

October 14, 2011

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Attn: David W. Danner
Executive Director and Secretary

RE: WAC 480-107-015 Draft Request for Proposals for Market Resources

Dear Mr. Danner:

Pursuant to the Washington Utilities and Transportation Commission's (Commission) Rules and Regulations, PacifiCorp, d.b.a. Pacific Power & Light Company (PacifiCorp or Company), submits for approval by the Commission the original and twelve (12) copies of a Request for Proposals for Market Resources (Market RFP).

A. Introduction and Background

The rules established under WAC 480-107 require utilities to solicit bids, rank project proposals, and identify any bidders that meet minimum selection criteria.¹ Pursuant to WAC 480-107-015(3)(b), a utility must submit to the Commission a proposed RFP and accompanying documentation no later than one hundred third-five days after the utilities integrated resource plan (IRP) is due to be filed with the Commission.

On May 31, 2011, in Docket UE-100514, the Company filed its 2011 IRP pursuant to WAC 480-100-238. The 2011 IRP preferred portfolio identifies resources needed to serve the west balancing authority area over the next three years. This consists of a mix of resources which includes front office transactions (FOT) at liquid hubs from existing or new generation sources, demand-side management (DSM), thermal plant turbine upgrades, combined heat and power (CHP), and renewable resources.

On August 3, 2011, in Docket UE-111418, the Company filed a petition for waiver of certain requirements related to RFPs contained in WAC 480-107.² On August 11, 2011, the Company presented its petition for waiver at the Commission's open meeting. At the open meeting, the Commission requested additional information with respect to the basis for the Company's

¹ WAC 480-107-001(1).

² The petition for waiver filing met the filing deadline of 135 days from the date when the IRP was filed.

request. Further, the Commission requested greater specificity with regard to which rules the Company is requesting waiver. The Company agreed to provide such additional information and specificity in an amended petition; which was filed on September 6, 2011.

The amended petition requested waiver of certain sections of WAC 480-107 with respect to each of the 2011 IRP preferred portfolio resources, specifically:

- Waiver of WAC 480-107-015(3)(d) with respect to Front Office Transactions;
- Waiver of WAC 480-107-015(3)(b) with respect to Jim Bridger Turbine Upgrades;
- Waiver of WAC 480-107-015(3)(b) with respect to CHP Biomass;
- Waiver of WAC 480-107-015(3)(b) with respect to DSM Class 2;
- Waiver of WAC 480-107-015(3)(b) with respect to DSM Class 1;
- Waiver of WAC 480-107-015(3)(b) with respect to Hot Water Solar Heating; and
- Waiver of entire WAC Chapter 480-107 with respect to Solar.

At its October 13, 2011 public meeting, the Commission granted the waiver as requested. Accordingly, consistent with its September 6, 2011 amended petition for waiver, the Company is now filing its Market RFP for Commission approval.

B. Request for Proposals for Market Resources

Consistent with the waivers listed above, the capacity needed within the next three years for which PacifiCorp must file a RFP for approval by the Commission pursuant to WAC 480-107-015(3)(b) are Front Office Transactions (FOT). According to WAC 480-107-025, the RFP contents must include the following:

- The amount and duration of power being solicited within the range estimated in the IRP for new resources
- An initial estimate of avoided cost schedule
- Additional information necessary for potential bidders to make a complete bid
- A general explanation of the evaluation and ranking procedure to be used that is consistent with the Project ranking procedure at WAC 480-107-035
- Minimum criteria for bidders to be considered eligible for ranking
- Timing of the solicitation, ranking and selection processes
- Identification of all security requirements and rationale for same

The Market RFP solicits power purchase agreements of varying contract lengths between 2012 and 2014. It seeks resources with the ability to deliver firm power to PacifiCorp's western balancing authority area for this period. The RFP identifies the capacity needs for each year:

PacifiCorp West Capacity Position Forecast (Megawatts)

Calendar Year	2012	2013	2014
West			
West Existing Resources	3,512	3,636	3,489
West Obligation + 13% Planning Reserves	4,079	4,092	4,165
West Position	(567)	(456)	(676)
Planning Margin	(3%)	1%	(5%)

In addition, the Market RFP includes a schedule of estimated avoided cost for the state of Washington. The estimated avoided cost is provided in the Market RFP in accordance with the requirements of WAC 480-107-025 and to provide potential respondents to the Market RFP with information regarding the cost of new power supplies. However, the Company reserves the right to revise its schedule of estimated avoided cost as necessary consistent with WAC 480-107-055(3), which allows utilities to revise estimated avoided cost schedules at any time, if filed with the Commission with supporting documentation.

The remainder of the requirements listed above are included and clearly identified in the proposed Market RFP. The Company provides as Exhibit A, a table demonstrating that the Company's proposed RFP satisfies the requirements set forth in the relevant sections of WAC Chapter 480-107.

C. Request for Public Comment

The Company will host a proposal conference on October 26, 2011 to discuss this filing and the proposed Market RFP. The Company also invites public comment on its proposed Market RFP. Informal questions regarding this filing should be directed to Andrea Kelly at (503) 813-6043. Questions regarding the Market RFP should be address to Stacey Kusters at (503) 813-5351.

Sincerely,



Andrea L. Kelly
Vice President, Regulation

Enclosures

EXHIBIT A

EXHIBIT A

Washington UTC Rules Governing RFPs

Market RFP

WAC Rule	Requirement	Location in Market RFP
480-107-025 – Contents of the Solicitation		
	(1) The RFP must identify the resource block, consisting of the overall amount and duration of power the utility is soliciting, the initial estimate of avoided cost schedule as calculated in WAC 480-107-055 Avoided cost schedule, and any additional information necessary for potential bidders to make a complete bid.	Part I, Section 2, Section 4 and Appendix 1
	(2) The RFP must document that the size of the resource block is consistent with the range of estimated new resource needs identified in the utility's integrated resource plan.	Part I, Section 3.
	(3) The RFP must explain general evaluation and ranking procedures the utility will use in accordance with WAC 480-107-035 Project ranking procedure. The RFP must also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure.	Part I, Section 5.
	(4) The RFP must specify the timing of process including the solicitation period, the ranking period, and the expected selection period.	Part I, Sections 4-5.
	(5) The RFP must identify all security requirements and the rationale for them.	Part II, Section 2.
480-107-035 – Ranking Procedures		
	(2) At a minimum, the ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference adopted by Washington state or the federal government and environmental effects including those associated with resources that emit carbon dioxide. The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, and contract provisions. The ranking process must complement power acquisition goals identified in the utility's integrated resource plan.	Part I, Section 5.

DRAFT REQUEST FOR PROPOSALS

MARKET RESOURCES

(2011 MARKET RFP)

PacifiCorp

DRAFT Request for Proposals

Market Resources

(2011 Market RFP)

ISSUED: January 16, 2012

DUE DATE: January 31, 2012

I. Introduction and Process

This document constitutes a Request for Proposals ("RFP") from qualified third parties ("Bidders") to supply electric resources to PacifiCorp ("Company"). It is an "All Market Sources" RFP in that any electric generation source will be considered, consistent with the requirements described herein. The RFP may be found at <http://www.pacificorp.com/sup/rfps.html>.

The Company is seeking the following resources with this RFP in the PacifiCorp western balancing authority area:

- Energy and Capacity resources
- Capacity

The Company will consider generation from existing and yet-to-be constructed generation resources with commercial operation dates between 2012-2014.

This RFP solicitation seeks power purchase agreements of varying contract lengths between 2012 through December 2014. PacifiCorp seeks resources with the ability to deliver firm power to PacifiCorp's western balancing authority area for the duration of the proposal. In keeping with the company's desire to continue to build a diversified portfolio of resources, PacifiCorp encourages qualified Bidders representing small or large-scale projects from all fuel types and technologies to participate in this RFP.

The Company evaluates unsolicited proposals outside of the RFP on an ongoing basis. Given the Company's demonstrated resource need and its obligation to provide the lowest reasonable cost to its customers, the Company actively seeks and evaluates external proposals as well as in-house development projects which may provide the greatest benefit to customers at the lowest reasonable cost, adjusted for risk. The Company's estimated avoided cost for qualifying facilities in the state of Washington is provided in Appendix 1.

SECTION 1. RESOURCE STRATEGY

This RFP is consistent with guidance provided by the Company's most recent Integrated Resource Plan ("IRP"), as filed with the Washington Utilities and Transportation Commission ("WUTC") on March 31, 2011.¹ A downloadable copy of the IRP is available to all interested parties on PacifiCorp's Web site at <http://www.pacificorp.com/es/irp.html>.

PacifiCorp's overall strategy for integrated resource planning is described below.

¹ WUTC Docket No. UE-100514.

- Examine the Company’s electric resource needs over the next twenty years, and analyze the mix of conservation programs and supply resources that might best meet those needs.
- Provide the strategic direction to acquire a diversified, balanced electric resource portfolio that meets customer needs, results in reasonable energy supply costs and mitigates market risks.
- Identify key factors related to various resource decisions and provide a method for evaluating a resource acquisition in terms of cost, risk, and other factors at the time a decision needs to be made. The IRP does not commit to or preclude the acquisition of a specific resource type, project or facility.

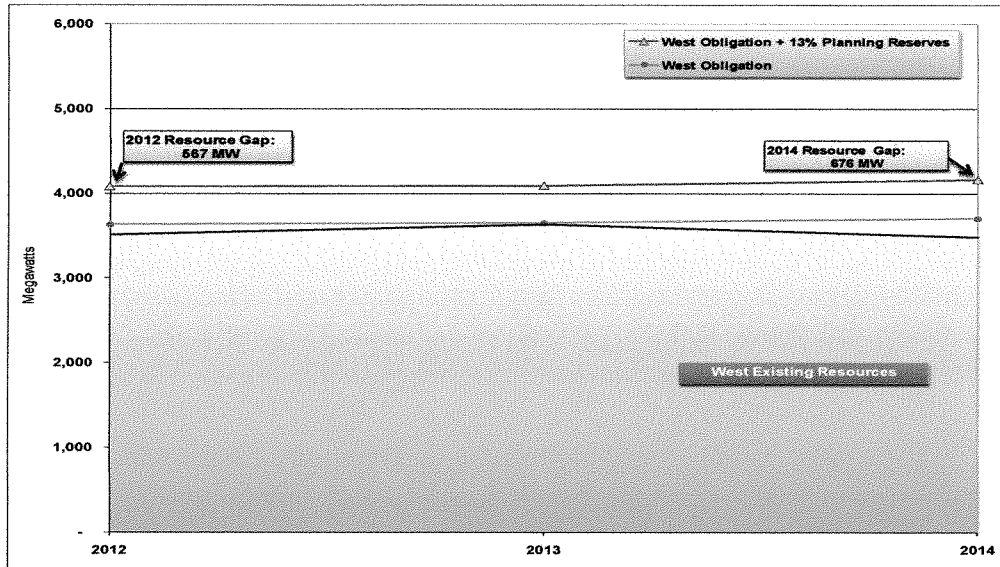
SECTION 2. RESOURCE NEED

The Company is expected to need new resources to offset load growth and the expiration of long-term purchase power contracts occurring over the next several years in the western balancing authority area. Resource need is determined by developing a capacity load and resource balance that considers the coincident system peak load hour capacity contribution of existing resources, forecasted loads and sales, and reserve requirements. Table 1 shows the Company’s annual West capacity position for 2012 through 2014, while Figure 1 graphically highlights the capacity resource gap and contribution of currently owned and contracted west-side resources. Without new resources, the west experiences a capacity deficit of 567 MW in 2012 and 676 MW by 2014. The average deficit for the west position for years 2012-2014 is 566 MW. Underlying the capacity position is west annual peak load growth of 1.8 percent on a compounded average annual basis (prior to forecasted load reductions from energy efficiency). On an energy basis, PacifiCorp expects west average load growth of 1.7 percent per year.

Table 1 – PacifiCorp West Capacity Position Forecast (Megawatts)

Calendar Year	2012	2013	2014
West			
West Existing Resources	3,512	3,636	3,489
West Obligation + 13% Planning Reserves	4,079	4,092	4,165
West Position	(567)	(456)	(676)
Planning Margin	(3%)	1%	(5%)

Figure 1 – West Capacity Position Trend



For capacity expansion planning, the Company uses a 13-percent planning reserve margin applied to the Company’s obligation (load plus sales obligations) less firm purchases and dispatchable load control capacity. The 13-percent planning reserve margin is supported by a stochastic loss of load probability study conducted in late 2010.

SECTION 3. MARKET PURCHASE ADDITIONS IN THE 2011 IRP

PacifiCorp’s 2011 IRP preferred portfolio includes a resource type called “front office transactions” (FOT), which serves as a proxy for a variety of firm market purchase products. For portfolio modeling, the Company included two FOT types: a heavy load hour third-quarter product, and an annual flat product. The preferred portfolio includes FOT capacity quantities acquired in the PacifiCorp western balancing authority area (PACW) that serve system capacity and energy needs. Total PACW FOT additions in the preferred portfolio for 2012-2014 are as follows: 871 MW – 2012, 811 MW – 2013, 600 MW – 2014.² These market purchase quantities should be considered only as indicative of what the Company plans to acquire. Resources evaluated as part of this RFP may vary from the proxy FOT resources identified in the IRP with respect to resource type timing, size, cost and location.

SECTION 4. SCHEDULE

Table 3 identifies a schedule for this RFP, which is subject to adjustment based on WUTC review and the actual pace of PacifiCorp's evaluation process. The Company accepts no liability to the extent the actual schedule is different from the anticipated

² PacifiCorp 2011 IRP, Chapter 8 – Modeling Results, Table 8.16, page 230.

schedule. Any updates to the schedule will be posted online at <http://www.pacificorp.com/sup/rfps.html> (Menu: Suppliers > RFP's).

Table 3 – Anticipated RFP Schedule

Event	Estimated Timeline
Draft RFP filed with WUTC	October 14, 2011
PacifiCorp hosts proposal conference	October 26, 2011
Public comments due	December 12, 2011
WUTC approval expected	January 11, 2012
PacifiCorp releases final RFP solicitation	January 16, 2012
Offers due to PacifiCorp	January 31, 2012
Final short list selected, Bidders notified	January 31, 2012
Avoided Cost Filing	March 31, 2012

Interested parties and Bidders may submit questions, which will be addressed in a timely fashion. All information, including the pre-bid materials, questions and answers will be posted on the Company's website at www.pacificorp.com. The Company will maintain and post all materials on PacifiCorp's website at www.pacificorp.com. Any questions on the RFP or related documents should be sent to the Company via email at rfpmarket@pacificorp.com.

SECTION 5. EVALUATION PROCESS

PacifiCorp will follow a structured evaluation process to assess the merits of proposals with regard to meeting its need. The process is intended to screen and rank individual proposals.³ The Company will consider a number of quantitative and qualitative factors designed to reasonably compare proposals with diverse attributes. Each proposal will be evaluated based on its compliance with this RFP and according to the following Price and Non-Price information.

A. PRICE AND NON-PRICE INFORMATION

Proposals will be evaluated on the basis of price and non-price factors.

1. PRICE INFORMATION (70%)

The Price factors will be determined using the comparison metric of the projected net present value revenue requirement (net PVRR) per kilowatt month (net PVRR/kW-mo). The net PVRR component views the value of the energy and capacity as a positive, and

³ PacifiCorp will comply with WAC 480-107-035(3), which states, "After the project proposals have been opened for ranking, the utility must make available for public inspection at the utility's designated place of business a summary of each project proposal and a final ranking of all proposed projects."

the offsetting costs as negative. The more positive the net PVRR, the more beneficial a given resource is to PacifiCorp's customers. The net PVRR/kW-mo metric is the annuity value which, when applied to the nominal kilowatts on a monthly basis and present-valued, will result in the same net PVRR as a straight NPV calculation. Price factors will recognize the value of the power (e.g., firm versus non-firm, delivery shape, but not an inferred value of environmental attributes associated with the facilities).

The Company will consider PPA options as described in Part II, Section 1 below.

2. NON-PRICE INFORMATION (30%)

The Non-Price factors will include:

- 1) Conformity to the WSPP or EEI (Appendix 2) (10%)
- 2) Development and feasibility of proposal (10%)
- 3) Operational viability (10%)

All proposals will be contingent on firm transmission and must be able to be designated by PacifiCorp's Commercial and Trading function as a Network Resource in the western balancing authority area under the network integration transmission service contract between PacifiCorp Transmission (www.oasis.pacificorp.com) and PacifiCorp Commercial and Trading.

PacifiCorp has no obligation to enter into definitive agreements with any Bidder to this RFP and may terminate or modify the RFP at any time without liability or obligation to any Bidder. This RFP shall not be construed as preventing the Company from entering into any agreement that it deems appropriate at any time before, during, or after the RFP process is complete.

II. Information Requested from Bidders

SECTION 1. PROPOSAL REQUIREMENTS

Bidders will be required to fill out the following and provide the following Term Sheet when submitting their proposals. Contract pricing must be submitted by Seller on January 31, 2012 at 9:00 am and Bidders must hold their prices valid until 11am PPT. . PacifiCorp will contact Bidders on January 31, 2012 at 11:00 PPT if the Bidder is successful in the RFP. Bidders are to email the Following TERM SHEET and any changes to Appendix 2 to rfpmarket@pacificorp.com.

TERM SHEET

Seller: Counterparty
Buyer: PacifiCorp
Term: 2012, 2013 and/or 2014
Quantity: Minimum bid of 25 MW in 25 MW increments
Delivery Term: Product One: July – September (all months inclusive, Q3) or
Product Two: January – December all months during Calendar
2012, 2013 and 2014.
Point of Delivery: PACW (see defined Point of Delivery below)
Products: Product One: Q3 Standard On-Peak (6x16); Monday through
Saturday HE 0700 – HE 2200 PPT, excluding NERC holidays for
Q3 and
Product Two: Flat Calendar product. All hours HE 0100 – HE
2400 PPT, including NERC holidays for 2012, 2013 and 2014.
Energy Price: Please specify energy price (\$/MWh) for all Delivery Months in
each year in the Term.
Quality of Product: WSPP Schedule C.
Pre-scheduling: Pre-scheduling will be pursuant to the WECC ISAS daily pre-
scheduling calendar and the WECC Business Practices.
Credit Requirements: Credit requirements will be evaluated based on the Bidders' credit
rating and the Product, Quantity, Delivery Term and the Price of
the Bidders' proposals.

Counterparty Name (Seller): _____

Contact Name: _____

Phone number: _____

Delivery Point	Delivery Months	Year(s)	Delivery Schedule	Quantity (MW)	Energy Price (\$/MWh)

POINT OF DELIVERY

PacifiCorp seeks resources that are capable of delivery into or in PacifiCorp’s western balancing authority area. If the source is located within the Bonneville Power Administration or another balancing authority area, the Bidder must show they have all necessary transmission services, including: interconnection; transmission; balancing; reserve or other applicable balancing authority services from the resource to the delivery point to be able to schedule to the point(s) of interconnection into PACW.

West System Points of Delivery (PACW)

- Mid-Columbia – Yakima Area
 - Midway 230 kV
 - Wanapum 230 kV
- California Oregon Border
- Portland
 - Troutdale 230 kV
- Willamette Valley
 - Alvey 500 kV
 - Fry 230 kV
- Southern Oregon
 - Chiloquin 230 kV
 - Dixonville 230 kV
 - Meridian 230 kV
 - Reston 230 kV
- Central Oregon
 - Bend 69 kV
 - Plot Butte 69/230 kV
 - Ponderosa 230 kV
 - Redmond 69 kV
- Oregon Coast
 - Astoria to Tillamook 115 kV
 - Boyer (Lincoln City) 115 kV
 - Fairview (Coos Bay) 115/230 kV

- Within the Western Balancing Authority Area – The point of interconnection between the resource, or the electrical system to which the resource is connected, and PacifiCorp’s transmission system.
- Scheduled to the point(s) of interconnection between PacifiCorp’s western balancing authority area and the Bonneville Power Administration or Portland General Electric such that transfer limitations are not exceeded. If the source located within the Bonneville Power Administration balancing authority area the Bidder must show they have balancing authority area services from the resource to the delivery point.

SECTION 2. CREDIT REQUIREMENTS

PacifiCorp will not accept collateral thresholds, credit ratings triggers, general adequate assurances language or similar language that might require the Company to provide performance assurance. However, PacifiCorp's credit risk department may require the seller to provide performance assurance in the form of a commitment letter(s) from a proposed guarantor(s) and/or from a financial institution(s) that would be issuing a Letter of Credit. The amount of performance assurances to be provided will be determined based upon:

- a) The Credit Rating of the Bidder and the entity(ies) providing credit assurances on behalf of the Bidder, if applicable.
- b) The Proposals/Contracts type.
- c) The Eligible Online Date.
- d) The size of the Proposals/Contracts.

In order for PacifiCorp’s credit risk department to conduct a credit evaluation, the Bidder or its Credit Support Provider must provide audited financial statements (including balance sheet, income statement, and cash flow statement) for the three (3) most recent fiscal years.

The Credit Rating is defined as the lower of: x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is unavailable) from Standard & Poor’s (S&P) and/or y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is unavailable) from Moody’s Investor Services. If option x) and y) are not available, the Credit Rating will be determined by the Company through an internal process review utilizing a proprietary credit scoring model developed in conjunction with a third party. With few exceptions, PacifiCorp will expect sellers with sub investment-grade credit ratings (or being of similar creditworthiness) to provide performance assurance acceptable to the Company.

Please note that a financial institution providing credit assurances on behalf of the Bidder must have a Credit Rating of at least ‘A’ and ‘A2’ from S&P and Moody’s, respectively, and have assets (net of reserves) of at least \$10,000,000,000.

COMPANY RESERVATION OF RIGHTS AND DISCLAIMERS

The Company reserves the right, without qualification and in its sole discretion, to reject any or all proposals, and to terminate this RFP in whole or in part at any time. The Company further reserves the right without qualification and in its sole discretion to decline to enter into any agreement with any Bidder for any reason, including, but not limited to, change in regulations or regulatory requirements that impact the Company and/or any collusive bidding or other anti-competitive behavior or conduct.

APPENDIX 1

APPENDIX 1

SCHEDULE OF ESTIMATED AVOIDED COST

State of Washington

Consistent with WAC 480-107-055, this schedule of estimated avoided cost is intended to provide general information to potential bidders about the cost of new power supplies. It does not provide a guaranteed contract price for electricity.

The schedule below provides the nominal levelized price forecast on a monthly basis and on an annual flat basis using the September 2011 official forward price curve.

Avoided Cost Prices

Deliveries During Calendar Year	Capacity Payment \$/kW - Month	Energy Payment \$/MWH
2012	\$2.31	28.82
2013	\$2.35	35.03
2014	\$2.39	38.50
2015	\$2.44	42.40
2016	\$2.49	45.47

5 Year (2012 - 2016) Levelized Prices (Nominal) @ 7.15% Discount Rate (1)

\$/kW - Month	\$2.39	
\$/kW - Year	\$28.68	
\$/MWh		\$37.48

Footnotes:

1 Discount Rate - Company Official Discount Rate - Dated September 2011

APPENDIX 2

PacifiCorp Form of EEI Master Power Purchase and Sale Agreement

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)
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INDUSTRY IS ENCOURAGED TO USE THIS MASTER POWER PURCHASE AND SALE AGREEMENT IN ITS TRANSACTIONS.
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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* (Version 2.1; modified 4/25/00) (“*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:

Article One:

General Terms and Conditions

PacifiCorp (“Party A”)

(“Party B”)

All Notices:

All Notices:

Street: 825 NE Multnomah Street
City: Portland, OR 97232
Attn: Contract Administration, Suite 600
Phone: (503) 813 - 5952
Facsimile: (503) 813 - 6291
Duns: 00-790-9013
Federal Tax ID Number: 93-0246090

Street:
City:
Attn:
Phone:
Facsimile:
Duns:
Federal Tax ID Number:

Invoices:

Invoices:

Attn: Energy Operations Back Office, Suite 700
Phone: (503) 813 - 5705
Facsimile: (503) 813 - 5580

Attn:
Phone:
Facsimile:

Scheduling:

Scheduling:

Attn: Energy Operations Back Office, Suite 700
Phone: (503) 813 - 6090
Facsimile: (503) 813 – 6265

Attn:
Phone:
Facsimile:

Payments:

Payments:

Attn: PACA – Controller, Suite 700
Phone: (503) 813 - 5697
Facsimile: (503) 813 – 5580

Attn:
Phone:
Facsimile:

Wire Transfer:

Wire Transfer:

BNK: JPM Chase.
ABA: 021000021
ACCT: 55-44688
NAME: PacifiCorp

BNK:
ABA:
ACCT:

Credit and Collections:

Credit and Collections:

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

Attn:
Phone:
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: Jeffery B. Erb, Esq. and Jeremy D. Weinstein, Esq.
Phone: (503) 813-5029 and (925) 943-3103
Facsimile: (503) 813-6761 and (925) 943-3105

Phone:
Facsimile:

Margining notices to Party A:
e-mail: margincalls@pacificorp.com
Facsimile No: (503) 813-5609

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

Attn: Jeffery B. Erb, Esq. and Jeremy D. Weinstein, Esq.
Phone: (503) 813-5029 and (925) 943-3103
Facsimile: (503) 813-6761 and (925) 943-3105

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

Phone:
Facsimile:

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

Party A Tariff FERC Electric Tariff, Volume 12 Dated September 22, 2000 Docket Number ER00-3726-000
Party B Tariff
; in each case, as such tariff may be revised from time to time.

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: PacifiCorp Cross Default Amount \$50,000,000
□ Other Entity: _____ Cross Default Amount: \$

■ Cross Default for Party B:

■ Party B: [guarantor] Cross Default Amount \$
□ Other Entity: [guarantor] Cross Default Amount \$25,000,000

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 Eight:

8.1 Party A Credit Protection:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

8.1 Party A Credit Protection:

- (c) Collateral Threshold:
- Not Applicable
 - Applicable

If applicable, complete the following:

Party B Collateral Threshold: As determined by reference to Party B's Credit Rating in accordance with the table set forth below; 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.

Credit and Collateral Requirements

8.2 Party B Credit Protection:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

8.2 Party B Credit Protection:

- (c) Collateral Threshold:
- Not Applicable
 - Applicable

If applicable, complete the following:

Party A Collateral Threshold: As determined by reference to Party A's Credit Rating in accordance with the table set forth below; 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.

A/ A2 and above \$ million
 A-/A3 \$ million
 BBB+/Baa1 \$ million
 BBB/Baa2 \$ million
 BBB-/Baa3 Watch negative \$0.00
 BB+/Ba1 and below \$0.00
 Party B Independent Amount: \$0.00
 Party B Rounding Amount: \$ 100,000.00

A/ A2 and above \$ million
 A-/A3 \$ million
 BBB+/Baa1 \$ million
 BBB/Baa2 \$ million
 BBB-/Baa3 Watch negative \$0.00
 BB+/Ba1 and below \$0.00
 Party A Independent Amount: \$0.00
 Party A Rounding Amount: \$100,000.00

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party B: _____
 Guarantee Amount: _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____
 Guarantee Amount: _____

Article Ten: Confidentiality

- Confidentiality Applicable

If not checked, inapplicable.

Schedule M

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

Other Changes The following changes shall apply:

Part 1. GENERAL TERMS AND CONDITIONS.

1. **Article One: General Definitions:** The following definitions are amended as follows:

1.1 "Affiliate": Section 1.1 is amended to add to the end thereof: "Notwithstanding the foregoing, in the case of Party A, "Affiliate" means MidAmerican Energy Holdings Company and its direct and indirect subsidiaries."

1.3 "Bankrupt": Section 1.3 is amended to read:

- 1.3 "Bankrupt" means the Defaulting Party or any Guarantor of such Party:
- (i) Is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) Becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
 - (iii) Makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iv) Institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up or liquidation;

- (v) Has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (vi) Seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or substantially all its assets;
- (vii) Has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process is levied, enforced or sued on or against all or substantially all its assets;
- (viii) Causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses one to seven inclusive; or
- (ix) Takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

1.12 "Credit rating": Sec. 1.12 is amended by deleting in the fourth line the word “issues” and replacing it with the word “issuer”.

1.24 “Gains”: Add the following after “Costs)”:

“calculated in a commercially reasonable manner based on the prime rate of interest as published from time to time under the Wall Street Journal for such period and such calculation will be equal to the net present value of the economic gain to it.”

1.28 “Losses”: Add the following after “Costs)”:

"calculated in a commercially reasonable manner based on the prime rate of interest as published from time to time under the Wall Street Journal for such period and such calculation will be equal to the net present value of the economic loss to it.”

1.50 "Recording": Section 1.50 is revised to read as follows:

“**Recording**” has the meaning set forth in Section 2.5.

1.51 "Replacement Price": Section 1.51 is amended by (a) adding "for delivery" immediately before "at the Delivery Point" in the second line and (b) replacing "at Buyer's option" in the fifth line with "absent a purchase".

1.53. "Sales Price": Section 1.53 is amended by (i) deleting "at the Delivery Point" from the second line; (ii) deleting "at Seller’s option" from the fifth line and replacing it with the following: “absent a sale”; and (iii) inserting after “commercially reasonable manner” in the sixth line, the following: “; provided, however if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0)”.

1.62. "Specified Transaction": Article One is amended by inserting at the end the following new Section 1.62:

1.62 "Specified Transaction" means any contract or transaction (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between Party A (or any Guarantor of Party A) and Party B (or any Guarantor of Party B or any Affiliate of Party B).

1.63: Rules of Construction. Article One is amended by inserting at the end the following new Section 1.63:

1.63 **Rules of Construction.** "Or" is not necessarily exclusive. "Hereof," "herein," "hereunder," and similar words refer to this Agreement in its entirety. "Articles", "Section" and "Exhibits" refer to Articles, Sections and Exhibits hereof unless otherwise stated or indicated. "Including" is not limiting and means "including without limitation". The singular includes the plural, and vice versa, as the context allows. All references to a particular entity, statute, or market price index include a reference to such entity's, statute's or index's successors and (if applicable) permitted assigns.

2. Prior Transactions. The following is added as a separate second paragraph of Section 2.2:

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

3. Market Redesign. A new Section 3.4 shall be added as follows:

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

4. Suspension of Performance. A new **Section 4.3** is added to Article Four, worded as follows:

"4.3 Suspension of Performance. Notwithstanding, and in addition to the remedies provided pursuant to Sections 4.1, 4.2 and 5.7, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or

more consecutive days, and such failure is not excused under the terms of this Agreement, by the other Party's failure to perform or by agreement of the Parties, then upon one (1) Business Day prior notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance; provided that, if the performing Party has entered into a replacement contract with a term of 31 days or less, the performing Party may resume performance at the end of the term of such replacement contract. Remedies available under this provision to the performing Party are in addition to, not in replacement for, other remedies specified in this Agreement."

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

6. Declaration of an Early Termination Date and Calculation of Settlement Amounts. Section 5.2 is deleted in its entirety and replaced with the following:

"5.2 "Effect of Event of Default." If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party may do one or more of the following: (a) withhold any payments due to the Defaulting Party under this Agreement; (b) suspend performance due to the Defaulting Party under this Agreement; and/or (c) by giving not more than twenty (20) days notice, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions (each referred to as a "Terminated Transaction"). The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and

Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information."

7. **Net Out of Settlement Amount.** Section 5.3 is amended by inserting "plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight," between the words "that are due to the Non-Defaulting Party," and "plus any and all other amounts" in the sixth line.

8. **Notice of Payment of Termination Payment.** The following is added to the end of Section 5.4:

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

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

10. **Timeliness of Payment.** Section 6.2 is amended by (1) replacing in the first sentence "each party's" with "the Party owing the lesser amount as determined by pursuant to standard wholesale electric industry after-the-fact check-out procedures for the point of delivery associated with each Transaction"; (2) deleting from the second sentence: ", or by other mutually agreeable method(s),"; and (3) adding the following sentence at the end: "If on the due date, the aggregate amounts payable by a Party for failing to schedule and/or deliver or receive Product under Article Four with respect to all Transactions and Agreements after the expiration of the month covered by the invoice until and including the due date exceed \$10,000.00, (i) the Party owed such amounts shall recalculate the amount payable and notify the other Party (by telephone, facsimile or other reasonable means), (ii) the due date shall be extended by five (5)

calendar days, and (iii) the recalculated amount payable shall be subject to the dispute procedures under Section 6.3.”

11. **Netting of Payments.** Section 6.4 is amended by deleting “and owing to each other on the same date”.

12. **Limitation of Remedies, Liability and Damages.** The fifteenth and sixteenth lines of Section 7.1 are amended by deleting "UNLESS EXPRESSLY HEREIN PROVIDED,".

13. **Uniform Commercial Code Disclaimer of Warranties.** The following is added to the end of Article Seven:

"7.2. UCC/Disclaimer of Warranties. To the extent that the provisions of the applicable Uniform Commercial Code (“UCC”) are deemed to apply to Transactions hereunder, and any Products deemed to be a “good” for the purposes of the UCC, **PARTY A AND PARTY B EACH ACKNOWLEDGE THAT IT HAS ENTERED INTO THIS AGREEMENT AND IS CONTRACTING FOR THE PRODUCTS BASED SOLELY UPON THE EXPRESS REPRESENTATIONS AND WARRANTIES HEREIN AND, SUBJECT THERETO, ACCEPTS SUCH PRODUCTS “AS-IS” AND “WITH ALL FAULTS”. PARTY A AND PARTY B EACH EXPRESSLY DISCLAIM ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, RELATING TO SUCH PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. "**

14. **Article 8: Collateral Annex.** In addition to Sections 8.1(c) and 8.2(c), the rights and obligations of the parties with respect to Performance Assurance as collateral shall be governed by the Collateral Annex, which is attached hereto and incorporated herein by reference.

15. **Downgrade Event.** Sections 8.1(d) and 8.2(d) are amended by adding after "receipt of notice": "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing".

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

17. **No Investment Advice Given.** Section 10.2(viii) is amended by adding to the end: “;information and explanations of the terms and conditions of each such Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction; no

communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;”

18. FERC Order 888. The following is added to the end of Section 10.4: "Notwithstanding the foregoing or anything to the contrary herein, Party B may not use any provision of this Agreement, by set-off or otherwise, to hold PacifiCorp liable for any amounts (i) in excess of limitations of its transmission or distribution function's liability to Party B pursuant to the tariffs and other agreements of those functions with or applicable to Party B or (ii) respecting any act or omission by its transmission or distribution function."

19. Section 10.5 is amended to replace the word “affiliate” with the defined term “Affiliate”.

20. Jurisdiction. Section 10.6 is amended by inserting at its end the following new sentence: “With respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the parties hereby consent to the exclusive jurisdiction of the federal courts sitting in the borough of Manhattan in New York State.”

21. Confidentiality. Section 10.11 is amended by (a) adding "or the completed Cover Sheet to this Master Agreement" immediately before "to a third party"; (b) adding "or the Party's Affiliates" immediately after "(other than the Party's"; (c) replacing “have agreed to” in the fifth line with “who the Party is satisfied will”; (d) inserting “or request by a regulatory authority” in the seventh line between “court or regulatory proceeding” and “; provided, however, each Party shall,” and (e) inserting at the end of Section 10.11: “Notwithstanding the foregoing, it shall not be a breach of this Section 10.11 if a Party discloses the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party, including unique attributes and requirements, is redacted and otherwise not disclosed.”

22. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

23. Index Transactions. The following provision is added as Section 10.12:

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

the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by PacifiCorp, by taking the average of four dealer quotes, two such quotes to be provided by each Party from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time.

"Determination Period" means each calendar month during the Delivery Period of the relevant Transaction; provided that if the term of the Transaction is less than one calendar month the Determination Period shall be the term of the Transaction.

"Exchange" means the exchange or market, if any, specified in a Transaction.

"Floating Price" means the price specified in the Transaction as being based upon a Price Source or specified index.

"Market Disruption Event" means, with respect to an index, any of the following events: (a) the failure of the Price Source to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange; (c) the temporary or permanent discontinuance or unavailability of the Floating Price; (d) the temporary or permanent closing of any Exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means a publication or other reference, including an Exchange, containing or reporting a specified price or price index, or prices from which the specified price or price index is calculated, specified in the relevant Transaction.

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

- (b) **Corrections to Published Prices.** For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.
- (c) **Calculation of Floating Price.** For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

24. Netting and Setoff.

- (1) **Termination of Specified Transactions.** The occurrence or designation of an Early Termination Date on account of an Event of Default with respect to a party hereto (“Y”) shall constitute a material breach and event of default (howsoever described) under all Specified Transactions to which Y is a party, whereupon the Non-defaulting Party (“X”) shall have the right to terminate, liquidate and otherwise close out any such Specified Transactions (and Y shall be liable for any damages suffered by X as a result thereof).
- (2) **Setoff.** (a) Upon the occurrence or designation of an Early Termination Date on account of an Event of Default respect to a party hereto. in addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) under applicable law, the Non-defaulting Party (“X”) may, without prior notice to any person, at its option and in its discretion, (1) setoff, against any amount or obligation (whether matured or unmatured and irrespective of the currency, place of payment or booking office of the sum or obligation) owed to the Defaulting Party (“Y”) in Dollars or any other currency by X under this Agreement or any other contract or agreement between the Parties: (a) any amount or obligation (whether matured or unmatured and irrespective of the currency, place of payment or booking office of the sum or obligation) owed in Dollars or any other currency by Y to X under this Agreement or other contract or agreement between Party A and Party B, or (b) any amounts due any Affiliate of X *from* Y under any present or future contract or agreement between Y and any Affiliate of X (each an “Affiliate Netted Agreement”), and (2) set-off or cause the setoff against any amounts due *from* Y under this Agreement or other contract or agreement between Party A and Party B: (a) any amounts due *to* Y under any this Agreement or other contract or agreement between Party A and Party B, or (b) any amounts due *to* Y from any Affiliate of X under any Affiliate Netted Agreement. The obligations of Y and X under this Agreement in respect of such amount or obligation shall be deemed satisfied and discharged to the extent of any such setoff. If any obligation is unliquidated, X may in good faith, estimate that obligation and setoff in respect of the estimate, subject to X or Y, as the case may be, accounting to the other party when the obligation is liquidated. X will give Y notice of any setoff effected under this section but failure to give such notice shall not affect the validity of the setoff.
- (b) For purposes of the foregoing, X shall be entitled to convert any obligation denominated in one currency into another at such rates of exchange as it deems appropriate in good faith and in a commercially reasonable manner, to convert any obligation to deliver non-cash property into an obligation to deliver cash in an amount determined by it as it deems appropriate in good faith and in a commercially reasonable manner, and amounts may be set off and recouped irrespective of the currency, place of payment or booking office of any obligation to or from Y.
- (c) If an obligation is unascertained, X may in good faith estimate that obligation and set off and recoup in respect of that estimate, subject to the relevant party’s accounting to the other(s) when the obligation is ascertained.

(d) Nothing in this subsection shall be effective to create a charge or other security interest. This setoff provision shall be without prejudice and in addition to any right of setoff, recoupment, 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). Each provision of this clause shall be severable from every other provision when determining its legal enforceability.

- (3) **Condition Precedent to Payments to the Defaulting Party.** All obligations of a Non-defaulting Party (“X”) under this Agreement, any Specified Transaction with the other party (“Y”) or in respect of any other matured, liquidated or terminated obligation to Y are subject to the condition precedent that Y shall have performed all of its obligations to X under this Agreement, any Specified Transaction with X and in respect of any other matured, liquidated or terminated obligation of Y to X or any Affiliate of X, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation.
- (4) **Single Relationship.** The parties intend that all Transactions and Specified Transactions shall be treated as mutual and part of a single, indivisible contractual and business relationship.

Part 2. SCHEDULE P

1. Schedule P, “Products and Related Definitions” is modified by inserting the following at its end:

“Other Products and Service Levels:

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

2. The following definitions are added to Schedule P:

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

"West Firm" means with respect to a Transaction, a Product that is or will be scheduled as firm energy consistent with the most recent rules adopted by the WECC and service schedules defined by the WSPP for which the only excuses for failure to deliver or receive are if an interruption is (i) due to an Uncontrollable Force as provided in Section 10 of the WSPP Agreement; or (ii) where applicable, to meet Seller's public utility or statutory obligations to its customers. Notwithstanding any other provision in this Agreement, if Seller exercises its right to interrupt to meet its public utility or statutory obligations, Seller shall be responsible for payment of damages for failure to deliver firm energy as provided in Article 4 of this Agreement.

"WECC" means the Western Electricity Coordinating Council.

"WSPP" means the Western Systems Power Pool.

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

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

PACIFICORP
("Party A")

("Party B")

By: _____
Name: _____
Title: _____

By: _____
Name: _____
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.

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

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

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

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

[Party A]

[Party B]

Name: _____
Title: _____
Phone No: _____
Fax: _____

Name: _____
Title: _____
Phone No: _____
Fax: _____

COLLATERAL ANNEX

This Collateral Annex, together with the Paragraph 10 Elections, (the “Collateral Annex”) supplements, forms a part of, and is subject to, the EEI Master Power Purchase and Sale Agreement, dated _____, including the Cover Sheet and any other annexes thereto between _____ (“Party A”) and _____ (“Party B”). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.

The obligations of each Party under the Agreement shall be secured in accordance with the provisions of this Collateral Annex, which, except as provided below, sets forth the exclusive conditions under which a Party will be required to Transfer Performance Assurance in the form of Cash, a Letter of Credit or other property as agreed to by the Parties, as well as the exclusive conditions under which a Party will release such Performance Assurance. This Collateral Annex supercedes and replaces in its entirety Sections 8.1(c), 8.2(c) and 8.3 of the Agreement and the defined terms used therein to the extent that such terms are otherwise defined and used in this Collateral Annex. In addition, to the extent that the Parties have specified on the Cover Sheet that Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement are applicable, then the definition of Performance Assurance as used in this Collateral Annex shall apply and Paragraphs 2, 6, 7 and 9 of this Collateral Annex shall apply to any such Performance Assurance posted under such provisions, it being understood that nothing contained in this Collateral Annex shall change any election that the Parties have specified on the Cover Sheet with respect to Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement, which provisions require a Party to Transfer Performance Assurance under certain circumstances not contemplated by this Collateral Annex.

Paragraph 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below:

“Calculation Date” means any Local Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraphs 3, 4, 5 or 8 of this Collateral Annex.

“Cash” means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

“Collateral Account” shall have the meaning attributed to it in Paragraph 6(a)(ii)(B).

“Paragraph 10 Cover Sheet” means the Cover Sheet attached to this Collateral Annex setting forth certain elections governing this Collateral Annex.

“Collateral Requirement” shall have the meaning attributed to it in Paragraph 3(b).

"Collateral Threshold" means, with respect to a Party, the collateral threshold, if any, set forth in the Paragraph 10 Cover Sheet for a Party.

"Collateral Value" means (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the Valuation Percentage multiplied by the stated amount then available under the Letter of Credit to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the Valuation Percentage multiplied by the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, a Party pursuant to this Collateral Annex as determined by such Party in a commercially reasonable manner.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Credit Rating Event" shall have the meaning attributed to it in Paragraph 6(a)(iii).

"Current Mark-to-Market Value" of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction.

"Custodian" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Downgraded Party" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Eligible Collateral" means, with respect to a Party, the Performance Assurance specified for such Party on the Paragraph 10 Cover Sheet.

"Exposure" of one Party ("Party X") to the other Party ("Party Y") for each Transaction means (without duplication) as of any Calculation Date the sum of the following:

(a) the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party X and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party Y and that remain unpaid as of such Calculation Date; plus

(b) the Current Mark-to-Market Value of such Transaction to Party X.

"Exposure Amount" shall have the meaning set forth in Paragraph 3(a).

"Independent Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party (which amount, if designated, shall either be a Fixed Independent Amount, a Full Floating Independent Amount or a Partial Floating Independent Amount, in each case, as designated on the Paragraph 10 Cover Sheet), or if no amount is specified, zero, or with respect to either Party, an additional or reduced amount agreed to as such for that Party in respect of a Transaction.

"Interest Amount" means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day; multiplied by (b) the Interest Rate for that day, divided by (c) 360.

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Local Business Day on which Cash was Transferred to such Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" means, in respect of a Party holding Cash, the rate specified for such Party in the Paragraph 10 Cover Sheet.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, substantially in the form set forth in Schedule 1 attached hereto, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex.

"Local Business Day" means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient.

"Minimum Transfer Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Net Exposure" shall have the meaning attributed to it in Paragraph 3(a).

"Notification Time" means 11:00, New York time, on any Calculation Date or any different time specified in the Paragraph 10 Cover Sheet.

"Obligations" shall have the meaning attributed to it in Paragraph 2.

"Performance Assurance" means all Eligible Collateral, all other property acceptable to the Party to which it is Transferred, and all proceeds thereof, that has been Transferred to or received by a Party hereunder and not subsequently Transferred to the other Party pursuant to Paragraph 5 or otherwise received by the other Party. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(a)(iv) and any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash, until all or any portion of such Cash is applied against Obligations owing to such Party pursuant to the provisions of this Collateral Annex. Any guaranty agreement executed by a Guarantor of a Party shall not constitute Performance Assurance hereunder.

"Pledging Party" shall have the meaning attributed to it in Paragraph 3(b).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party determining its Exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Rounding Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Secured Party" shall have the meaning attributed to it in Paragraph 3(b).

"Transfer" means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

- (a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient;
- (b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient; and

(c) in the case of any other type of Performance Assurance, delivery thereof as specified by the recipient.

"Valuation Percentage" means, with respect to any Performance Assurance designated as Eligible Collateral on the Paragraph 10 Cover Sheet, the Valuation Percentage specified for such Performance Assurance on the Paragraph 10 Cover Sheet.

Paragraph 2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the "Obligations"), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, the other Party and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

Paragraph 3. Calculations of Collateral Requirement.

(a) On any Calculation Date, the "Exposure Amount" for each Party shall be calculated for all Transactions for which there are any Obligations remaining unpaid or unperformed, by calculating each Party's Exposure to the other Party in respect of each such Transaction and determining the net aggregate sum of all Exposures for all Transactions for each Party. The Party having the greater Exposure Amount at any time (the "Secured Party") shall be deemed to have a "Net Exposure" to the other Party equal to the Secured Party's Exposure Amount.

(b) The "Collateral Requirement" for a Party (the "Pledging Party") means the Secured Party's Net Exposure minus the sum of:

- (1) the Pledging Party's Collateral Threshold; plus
- (2) the amount of Cash previously Transferred to the Secured Party, the amount of Cash held by the Secured Party as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to the Pledging Party; plus
- (3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party; provided, however, that, the Collateral Requirement of a Party will be

deemed to be zero (0) whenever the calculation of such Party's Collateral Requirement yields a number less than zero (0).

Paragraph 4. Delivery of Performance Assurance.

On any Calculation Date on which (a) no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, and (c) the Pledging Party's Collateral Requirement equals or exceeds its Minimum Transfer Amount, then the Secured Party may demand that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall, after receiving such notice from the Secured Party, Transfer, or cause to be Transferred to the Secured Party, Performance Assurance for the benefit of the Secured Party, having a Collateral Value at least equal to the Pledging Party's Collateral Requirement. The amount of Performance Assurance required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by the close of business on the next Local Business Day and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Paragraph 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be Transferred.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) On any Local Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Performance Assurance previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Performance Assurance, (i) the Pledging Party shall in fact have a Collateral Requirement of zero; (ii) no Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The amount of Performance Assurance required to be reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. The Pledging Party shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the Pledging Party. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Pledging

Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, the Pledging Party may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon one (1) Local Business Day's written notice (provided such notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Local Business Days) to the Secured Party; provided, however, that if such substitute Performance Assurance is of a type not otherwise approved by this Collateral Annex, then the Secured Party must consent to such substitution. Upon the Transfer to the Secured Party and/or its Custodian of the substitute Performance Assurance, the Secured Party and/or its Custodian shall Transfer the relevant replaced Performance Assurance to the Pledging Party within two (2) Local Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to the Secured Party and/or its Custodian prior to the release of the Performance Assurance to be returned to the Pledging Party and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal the greater of the Pledging Party's Collateral Requirement or the Pledging Party's Minimum Transfer Amount. Each substitution of Performance Assurance shall constitute a representation and warranty by the Pledging Party that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by the Secured Party and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to a Party that is the Secured Party shall be subject to the following provisions.

(i) If such Party is entitled to hold Cash, then it will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a "Custodian") to hold Cash for it provided that the conditions for holding Cash that are set forth on the Paragraph 10 Cover Sheet for such Party are satisfied. If such Party is not entitled to hold Cash, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to such Party and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B). Upon notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. If the Secured Party or its Custodian fails to satisfy any conditions for holding Cash as set forth above or in the Paragraph 10 Cover Sheet or if the Secured Party is not entitled to hold Cash at any time, then the Secured Party will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(ii)(B), with the Party not eligible to hold Cash being considered the "Downgraded Party" (as defined below). Except as set forth in Paragraph 6(c), the Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to the Secured Party and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party; provided, however, that if a Party or its Custodian is not eligible to hold Cash pursuant to Paragraph 6(a) (such Party shall be the "Downgraded Party" and the event that caused it or its Custodian to be ineligible to hold Cash shall be a "Credit Rating Event") then:

(A) the provisions of this Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business on the next Local Business Day following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution approved by the non-Downgraded Party (which approval shall not be unreasonably withheld), to a segregated, safekeeping or custody account (the "Collateral Account") within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for the Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Collateral Annex and for the security interest of the Downgraded Party and execute such account control agreements as are necessary or applicable to perfect the security interest of the Non-Downgraded Party therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of the non-Downgraded Party. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in

accordance with the written instructions of the Pledging Party, subject to the approval of such instructions by the Downgraded Party (which approval shall not be unreasonably withheld), provided that the Qualified Institution shall not be required to so invest or reinvest or procure such investment or reinvestment if an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing. The Downgraded Party shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with the Pledging Party's instructions.

(iii) Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Local Business Day of the first month after the last month to which such invoice relates or (B) the third Local Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within one (1) Local Business Day after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (A), (B), or (C) above, the Pledging Party's Collateral Requirement would be greater than zero.

(ii) As one method of providing Performance Assurance, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Pledging Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

(c) Care of Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii) and beyond the exercise of reasonable care in the custody thereof, the Secured Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by the Secured Party in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence. Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of the Secured Party shall be deemed to be the holding and possession of such Performance Assurance by the Secured Party for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided

in Paragraph 6(a)(ii), nothing in this Collateral Annex shall be construed as requiring the Secured Party to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, the Secured Party may exercise any one or more of the rights and remedies provided under the Agreement, in this Collateral Annex or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may, in its sole discretion, exercise any one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;
- (ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations;
- (iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or
- (iv) the right to liquidate any Performance Assurance held by or for the benefit of the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledging Party, including any right of equity or redemption by the Pledging Party (with the Secured Party having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations in such order as the Secured Party may elect.

(b) The Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).

(c) Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging

Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

(d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party, then:

(1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including any Letter of Credit) and the Interest Amount, if any, to the Pledging Party;

(2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (y) to the extent that the Performance Assurance or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and

(3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.

Paragraph 8. Disputed Calculations

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 4. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of

such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 5(a). In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) The Pledging Party will execute and deliver to the Secured Party (and to the extent permitted by applicable law, the Pledging Party hereby authorizes the Secured Party to execute and deliver, in the name of the Pledging Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex, including any action the Secured Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Pledging Party shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by the Secured Party and/or its Custodian under the Agreement and this Collateral Annex, the Pledging Party hereby represents and warrants that:

(i) the Pledging Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation,

the Performance Assurance, other than the security interests and liens created under the Agreement and this Collateral Annex;

(ii) upon the Transfer of Performance Assurance by the Pledging Party to the Secured Party and/or its Custodian, the Secured Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) it is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Collateral Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(d) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Collateral Annex or the execution, delivery, performance or enforcement of the Agreement and this Collateral Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Collateral Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

SCHEDULE 1 to Collateral Annex

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$ _____), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by a representative of the beneficiary:

1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit"; or
2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit".

This Letter of Credit shall expire on _____.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.

With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable

amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]

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

CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

I. Collateral Threshold.

A. Party A Collateral Threshold.

- \$ _____ (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

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

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

- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for Party A on the relevant date of determination, and if Party A’s Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination Party A does not

have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

:
:
:

Party A Collateral Threshold	S&P Credit Rating	Moody's Credit Rating
\$25,000,000	A- (or above)	A3 (or above)
\$20,000,000	BBB+	Baaa1
\$12,500,000	BBB	Baa2
\$5,000,000	BBB-	Baa3
\$0	Below BBB- or rating suspended or withdrawn _____	Below Baa3 or rating suspended or withdrawn

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

B. Party B Collateral Threshold.

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

Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party B Collateral Threshold	Credit Rating
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

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

Party B Collateral Threshold	S&P Credit Rating	Moody’s Credit Rating
\$25,000,000	A- (or above)	A3 (or above)
\$20,000,000	BBB+	Baa1
\$12,500,000	BBB	Baa2
\$5,000,000	BBB-	Baa3
\$0	Below BBB- or rating suspended or withdrawn	Below Baa3 or rating suspended or withdrawn

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

II. Eligible Collateral and Valuation Percentage.

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

		Party A	Party B	Valuation Percentage
(A)	Cash	[X]	[X]	100%
(B)	Letters of Credit	[X]	[X]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) thirty (30) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall

be zero (0).

(C) Other _____%

III. Independent Amount.

A. Party A Independent Amount.

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

B. Party B Independent Amount.

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

calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

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

IV. Minimum Transfer Amount.

- A. **Party A Minimum Transfer Amount:** \$1,000,000
- B. **Party B Minimum Transfer Amount:** \$1,000,000

V. Rounding Amount.

- A. **Party A Rounding Amount:** \$100,000
- B. **Party B Rounding Amount:** \$100,000

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

- Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), Party A has a Credit Rating from Moody's and/or Standard & Poor's and the lowest Credit Rating for Party A is Baa3/BBB- or higher from Moody's and/or Standard & Poor's respectively; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

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

B. Party B Eligibility to Hold Cash.

- Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.

- Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), Party B's Guarantor has a Credit Rating from Moody's and/or Standard & Poor's and the lowest Credit Rating for Party B's Guarantor is Baa3/BBB- or higher from Moody's and/or Standard & Poor's respectively; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

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

- Other - _____

VII. Notification Time.

- Other – “Notification Time” means by 1:00 p.m., New York time, on a Local Business Day

VIII. General.

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

Appendix

PacifiCorp Forms of Documentation Accompanying Use of WSPP Agreement

SHORT-FORM NETTING AGREEMENT

This SHORT-FORM NETTING AGREEMENT (this "Agreement") is entered into by and between PACIFICORP, an Oregon corporation ("PacifiCorp"), and _____ ("Counterparty") (each a "Party"; collectively the "Parties") this __ day of ____, 200_, with reference to the following:

WHEREAS, PacifiCorp and Counterparty are parties to the contracts and agreements set forth on Exhibit A hereto (collectively with any future agreement for the purchase or sale of energy or fuel not explicitly excluded herefrom, the "Netted Agreements"); and

WHEREAS, the Parties wish to improve trading liquidity and reduce transactional risk by making available the legal benefits of netting, set-off and recoupment;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

[DELETE IF NOT APPLICABLE

1. Simplification. This Agreement shall terminate and replace in its entirety that certain Mutual Netting/Settlement Agreement dated _____.]

2. WSPP Netting. If Counterparty is or becomes a member of the Western Systems Power Pool Agreement, as amended (the "WSPP"), shall be considered a Netted Agreement, and all outstanding payment obligations between the parties arising under any one or more of the WSPP, WSPP Confirmation Agreements, WSPP Service Schedules A, B, or C, or Service Agreements entered into in connection therewith shall form a single integrated agreement between the Parties, a Netted Agreement, and be subject to set-off and recoupment. Nothing herein shall require either Party to execute Exhibit A to the WSPP; nor shall either Party's obligations with respect to payments to or from other members of the WSPP be affected by entering hereinto.

3. Payment Netting. If payments are due from each Party to each other on the same day, then the amounts owing shall be offset so that only the net amount owing on that day shall be paid by the Party owing the larger amount. The Parties may from time to time, by mutual agreement, put in place between them procedures for the netting of payments due within a month; provided that any such procedures in place between the Parties on the date hereof shall continue in effect until terminated by either Party.

4. Netting and Set-Off. Upon an event of default or termination event under a Netted Agreement, in addition to and not in limitation of any other right or remedy under contract or applicable law (including any right to set-off, counterclaim, or otherwise withhold payment), the non-defaulting Party may at its option set-off, against any amounts owed to the defaulting Party,

any amounts owed by the defaulting Party under any contract or agreement between the Parties or owed by the defaulting Party to any subsidiaries or affiliates to the non-defaulting Party, howsoever arising. The obligations of the Parties shall be deemed satisfied and discharged to the extent of any such set-off. The non-defaulting Party shall give the defaulting Party written notice of any set-off, but failure to give such notice shall not affect the validity of the set-off.

5. Full Payment. Notwithstanding anything to the contrary anywhere, the non-defaulting Party under any Netted Agreement need not pay the defaulting Party under any Netted Agreement any amount, including without limitation any early termination payment or close-out amount, until all obligations of any kind whatsoever of the defaulting Party to the non-defaulting Party or any of its subsidiaries and affiliates, howsoever arising, due or to become due, have been fully and finally paid or, if not yet due, fully secured.

6. FDICIA Representation. PacifiCorp and Counterparty each independently have total gross mark to market positions aggregated across all trading counterparties of at least \$100 million, and are each hence a "financial institution" as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), 12 U.S.C. §4402(9) and 12 C.F.R. §231.1. Each Party intends that this Agreement constitute a "netting contract," and each payment entitlement and payment obligation under Netted Agreements constitute a "covered contractual payment entitlement" and "covered contractual payment obligation," respectively, all as defined in and subject to FDICIA.

7. Mobile-Sierra Waiver. The rates for service specified in any Netted Agreement shall remain in effect until expiration of the term thereof, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes to this Agreement or any Netted Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest application of the just and reasonable standard of review, the Parties hereby incorporate such language herein by reference.

8. Without Prejudice. This Agreement shall be without prejudice and in addition to any right of set-off, recoupment, combination of accounts, lien or other right which either Party has at any time, by operation of law, contract or otherwise. Each Party reserves to itself all rights, set-offs, counterclaims, and other remedies and defenses arising out of a Netted Agreement or otherwise. Nothing herein shall abrogate the rights of the parties pursuant to Section 2609 of the

Uniform Commercial Code to demand adequate assurances of future performance.

9. Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY NETTED AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY PROCEEDING REGARDING THIS AGREEMENT OR ANY NETTED AGREEMENT WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

PACIFICORP _____

By _____
Name _____
Its _____

By _____
Name _____
Its _____

EXHIBIT A
NETTED AGREEMENTS

[list agreements to be netted]

COVER SHEET ELECTIONS
applicable to the
COLLATERAL ANNEX
to the
WESTERN SYSTEMS POWER POOL AGREEMENT

This Cover Sheet Elections applicable to the Collateral Annex to the Western Systems Power Pool Agreement (“Cover Sheet Elections”) between the Parties is between: PacifiCorp, an Oregon corporation (“Party A”) and _____ (“Party B”) and is dated _____.

This Cover Sheet Elections sets forth the Parties’ agreements to supplement the Collateral Annex and, as the Parties may determine, vary the terms and conditions of the Collateral Annex. To the extent there are any inconsistencies between the terms and conditions of the Collateral Annex, excluding the Cover Sheet Elections, and these Cover Sheet Elections, the Cover Sheet Elections shall prevail.

Terms that are capitalized for reasons other than grammatical reasons shall have the meanings assigned to them in Section 1 of the Collateral Annex.

The Collateral Threshold, Interest Rate, Minimum Transfer Amount and Rounding Amount, shall each be zero (0) unless a different amount is stated below.

I. Collateral Threshold.

Explanatory note: The Beneficiary Party’s exposure due to the other Party’s failure to perform a WSPP Agreement transaction is the sum of (a) the Termination Payment under WSPP Agreement 22, (b) damages under WSPP Agreement § 21.3, and (c) any further and additional amounts due for rendered performance by the Beneficiary Party to the Posting Party, whether or not invoiced. The Collateral Threshold is the portion, if any, of this exposure that the Parties agree in this Cover Sheet Elections will not be secured with Performance Assurance.

A. Party A Collateral Threshold.

Name of Party A Guarantor, if applicable: N/A (“Party A Guarantor”)

If a Guarantor is identified, then all references to Party A shall include Party A Guarantor unless otherwise indicated and Party A shall be deemed to have the Credit Rating of Party A Guarantor.

- The Collateral Threshold for Party A shall be \$_____; provided, however, that the Collateral Threshold shall be zero in the event of a Material Adverse Change as defined in Part II hereof with respect to Party A.
- The Collateral Threshold for Party A shall be (a) the amount set forth in the chart below under the heading “Collateral Threshold” opposite the Credit Rating for Party A on the relevant date of determination, and if such Credit Ratings shall not be equivalent, the lower Credit Rating shall govern, or (b) zero if on the relevant date of determination none of the rating agencies specified below has a Credit Rating in effect with respect to Party A or in

the event of a Material Adverse Change as defined in Part II hereof with respect to Party A:

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

- The Collateral Threshold for Party A shall be (a) the amount set forth in the chart above under the heading "Collateral Threshold" opposite the Credit Rating for Party A on the relevant date of determination, and if such Credit Ratings shall not be equivalent, the higher two Credit Ratings shall govern, or (b) zero if on the relevant date of determination none of the rating agencies specified below has a Credit Rating in effect with respect to Party A or in the event of a Material Adverse Change with respect to Party A.
- The Collateral Threshold for Party A shall be the amount of the Guaranty Agreement dated _____ from Party A Guarantor, as amended from time to time, but in no event shall Party A's Collateral Threshold be greater than \$ _____.

B. Party B Collateral Threshold.

Name of Party B Guarantor, if applicable:
 _____ ("Party B Guarantor")

If a Guarantor is identified, then all references to Party B shall include Party B Guarantor unless otherwise indicated and Party B shall be deemed to have the Credit Rating of Party B Guarantor.

- The Collateral Threshold for Party B shall be \$ _____; provided, however, that the Collateral Threshold shall be zero in the event of a Material Adverse Change as defined in Part II hereof with respect to Party B.
- The Collateral Threshold for Party B shall be (a) the lower of (x) the amount set forth in the chart below under the heading "Collateral Threshold" opposite the Credit Rating for Party B on the relevant date of determination, and if such Credit Ratings shall not be equivalent, the lower Credit Rating shall govern, or (y) the dollar limit set forth in the guaranty provided to Party A by Party B's Guarantor in form and substance satisfactory to Party A, or (b) zero if on the relevant date of determination none of the rating agencies specified below has a Credit Rating in effect with respect to Party B or in the event of a Material Adverse Change as defined in Part II hereof with respect to Party B:

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

Party B covenants and agrees that the guaranty provided by Party B's Guarantor shall at least equal the relevant Collateral Threshold; provided that nothing herein authorizes Party B's Guarantor to reduce the amount of any guaranty provided by Party B's Guarantor to Party A.

- The Collateral Threshold for Party B shall be (a) the amount set forth in the chart above under the heading "Collateral Threshold" opposite the Credit Rating for Party B on the relevant date of determination, and if such Credit Ratings shall not be equivalent, the higher two Credit Ratings shall govern, or (b) zero if on the relevant date of determination none of the rating agencies specified below has a Credit Rating in effect with respect to Party B or in the event of a Material Adverse Change with respect to Party B.
- The Collateral Threshold for Party B shall be the amount of the Guaranty Agreement dated _____ from Party B Guarantor, as amended from time to time, but in no event shall Party B's Collateral Threshold be greater than \$ _____.

II. Material Adverse Change.

A. Party A

A Material Adverse Change shall occur with respect to Party A in the following circumstances:

- (i) Its Credit Rating falls below _____ by S&P or _____ by Moody's; or (ii) it is given an "issuer rating" by S&P below _____ or by Moody's below _____; or (iii) it has no Credit Rating by either S&P or Moody's.
- Party A's creditworthiness, financial responsibility, or performance viability has become unsatisfactory to Party B in Party B's reasonably exercised discretion with regard to a transaction between the Parties conducted under the WSPP Agreement.
- An Event of Default shall have occurred and is continuing where Party A is the Defaulting Party, or a Potential Event of Default has occurred where Party A is the potentially Defaulting Party, or an Early Termination has occurred or been designated with respect to Party A for which Party A has not satisfied its Obligations.
- Other: _____

B. Party B

A Material Adverse Change shall occur with respect to Party B in the following circumstances:

- (i) Its Credit Rating falls below ____ by S&P or ____ by Moody's; or (ii) it is given an "issuer rating" by S&P below ____ or by Moody's below ____; or (iii) it has no Credit Rating by either S&P or Moody's.
- X Party B's creditworthiness, financial responsibility, or performance viability has become unsatisfactory to Party A in Party A's reasonably exercised discretion with regard to a transaction between the Parties conducted under the WSPP Agreement.
- X An Event of Default shall have occurred and is continuing where Party B is the Defaulting Party, or a Potential Event of Default has occurred where Party B is the potentially Defaulting Party, or an Early Termination has occurred or been designated with respect to Party B for which Party B has not satisfied its Obligations.
- X Other: Any breach or default shall occur in any agreement by any of Party B [or Party B affiliate], in any agreement by either of them with Party A.

III. General Credit Assurances.

Explanatory note: If in Part II above either Party elected the second option (Material Adverse Change includes unsatisfactory creditworthiness, financial responsibility, or performance viability) (such election, a "Section 27 Inclusion"), the Parties must make the first election in this Part III. If in Part II the Parties did not elect a Section 27 Inclusion and if they do not make either election in this Part III, then the second election under this Part III shall apply by default.

X Section 27 of the WSPP Agreement applies, provided, that (a) the following phrase is added after the last word of Section 22.1(d): "or in the Collateral Annex to the Western Systems Power Pool Agreement between the Parties," (b) the following phrase is deleted: "The Second Party's obligations under this Section 27 shall be limited to a reasonable estimate of the damages to the First Party (consistent with Section 21.3 of this Agreement) if the Second Party were to fail to perform its obligations," and (c) the phrase "within three (3) Business Days of demand therefore" is revised to state "within one (1) Business Day after receipt of demand therefor."

Section 27 of the WSPP Agreement does not apply; Sections 27 and Section 22.1(d) of the WSPP Agreement are inapplicable to WSPP Agreement transactions between the Parties.

IV. Minimum Transfer Amount.

A. Party A Minimum Transfer Amount: \$100,000

B. Party B Minimum Transfer Amount: \$100,000

V. Rounding Amount.

A. Party A Rounding Amount: \$100,000

B. Party B Rounding Amount: \$100,000

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Performance Assurance in form of Cash; Interest Rate.

Note: if neither of the two options immediately below is selected, then Option A shall apply.

Option A: Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held solely by a Custodial Bank in accordance with Section 6(b) of the Collateral Annex.

Option B: Party A shall be entitled to hold Performance Assurance in the form of Cash under Section 6(a)(i), (ii) and (iii) of the Collateral Annex, provided, that no Downgrade Event has occurred with respect to Party A. **If Option B is elected, the Parties must complete the following election:**

Right of Party B to Rescind Option B:

Party B shall be entitled to rescind Option B unilaterally, in its sole discretion, such that upon rescission (in accordance with Section 6(a)(iv) of the Collateral Annex) Party A shall not be entitled to hold Performance Assurance in the form of Cash and Section 6(a)(iv) of the Collateral Annex shall become applicable.

Party B shall not be entitled to rescind Option B unilaterally, in its sole discretion, provided, Party A shall lose its entitlement to hold Performance Assurance in the form of Cash upon the occurrence of any other Downgrade Event under Section 6(a)(iv) of the Collateral Annex.

To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as elected below:

Party A Interest Rate.

Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System. *(If neither Interest Rate box is checked, or the "Other" box is not completed, the Federal Funds Rate specified herein shall apply.)*

Other - _____

B. Party B Eligibility to Hold Performance Assurance in form of Cash; Interest Rate.

Note: if neither of the two options immediately below is selected, then Option A shall apply.

- Option A:** Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held solely by a Custodial Bank in accordance with Section 6(b) of the Collateral Annex.
- Option B:** Party B shall be entitled to hold Performance Assurance in the form of Cash under Section 6(a)(i), (ii) and (iii) of the Collateral Annex, provided, that no Downgrade Event has occurred with respect to Party B. **If Option B is elected, the Parties must complete the following election:**

Right of Party A to Rescind Option B:

- Party A shall be entitled to rescind Option B unilaterally, in its sole discretion, such that upon rescission (in accordance with Section 6(a)(iv) of the Collateral Annex) Party B shall not be entitled to hold Performance Assurance in the form of Cash and Section 6(a)(iv) of the Collateral Annex shall become applicable.
- Party A shall not be entitled to rescind Option B unilaterally, in its sole discretion, provided, Party B shall lose its entitlement to hold Performance Assurance in the form of Cash upon the occurrence of any other Downgrade Event under Section 6(a)(iv) of the Collateral Annex.

To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as elected below:

Party B Interest Rate.

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System. *(If neither Interest Rate box is checked, or the "Other" box is not completed, the Federal Funds Rate specified herein shall apply.)*
- Other - _____

C. Posting Deadline for Collateral Requirement

The Posting Party shall be required to provide Performance Assurance to cover an outstanding Collateral Requirement under Section 4 of the Collateral Annex no later than 1:00 pm New York time of the first [state number] Business Day after receipt of a Demand Notice (the "Posting Deadline"), provided, that if the Posting Deadline is the same day as the Demand Notice is sent/received, then the Demand Notice must be received no later than 1 p.m. New York time on that day, and if the Demand Notice is sent/received after such time, then the Posting Deadline shall be 24 hours later.

D. Reduction Deadline for Transfer of Excess Performance Assurance

The Beneficiary Party shall be required to transfer Excess Performance Assurance to the Posting Party under Section 5 of the Collateral Annex no later than 1:00 pm

New York time of the first [state number] Business Day after receipt of a demand therefor (the "Reduction Deadline"), provided, that if the Reduction Deadline is the same day as the demand for return of Excess Performance Assurance is sent/received, then the demand must be received no later than 1 p.m. New York time on that day, and if the demand is sent/received after such time, then the Reduction Deadline shall be 24 hours later.

VII. Letters of Credit

A. Definition of LC Issuer:

If the Parties agree that a specific entity shall be an LC Issuer even if may not satisfy the credit rating specified in the definition of LC Issuer set forth in the Collateral Annex, identify such entity here:

If the Parties agree to a different definition of LC Issuer than the definition specified in the Collateral Annex, state such definition here:

B. Definition of Letter of Credit

"Letter of Credit" means an irrevocable, non-transferable, standby letter of credit, issued by a Qualified Institution, or other issuer to which the Parties may agree in writing, in a form consistent with the Parties' agreements stated below and otherwise reasonably acceptable to the Beneficiary Party. Each Letter of Credit shall contain the following terms and conditions:

"Letter of Credit" has the following meaning:

Regardless of the Parties' election in this Part VII.B above, the Parties may specify here additional terms and conditions that a Letter of Credit shall contain:

Each Letter of Credit must provide that beneficiary may draw down the full amount thereof if less than thirty days remain before its expiration.

VIII. Notice and other Communications Under Section 10(h) of Collateral Annex

Each demand, notice, consent, agreement, approval or other communication required or permitted to be given from one Party to the other Party under the Collateral Annex shall be submitted to the recipient Party at the following address or fax number:

Party A:

PacifiCorp

825 N.E. Multnomah, Suite 700

Portland, OR 97232-2315

Attention: **Credit Department**

Facsimile No: **503-813-5609**

Telephone No: **503-813-5684**

with copies of any notices of Event of Default of Material Adverse Change to:

**PacifiCorp
Office of the General Counsel
825 N.E. Multnomah, Suite 600
Portland, OR 97232-2315**

Attention: **Jeffrey Erb, Esq. and Jeremy Weinstein, Esq.**
Facsimile No: **503-813-6260 and 925-943-3105**
Telephone No: **503-813-5000 and 925-943-3103**

Party B:

Attention: _____
Street: _____
City, State, Zip Code: _____
Fax No.: _____

Execution of Cover Sheet Elections:

Party A

Party B

PacifiCorp
Name of Party:

Name of Party

[Sign here]

[Sign here]

[Print name]

[Print name]

Title

Title

Date: _____

Date: _____

**COLLATERAL ANNEX
to the
WESTERN SYSTEMS POWER POOL AGREEMENT**

This Collateral Annex to the Western Systems Power Pool Agreement together with the Cover Sheet Elections (collectively, the “Collateral Annex”), between _____ (“Party A”)

and _____ (“Party B”)

(each a “Party” and, collectively, the “Parties”), is applicable to all transactions between the Parties conducted under the Western Systems Power Pool Agreement, including any amendments and annexes thereto agreed between the Parties (collectively, the “WSPP Agreement”).

The Obligations of each Party to the other Party under the WSPP Agreement shall be secured in accordance with the provisions of this Collateral Annex, which sets forth the conditions under which a Party will be required to deliver Performance Assurance and the conditions under which a Party will be required to release and return Performance Assurance. To the extent there are any inconsistencies between the terms and conditions of the WSPP Agreement and this Collateral Annex, this Collateral Annex shall prevail. To the extent there are any inconsistencies between the terms and conditions of this Collateral Annex, excluding the Cover Sheet Elections, and the Cover Sheet Elections, the Cover Sheet Elections shall prevail.

1. Definitions.

For purposes of this Collateral Annex, the following terms have the meanings set forth below or in the provisions referred to below:

“Beneficiary Party” means, at any time, the Party entitled to receive, or that has received and is the beneficiary of, Performance Assurance provided by, or on behalf of, the Posting Party.

“Business Day(s)” has the meaning stated in section 4.1b of the WSPP Agreement.

“Cash” means U.S. dollars held by, or on behalf of, a Party as Performance Assurance and which shall be, for purposes of obtaining and perfecting a security interest hereunder, treated as “money” as defined in the UCC.

“Custodial Bank” means a Qualified Institution that has executed a Deposit Account Agreement.

“Collateral Annex” has the meaning stated in the introductory paragraph of this Collateral Annex.

“Collateral Threshold” means, with respect to a Party, the collateral threshold, if any, set forth in Part I of the Cover Sheet Elections for that Party, or if no amount is set forth for such Party, such amount shall be zero (0).

“Credit Rating” means, with respect to an entity other than a Qualified Institution, but including, as applicable, a Party or its Guarantor, as the case may be, on any date of

determination: (a) the rating then assigned to such entity's (i) unsecured debt (such debt not supported by third-party credit enhancement) or (ii) if such rating in clause (i) is unavailable, its corporate credit rating, in each case as issued by Standard & Poor's ("S&P"), Moody's Investors Service ("Moody's"), or Fitch, Inc. ("Fitch") or other rating agency or agencies to which the Parties may agree in writing, or (b) other such rating to which the Parties may agree in writing, and as further defined or described by the Parties in the Cover Sheet Elections. With respect to a Qualified Institution, "Credit Rating" refers to the ratings issued to the applicable commercial bank or trust company by S&P or Moody's. "S&P," "Moody's" and "Fitch" each includes its successors.

"Collateral Requirement" has the meaning stated in Section 4(c) of this Collateral Annex.

"Dealer" has the meaning stated in Section 4.2a of the WSPP Agreement except that no Party or any parent, subsidiary, or other affiliate of a Party shall be a Dealer for purposes of this Collateral Annex.

"Demand Notice" has the meaning given in Section 4(a) hereof.

"Deposit Account" means a demand, time, savings, passbook or similar account maintained with a Qualified Institution and subject to a Deposit Account Agreement, which Deposit Account shall, for purposes of obtaining and perfecting a security interest hereunder, be a "deposit account" as defined in UCC § 9-102.

"Deposit Account Agreement" is an agreement, executed by the Parties and a Custodial Bank with which the Deposit Account is or will be maintained under this Agreement, that provides the Beneficiary Party with control of the Deposit Account within the meaning of UCC § 9-104.

"Defaulting Party" has the meaning stated in Section 22.1 of the WSPP Agreement.

"Downgrade Event" has the meaning stated in Section 6(a)(iv) of this Collateral Annex.

"Downgraded Party" has the meaning stated in Section 6(a)(iv) of this Collateral Annex.

"Early Termination" means a termination of one or more transactions in accordance with Section 22.2 of the WSPP Agreement due to an Event of Default.

"Eligible Beneficiary Party" has the meaning stated in Section 6(a)(i) of this Collateral Annex.

"Event of Default" has the meaning stated in Section 22.1 of the WSPP Agreement as modified by Section 3 of this Collateral Annex.

"Guarantor" has the meaning stated in Section 4.7b of the WSPP Agreement and is the entity, if any, identified in Part I of the Cover Sheet Elections.

"Interest Rate" has the meaning stated in Part VI of the Cover Sheet Elections.

"LC Issuer" means (a) an entity having a capital surplus of at least one billion United States dollars (\$1,000,000,000.00) and having a Credit Rating of at least (i) "A-" by S&P and "A3" by Moody's, if such entity is rated by S&P and Moody's, or (ii) "A-" by S&P or "A3" by

Moody's, if such entity is rated by either S&P or Moody's, but not both, or (b) any other entity to which the Parties agree in the Cover Sheet Elections or otherwise in writing, provided, that the Parties may agree to another definition of LC Issuer in Part VII of the Cover Sheet Elections or otherwise in writing, which other definition shall supercede the foregoing.

"Letter of Credit" means an irrevocable, non-transferable, standby letter of credit, issued by a LC Issuer in a form consistent with the Parties' agreements stated in Part VII of the Cover Sheet Elections and which letter of credit is otherwise reasonably acceptable to the Beneficiary Party.

"Letter of Credit Default" means with respect to an outstanding Letter of Credit and prior to the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex, the occurrence of any of the following events: (a) the issuer of the Letter of Credit has failed to satisfy the criteria of a LC Issuer under this Collateral Annex, the Cover Sheet Elections, or other agreements of the Parties, as applicable; (b) the LC Issuer has failed to comply with or perform its obligations under such Letter of Credit, including, but not limited to a failure to comply with a request to draw thereon in accordance with its terms; (c) the LC Issuer has disaffirmed, disclaimed, repudiated or rejected, in whole or in part, or challenged the validity of, such Letter of Credit; (d) such Letter of Credit has expired or terminated, or has failed or ceased to be in full force and effect at any time during the term of any transaction under the WSPP Agreement for which Performance Assurance is required to be kept in full force and effect hereunder, in any such case without replacement within three (3) Business Days following the date such Letter of Credit expired, terminated or failed or ceased to be in full force and effect; (e) the LC Issuer has initiated or become subject to, or any other party has initiated against LC Issuer (i) a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding under federal or state law, (ii) a similar proceeding for relief under any federal or state bankruptcy or insolvency law affecting creditor's rights, or (iii) a proceeding to liquidate or wind-up the business or affairs of the LC Issuer; (f) the LC Issuer makes an assignment for the benefit of creditors; or (g) the LC Issuer admits in writing its inability to pay its debts generally as they become due.

"Material Adverse Change" has the meaning stated, for the applicable Party, in Part II of the Cover Sheet Elections.

"Minimum Transfer Amount" means, with respect to a Party, the amount set forth in Part IV of the Cover Sheet Elections for such Party, or if no amount is filled in for such Party, such amount shall be zero (0).

"Non-Performing Party" has the meaning stated in Section 21.3 of the WSPP Agreement.

"Obligations" means, with respect to a Posting Party (a) all debts, liabilities and amounts due or that may become due from the Posting Party to the Beneficiary Party pursuant to (i) the WSPP Agreement, (ii) all outstanding Confirmation Agreements between the Parties under the WSPP Agreement, (iii) this Collateral Annex, (iv) any Security Agreement and (v) any other documents, instruments or agreements executed in connection therewith; and (b) all amounts owed under any modifications, renewals or extensions of the foregoing.

"Party" and "Parties" have the respective meanings stated in the introductory paragraph of this Collateral Annex.

“Performance Assurance” means collateral in the form of (i) Cash (whether posted directly with a Beneficiary Party or the Custodial Bank in a Deposit Account, (ii) a Letter of Credit, or (iii) other security in form and subject to terms and conditions that are acceptable to the Beneficiary Party in its sole and absolute discretion. Interest payments on Cash held by a Beneficiary Party will constitute Performance Assurance in the form of Cash. Interest payments on Cash deposited into or otherwise held in a Deposit Account with a Custodial Bank will constitute a part of the Deposit Account held as Performance Assurance. For all purposes hereunder, Performance Assurance in the form of Cash is a margin payment within the meaning of the Bankruptcy Code, 11 U.S.C. § 101 et seq., including but not limited to sections 101(38), 362(b)(6), 546(e), 548(d), and 556 thereof.

“Posting Deadline” has the meaning given in Part VI of the Cover Sheet Elections.

“Posting Party” means, at any time, the Party required to post, or that has posted, Performance Assurance to, or for the benefit of, the Beneficiary Party.

“Potential Event of Default” means an event which, (a) with the giving of notice required under Section 22.1 of the WSPP Agreement, if any is required, and (b) the failure to remedy or cure under Section 22.1 of the WSPP Agreement, if remedy or cure is permitted, or both (a) and (b), would be an Event of Default.

“Qualified Institution” means (a) a commercial bank or trust company organized under the laws of the United States or Canada or a political subdivision thereof having a capital surplus of at least one billion United States dollars (\$1,000,000,000.00) and having a Credit Rating of at least (i) “A-” by S&P and “A3” by Moody’s, if such entity is rated by S&P and Moody’s or (ii) “A-” by S&P or “A3” by Moody’s, if such entity is rated by either S&P or Moody’s, but not both, or (b) any other commercial bank or trust company, or other entity, to which the Parties agree in writing.

“Reduction Deadline” has the meaning given in Part VI of the Cover Sheet Elections.

“Replacement Letter of Credit” has the meaning given in Section 6(c) hereof.

“Replacement Performance Assurance” has the meaning given in Section 6(c) hereof.

“Rounding Amount” means, with respect to a Party, the amount, set forth in the Cover Sheet Elections for such Party, or if no amount is filled in for such Party, such amount shall be zero (0).

“Security Agreement” means a Security Agreement, which may be in the form attached hereto, applicable to Performance Assurance in a form other than Cash or a Letter of Credit.

“Termination Date” means the date on which the Beneficiary Party shall have received full and final payment of all of the Obligations.

“Termination Payment” means, for purposes of this Collateral Annex, the Termination Payment calculated under Section 22.3 of the WSPP Agreement.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of Utah, without regard to the conflicts of laws rules thereof, except to the extent that the perfection, the effect of perfection or nonperfection and the priority of the security interest

granted hereunder, or remedies hereunder, are governed by the law of any jurisdiction other than the State of Utah, the term UCC shall mean the Uniform Commercial Code of such other jurisdiction as necessary to give complete effect to this Collateral Annex.

“WSPP Agreement” has the meaning stated in the introductory paragraph of this Collateral Annex.

2. Encumbrance; Grant of Security Interest.

- (a) As security for the prompt and complete payment and performance when due of a Party's Obligations now existing or hereafter arising, each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party, a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be transferred to, or received by, the other Party or a Custodial Bank, for the benefit of such other Party, and all interest and other proceeds from time to time received or receivable in respect of, or in exchange for, any or all of the foregoing. Each Party agrees to take such action as the other Party reasonably requests in order to create and perfect the other Party's continuing security interest in, lien on, and right of setoff against, such Performance Assurance.
- (b) The security interest created hereunder shall (i) remain in full force and effect until the security interest granted hereby is terminated in accordance with the second sentence of this Section 2(b), (ii) be binding upon the Posting Party, its successors and assigns and (iii) inure to the benefit of the Beneficiary Party and its successors, transferees and assigns. On the Termination Date, the security interest granted hereunder shall terminate and all rights to the Performance Assurance shall revert to the Posting Party. Upon such termination, the Beneficiary Party shall return all Performance Assurance in its possession or otherwise under its control to the Posting Party pursuant to Section 5(b) of this Collateral Annex and, at the Posting Party's expense, execute and deliver to the Posting Party such documents as the Posting Party shall reasonably request to evidence termination of the security interest.
- (c) The security interest created hereunder is in addition to, and not in lieu of, any and all remedies that may be available under the WSPP Agreement.
- (d) In the event a Party claims in any judicial proceeding that the grant set forth in Section 2(a) of this Collateral Annex is ineffective and fails to prevail on the claim, then that Party shall pay the other Party's reasonable attorneys fees incurred in defending against the claim.

3. Additional Events of Default.

The following event is added as an additional Event of Default under Section 22.1 of the WSPP Agreement and is incorporated therein for all purposes under this Collateral Annex:

(f) A Party fails to establish, maintain, transfer or extend Performance Assurance, or return Excess Performance Assurance, in any such case when required pursuant to the Parties' Collateral Annex

4. Collateral Requirement.

- (a) From time to time, on any Business Day prior to 1 p.m. New York time (but no more than once daily), the Beneficiary Party may demand by notice (each a "Demand Notice") that the Posting Party transfer Performance Assurance to or for the benefit of the Beneficiary Party, in an amount no less than the Collateral Requirement, provided that both conditions (i) and (ii) of this Section 4(a) are satisfied.
- (i) No Event of Default has occurred and is continuing where the Beneficiary Party is the Defaulting Party and no Potential Event of Default exists where the Beneficiary Party is the potentially Defaulting Party;
- (ii) No Early Termination has occurred or been designated with respect to such Beneficiary Party.
- (b) After receiving a Demand Notice from the Beneficiary Party pursuant to Section 4(a) of this Collateral Annex, the Posting Party shall, by the Posting Deadline, transfer, or cause to be transferred to the Beneficiary Party or a Custodial Bank, as the case may be, Performance Assurance to, or for the benefit of, the Beneficiary Party, in an amount no less than the Collateral Requirement as defined in Section 4(c) of this Collateral Annex, provided, however, that a Posting Party shall not have an obligation to transfer Performance Assurance until the Collateral Requirement exceeds the Minimum Transfer Amount, at which time the Posting Party shall transfer the entire amount of the Collateral Requirement to the Beneficiary Party, and provided further, that if under this Collateral Annex each Party has an obligation to maintain Performance Assurance with respect to the other Party, the Parties' obligations to transfer Performance Assurance hereunder, including obligations to return Excess Performance Assurance under Section 5 of this Collateral Annex, at any time shall be determined on a net basis, and the Party with a net positive transfer obligation shall transfer Performance Assurance under this Section 4 in such amount.
- (c) The "Collateral Requirement" is the amount calculated, as of the date of the Demand Notice, rounded up to the nearest integral multiple of the Rounding Amount, which is equal to (x) less (y), but no less than zero, where:

(x) is

the Termination Payment, if any, that would be owed to the Beneficiary Party if the Posting Party were the Defaulting Party under Section 22.1 of the WSPP Agreement, plus

the damages, if any, solely under Section 21.3 of the WSPP Agreement that would be owed to the Beneficiary Party if the Posting Party were the Non-Performing Party, plus

any further and additional amounts due for rendered performance by the Beneficiary Party to the Posting Party under any WSP Agreement transactions, whether or not invoiced or due, and

(y) is

the amount of Performance Assurance previously provided by or otherwise credited to the Posting Party for the benefit of the Beneficiary Party and not released as of the time the Beneficiary Party made the demand plus

the Collateral Threshold applicable to the Posting Party.

- (d) Any Letter of Credit shall be delivered to such address as the Beneficiary Party shall specify and any such demand made by the Beneficiary Party under this Section 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be delivered.

5. Reduction, Return, and Substitution of Performance Assurance.

- (a) Reduction of Performance Assurance. From time to time, on any Business Day prior to 1 p.m. New York time (but no more than weekly with respect to Letters of Credit and daily with respect to Cash or a Deposit Account with the Custodial Bank), a Posting Party may demand that the Beneficiary Party reduce Performance Assurance in an amount equal to the Excess Performance Assurance as defined in this Section, provided, that the Posting Party shall not have any right to demand such reduction if on or prior to such Business Day, an Event of Default has occurred and is continuing where the Posting Party is the Defaulting Party, a Potential Event of Default exists where the Posting Party is the potentially Defaulting Party, or an Early Termination has occurred or been designated with respect to such Posting Party for which the Posting Party has not satisfied its Obligations. The Beneficiary Party shall comply with the demand by transferring, or causing the transfer of, Cash to the Posting Party or reducing the amount(s) of outstanding Letter(s) of Credit the Posting Party previously posted, provided, however, that a Beneficiary Party shall not have an obligation to transfer or cause the transfer of Excess Performance Assurance until the Excess Performance Assurance exceeds the Minimum Transfer Amount, at which time the Posting Party shall transfer the entire amount of the Excess Performance Assurance to the Posting Party. The Posting Party shall have the right to specify such means of compliance, provided, that it may specify Cash only to the extent that Excess Performance Assurance is in the form of Cash held by the Beneficiary Party or a Custodial Bank. If Excess Performance Assurance is returned by reducing the face amount of an outstanding Letter of Credit and the LC Issuer requires that the reduction be implemented through a cancellation of the existing Letter of Credit and the issuance of a new Letter of Credit with a reduced face amount, then (1) the Posting Party shall have delivered a new Letter of Credit to the Beneficiary Party in a form reasonably acceptable to the Beneficiary Party and in an amount that, when combined with the remaining amount of the then-current Performance Assurance, is not less than the then-current Collateral Requirement, and (2) in the event that an Event of Default occurs, as to which the Posting Party is the defaulting Party, between the

Reduction Deadline and the date on which the new Letter of Credit is executed and delivered to the Beneficiary Party, the Beneficiary Party shall be entitled to draw from the existing Letter of Credit only an amount up to but not exceeding the then-current Collateral Requirement. The cost and expense of compliance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Beneficiary Party and, if applicable, the LC Issuer or Custodial Bank) shall be the sole obligation of, and paid directly by, the Posting Party. If the Beneficiary Party pays any such cost or expense, the Posting Party shall reimburse the Beneficiary Party for each such cost and expense promptly following a demand for reimbursement. The Beneficiary Party shall comply with the demand on or before the Reduction Deadline. Any such demand made by the Posting Party under this Section 5(a) shall specify account information for the account to which Excess Performance Assurance in the form of Cash shall be delivered.

"Excess Performance Assurance" is an amount, calculated as of the date of the demand and rounded down to the nearest integral multiple of the Rounding Amount, which is equal to (x) less (y), but no less than zero, where:

(x) is

the amount of Performance Assurance previously provided by or credited to the Posting Party for the benefit of the Beneficiary Party and not released as of the time the Posting Party made the demand, plus

the Collateral Threshold applicable to the Posting Party.

(y) is

the Termination Payment, if any, that would be owed to the Beneficiary Party if the Posting Party were the Defaulting Party under Section 22.1 of the WSPP Agreement, plus

the damages, if any, solely under Section 21.3 of the WSPP Agreement that would be owed to the Beneficiary Party if the Posting Party were the Non-Performing Party, plus

any further and additional amounts due for rendered performance by the Beneficiary Party to the Posting Party under any WSPP Agreement transactions, whether or not invoiced or due.

The foregoing notwithstanding, if under this Collateral Annex each Party has an obligation to maintain Performance Assurance with respect to the other Party, the Parties' obligations to transfer Performance Assurance hereunder, including obligations to post Performance Assurance under Section 4 of this Collateral Annex, at any time shall be determined on a net basis, and the Party with a net positive transfer obligation shall transfer Performance Assurance under this Section 5(a) in such amount.

- (b) Return of All Performance Assurance. No later than one (1) Business Day after the last to occur of (i) the Termination Date, and (ii) (A) completion of all outstanding transactions between the Parties under the WSPP Agreement or (B) if all such outstanding transactions have not been completed, then payment by the Posting Party of all amounts due to the Beneficiary Party under Sections 21 and 22 of the WSPP Agreement with respect to uncompleted transactions, the Beneficiary Party shall return all outstanding Performance Assurance to the Posting Party less any amounts applied to the satisfaction of any of the Posting Party's Obligations.
- (c) Substitution of Performance Assurance. Unless (i) an Event of Default has occurred and is continuing where the Posting Party is the Defaulting Party, (ii) a Potential Event of Default exists where the Posting Party is the potentially Defaulting Party, or (iii) an Early Termination has occurred or been designated with respect to the Posting Party pursuant to which the Posting Party has not satisfied all Obligations, the Posting Party may substitute Performance Assurance for existing Performance Assurance of equal value. The Posting Party must give notice of the substitution to the Beneficiary Party two (2) Business Days before the substitution is intended to occur no later than 5 p.m. New York time. The notice must specify whether the substitute Performance Assurance is Cash or a Letter of Credit and if the latter it shall include a draft thereof. If the substitute Performance Assurance is Cash or a Letter of Credit (in form consistent with this Collateral Annex), then the Posting Party may effect the substitution no earlier than two, and no later than five (5), Business Days after giving such notice. If the substitute Performance Assurance is not Cash or a Letter of Credit (in form consistent with this Collateral Annex), the substitution shall not be made unless the Beneficiary Party consents in writing thereto. No later than one Business Day after the Beneficiary Party receives substitute Performance Assurance in accordance with this Section, the Beneficiary Party shall transfer the Performance Assurance that has been replaced to the Posting Party. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless after giving effect to such substitution, the value of such substitute Performance Assurance shall equal the greater of the Posting Party's Collateral Requirement or the Posting Party's Minimum Transfer Amount. The substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Collateral Annex.

6. Administration of Performance Assurance.

(a) Cash held by Beneficiary Party.

(i) Conditions Under Which A Beneficiary Party Is Entitled To Hold Cash. A Beneficiary Party shall be an "Eligible Beneficiary Party" entitled to hold Performance Assurance in the form of Cash if, and for only so long as, all of the following conditions (w), (x), (y) and (z) are satisfied:

- (w) The Parties have agreed in the Cover Sheet Elections or otherwise in writing that the Beneficiary Party may hold Performance Assurance in the form of Cash.
- (x) If the Cover Sheet Elections permit the Posting Party unilaterally to

rescind the Parties' agreement that the Beneficiary Party shall be entitled to hold Performance Assurance in the form of Cash, the Posting Party has not rescinded such agreement.

- (y) A Material Adverse Change with respect to the Beneficiary Party has not occurred.
- (z) The Beneficiary Party, the Posting Party, and a Custodial Bank have executed a Deposit Account Agreement, provided, that the Beneficiary Party is not required to place any Performance Assurance in the form of Cash in the Custodial Bank under such agreement except in the event of a cessation of Eligible Beneficiary Party status under Section 6(a)(iv) of this Collateral Annex.

(ii) Eligible Beneficiary Party's Use Of Cash. An Eligible Beneficiary Party shall be entitled to hold Performance Assurance in the form of Cash in any accounts it holds in the United States, and, notwithstanding anything to the contrary in UCC § 9-207, an Eligible Beneficiary Party shall also have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Posting Party except for the Posting Party's rights under (A) Section 5(a), (b), and (c) of this Collateral Annex (reduction, return or substitution of Performance Assurance), (B) Section 6(a)(iv) (cessation of Eligible Beneficiary Party status), and (C) Section 8 of this Collateral Annex (Event of Default or Early Termination).

(iii) Appointment of Agent. The Eligible Beneficiary Party may, but is not required, to appoint an agent to hold Performance Assurance in the form of Cash on its behalf and to receive additional Performance Assurance. In the event an Eligible Beneficiary Party makes such an appointment, it must give notice to the Posting Party including the identity and address of the agent, no later than one (1) Business Day after the deposit. Upon the receipt of such notice, the Posting Party's obligations to make any transfer will be discharged by making the transfer to the agent. The Eligible Beneficiary Party may use Cash held by an agent in accordance with Section 6(a)(ii) of this Collateral Annex, subject to the Posting Party's rights referred to therein.

(iv) Cessation Of Eligible Beneficiary Party Status. The Beneficiary Party shall cease to be an Eligible Beneficiary Party immediately upon the failure of any one of conditions (w), (x), (y) or (z) of Section 6(a)(i) at any time (each a "Downgrade Event"), and thereafter such Beneficiary Party shall be considered a "Downgraded Party." Failure of (x) shall occur upon the Posting Party's giving notice to the Beneficiary Party of its rescission of the Parties' agreement that the Beneficiary Party shall be entitled to hold Performance Assurance in the form of Cash. A Downgraded Party shall transfer, or cause its agent to transfer, no later than the close of the next Business Day following the occurrence of the Downgrade Event, all Performance Assurance in the form of Cash to the Custodial Bank and all such Cash shall be maintained in a Deposit Account in accordance with Section 6(b) of this Collateral Annex and the terms and conditions of the Deposit Account Agreement. Upon the occurrence of a Downgrade Event, Section 6(a)(ii) concerning the Eligible Beneficiary Party's

rights to use Cash shall cease to apply. After the occurrence of a Downgrade Event, a Downgraded Party shall not become an Eligible Beneficiary Party except upon the written agreement of the Posting Party. Nothing in this Section 6(a) shall diminish the Posting Party's rights under Section 8 of this Collateral Annex.

(v) Interest Payments On Cash. So long as no (i) Event of Default has occurred and is continuing where the Posting Party is the Defaulting Party or (ii) no Early Termination has occurred or been designated with respect to the Posting Party pursuant to which the Posting Party has not satisfied all of its Obligations, then, the Eligible Beneficiary Party will pay to the Posting Party, in lieu of any other amounts paid, earned, or deemed to have been paid or earned, with respect to such Cash (all of which may be retained by the Eligible Beneficiary Party), interest in amounts calculated in accordance with the Interest Rate. The Posting Party shall submit an invoice to the Beneficiary Party on the first Business Day of each month for interest due for the prior month, and shall set forth such calculation therein. The Eligible Beneficiary Party shall make payment thereof of any interest due to the Posting Party by the later of the next Business Day after submittal of the invoice. The Beneficiary Party shall determine in its sole discretion whether the method of payment shall be (a) an increase in the Performance Assurance credited to the Posting Party in an amount equal to any interest due, or (b) a transfer of funds to the Posting Party equal to any interest due.

(b) Cash Held By Custodial Bank.

(i) Conditions Under Which Cash Shall Be Held By Custodial Bank. The Custodial Bank shall hold Performance Assurance in the form of Cash if either of the following conditions is satisfied:

- (x) The Parties have not agreed in the Cover Sheet Elections or otherwise in writing that the Beneficiary Party may hold Performance Assurance in the form of Cash.
- (y) A Downgrade Event has occurred such that an Eligible Beneficiary Party has become a Downgraded Party.

(ii) Use Of Cash. In the event the Custodial Bank holds Performance Assurance in the form of Cash under this Section 6(b), the Beneficiary Party shall have no right to use or receive Performance Assurance in the form of Cash held by the Custodial Bank except, if an Event of Default has occurred where the Posting Party is the Defaulting Party or an Early Termination has occurred or been designated with respect to such Posting Party for which the Posting Party has not satisfied Obligations, then the Beneficiary Party shall have a right to receive Cash in payment of the Posting Party's Obligations. The Custodial Bank shall hold and disburse Performance Assurance in the form of Cash in accordance with the terms of this Collateral Annex and for the security interest and benefit of the Beneficiary Party and, subject solely to such security interest, for the ownership of the Posting Party. Performance Assurance in the form of Cash shall be held in a Deposit Account (A) designated for the ownership of the Posting Party, (B) controlled by the Beneficiary Party in accordance with the

terms of the Deposit Account Agreement, and (C) designated for the security interest and benefit of the Beneficiary Party under this Collateral Annex and the Deposit Account Agreement.

(iii) Interest Payments On Cash. So long as no (i) Event of Default has occurred and is continuing where the Posting Party is the Defaulting Party and (ii) no Early Termination has occurred or been designated with respect to such Posting Party for which the Posting Party has not satisfied Obligations, then, the Custodial Bank, on behalf of the Beneficiary Party will pay to the Posting Party, in lieu of any other amounts paid, earned, or deemed to have been paid or earned, with respect to such Cash, interest in amounts calculated and paid in accordance with the Deposit Account Agreement or otherwise agreed by the Custodial Bank and Parties in writing. Payment shall be made by increasing the Performance Assurance credited to the Posting Party in an amount equal to any interest due, unless the Beneficiary Party instructs the Custodial Bank to make payment by transferring funds to the Posting Party in an amount equal to any interest due.

(iv) Other Conditions. All terms and conditions stated in the Deposit Account Agreement as they apply to the Parties are incorporated into this Collateral Annex.

(c) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions, provided, that nothing in this Section 6(c) is intended to modify any terms and conditions contained in any Letter of Credit that apply to draws thereon and it is recognized that the Parties may agree to additional terms and conditions not stated herein.

(i) The Posting Party shall maintain for the benefit of the Beneficiary Party any Letter of Credit provided as Performance Assurance in accordance with Section 4 of this Collateral Annex. The Posting Party shall (a) renew or cause the renewal of each outstanding Letter of Credit not less than twenty (20) Business Days prior to its expiration in accordance with the terms contained in the applicable Letter of Credit, (b) if the LC Issuer has indicated its intent not to renew such Letter of Credit, provide either (1) a Letter of Credit issued by a Qualified Institution in the same face amount and on substantially the same terms as the outstanding Letter of Credit (each, a "Replacement Letter of Credit") or (2) Performance Assurance in the form of Cash equal to the face amount of such outstanding Letter of Credit in a form acceptable to the Beneficiary Party ("Replacement Performance Assurance"), in each case at least twenty (20) Business Days prior to the expiration of the applicable Letter of Credit, and (c) if the LC Issuer shall fail to honor the Beneficiary Party's request to draw on an outstanding Letter of Credit in accordance with the terms thereof, provide for the benefit of the Beneficiary Party either (1) a Replacement Letter of Credit or (2) Replacement Performance Assurance, in each case within one (1) Business Day after such refusal, provided, that, as a result of the Posting Party's failure to perform in accordance with (a), (b), or (c) above, the Posting Party's Collateral Requirement would be greater than zero. The foregoing notwithstanding, the Beneficiary Party may reject a Replacement Letter of Credit that conforms to the requirements of this Section if in the Beneficiary Party's sole discretion acceptance of additional credit from the applicable LC Issuer would be an unacceptable credit risk due to other commitments it had accepted from such LC

Issuer, provided, that in the event of such rejection, the Beneficiary Party shall pay any costs incurred by the Posting Party in obtaining a Replacement Letter of Credit from a different LC Issuer. Rejection of a Replacement Letter of Credit under the immediately prior sentence shall not relieve a Posting Party of its obligations to maintain adequate Performance Assurance at all times under this Collateral Annex.

(ii) Upon the occurrence of a Letter of Credit Default, the Posting Party shall deliver to the Beneficiary Party either a Replacement Letter of Credit or Replacement Performance Assurance, in each case on or before the first Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies), in such amounts that on the day such Replacement Letter of Credit or Replacement Performance Assurance is provided the Collateral Requirement is zero.

(iii) Upon or at any time after the occurrence of an Event of Default that is continuing where the Posting Party is the Defaulting Party, or if an Early Termination has occurred or been designated with respect to the Posting Party pursuant to which the Posting Party has not satisfied all of its Obligations, then the Beneficiary Party may draw on the entire, undrawn portion of any outstanding Letter of Credit in accordance with its terms. Notwithstanding the Beneficiary Party's receipt of Cash under the Letter of Credit, the Posting Party shall remain liable for any failure to transfer sufficient Performance Assurance and for any Obligations owing to the Beneficiary Party and remaining unpaid after the application of the amounts so drawn by the Beneficiary Party.

(iv) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Beneficiary Party) of establishing, renewing, substituting, reissuing, canceling, and increasing the face amount of (as the case may be) a Letter of Credit shall be paid by the Posting Party, or if paid by the Beneficiary Party, promptly reimbursed by the Posting Party following the Beneficiary Party's demand for reimbursement.

- (d) Performance Assurance in Forms Other than Cash or Letters of Credit. The Parties may agree that a Party may provide Performance Assurance in forms other than Cash or Letters of Credit, and may agree to additional terms and conditions respecting such Performance Assurance.
- (e) Care of Performance Assurance. Except for duties to comply with all requirements concerning Performance Assurance stated herein, the Beneficiary Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodial Bank or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Eligible Beneficiary Party shall not be liable or responsible for any diminution in the value of Performance Assurance by reason of the act or omission of a Custodial Bank. Unless held by a Custodial Bank and except as required under Section 6(a)(iv) of this Collateral Annex, the Beneficiary Party, or its agent appointed under Section 6(a)(iii), shall at all times retain possession or control of Performance Assurance delivered to it. To the extent if any that this Section 6(e) is inconsistent with UCC § 9-207, this Section 6(e) shall control.

7. Beneficiary Party's Exercise of Rights Concerning Performance Assurance.

- (a) In the event that (x) an Event of Default has occurred and is continuing where the Posting Party is the Defaulting Party or (y) an Early Termination has occurred or been designated with respect to the Posting Party for which the Posting Party has not satisfied all of its Obligations, the Beneficiary Party may exercise any one or more of the rights and remedies provided under the WSPP Agreement, under this Collateral Annex or as otherwise may be available under applicable law. Without limiting the foregoing, if at any time (x) or (y) has occurred, then the Beneficiary Party may, in its sole discretion, declare all Obligations immediately due and payable without presentment, demand, notice, protest or other formalities of any kind (all of which are hereby expressly waived by the Posting Party) and exercise any one or more of the following rights and remedies:
- (i) All rights and remedies available to the Beneficiary Party under UCC Article 9 or the uniform commercial code of any jurisdiction in which the Performance Assurance is being held and any other applicable jurisdiction and other applicable laws with respect to the preservation of or foreclosure upon collateral.
- (ii) The right to set off any Performance Assurance held by or for the benefit of the Beneficiary Party against and in satisfaction of any amount payable by the Posting Party in respect of any of its Obligations.
- (iii) The right to draw the full undrawn face amount of each outstanding Letter of Credit issued for its benefit.
- (iv) The right to instruct the Custodial Bank to transfer all Performance Assurance held in a Deposit Account to an account of the Beneficiary Party or otherwise to or for the benefit of the Beneficiary Party.
- (v) The right to liquidate any Performance Assurance held by or for the benefit of the Beneficiary Party, free from any claim or right of any nature whatsoever of the Posting Party, and to apply the proceeds received following the exercise of the rights and remedies set forth above as follows (A) first, to the payment of (1) all costs and expenses relating to the sale of any Performance Assurance and collection of amounts owing hereunder, including reasonable attorneys' fees and disbursements and the just compensation of the Beneficiary Party for services rendered in connection therewith or in connection with any proceeding to sell if a sale is not completed, and (2) all charges, expenses and advances incurred or made by the Beneficiary Party in order to protect the lien provided under this Collateral Annex; (B) second, to the payment in full of all of the Obligations owed to the Beneficiary Party hereunder in such order as the Beneficiary Party may elect; and (C) third, the balance, if any, shall be paid to the Posting Party.

[DISCUSS: Under the foregoing, failure to make one payment can lead to a default and draw of all collateral. Although this strikes some as too harsh, it tracks the WSPP Agreement where the Event of Default does not occur until after notice and failure to cure during cure period.]

- (b) The Posting Party hereby irrevocably constitutes and appoints the Beneficiary Party and any officer or agent thereof, with full power of substitution, as the Posting Party's true and lawful attorney-in-fact (which appointment shall be coupled with an interest) with full irrevocable power and authority to act in the name, place and stead of the Posting Party or in the Beneficiary Party's own name, from time to time in the Beneficiary Party's discretion, solely for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Section 7(a). Notwithstanding the foregoing, the Beneficiary Party shall not be obligated to exercise any right or duty as attorney-in-fact, and shall have no duties to the Posting party in connection therewith.
- (c) The Posting Party shall in all events remain liable to the Beneficiary Party for any amount payable by the Posting Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off and the Beneficiary Party shall have the right to proceed against the Posting Party for any such deficiency.

8. Posting Party's Exercise of Rights Concerning Performance Assurance.

If at any time (a) an Event of Default has occurred and is continuing where the Beneficiary Party is the Defaulting Party, or (b) an Early Termination has occurred or been designated with respect to the Beneficiary Party for which the Beneficiary Party has not satisfied all of its Obligations, then:

- (i) on the day of such occurrence, the Beneficiary Party will be obligated to transfer all Performance Assurance (including any Letter of Credit) and interest in amounts calculated in accordance with the Interest Rate, if any, to the Posting Party;
- (ii) the Posting Party may do any one or more of the following: (a) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (b) to the extent that Performance Assurance is not transferred to the Posting Party as required in (i) above, setoff amounts payable to the Beneficiary Party against the Performance Assurance (other than Letters of Credit) held by the Beneficiary Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Posting Party, up to the value of any Performance Assurance that has not been so transferred, until the Performance Assurance is transferred to the Posting Party; (c) exercise rights and remedies available to the Posting Party under the terms of any Letter of Credit; and (d) exercise any applicable rights and remedies available to the Posting Party under the WSPP Agreement; and
- (iii) the Beneficiary Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Posting Party for its benefit.

9. Disputed Calculations.

If a Party shall dispute the Collateral Requirement determined by the Beneficiary Party or the Excess Performance Assurance determined by the Posting Party and such dispute relates to the Termination Payment calculated by the other Party under Section 22.1 of the WSPP Agreement or damages calculation under Section 21.3 of the WSPP Agreement, then the Party contesting the Termination Payment calculation or damages calculation shall:

(i) notify the other Party of the existence and nature of the dispute not later than 4 p.m. New York Time on the same day a Party has demanded additional Performance Assurance under Section 4 of this Collateral Annex or the return of Excess Performance Assurance under Section 5 of this Collateral Annex;

(ii) if a Beneficiary Party has demanded that the Posting Party provide Performance Assurance under Section 4, the Posting Party shall provide Performance Assurance to satisfy its Collateral Requirement based upon the Beneficiary Party's estimate, made in good faith and in a commercially reasonable manner, of the Termination Payment if the Posting Party were the Defaulting Party under Section 22.1 of the WSPP Agreement and the damages under Section 21.3 of the WSPP Agreement if the Posting Party were required to pay such damages; and

(iii) if a Posting Party has demanded that the Beneficiary Party return Excess Performance Assurance under Section 5, the Beneficiary Party shall return Excess Performance Assurance based upon the Beneficiary Party's estimate, made in good faith and in a commercially reasonable manner, of the Termination Payment if the Posting Party were the Defaulting Party under Section 22.1 of the WSPP Agreement and the damages under Section 21.3 of the WSPP Agreement if the Posting Party were required to pay such damages.

In all such cases, the Parties thereafter shall promptly negotiate in good faith in order to reconcile the dispute or a method for resolving the dispute. If the Parties fail to resolve the dispute on or before the first Business Day following the date that the demand is made by the Party contesting the Termination Payment calculation or the damages calculation, then such Termination Payment or damages calculation shall be determined based upon quotations from Dealers in energy contracts. Each Party may obtain up to a maximum of four (4) quotations which must be provided to the other Party on the same day as the demand, if the demand is made no later than 2 p.m. New York Time, or the next Business Day, if the demand is made after 2 p.m. Eastern Time. These quotations shall reflect transacted prices in comparable contracts. The Termination Payment or damages calculation shall equal a simple average of the quotations obtained and provided by the Parties consistent with the provisions of this Section 9. Each Party providing quotations to the other Party also shall identify to the other Party the Dealer(s) who provided each of the quotations to allow verification. Performance Assurance shall thereupon be provided, or Excess Performance returned, as the case may be, on the next Business Day after provision to the Posting Party of the recalculation, in accordance with the results of such recalculation. The results of this process shall be enforceable in a court of law unless fraudulent.

10. Covenants; Representations and Warranties; Miscellaneous.

- (a) The Posting Party will execute and deliver to the Beneficiary Party (and to the extent permitted by applicable law, the Posting Party hereby authorizes the Beneficiary Party to execute and deliver, in the name of the Posting Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex including any action the Beneficiary Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Posting Party shall pay all costs relating to its delivery of Performance Assurance and the maintenance and perfection of the security interest therein.
- (b) On each day on which Performance Assurance is held under this Collateral Annex by the Beneficiary Party and/or its agent, or by the Custodial Bank under the Deposit Account Agreement, the Posting Party hereby represents and warrants that:
 - (i) the Posting Party has good and marketable title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under the WSPP Agreement and this Collateral Annex;
 - (ii) upon the transfer of Performance Assurance by the Posting Party to the Beneficiary Party, its agent, or the Custodial Bank for the benefit of the Beneficiary Party, the Beneficiary Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, security interests, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest;
 - (iii) it is not and will not become a Party to or otherwise be bound by any agreement, other than the WSPP Agreement and this Collateral Annex, or amendments thereto, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto; and
 - (iv) No approval or authorization by, and no filing with or consent of, any federal, state, local, municipal or other government agency, department or regulatory authority is required either (A) for the grant by the Posting Party of the liens granted hereby or for the execution, delivery or performance of this Collateral Annex by the Posting Party or (B) for the perfection (except for filing of any financing statements in the jurisdictions identified in writing by the Posting Party) of the liens created hereby or the exercise by the Beneficiary Party of the rights and remedies hereunder.
- (c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership,

association, corporation, or other entity shall acquire or have any right thereunder or by virtue of this Collateral Annex.

- (d) Each Party represents and warrants to the other Party that (i) it has all requisite power and authority to execute and deliver this Collateral Annex, to consummate the transactions contemplated hereby and to perform its respective obligations hereunder; (ii) it has taken all necessary action to authorize the execution, delivery and performance of this Collateral Annex and (iii) this Collateral Annex has been duly executed and delivered and, when executed and delivered by the other Party, will constitute the legal, valid and binding obligation of such Party enforceable against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors generally or by general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law). Each Party, at the time of execution, shall provide the other Party with evidence of such authority reasonably acceptable to the other Party, including, if the Collateral Annex is executed by an officer, a certificate of incumbency, and, if requested by the other Party, a written opinion of counsel (the opinion of a Party's in-house counsel shall suffice), in such form as is reasonably acceptable to the other Party, that person who executed this Collateral Annex was duly authorized in accordance with all actions requisite to establish such authority.
- (e) As of the date a Party executes this Collateral Annex, the Cover Sheet Elections, Deposit Account Agreement, or Security Agreement, or any amendment thereto, such Party is a member in good standing of the Western Systems Power Pool, Inc.
- (f) Section 34 of the WSPP Agreement is inapplicable to any disputes concerning the enforcement of this Collateral Annex or the rights and obligations set forth herein concerning Performance Assurance. In the event litigation is commenced by either Party to enforce this Collateral Annex or collect any amounts required to be paid, provided or transferred hereunder, each Party agrees to pay the other Party for all reasonable attorneys fees, disbursements, and court costs incurred by the prevailing Party in such litigation.
- (g) No delay or forbearance by any Party or its agents in exercising any right, power, privilege, or remedy accruing to such Party upon the occurrence of any breach or default by the other Party under this Collateral Annex, and no course of dealing between the Parties, shall impair any such right, power or remedy of the non-defaulting Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of a Party of any such breach or default under this Collateral Annex, or any waiver on the part of any non-defaulting Party hereto of any provision or condition of this Collateral Annex, must be in writing and shall be effective only to the extent specifically set forth in such writing. This Collateral Annex may be amended only by a document executed by the Parties.

- (h) Each demand, notice, consent, agreement, approval or other communication required or permitted to be given from one Party to the other Party under this Collateral Annex shall be provided in writing (unless expressly provided otherwise) and shall be submitted by recognized overnight courier service or telefacsimile addressed to the recipient Party at its address or telefacsimile number set forth in Part VIII of the Cover Sheet Elections or as changed by notice to the other Party. All such notices, requests, demands, approvals and other communications shall be deemed to have been duly given, received and effective when: (a) received if personally delivered; (b) on the day transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day), if transmitted by facsimile transmission and the sender's facsimile machine has received the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile message; (c) the day immediately following the day it is sent, if sent for next day delivery to a domestic address by a nationally-recognized overnight courier or delivery service; (d) on the day of receipt, if sent by certified or registered mail, return receipt requested; and (e) on the date actually received, if sent or delivered by any other means; provided, that any notice, demand, request or other communication made or delivered in connection with an alleged breach or default hereunder (including an Event of Default) shall only be delivered personally or by a nationally-recognized overnight courier or delivery service. Whenever this Collateral Annex provides that a demand, notice, consent, agreement, approval or other communication shall be provided in "writing" or shall be provided in "written" form, such demand, notice, consent, agreement, approval or other communication shall only be effective hereunder if provided by a manually signed original, photocopy or telefacsimile copy from the Party or Parties to be bound thereby.
- (i) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.
- (j) This Collateral Annex shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah, except to the extent that the perfection, the effect of perfection or nonperfection and the priority of the security interest granted hereunder, or remedies hereunder, are governed by provisions of the UCC, including but not limited to UCC §§ 9-301, 9-303, 9-304, 9-305, 9-306 and 9-307, that may call for the application of the laws of jurisdictions other than the State of Utah.
- (k) This Collateral Annex may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same instrument and each of the Parties hereto may execute this Collateral Annex by signing any such counterpart.

IN WITNESS HEREOF, the Parties have caused this Collateral Annex to be duly executed effective as of the date first written above.

Party A

Party B

Name of Party:

[Sign here]

[Print name]

Title

Date: _____

Name of Party

[Sign here]

[Print name]

Title

Date: _____