E = Operations and Maintenance adder = 0.002 \$/kWh.
- F = Energy payment Allocation Factor for the TOD Period.
- G = Generation-weighted average GMM for all hours of the TOD Period in the month.
- H = DLF for Seller's Project (if applicable).
- I = Sum of all kWh of energy delivered by Seller to the Delivery Point in all hours of the TOD Period in the

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month, adjusted for transformer and electrical losses as may be applicable in accordance with Section 3.1(a), but not including the adjustment for GMM which is included as variable G.

As used in the above formula, "Firm Interstate Transportation Charge" means the average of El Paso's firm tariff rates, plus corresponding fuel charges, to move gas from the San Juan and Permian basins, to the California border. "Intrastate Transportation Charge" means the sum of the GT-F5 rates pursuant to Southern California Gas Company's (SoCal's) Tariff Schedule GT-F5 (including the Interstate Transition Cost Surcharge provided therein) and the rate pursuant to SoCal's Tariff Schedule G-MSUR.

- (e) During the Term, if Seller has a Firm Contract Capacity level greater than zero (0) kW and meets the performance requirements set forth in Section 3.3, below, then Seller will receive a monthly Firm Contract Capacity payment equal to the sum of the Period Capacity Payments for all TOD Periods in the month. Seller shall not earn a Firm Contract Capacity payment prior to the later of the commencement of the Term of this Agreement or the first day of the month following the date of Firm Operation. For each TOD Period in the month, a Monthly Period Capacity Payment shall be calculated pursuant to the following formula:

MONTHLY PERIOD CAPACITY PAYMENT = A x B x C x D

- Where A = The Annual Capacity Price of \$95.00/kW-year.
B = Capacity Allocation Factor to convert annual capacity prices to monthly payments for the TOD Period.
C = Firm Contract Capacity specified in Special Condition B (or as may be adjusted pursuant to Section 3.3(c) in kW (*i.e.*, MW times 1000).
D = Period Capacity Performance Factor, calculated pursuant to the formula for Capacity Performance Factor as set forth in Section 3.3(a) below for each TOD Period in the month where the variable "D" in the equation in Section 3.3(a) is equal to the TOD Period hours in the month *without* adjustment for SCE Outages or Force Majeure."

- "3.2 Security. The terms of security agreements and arrangements between the Parties with respect to Energy and firm capacity payments under this Agreement shall be as set forth in Article Eight, and any other security agreements between the Parties relating to this Agreement, if any, that are attached hereto and made a part

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hereof as Exhibit B.”

“3.3 Seller’s Capacity Performance Obligations. If Seller has agreed to deliver Firm Contract Capacity as specified in Special Condition B, then following Firm Operation of the Generating Facility, Seller shall be subject to the following capacity performance requirements:

- (a) Seller shall achieve a Capacity Performance Factor in each Peak Month for all on-peak hours (as defined in Tariff Schedule No. TOU-8, Special Conditions 1 and 15) of at least eighty percent (80%). Seller shall not be subject to such performance requirements for the remaining hours of the year. For each on-peak period in each Peak Month, the Capacity Performance Factor shall be calculated pursuant to the following formula:

$$\text{CAPACITY PERFORMANCE FACTOR} = [A \times B \times C] / [D \times E]$$

Where A = Sum of all kWh of Energy delivered by Seller to the Delivery Point during the TOD Period during the month, adjusted for transformer and electrical losses as may be applicable in accordance with Section 3.1(a) (not including the adjustment for GMM which is included as variable B), limited in each hour of delivery by the level of Firm Contract Capacity.

B = Generation-weighted average GMM for all hours of the TOD Period in the month.

C = DLF for Seller’s Project (if applicable).

D = Adjusted Period Hours as defined below.

E = Firm Contract Capacity specified in Special Condition B in kW (*i.e.*, MW times 1000).

Adjusted Period Hours = TOD hours in the month
less SCE Outage hours allowed in accordance with Section 3.4(a)
less Force Majeure hours allowed in accordance with Section 3.5(b).

- (b) If at any time after the first six months of the Term, Seller fails to meet the requirements specified in Section 3.3(a), above, SCE may, in its sole discretion, place Seller on probation for a period not to exceed fifteen (15) months (as the same may be extended in SCE’s sole discretion due to Force Majeure events during such period) (“Probationary Period”), effective as of the first date of Seller’s failure. If Seller fails to meet the requirements specified in Section 3.3(a) at any time during the Probationary Period, then SCE may, in its sole discretion, elect to derate

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Seller's Firm Contract Capacity in accordance with the provisions of Sections 3.3(e) and (f).

- (c) In the event SCE, in applying the procedures described in Exhibit A hereto, determines that the Generating Facility has the ability to provide and deliver to the Delivery Point a level of firm capacity *less than* the Firm Contract Capacity level specified in Special Condition B, then SCE may derate the Firm Contract Capacity in accordance with the procedures set forth in Section 3.3 (e) and Seller shall be subject to the Capacity Replacement Damage Amount provisions set forth in Section 3.3(f). Moreover, at least once a year after the commencement of the Term, at SCE's request, Seller shall demonstrate the ability to provide Firm Contract Capacity in accordance with the procedures attached to this Agreement as Exhibit C (the "Capacity Demonstration Test"). Seller's Capacity Demonstration Test shall be conducted at Seller's expense. If Seller fails to demonstrate the ability to provide Firm Contract Capacity pursuant to the procedures in Exhibit C, the provisions of Sections 3.3(e) and (f) shall apply. The provisions of this Section 3.3(c) shall apply in addition to, and not as an alternative to, the provisions of Section 3.3 (b).
- (d) At SCE's request, Seller shall achieve a Capacity Performance Factor (pursuant to the formula set forth in Section 3.3(a)) of one hundred percent (100%) during periods of Emergency. If Seller has previously scheduled an outage, in accordance with the provisions of Section 3.7(c)(xi) and 3.7(c)(xii), coincident with an Emergency, Seller shall make all reasonable efforts to reschedule the outage. If Seller fails to deliver Firm Contract Capacity during an Emergency (other than an Emergency before Firm Operation), and there are no circumstances that in SCE's reasonable judgment excuse the failure, then the provisions of Sections 3.3(e) and (f) shall apply.
- (e) If Seller fails to (i) meet the requirements specified in Section 3.3(a) during a Probationary Period, (ii) demonstrate the ability to provide Firm Contract Capacity by application of the Initial Firm Operation Demonstration Test procedures set forth in Exhibit A or during a Capacity Demonstration Test pursuant to Section 3.3(c), or (iii) deliver Firm Contract Capacity during an Emergency pursuant to Section 3.3(d), then SCE may, in its sole discretion, derate the Firm Contract Capacity effective immediately upon written Notice to Seller ("Effective Date of Deration"). The new Firm Contract Capacity shall be the highest of (i) the lowest level of capacity actually delivered in any hour during any month of the Probationary Period, (ii) the lowest level of capacity actually delivered in any applicable metering interval of the Initial Firm Operation Demonstration Test, (iii) the lowest level of capacity actually delivered during applicable metering interval of the Capacity Demonstration Test, (iv) the lowest level of capacity during the period of Emergency, as appropriate, or (v) the level of Firm Contract Capacity that, in SCE's sole

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judgment, Seller may reasonably be expected to deliver for the remainder of the Agreement Term.

- (f) In the event Seller's Firm Contract Capacity is derated pursuant to Sections 3.3(a) through (e), the Parties acknowledge that the damages sustained by SCE associated with deration would be difficult or impossible to determine, and/or that obtaining a then adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages the "Capacity Replacement Damage Amount," which is intended to compensate SCE for its cost to replace the Firm Contract Capacity that will not be purchased by SCE under this Agreement as a result of the deration. It is expressly agreed that Seller shall be required to pay the Capacity Replacement Damage Amount, irrespective of whether SCE actually purchases such replacement capacity by reason of the deration. The Capacity Replacement Damage Amount shall be calculated as of the Effective Date of Deration using the present value over the remainder of the Agreement's Term² of the annual difference, if any, of the assumed annual payments for the quantity of capacity that is the difference between the original quantity of Firm Contract Capacity and the quantity of Firm Contract Capacity after the deration (the "Derated Capacity Quantity") based on the going-forward market price of firm capacity, A_i , (calculated as set forth below), and the annual payments, B_i , that would be made under this Agreement for the Derated Capacity Quantity for the remainder of the Agreement's term, but for the deration. All present value calculations shall use a discount rate of ten (10) percent and all annual dollar amounts shall be discounted to the Effective Date of Deration as set forth in Section 3.3(f)(i) below. For purposes of the above calculation, these quantities are determined as follows:

Capacity Replacement Damage Amount = sum of the present value amounts of the annual difference in capacity payments [$A_i - B_i$] for each year for the remainder of the Term of the Agreement after the Effective Date of Deration, provided this present value is greater than zero.

Where,

A_i (Going-Forward Market Payments for Derated Capacity Quantity) are the annual payments in dollars that SCE would otherwise have to make to purchase the Derated Capacity Quantity,

² If the deration occurs during the first five years of the Term of the Agreement, and Seller exercises its right to terminate the second five years of the Term of the Agreement in accordance with Special Condition E(ii)(c), either before or promptly following such Notice of duration, then the remaining years of the Agreement Term used under this Section 3.3(f) shall be based on the first five years of the Term of the Agreement only, rather than the entire ten (10) year Term. Otherwise, the entire ten (10) year Term shall be used.

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without regard to whether or not SCE actually procures such replacement capacity, from a source other than Seller for the remainder of the Agreement's Term after the Effective Date of Deration. In each such year, the value of A_i in that year shall be based on the following:

$$A_i = [A_1 - (A_2 + A_3)]/100 * [\text{Derated Capacity Quantity in kW}] * 8760, \text{ where}$$

A_1 = Forward market electricity price in \$/kWh, which is the Market Quotation Average Price solicited by or on behalf of SCE for firm SP-15 (7x24) electric energy for the remainder of the Agreement's Term after the Effective Date of Deration,

A_2 = Fuel cost component in \$/kWh, which equals $(F_1 + F_2 + F_3) \times 0.0072$, where

F_1 = Basin gas forward price (\$/MMBtu), which is the Market Quotation Average Price solicited by or on behalf of SCE for natural gas at the San Juan and Permian producing basins for the remainder of the Agreement's Term after the Effective Date of Deration,

F_2 = Firm interstate transportation charge (\$/MMBtu), which is the average of El Paso Natural Gas Company's firm tariff rates, plus corresponding fuel charges, to move gas from the San Juan and Permian basins to the California border. For purposes of this calculation, and for all years, SCE shall use the rates in effect on the Effective Date of the deration, and

F_3 = Intrastate transportation charge (\$/MMBtu), which is the sum of the GT-F5 rates pursuant to Southern California Gas Company's Tariff Schedule GT-F5 (including the Interstate Transition Cost Surcharge provided therein) and the rate pursuant to Southern California Gas Company's Tariff Schedule G-MSUR. For purposes of this calculation, SCE shall use the rates in effect on the Effective Date of the Deration for all years,

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A_3 = Variable Operation and Maintenance Component in \$/kWh, which shall be equal to \$0.002 /kWh in all years for purposes of this calculation;

and B_i (Contract Payments For Derated Capacity Quantity) are the annual capacity payments in dollars that SCE would have made to Seller at the price set forth in Section 3.1(e) of this Agreement to purchase the Derated Contract Quantity for the remaining Term of this Agreement, assuming Seller would have operated at a Period Capacity Performance Factor of 1.0 for all TOD Periods during each of these years.

- (i) For purposes of Section 3.3(f), the calculations described above shall be performed using whole years, assuming, for calculation purposes only, that the annual difference in capacity payments is due and payable to SCE as of July 1st of each year, but prorating the year in which the deration occurs based on the Effective Date of Deration. The sum of the present value amount of the annual difference in capacity payments for each year shall be calculated as of the Effective Date of Deration using the Excel spreadsheet "XNPV" function. A sample calculation illustrating the determination of the Capacity Replacement Damage Amount is attached as Exhibit D to the Agreement.
- (ii) Seller shall pay SCE the Capacity Replacement Damage Amount within thirty (30) calendar days of Seller's receipt of SCE's invoice for the Capacity Replacement Damage Amount calculated under Section 3.3(f). SCE may, but is not required to, collect the Capacity Replacement Damage Amount by withholding it from future payments under Sections 3.1(c), (d), and/or (e).
- (iii) Notwithstanding any deration in accordance with this Section 3.3, Seller shall remain obligated to sell all Energy and Firm Contract Capacity produced by the Project (net of Station Use and electrical losses as provide in Section 3.1(a)) including all Environmental Attributes and Capacity Attributes to SCE as set forth in Section 2.1(b)."

"3.4 Interruption of Deliveries.

- (a) Consistent with ISO protocols and Prudent Electrical Practices, SCE may require Seller to interrupt or reduce deliveries of Energy and, if applicable, capacity, and shall not be obligated to accept or pay for such deliveries under any of the following circumstances (these circumstances are referred to in this Agreement as an "SCE Outage" or "SCE Outages"):
 - (i) when the interruption or reduction is necessary to construct, install, maintain, repair, replace, remove, investigate, or inspect any of SCE's

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equipment or any part of the SCE electric system; (ii) when such interruption or reduction is necessary due to congestion, voltage or stability conditions occurring on the SCE electric system or the ISO Grid, provided that SCE shall not interrupt or reduce deliveries pursuant to this Section 3.4 solely in order to take advantage, or make purchases, of less expensive energy from another source; or (iii) if SCE determines, in its sole judgment, that interruption or reduction is necessary because of an Emergency, Forced Outage, Force Majeure, or compliance with Prudent Electrical Practices.

- (b) Notwithstanding any other provision of this Agreement, SCE shall have the right to disconnect the Generating Facility from the SCE system and/or the ISO Grid if at any time SCE determines that, (i) continued parallel operation of the Generating Facility may endanger SCE personnel, (ii) continued parallel operation of the Generating Facility may endanger SCE Electric System Integrity, or the integrity of the ISO Grid, (iii) Seller's Protective Apparatus is not fully in service. The Generating Facility shall remain disconnected until such time as SCE is satisfied that the condition(s) referenced in this Section 3.4 have been corrected.
- (c) Whenever reasonably possible, SCE shall give Seller reasonable Notice of the possibility that interruption or reduction of deliveries may be required."

"3.5 Effect of Force Majeure.

- (a) Neither Party shall be considered to be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance shall be caused by a Force Majeure.
- (b) If either Party because of a Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement (the "Claiming Party"), the Claiming Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:
 - (i) The Claiming Party, within two weeks after the initial occurrence of the claimed Force Majeure, gives the other Party written Notice describing the particulars of the occurrence;
 - (ii) The Claiming Party, within thirty (30) calendar days of providing Notice of occurrence of the Force Majeure under Section 3.5(b)(i) above, provides evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;

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- (iii) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iv) The Claiming Party uses its best, commercially reasonable efforts to remedy its inability to perform. This subsection shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, nor the commencement, prosecution or settlement of any judicial action to secure or defend any permits or approvals required from any governmental authority for the Project on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes, and the institution, prosecution or settlement of any judicial action to secure any permits or approvals required for the Project, shall be at the sole discretion of the Party having the difficulty;
- (v) When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt written Notice to that effect; and
- (vi) In the event that either Party's ability to perform cannot be corrected when the Force Majeure is caused by the actions or inactions of legislative, judicial or regulatory agencies or other proper authority, this Agreement may, upon the mutual agreement of the Parties, be amended to comply with the legal or regulatory change, action or inaction which caused the nonperformance.
- (vii) If Seller's failure to commence Initial Operation by the Start-Up Deadline is excused by a Force Majeure caused by the action, inaction or delay of a governmental authority with respect to one or more permits that are necessary to construct, operate or maintain the Project, and such Force Majeure prevents Initial Operation from occurring on or before the date that is nine (9) months from the Start-Up Deadline, then either Party may terminate this Agreement upon five (5) days written Notice to the other Party. If the Agreement is terminated under this Section 3.5(b)(vii), SCE shall retain the entire Project Fee, including accrued interest thereon, but, notwithstanding any other provision of this Agreement to the contrary, no other sum shall be due or owing from one Party to the other by reason of the Agreement's termination under this Section 3.5(b)(vii)."

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“3.6 Payment and Billing.

- (a) SCE shall mail to Seller not later than thirty (30) calendar days after the end of each monthly billing period: (i) a statement showing the Energy and, if applicable, Firm Contract Capacity delivered to SCE during each TOU Period during the monthly billing period; (ii) SCE's computation of the amount due Seller; and (iii) SCE's check in payment of said amount. If within sixty (60) calendar days of receipt of the statement Seller does not make a report in writing to SCE of an error, Seller shall be deemed to have waived any error in SCE's statement, computation and payment, and they shall be considered correct and complete.
- (b) Seller shall pay any amount owing for electric service provided by SCE to Seller in accordance with applicable tariff schedules. SCE reserves the right to apply amounts that would otherwise be due to Seller under this Agreement for the purchase of Energy and, if applicable, Firm Contract Capacity as an offset in payment of any bill for electric service provided by SCE to Seller at the Generating Facility or any bill to Seller for any charges under this Agreement owing and unpaid by Seller. Nothing in this Section 3.6 shall limit SCE's rights under applicable tariff schedules.
- (c) In the event adjustments to payments are required as a result of inaccurate meters, SCE shall use the corrected measurements including those described in Section 3.11(b)(ii) if applicable, to recompute the amount due from SCE to Seller for the capacity and Energy delivered under this Agreement during the period of inaccuracy. Any refund due and payable to SCE resulting from inaccurate metering shall be made within thirty (30) calendar days of written Notice to Seller by SCE of the amount due. Any additional payment to Seller resulting from inaccurate metering shall be made within thirty (30) calendar days of SCE's recomputation of the amount due from SCE.”

“3.7 Generating Facility.

Seller shall all times during the Term of this Agreement own or Lease the Generating Facility. If at any time during the Term of this Agreement, Seller does not own or Lease the Generating Facility, it shall be an Event of Default under Article Five hereof. Moreover, during the entire Term of this Agreement, the Generating Facility shall consist solely of the ERR Type set forth in Special Condition A (v). If at any time during the Term of this Agreement the Generating Facility consists of generators employing a technology other than the single ERR type set forth in Special Condition A (v), it shall be an Event of Default under Article Five.

- (a) Design:

Seller, at no cost to SCE, shall be responsible to:

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- (i) Design and construct the Generating Facility.
 - (ii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Generating Facility.
 - (iii) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Generating Facility.
 - (iv) Furnish and install the relays, meters, power circuit breakers, synchronizer, and other control and Protective Apparatus as SCE, in its sole judgment, determine to be reasonably necessary for proper and safe operation of the Generating Facility in parallel with the SCE electric system.
 - (v) In the event that construction of Seller's Generating Facility has not commenced upon the date of execution of this Agreement, at SCE's request, Seller shall provide to SCE Seller's electrical specifications and design drawings pertaining to Seller's Generating Facility for SCE's review prior to finalizing design of the Generating Facility and before beginning construction work based on such specifications and drawings. Seller shall provide to SCE reasonable advance written Notice of any changes in Seller's Generating Facility and provide to SCE specifications and design drawings of any such changes for SCE's review and approval.
 - (vi) The total installed net capacity of Seller's Generating Facility shall not exceed the Net Nameplate Capacity set forth in Special Condition A (i) (or any reduced Net Nameplate Capacity established pursuant Special Condition A (ii)) of this Agreement. Any installation at the Project by Seller of additional Net Nameplate Capacity after Firm Operation, without the written consent of SCE, shall constitute an Event of Default.
- (b) SCE shall have the right to:
- (i) Review the design of the Generating Facility's electrical system. Such review may include, but not be limited to, the Generating Facility, governor, excitation system, synchronizing equipment, protective relays, and neutral grounding.
 - (ii) Notify Seller in writing of the results of the review within thirty (30) calendar days of SCE's receipt of all specifications for the Generating Facility, including a description of any flaws perceived by SCE in the design.

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- (iii) Request modifications to the design of the Generating Facility's electrical system. Such modifications shall be required if necessary, in SCE's sole judgment, to maintain SCE or ISO Electric System Integrity when the Generating Facility is operating in parallel with the SCE electric system.
- (c) Operation and Maintenance:
- (i) Seller shall operate the Generating Facility in accordance with Prudent Electrical Practices.
 - (ii) Seller shall operate the Generating Facility to generate such reactive power or provide individual power factor correction as necessary to maintain voltage levels and reactive power support as may be required by either SCE or ISO in its sole judgment. Seller shall not deliver excess reactive power to SCE or ISO unless otherwise agreed upon by the Parties. If Seller fails to provide reactive power support, SCE may do so at Seller's expense.
 - (iii) The Generating Facility shall be operated with all of Seller's Protective Apparatus in service whenever the Generating Facility is connected to, or is operated in parallel with, the SCE electric system or the ISO Grid. Any deviation shall require SCE's or ISO's consent, as the case may be.
 - (iv) Seller shall maintain operating communications with either the SCE Designated Switching Center identified in Special Condition D or the SCE Grid Operations Center, as requested by SCE. The Grid Operations Center can be reached at any time at 626-302-3285 or 626-302-3205. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports. For coordination of switching and SCE grid operations, the supplier may be referred to the Designated Switching Center.
 - (v) Seller shall keep a daily operations log for the Generating Facility which shall include information on availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the operation of the Generating Facility, including but not limited to: real and reactive power production; changes in operating status and protective apparatus operations; and any unusual conditions found during inspections. Changes in setting shall also be logged for Seller's generator(s) if it is "block-loaded" to a specific kW capacity.

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- (vi) Seller shall maintain complete daily operations records applicable to the Generating Facility, including but not limited to, fuel consumption, maintenance performed, kilowatts, kilovars and kilowatt-hours generated and settings or adjustments of the generator control equipment and protective devices. Such information shall be available to SCE upon twenty (20) calendar days' written request.
- (vii) If Seller's Generating Facility has a Net Nameplate Capacity greater than one (1) megawatt and up to and including ten (10) megawatts, SCE may require Seller to report to the Designated Switching Center, twice a day at agreed upon times for the current day's operation, the hourly readings of capacity in kW delivered and the Energy in kWh delivered since the last report.
- (viii) If Seller's Generating Facility has a Net Nameplate Capacity greater than ten (10) megawatts, SCE shall provide, at Seller's expense, telemetering equipment.
- (ix) SCE or ISO may require Seller, at Seller's expense, to demonstrate to SCE's satisfaction the correct calibration and operation of Seller's Protective Apparatus at any time SCE or ISO has reason to believe that said Protective Apparatus may impair SCE's or ISO's Electric System Integrity.
- (x) Seller shall maintain the Generating Facility in accordance with Prudent Electrical Practices.
- (xi) Seller shall notify SCE in writing (1) by January 1, May 1, and September 1 of each year during the Term of this Agreement, of the estimated scheduled maintenance and estimated daily Energy and capacity deliveries for the following four month period, and (2) by September 1 of each year during the Term of this Agreement, of the estimated scheduled maintenance and estimated daily Energy and capacity deliveries for the following calendar year.
- (xii) Seller shall provide SCE written Notice of actual outages, whether scheduled or forced, with as much notice as practicable. Seller shall notify SCE of any scheduled outages by providing at least 24 hours Notice in writing and in addition by use of SCE's automated telephone-based Interactive Voice Response System (IVR), or its replacement, which can be accessed at 626-302-1145.
- (xiii) Seller shall install and maintain, at its sole expense, all communication, metering, telemetering, and associated equipment deemed necessary by the ISO.

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(d) **No Representation by SCE:**

Any review by SCE of the design, construction, operation or maintenance of the Project is solely for SCE's information. By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Project. Seller shall in no way represent to any third party that any such review by SCE of the Project, including, but not limited to, any review of the design, construction, operation, or maintenance of the Project by SCE, is a representation by SCE as to the economic and/or technical feasibility, operational capability, or reliability of the Generating Facility or the Project. Seller is solely responsible for economic and technical feasibility, operational capability, and reliability of the Generating Facility and the Project."

"3.8 Transmission and Scheduling.

Seller shall have sole responsibility for arranging and paying for transmission service to the Delivery Point and shall Schedule or arrange and pay for Scheduling services for that purpose with its Transmission Providers in accordance with the practice of the Transmission Provider."

"3.9 Project Fee and Milestones.

(a) **Project Fee:**

Within ten (10) calendar days after the Effective Date of this Agreement, Seller shall post and thereafter maintain a Project Fee equal to ten dollars (\$10) for each kilowatt of Net Nameplate Capacity of the Generating Facility specified in Special Condition A (i). SCE may in its sole discretion either extend the ten (10) day deadline to pay or waive the requirement that payment be made. The Project Fee shall be held by SCE as security for Seller maintaining adequate progress in the development of the Generating Facility. The Project Fee shall be established by either a cash deposit or by an irrevocable Letter of Credit with terms and conditions acceptable to SCE in its sole judgment. If Seller establishes the Project Fee by means of an irrevocable Letter of Credit, such Letter of Credit shall provide for the disbursement of the Project Fee in accordance with Section 3.9(b), below.

(b) **Disbursement of Project Fee:**

SCE shall disburse the Project Fee in the following manner, and shall provide Notice of such disbursement to Seller as set forth below.

- (i) The Project Fee shall be returned to Seller if: (1) the Generating Facility begins Initial Operation at the Net Nameplate Capacity level initially designated in Special Condition A (i) on or before the Startup Deadline, (2) this Agreement terminates because CPUC

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Approval is not obtained and SCE, in its sole discretion, does not waive CPUC Approval, or (3) SCE exercises its termination rights in accordance with Article Twelve.

- (ii) Notwithstanding the above, in the event that Seller fails to complete and/or comply with each Project Development Milestone and Development Warranty set forth below, and subject to Section 3.9(c)(ii) below, Seller shall forfeit the entire Project Fee to SCE, including any interest earned thereon and the Agreement shall be subject to termination under Article Five: Events of Default: Remedies. Nothing in this Section 3.9 shall limit SCE's remedies at law and/or under this Agreement regarding any failure by Seller to comply with all warranties under this Section.

(c) Milestones/Development Warranties

(i) Site Control/Lease:

- (1) Seller warrants that it either possessed Site Control of the site described in Special Condition A (iii) or that it was the lessee under a Lease as of the date Seller executed this Agreement and that Seller shall maintain continuous Site Control or the Lease will continue in effect for the Term of this Agreement under at least one of the following possessory interests:

- Seller's fee ownership of the location of Seller's Generating Facility specified in Special Condition A (iii);
- Seller is the lessee under a Lease,
- Seller's leasehold interest in the location specified in Special Condition A (iii), which leasehold interest shall specifically include the right to construct and operate the Generating Facility at such location during the Term of this Agreement;
- Seller's exclusive and irrevocable contractual right to construct and operate the Generating Facility at the location specified in Special Condition A (iii), during the Term of this Agreement;
- Seller's exclusive and irrevocable option to obtain any of the rights described above. This alternative shall only constitute Site Control prior to the

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commencement of construction of Seller's
Generating Facility; or

- Other form of Site Control acceptable to SCE in its sole judgment.
- (2) Seller shall provide SCE with prompt written Notice of any change in the status of Seller's Site Control.
- (3) If, at any time during the Term of this Agreement, SCE believes in its sole judgment that Seller has lost Site Control, SCE may send Seller a written request for confirmation of Site Control. Whether or not SCE has sent Seller a written request as set forth in the preceding sentence, if Seller does not have Site Control for the full Term of this Agreement, Seller shall advise SCE in writing at least sixty (60) calendar days before Site Control is scheduled to expire and Seller shall provide to SCE, no later than twenty (20) calendar days before Seller's Site Control is scheduled to expire, evidence that Seller's Site Control has been renewed or extended. If Seller fails to provide evidence to SCE's sole satisfaction within twenty (20) calendar days before Site Control was originally set to expire that Seller's Site Control has been renewed or extended, or Seller fails to provide SCE with confirmation to SCE's sole satisfaction of Site Control within twenty (20) calendar days of a written request for confirmation of same, then SCE may, at any time after such 20-day period, declare an Event of Default and terminate this Agreement in accordance with Article Five: Events of Default: Remedies.

(ii) Initial or Firm Operation:

Seller shall achieve Initial Operation of the full Net Nameplate Capacity set forth in Special Condition A (i) on or before the Startup Deadline. In the event Seller achieves Initial Operation at a reduced Net Nameplate Capacity pursuant to the provisions of Special Condition A (ii), and Seller does not demonstrate its ability to deliver the full Net Nameplate Capacity by the first day the seventh month of the Term in accordance with the protocols described in Exhibit A, Seller shall forfeit that portion of the Project Fee equal to \$10 per kW, multiplied by the kW of Net Nameplate Capacity that was reduced pursuant to Special Condition A (ii) ("Reduced Net Nameplate Capacity"), plus any interest earned on the Project Fee paid by Seller in respect of the Reduced Net Nameplate Capacity. Subject to Seller's compliance

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with all other warranties set forth in this Section 3.9, Seller shall be entitled to a return of the balance of the Project Fee.”

“3.10 Electric Lines and Associated Easements.

- (a) SCE shall, as it deems necessary or desirable, and at Seller’s expense, build electric lines, facilities and other equipment, both overhead and underground, on and off the site of Seller’s Project, for the purpose of effectuating the terms of this Agreement. The physical location of such electric lines, facilities and other equipment as may be located on the site of Seller’s Project shall be determined by agreement of the Parties.
- (b) Seller shall reimburse SCE for the cost of acquiring property rights at the site of Seller’s Project as may be required by SCE to meet its obligations under this Agreement.
- (c) Seller shall grant to SCE, without cost to SCE, and by an instrument of conveyance, acceptable to SCE in its sole judgment, rights of way, easements and other property interests necessary to construct, reconstruct, use, maintain, alter, add to, enlarge, repair, replace, inspect and remove, at any time, the electric lines, facilities or other equipment, both overhead and underground, which are required by SCE to effectuate the terms of this Agreement. Seller shall also provide the rights of ingress and egress at all reasonable times necessary for SCE to perform its duties generally and the activities contemplated in this Agreement.
- (d) The electric lines, facilities, or other equipment referred to in this Section 3.10 installed by SCE on or off the site of Seller’s Project shall be and remain the property of SCE.
- (e) SCE shall have no obligation to Seller for any delay in the commencement or cancellation of Seller’s sales under this Agreement due to inability to build required facilities as set forth in Section 3.10(a) above, or to acquire a satisfactory right of way, easements, or other property interests.”

“3.11 Metering.

Seller shall install, if not already installed, and maintain ISO revenue quality meter(s), in accordance with the requirements of Seller’s Transmission Provider and SCE may in its sole discretion elect to use the readings from such meter(s) (closest to the Point of Delivery) under this Agreement, including, without limitation, for payment purposes. If SCE elects to use such (a) meter(s), Seller shall grant SCE reasonable access to the meter(s) for meter readings, testing and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data both in real time, and at later times as may be required.”

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“3.12 Real Property Rights.

- (a) SCE shall have the right of ingress and egress with respect to Seller’s Project at all reasonable hours for any purpose reasonably connected with this Agreement or the exercise of any and all rights secured to SCE by law or its tariff schedules and rules on file with the CPUC.
- (b) Nothing in this Section 3.12 shall be construed to require SCE to acquire land rights through condemnation or any other means for Seller either inside or outside of SCE’s service territory, unless SCE shall in its sole discretion elects to do so.”

“3.13 Environmental and Capacity Attributes.

- (a) During the Term of the Agreement, the Environmental and Capacity Attributes shall not in any way be unbundled or otherwise separated from the capacity and Energy generated by the Generating Facility, except in SCE’s sole discretion, so that the purchase of Energy and, if applicable, capacity, by SCE under this Agreement shall entitle SCE to all Environmental and Capacity Attributes associated with the Generating Facility during the Term.
- (b) In order to take advantage of the actual or perceived value of the Environmental and Capacity Attributes, SCE shall be given sole title to all Environmental and Capacity Attributes associated with the Generating Facility during the Term and will have the exclusive right, at any time or from time-to-time during the Term of this Agreement, to sell, convey, transfer, allocate, designate, award, or otherwise provide any and all such Environmental and Capacity Attributes to third parties.”

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Article Four is deleted in its entirety.

ARTICLE FIVE: EVENTS OF DEFAULT: REMEDIES

Section 5.1(a) is deleted in its entirety.

Section 5.1(c) is amended to read as follows: “the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within five (5) Business Days after written Notice.”

A new section 5.1(i) is added as follows:

- “(i) if at any time during the Term of this Agreement, Seller fails to retain ownership of the Generating Facility or fails to keep the Lease in effect

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and does not remedy such failure within fifteen (15) Business Days after written Notice;"

A new section 5.1(j) is added as follows:

- "(j) with respect to Seller, excluding periods of Force Majeure, if at any time during the Term of this Agreement, Seller fails to deliver in any six (6) month period, at least the number of kilowatt-hours derived from the product of four hundred and thirty-eight (438) hours times the Net Nameplate Capacity (as that Net Nameplate Capacity may have been reduced pursuant to Special Condition E), times the ERR-Specific factor applicable to the Project, and Seller fails to demonstrate to SCE's satisfaction, within ten (10) Business Days after written Notice from SCE, a legitimate reason for Seller's failure to deliver;"

A new section 5.1(k) is added as follows:

- "(k) Seller fails to complete or maintain each Project Development Milestone or to possess and maintain continuous Site Control in the time and manner provided in Section 3.9(c);"

A new section 5.1(l) is added as follows:

- "(l) if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement electrical power that was not generated by the Generating Facility;"

A new section 5.1(m) is added as follows:

- "(m) if at any time during the Term of this Agreement, the Generating Facility consists of more than one ERR Type; or"

A new section 5.1(n) is added as follows:

- "(n) if at any time during the Term of this Agreement, SCE has elected to have PGC Funds sent to it by Seller under Section 12.4 and Seller fails to do so within thirty (30) calendar days of Seller's receipt of same."

Section 5.2 is deleted in its entirety and replaced with the following:

- "5.2 If an Event of Default with respect to a Defaulting Party shall have occurred and has not been cured within ten (10) Business Days, or other cure period provided in the applicable section(s) of this Agreement, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day the applicable Notice of the Event of Default is effective and no later than twenty (20) calendar days after the Notice is effective, as an "Early Termination Date," and (ii) to suspend performance under the Agreement."

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Section 5.3 is deleted in its entirety.

Section 5.4 is deleted in its entirety and replaced with the following:

“5.4 As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under the Agreement,³ less any amounts owed by the Non-Defaulting Party to the Defaulting Party (the “Termination Payment”). If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party) then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) calendar days after the Notice is provided.”

Sections 5.6 and 5.7 are deleted in their entireties.

ARTICLE SIX: PAYMENT AND NETTING

Article Six is deleted in its entirety.

ARTICLE SEVEN: LIMITATIONS

The third sentence of Article Seven shall be amended to read as follows:

“FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.”

The first clause of the fifth sentence of Article Seven shall be amended to read,

“UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.4 (INDEMNITY), . . .”

³ If an Early Termination Date is declared during the first five years of the Term of the Agreement, and Seller exercises its right to terminate the second five years of the Term of the Agreement in accordance with Special Condition E(ii)(c), either prior to or immediately following Notice of an Early Termination Date, then the remaining years of the Agreement Term used under this Section 5.4 shall be based on the first five years of the Term of the Agreement only, rather than the entire ten (10) year Term. Otherwise, the entire ten (10) year Term shall be used.

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ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

Sections 8.1(c) and 8.2(c) shall be deleted in their entirety and a new Section 8.4 shall be added as follows:

"8.4 Performance Assurance.

- (a) During the Term of the Agreement, the Parties shall calculate the Performance Assurance Amount as set forth in Section 8.4 (c) below. 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 Performance Assurance Amount, less any Performance Assurance already posted with the requesting Party, is greater than the other Party's Collateral Threshold, then upon written Notice by the requesting Party, the responding Party shall provide the Performance Assurance, as set forth in Section 8.4(b) below, within three (3) Business Days of the request. However, requests under this Section 8.4(a) can be made no more frequently than once per week.
- (b) If a calculation performed pursuant to Section 8.4(c), below, establishes that the Performance Assurance Amount, less any Performance Assurance already posted with the requesting Party, is greater than the other Party's Collateral Threshold, then the appropriate Party shall provide Performance Assurance, as follows:

Performance Assurance Owed by SCE:

If the Performance Assurance Amount, calculated pursuant to Section 8.4(c) below, less any Performance Assurance already posted with Seller by SCE is positive, SCE shall deliver to Seller Performance Assurance in the amount of the Performance Assurance Amount calculated less the SCE Collateral Threshold and less any Performance Assurance already posted with Seller by SCE. In each case, the amount of Performance Assurance to be delivered will be rounded upwards for any fractional amount to the next SCE Rounding Amount, as applicable;

Performance Assurance Owed by Seller

If the Performance Assurance Amount, calculated in Section 8.4(c) below, adding any Performance Assurance already posted with SCE by Seller is negative, Seller shall deliver to SCE Performance Assurance in the amount of the absolute value of the Performance Assurance Amount calculated less the Seller's Collateral Threshold and less any Performance Assurance already posted

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with SCE by Seller. In each case, the amount of Performance Assurance to be delivered will be rounded upwards for any fractional amount to the next Seller Rounding Amount, as applicable.

- (c) The Performance Assurance Amount shall be equal to the sum of the present value amounts of the annual Performance Assurance Amounts ("PAA_i") calculated over the remaining Term of the Agreement⁴ as set forth below and discounted in accordance with Section 8.4(d):

$PAA = A + \text{sum of the present value amounts of } PAA_i \text{ for the remaining Term of the Agreement, where}$

$PAA_i = \{ [P_{0i} - P_{ii}] \times B \times C \}$, for each calendar year, or partial calendar year "i" remaining under the Term of the Agreement as of the day, (t), the PAA is being computed, where

A = All amounts owed by SCE to Seller less any amounts owed by Seller to SCE under this Agreement, but not yet paid, whether or not such amounts are billed or due, for performance already provided pursuant to the Agreement.

i = Each calendar year or partial calendar year remaining under the Term of the Agreement.

P_{0i} = The Market Quotation Average Price \$ per MWh for SP-15 (7 x 24) energy for each calendar year or partial calendar year, i, remaining on the Term of the Agreement *as of the Effective Date (0)*. However, when i = the current year, the Market Quotation Average Price will be for the calendar year i + 1 in \$ per MWh. In the last year, the price will be year i - 1.

P_{ii} = The Market Quotation Average Price \$ per MWh for SP-15 (7 x 24) energy for each calendar year or partial calendar year "i" remaining on the Term of the Agreement *as of the day the PAA is being computed (t)*. However, when i = the current year, the Market Quotation Average Price will be for the calendar year i + 1. In the last year, the price will be year i - 1.

⁴ If the calculation of the Performance Assurance Amount occurs during the first five (5) years of the Term of the Agreement, then the remaining years of the Agreement Term used under this Section 8.4(c) shall be based on the first five (5) years of the Term of the Agreement only, rather than the entire ten (10) year Term. Otherwise, the remainder of the entire ten (10) year Term shall be used.

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B = The Firm Contract Capacity in MW (i.e. kW/1000) times the number of hours in the year (or remaining in the year, if "i" is the current year, or remaining in the Agreement if "i" is the last year of the Agreement).

C = 0.90 [the Generating Facility's Capacity Factor for the purposes of calculating Performance Assurance].

As used in the above formula, "Market Quotation Average Price" means the average of the quotations solicited in good faith from not less than three (3) Reference Market Makers; provided, however, that the Party soliciting such quotations 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 averaging the remaining quotations. The quotations shall be based on the midpoint (average) of firm and transactable offers to sell and bids to buy. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Parties are unable to obtain such quotations, the Parties shall negotiate in good faith to reach agreement on a valuation of the relevant product. In the event the Parties calculate differing Market Quotation Average Prices based on the above procedure, then the average of the two Market Quotation Average Prices shall be used for the purposes hereof.

- (d) For purposes of this Section 8.4, the calculations described above shall be performed using whole years, with partial years rounded to the nearest whole year (but not less than one year), assuming that the annual amount of Performance Assurance Amount is due as of July 1st of each whole year and on the midpoint date of any partial year. The present value of the annual amounts for each year shall be calculated using a discount rate of ten (10) percent and discounted to the date that the Performance Assurance Amount is being calculation using the Excel spreadsheet "XNPV" function. A sample calculation illustrating determination of the Performance Assurance Amount is attached as Exhibit E to the Agreement.
- (e) Any Performance Assurance due a Requesting Party under Sections 8.4 (b) and (c), above, will be delivered or adjusted within three (3) Business Days of the date that the calculation of the Performance Assurance Amount is delivered to the other Party under Section 8.4(a). In the event that a responding Party fails to provide the Performance Assurance within three (3) Business Days of the date such calculation is delivered to the requesting Party under Section 8.4(a), then an Event of Default under Article Five shall be deemed to have occurred and the Non-Defaulting Party will be entitled to the remedies set forth in Article Five."

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Section 8.1(d) shall be deleted in its entirety.

Section 8.2(d) shall be deleted in its entirety.

ARTICLE NINE: GOVERNMENTAL CHARGES

Section 9.2 is deleted in its entirety and replaced with the following:

“9.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any governmental authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising prior to the Delivery Point, including but not limited to, *ad valorem* taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. SCE shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction at and from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are SCE’s responsibility hereunder, SCE shall promptly reimburse Seller for such Governmental Charges. If SCE is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, SCE may deduct such amounts from payments to Seller made pursuant to Sections 3.1(c), (d) and/or (f); if SCE elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse SCE for such amounts upon request. 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.”

A new Section 9.3 is added as follows:

“9.3 Providing Information.

Seller and/or SCE shall provide information concerning the Project to any requesting taxing authority.”

ARTICLE TEN: MISCELLANEOUS

Section 10.1 is deleted in its entirety and replaced by the following:

“10.1 Term of Agreement.

Subject to Article Eleven, the Agreement’s Term commences on the date specified in Special Condition E to this Agreement and, unless terminated sooner pursuant to another provision of the Agreement, shall terminate automatically at the conclusion of the Term specified in Special Condition E. Unless otherwise provided herein, any rights vested as of the termination of this Agreement shall survive the termination.”

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Section 10.2(ii) is amended to read as follows: "Except for CPUC Approval in the case of SCE, and all permits necessary to install, operate and maintain the Project in the case of Seller, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;"

Section 10.2(iii) is amended to read as follows: "the execution, delivery and performance of this Agreement 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;"

Section 10.2(iv) is amended to read as follows: "this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;"

Section 10.2(vi) is amended to read as follows: "there is not pending, or to its knowledge, threatened against it (or any of its Affiliates in the case of Seller) any legal proceedings that could materially adversely affect its ability to perform under the Agreement;"

Section 10.2(vii) is amended to read as follows: "no 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 Agreement;"

Section 10.2(viii) is amended to read as follows: "it is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;"

Section 10.2(ix) is deleted in its entirety.

Section 10.2(x) is amended to read as follows: "it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement; and"

Section 10.2(xi) is deleted in its entirety.

Section 10.2(xii) is deleted in its entirety.

A new Section 10.2(xiii) is added as follows:

"10.2(xiii) Seller warrants that, throughout the entire Term of this Agreement, Seller shall either maintain site control or remain a lessee under a Lease as provided for in Section 3.9(c)(i)."

Section 10.4 is deleted in its entirety and replaced with the following:

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“10.4 Indemnity.

- (a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including attorneys' fees) for injury or death to persons, including employees of either Party, and damage to property including property of either Party arising out of or in connection with (a) the indemnifying Party's engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection or ownership of the indemnifying Party's facilities, or (b) the indemnifying Party's making of replacements, additions, betterments to, or reconstruction of the indemnifying Party's facilities; provided, however, Seller's duty to indemnify SCE hereunder shall not extend to loss, liability, damage, claim, cost, charge, demand, or expense resulting from interruptions in electrical service to SCE's customers other than Seller or electric customers of Seller. This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee. However, neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense resulting from its sole negligence or willful misconduct.
- (b) Notwithstanding the indemnity of Section 10.4(a) and except for a Party's willful misconduct or sole negligence, each Party shall be responsible for damage to its facilities resulting from electrical disturbances or faults.
- (c) Seller releases and shall defend, save harmless and indemnify SCE from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any representation made by Seller inconsistent with Section 3.7(d).
- (d) The provisions of this Section 10.4 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.
- (e) Except as otherwise provided in Section 10.4(a) and 10.4(f), neither Party shall be liable to the other Party for consequential damages incurred by that Party.
- (f) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.12, Seller shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or

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consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 10.12. The inclusion of this Section 10.4(f) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 10.12.

- (g) Except to the extent inconsistent with the provisions of Sections 10.4(a) through (f), above, each Party shall indemnify, defend and hold harmless the other Party from any and all 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.
- (h) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine."

Section 10.5 is deleted in its entirety and replaced with the following:

"10.5 Assignment.

Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which shall not be unreasonably withheld. Any such assignment or delegation made without such written consent shall be null and void."

Section 10.6 is amended by substituting "California" for "New York."

Section 10.8 is deleted in its entirety and replaced with the following:

"10.8 General.

This Agreement constitutes the entire agreement between the Parties relating to its subject matter. 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. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. 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. 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 rights shall survive the termination of this Agreement for twelve (12)

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months. This Agreement shall be binding on each Party's successors and permitted assigns."

Sections 10.9 and 10.10 are deleted in their entireties.

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

"10.11 Confidentiality.

The terms of the Confidentiality Agreement dated October 21, 2002 between the Parties shall apply to the terms of this Agreement."

A new section 10.12 is added, as follows:

"10.12 Insurance.

- (a) Throughout the term of this Agreement, Seller shall obtain and maintain in force as hereinafter provided comprehensive general liability insurance, including contractual liability coverage, with a combined single limit of not less than \$2,000,000 each occurrence for a Generating Facility with a Net Nameplate Capacity of 100 kW or greater. The insurance carrier or carriers and form of policy shall be subject to review and approval by SCE.
- (b) Before commencement of the Term of this Agreement, as provided in Special Condition E, Seller shall (i) furnish a certificate of insurance to SCE, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written Notice to SCE, (ii) maintain such insurance in effect for so long as Seller's Generating Facility is operated in parallel with the SCE electric system, and (iii) furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

'In consideration of the premium charged, SCE is named as additional insured with respect to all liabilities arising out of Seller's use and ownership of Seller's Generating Facility.'

'The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limit of the carrier's liability. SCE will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.'

'Any other insurance carried by SCE which may be applicable shall be deemed excess insurance and Seller's insurance primary

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for all purposes despite any conflicting provisions in Seller's policy to the contrary."

A new section 10.13 is added, as follows:

"10.13 Nondedication.

Neither Party, by this Agreement, dedicates any part of its facilities involved in the performance of this Agreement to the public or to the service provided under the Agreement, and such service shall cease upon termination of the Agreement. No agreement between Seller (or its parent or an affiliate) and a governmental agency to share Seller's revenue under this Agreement shall be deemed to amend this Section 10.13 and shall not constitute a dedication of any part of either Party's facilities involved in the performance of this Agreement to the public or the service provided under the Agreement, which services will cease upon termination of the Agreement."

This Agreement is supplemented by adding the following Article Nos. XI and XII:

"ARTICLE ELEVEN: CONDITIONS PRECEDENT

- 11.1 The Term of this Agreement shall not commence until both (i) this Agreement has been duly executed by authorized representatives of Seller and SCE, and (ii) CPUC Approval has been obtained or waived by SCE, as provided herein. SCE shall file with the CPUC the appropriate request for CPUC Approval, and seek such approval expeditiously. Seller shall use reasonable efforts in cooperation with SCE for the purpose of obtaining CPUC Approval.
- 11.2 This Agreement shall terminate automatically if CPUC Approval is not obtained (or waived by SCE) on or before, the date which is one hundred twenty (120) calendar days after SCE files the request for approval with the CPUC, or by such later date as may be agreed to in writing between Seller and SCE. In its sole discretion, SCE may waive CPUC Approval at any time by giving Notice of such waiver in writing to Seller. If "

"ARTICLE TWELVE: PGC FUNDS

- 12.1 Seller shall use best efforts to obtain PGC Funds at the level specified in Special Condition G for all anticipated deliveries from the Generating Facility under this Agreement. SCE shall, upon Seller's request, reasonably support any applications for PGC Funds filed by or on behalf of Seller.
- 12.2 If at any time up to and including the date that is six months after CPUC Approval, SCE determines in its sole discretion that Seller has not obtained a Satisfactory PGC Commitment for at least the first five years of

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the Term of this Agreement, then SCE may unilaterally terminate this Agreement without liability of any kind for such termination, effective as of the date that SCE sends Seller written Notice of termination under this Section.

12.3 If at any time up to and including the last day of the sixth month of the sixth year of the Term of this Agreement, SCE in its sole discretion determines that Seller has not obtained a Satisfactory PGC Commitment for the second five years of the Term of this Agreement, then SCE may unilaterally terminate the Agreement without liability of any kind for such termination, effective as of the later of (i) the first date of the sixth year of the Agreement's term, or (ii) the date SCE sends Seller written Notice of termination under this Section.

12.4 All PGC Funds obtained for deliveries from the Generating Facility under this Agreement shall, at SCE's election, (i) be sent to SCE by Seller within thirty (30) Business Days of Seller's receipt of same, or (ii) the amount of such PGC Funds payment shall, immediately upon payment to Seller, be automatically deducted by SCE against any payments due to Seller from SCE under the Agreement. If SCE elects to have the PGC Funds payments sent to it, and Seller fails to do so within five (5) Business Days of Seller's receipt of same, then SCE may treat the failure as an Event of Default under Article Five."

Schedule M is deleted in its entirety.

Schedule P is deleted in its entirety.

Exhibit A is deleted in its entirety and replaced with the following:

Exhibit A, Firm Capacity Test Protocols, is attached hereto and made a part hereof.

Exhibit B, Security Agreement(s), Guaranty Agreement.

Exhibit C, Capacity Demonstration Test Protocols, is attached hereto and made a part hereof.

Exhibit D, sample Capacity Replacement Damage Amount calculation, is attached hereto and made a part hereof.

Exhibit E, sample Performance Assurance Amount calculation, is attached hereto and made a part hereof.

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EXHIBIT A

INITIAL FIRM OPERATION DEMONSTRATION TEST PROTOCOL and CRITERIA

Capacity Payments:

- Firm Contract Capacity payments will not commence until the Seller has successfully completed the following initial firm operation tests.

Demonstration Dates and Duration of Demonstration:

- The initial firm operation demonstration test shall commence at 12:00 p.m. (noon) on a date following Initial Operation that is mutually agreed to by SCE and Seller and shall extend for a total period of 30 consecutive days (the "Thirty-Day Demonstration"). Concurrently with the selection of the commencement date for the Thirty-Day Demonstration, SCE and Seller shall also select a date within the same 30-day period for the "Twenty-Four Hour Demonstration" described below. The Thirty-Day Demonstration and the Twenty-Four Hour Demonstration are jointly referred to herein as the "Demonstration."
- SCE and Seller may each, upon three (3) Business Days' written Notice sent by facsimile transmission or e-mail, make up to two requests to reschedule the commencement date for either the Thirty-Day Demonstration or the Twenty-Four Hour Demonstration. The commencement date for the Twenty-Four Hour Demonstration, however, may only be rescheduled to a different date within the original 30-day demonstration period unless the commencement date for the Thirty-Day Demonstration is itself also being rescheduled.
- Once a Demonstration has commenced, it cannot be rescheduled except as set forth in the Remedial Actions for Sellers Failing the Demonstration.
- The Demonstration must be completed within six months of Initial Operation (or such later date as SCE, in its sole discretion, may agree to) ("Firm Operation Deadline").

Satisfactory Demonstration:

- For the Thirty-Day Demonstration, Seller shall demonstrate the ability to operate such that the Capacity Demonstration Factor for that time period shall be greater than or equal to 80%. The Capacity Demonstration Factor shall be calculated as follows:

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$$\text{CAPACITY DEMONSTRATION FACTOR} = [A \times B \times C] / [D \times E]$$

Where A = Sum of all kWh of energy delivered by Seller to the Delivery Point during applicable hours adjusted for transformer and electrical losses, as may be applicable in accordance with Section 3.1(a) (not including the adjustment for GMM which is included as variable B), limited in each and every metering interval by the level of Firm Contract Capacity.

B = Generation weight average GMM for applicable hours in the Demonstration Period in the month.

C = DLF for Seller's Project (if applicable).

D = Total of applicable hours in the Demonstration Period where the applicable hours shall be 12:00 (noon) to 6:00 pm for each non-holiday weekday (as defined in SCE's Tariff Schedule TOU-8) within the Thirty-Day Demonstration period.

E = Firm Contract Capacity specified in Special Condition B.

- For the Twenty-Four Hour Demonstration, Seller shall operate for a twenty-four consecutive hour period, starting at 12:00 p.m. (noon) on the day the Twenty-Four Hour Demonstration commences and ending at 12:00 p.m. (noon) on the next day (unless SCE, in its sole discretion, elects to conduct the Twenty-Four Hour Demonstration over a different 24-hour period). A Project shall be deemed to have satisfied this demonstration test if and only if the rate of delivery in each and every metering interval, adjusted for all electrical losses, as set forth in Section 3.1(a), is equal to or greater than the proposed Firm Contract Capacity level.

Testing Tool:

- For all Demonstrations, the rate of delivery is to be determined using SCE's Solid State Data Recorder (or a similar data collection and metering device).

Special Considerations:

- For a Project located outside of SCE's service territory and whose Delivery Point is not SP-15, the SCE metered output shall be adjusted by both (a) the factor assigned to such Project by the transmitting utility (such as Imperial Irrigation District) or other Transmission Provider within that service territory, to account for electrical losses to the Delivery Point, and (b) the actual GMM factor (or such other successor factor as may be applicable from time-to-time).

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Representation and Access:

- SCE representatives (normally one to three) may attend the setup and operation of the Demonstration or any portion thereof.
- SCE may, in its sole discretion, witness a start-up, ramp-up, ramp-down and shutdown of the Generating Facility at the commencement and end of the Demonstration.
- SCE's representatives may also concurrently conduct a site inspection of the Generating Facility and associated facilities, systems and equipment.
- SCE shall have access to and copies of control room logs, control system display screens, and instrumentation data before, during and after the Demonstration tests.
- Seller's representatives may be present during both the Demonstration and site inspection at the Seller's option.

Cost of Demonstration:

- Each Party shall bear its own costs of the Demonstration.

Remedial Action for Sellers Failing the Demonstration:

- If Seller fails its initial Thirty-Day Demonstration and/or the Twenty-Four Hour Demonstration, Seller may, subject to the Firm Operation Deadline, submit to one additional Thirty-Day Demonstration or an additional Twenty-Four Hour Demonstration within the initial Thirty-Day Demonstration upon providing three (3) Business Days' written Notice sent by facsimile transmission or e-mail. Any new Thirty-Day Demonstration, which must include another Twenty-Four Hour Demonstration within the same thirty-day time frame of this second Thirty-Day Demonstration.
- If, during the second demonstration, the Seller fails to demonstrate Contract Capacity due to an abnormal and unforeseeable operating condition, as verified and determined in SCE's sole judgment, an additional demonstration may be scheduled. Lack of wind, sun, water or other fuel source of an inherently intermittent nature shall not be deemed an abnormal and unforeseeable operating condition.
- If Seller fails to meet the minimum requirements of either component of the Demonstration (i.e., the Thirty-Day Demonstration and the Twenty-Four Hour Demonstration) during an initial Demonstration and, if applicable, fails again to meet the minimum requirements during the second or third Demonstration

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opportunity described above, then Seller's Contract Capacity may be derated to the lowest level of Contract Capacity demonstrated during either the Thirty Day Demonstration or the Twenty-Four Hour Demonstration component of the last Demonstration opportunity, and Seller shall also be liable for the Capacity Replacement Damage Amount as described in Section 3.3(f) of the Agreement by reason of the deration.

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EXHIBIT B
GUARANTY AGREEMENT

CONFIDENTIAL

GUARANTY AGREEMENT

1. Guaranty. For valuable consideration, Waste Management, Inc., a Delaware corporation ("Guarantor") unconditionally guarantees payment to Southern California Edison Company, a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by WM Energy Solutions, Inc., a Delaware corporation ("Principal) under that certain Master Power Purchase and Sale Agreement between Beneficiary and Principal dated December 20, 2002; Project Name: Simi Valley Gas-to-Energy Project; Nameplate Capacity: 2490 kW, as amended from time to time ("Agreement"). Upon the failure or refusal by Principal to pay any amounts owed to Beneficiary by Principal under the Agreement (the "Obligations"), the Beneficiary may make a demand upon the Guarantor. Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty. Guarantor shall promptly, but in no event less than ten business days following demand by Beneficiary, pay such Obligations in immediately available funds. A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. Other than such demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Debtor including without limitation all notices with respect to the Agreement and this Guaranty, and any notice of credits extended and sales made by the Beneficiary to the Principal and all other notices whatsoever. The liability of Guarantor hereunder is a continuing guaranty of payment when any amount is owing without regard to whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable.

2. Guaranty Limit. The liability of Guarantor hereunder shall not exceed at any one time the sum of \$6,000,000 in US dollars for principal, plus all interest that has accrued on any amount owed hereunder, to be paid to Beneficiary, its successors and assigns, and Guarantor hereby binds itself, its heirs, executors, administrators, successors and assigns, jointly and severally. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this agreement or any action or proceeding arising out of or relating to this agreement.

3. Independent Liability. The obligations of Guarantor hereunder are independent of the obligations of Principal. The liability of Guarantor hereunder is independent of any other guaranty of payment received by Beneficiary in connection with the Agreement and is not affected or impaired by any dissolution, reorganization, or insolvency of Principal, or any payment to Beneficiary by Principal that Beneficiary subsequently returns to Principal pursuant to court order in any bankruptcy or other debtor-relief proceeding, or any indemnity agreement Principal may have from any party.

4. Termination. The term of this Guaranty is continuous unless terminated in accordance with the following requirements. This Guaranty may be terminated with regard to future transactions; provided that, Guarantor must provide Beneficiary with written notice of such termination, and any such termination shall become effective no earlier than sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor. Unless otherwise agreed in writing by Beneficiary, no such notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time owing under the Agreement.

5. Waivers of Defenses by Guarantor. (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this agreement or the enforcement of this agreement. (b) Guarantor waives any right to require Beneficiary to (i) proceed against Principal, (ii) proceed against or exhaust any security held from Principal or any other party acting under a separate agreement, or (iii) pursue any other remedy available to Beneficiary. (c) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this agreement, except to the extent the amount(s) owed to Beneficiary by Principal have been paid. (d) Guarantor waives all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies may impair or destroy Guarantor's rights of subrogation and reimbursement against Principal by operation of Section 580d of the California Code of Civil Procedure or otherwise. (e) Until all amounts owed by Principal to Beneficiary are paid in full, Guarantor shall have no right of subrogation, waives any right to enforce any remedy that Beneficiary has or may have against Principal, and waives any benefit of and any right to participation in any security from Principal now or later held by Guarantor. (f) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.

6. No Waiver of Rights By Beneficiary. No right or power of Beneficiary under this agreement shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary .

7. Assignment, Successors and Assigns. This guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary, its successors, assigns and creditors, and can be modified only by a written instrument signed by the Beneficiary, and the Guarantor. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of

the Guarantor; provided, however, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary. The Guarantor shall have not right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary, which shall not be unreasonably withheld. Any reasonable uncertainty on the part of the Beneficiary concerning the ability on the part of any potential assignee of the Guarantor to carry out the Guarantor's obligations hereunder shall be considered a reasonable basis for withholding consent, unless and until the potential assignee can satisfy the Beneficiary, in its sole discretion, that the assignee is capable of performing the obligations of the Guarantor hereunder.

8. Representations of Guarantor. Guarantor hereby represent and warrants that (a) it is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty, (b) it has taken all necessary actions to execute, deliver and perform this Guaranty and (c) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles, (d) execution, delivery and performance by Guarantor of this Guarantee does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any governmental authority and (e) all consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

9. Governing Law. This agreement is made under and shall be governed in all respects by the laws of the State of California, and its provisions may not be waived, altered, modified or amended except in writing executed by an officer of each of Guarantor and Beneficiary. If any provision of this agreement is held invalid under the laws of California, this agreement shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

10. Construction. All parties to this agreement are represented by legal counsel. The terms of this agreement and the language used in this agreement shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this agreement. No rule of strict construction will be applied against any person.

11. Notice. Any notice given hereunder by either Guarantor or Beneficiary shall be made by facsimile to the person and at the address for notices specified in the Agreement (with notices to Guarantor being sent to the facsimile and address specified therein for Principal). Such notice shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

GUARANTOR:

WASTE MANAGEMENT, INC.

By: *Ronald H. Jones*
Position: Ronald H. Jones
Vice President & Treasurer
Date: 1/2/03

Lee A. McCormick
Lee A. McCormick
Assistant Treasurer
1/2/03

Agreed to by Beneficiary for purposes of establishing the creditworthiness of Principal, as partial security for the Agreement.

BENEFICIARY:

SOUTHERN CALIFORNIA EDISON COMPANY

By: *Stephen E. Pickett*
Position: Chief Executive Officer
Date: February 11, 2003

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By: *E. Matthea*
Jan 11 Attorney
2003

EXHIBIT C

ANNUAL CAPACITY DEMONSTRATION TEST CRITERIA and PROTOCOL

Annual Demonstration Date:

- An Annual Capacity Demonstration Test ("Annual Demonstration") shall be held on a non-holiday weekday, normally within the Peak Months, that is mutually agreed to by SCE and Seller. If, by August 31 of a particular year, SCE and Seller have not mutually agreed upon a date for the Annual Demonstration, SCE shall unilaterally select a date for that year. At its discretion, SCE may request that the Annual Demonstration be held on a non-holiday weekday and/or in a non-Peak Month.
- Either Party may request to reschedule the originally scheduled Annual Demonstration date upon three (3) Business Days' Notice sent by facsimile transmission or e-mail to the other Party. However, the Annual Demonstration may only be rescheduled once per year. Moreover, once the Annual Demonstration has commenced, it cannot be terminated or rescheduled for any reason whatsoever.

Annual Demonstration Period:

- The Annual Demonstration period shall commence at 12:00 pm (noon) on the selected day and end at 12:00 pm (noon) of the next day (unless SCE has elected, in its sole discretion, to request that the Annual Demonstration take place over a different 24-hour period).

Satisfactory Demonstration:

- Seller shall demonstrate the ability to operate at a rate of delivery, net of all electrical losses associated with the transmission of capacity from the Generating Facility to the Delivery Point as set forth in Section 3.1(a), equal to or greater than the current Firm Contract Capacity during each and every metering interval within the Annual Demonstration period.
- For a Project located within SCE's service territory or a Project located outside of SCE's service territory, but whose Delivery Point is within SP-15, the metered output will be adjusted by the Project's GMM and DLF factors (or such successor factors as may be applicable from time-to-time) ("GMM" or "DLF" "Factor").
- For a Project located outside of SCE's service territory and whose Delivery Point is not SP-15, the metered output may be adjusted both by (a) the factor assigned

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to such Project by the transmitting utility (such as Imperial Irrigation District) or other Transmission Provider within that service territory, to account for electrical losses to the SCE territory, and (b) the Project's GMM Factor.

Testing Tool:

- The rate of delivery is to be determined using SCE's Solid-State Data Recorder (or similar data collection and metering device).

Representation and Access:

- SCE representatives (normally one to three) may attend the setup and operation of the Annual Demonstration.
- SCE representatives may also concurrently conduct a site inspection of the Generating Facility and associated facilities, systems and equipment.
- SCE shall have access to and copies of control room logs, control system display screens, and instrumentation data before, during and after the demonstration.
- Project personnel may be present during both the Annual Demonstration and site inspection at the Seller's option.

Cost of Annual Demonstration:

- Each Party shall bear its own costs of the Annual Demonstration.

Remedial Action for Failing the Annual Demonstration:

- Should the Seller fail to demonstrate the ability to achieve and sustain Firm Contract Capacity for each and every metering interval during the Annual Demonstration, the Firm Contract Capacity may be derated pursuant to Section 3.3 (e), which shall cause Seller to be liable to SCE for the Capacity Repayment Damage Amount pursuant to Section 3.3 (f) of the Master Agreement by reason of such deration.
- If the Seller fails to demonstrate Firm Contract Capacity due to an abnormal and unforeseeable operating condition, as verified and determined at SCE's sole discretion, an additional Annual Demonstration may be scheduled, provided there is time remaining within current year's Peak Months or such other month as SCE may select in its sole discretion. Lack of wind, sun, water or other fuel source of an inherently intermittent nature shall not be deemed an abnormal and unforeseeable operating condition.

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EXHIBIT D

SAMPLE CAPACITY REPLACEMENT DAMAGE AMOUNT CALCULATION

Example of Capacity Replacement Damage Amount Calculation										
(Assumes Seller with a PPA ending in 2015 is derated by 1 MW at the end of 2004)										
Columns	1	2	3	4	5	6	7	8	9	10
Reference	A1	F ₁	F ₂	F ₃	= F ₁ + F ₂ + F ₃	A2 = col 5 * .22	A3	= A2 + A3	= A1 - col 8	= col 9 * \$750 / 100
Midpoint of Calendar year	Forward Market Price (cents/MWh)	Basin Gas Forward Price (\$/MMBtu)	Firm Interstate Transportation Charge (\$/MMBtu)	Intrastate Transportation Charge (\$/MMBtu)	Fuel Cost Component (\$/MWh)	Fuel Cost Component (cents/MWh)	Variable Operation and Maintenance Component (cents/MWh)	Total CCGT Variable Cost (cents/MWh)	Capacity Cost in Forward Market Price (cents/MWh)	Going Forward Market Price of Capacity (\$/MWh-yr)
7/1/05	3.99	3.00	0.50	0.23	3.73	2.69	0.20	2.89	1.10	96.7
7/1/06	4.03	3.04	0.50	0.23	3.78	2.72	0.20	2.92	1.11	97.4
7/1/07	4.07	3.08	0.51	0.23	3.82	2.75	0.20	2.95	1.12	98.0
7/1/08	4.11	3.13	0.51	0.23	3.87	2.79	0.20	2.99	1.13	98.6
7/1/09	4.15	3.17	0.51	0.23	3.92	2.82	0.20	3.02	1.13	99.2
7/1/10	4.19	3.22	0.51	0.24	3.96	2.85	0.20	3.05	1.14	99.8
7/1/11	4.24	3.26	0.52	0.24	4.01	2.89	0.20	3.09	1.15	100.4
7/1/12	4.28	3.31	0.52	0.24	4.06	2.93	0.20	3.13	1.15	101.0
7/1/13	4.32	3.35	0.52	0.24	4.11	2.96	0.20	3.16	1.16	101.6
7/1/14	4.36	3.40	0.52	0.24	4.16	3.00	0.20	3.20	1.17	102.2
7/1/15	4.41	3.45	0.53	0.24	4.21	3.03	0.20	3.23	1.17	102.7

Columns	11	12	13	14	15	16	17
Reference			A ₁ = col 11 * col 12			B ₁ = col 14 * col 15	A ₁ - B ₁
Midpoint of Calendar year	Going Forward Market Price of Capacity (\$/MWh-yr)	Derated Capacity Quantity (MW)	Going Forward Market Payments for Derated Capacity Quantity (\$)	Contract Capacity Price (\$/MWh-yr)	Derated Capacity Quantity (MW)	Contract Payments for Derated Capacity Quantity (\$)	Difference Between Going Forward Market Payments and Contract Payments for Derated Capacity Quantity (\$)
7/1/05	96.7	1,000	\$96,745	96.0	1,000	\$96,000	\$1,745
7/1/06	97.4	1,000	\$97,361	96.0	1,000	\$96,000	\$2,361
7/1/07	98.0	1,000	\$97,974	96.0	1,000	\$96,000	\$2,974
7/1/08	98.6	1,000	\$98,583	96.0	1,000	\$96,000	\$3,583
7/1/09	99.2	1,000	\$99,189	96.0	1,000	\$96,000	\$4,189
7/1/10	99.8	1,000	\$99,791	96.0	1,000	\$96,000	\$4,791
7/1/11	100.4	1,000	\$100,389	96.0	1,000	\$96,000	\$5,389
7/1/12	101.0	1,000	\$100,982	96.0	1,000	\$96,000	\$5,982
7/1/13	101.6	1,000	\$101,571	96.0	1,000	\$96,000	\$6,571
7/1/14	102.2	1,000	\$102,156	96.0	1,000	\$96,000	\$7,156
7/1/15	102.7	1,000	\$102,736	96.0	1,000	\$96,000	\$7,736

XNPV @ 10%						Capacity Replacement Damages		\$30,063
------------	--	--	--	--	--	------------------------------	--	----------

All numbers shown herein are for illustrative purposes only and in no way constitute a forecast of market prices, SCE's estimate of market prices, or any representation of valid market-makers quotes or offers to sell.

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EXHIBIT E

SAMPLE PERFORMANCE ASSURANCE AMOUNT CALCULATION

Exhibit E								
Sample Calculation of Performance Assurance Amount for 1 MW contract								
assuming computation date is at start of 2004 and the original agreement was through 2017.								
CASE 1: Performance Assurance owed to Seller by SCE (See Section 8.4); Interest rate = 10%								
Contract year	Year	Date	Pzero (Market quotation average SP15 price as of date of computation, in \$/MWh, adjusted for initial and final years)	PI (Performance Assurance threshold price in \$/MWh)	"B" (=Firm contract capacity in MW * hrs/year, in MWh)	"C" (assumed capacity factor)	PPA in year i, in \$ (= [PI - Pzero] * B * C)	
2	2004	7/1/04	43,000	45,000	8784	1.0	\$ 17,588	
3	2005	7/1/05	43,000	45,000	8760	1.0	\$ 17,520	
4	2006	7/1/06	44,000	45,000	8760	1.0	\$ 8,760	
5	2007	7/1/07	45,000	45,000	8760	1.0	\$ -	
6	2008	7/1/08	44,850	45,000	8784	1.0	\$ 1,318	
7	2009	7/1/09	44,700	45,000	8760	1.0	\$ 2,628	
8	2010	7/1/10	44,550	45,000	8760	1.0	\$ 3,842	
9	2011	7/1/11	44,400	45,000	8760	1.0	\$ 5,256	
10	2012	7/1/12	44,250	45,000	8784	1.0	\$ 6,588	
11	2013	7/1/13	44,100	45,000	8760	1.0	\$ 7,884	
12	2014	7/1/14	43,950	45,000	8780	1.0	\$ 9,188	
13	2015	7/1/15	43,800	45,000	8760	1.0	\$ 10,512	
14	2016	7/1/16	43,650	45,000	8784	1.0	\$ 11,858	
15	2017	7/1/17	43,650	45,000	8760	1.0	\$ 11,826	
If A, amounts owed but unpaid = \$10,000, P					\$59,026		\$69,026	=XNPV
SCE must provide assurance								
CASE 2: Performance Assurance owed to SCE by Seller (See Section 8.5); Interest rate = 10%								
Contract year	Year	Date	Pzero (Market quotation average SP15 price as of date of computation, in \$/MWh, adjusted for initial and final years)	PI (Performance Assurance threshold price in \$/MWh)	"B" (=Firm contract capacity in MW * hrs/year, in MWh)	"C" (assumed capacity factor)	PPA in year i, in \$ (= [Pzero - PI] * B * C)	
2	2004	7/1/04	43,000	45,000	8784	1.0	\$ (17,588)	
3	2005	7/1/05	43,000	45,000	8760	1.0	\$ (17,520)	
4	2006	7/1/06	44,000	45,000	8760	1.0	\$ (8,780)	
5	2007	7/1/07	44,500	45,000	8780	1.0	\$ (4,380)	
6	2008	7/1/08	45,000	45,000	8784	1.0	\$ -	
7	2009	7/1/09	45,650	45,000	8760	1.0	\$ 5,694	
8	2010	7/1/10	46,300	45,000	8780	1.0	\$ 11,398	
9	2011	7/1/11	46,950	45,000	8760	1.0	\$ 17,082	
10	2012	7/1/12	47,600	45,000	8784	1.0	\$ 22,838	
11	2013	7/1/13	48,250	45,000	8760	1.0	\$ 28,470	
12	2014	7/1/14	48,800	45,000	8780	1.0	\$ 34,184	
13	2015	7/1/15	49,550	45,000	8760	1.0	\$ 39,858	
14	2016	7/1/16	50,200	45,000	8784	1.0	\$ 45,677	
15	2017	7/1/17	50,200	45,000	8760	1.0	\$ 45,552	
If A, amounts owed but unpaid = \$10,000, P \$					42,270		\$52,270	=XNPV
Seller must provide assurance								

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

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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")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

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

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____
Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
- Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable
 - Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

- Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

- Confidentiality Applicable If not checked, inapplicable.

Schedule M

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

Other Changes

Specify, if any: _____

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

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

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

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

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

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

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

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

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

1.9 "Confirmation" has the meaning set forth in Section 2.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

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

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

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

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

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

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

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

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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

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

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

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

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

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

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

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

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

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

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

5.6 Closeout Setoffs.

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

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

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

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

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

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

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

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

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

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

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

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

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

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

ARTICLE SEVEN: LIMITATIONS

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

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

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

ARTICLE TEN: MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE M

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

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

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

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

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

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

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 -
Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS
OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

"Capacity" has the meaning specified in the Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Transmission.

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

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

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ ("Party A") and _____ ("Party B")
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

- Into _____, Seller's Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- System Firm
(Specify System: _____)

- Unit Firm
(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter

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Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____