



907 Energy Risk Management & Contracting

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Faculty Biographies

Michael K. Chapman

Michael K. Chapman is senior counsel/energy at International Paper Company, and he supports the activities of the energy procurement organization to meet the energy requirements of the company and its subsidiaries. Mr. Chapman's practice also includes hydroelectric relicensing and project finance cogeneration development at company manufacturing sites, providing advice on state and federal energy legislation, and participation in various state and federal energy related rulemakings and regulatory proceedings.

Prior to joining International Paper, he was assistant general counsel and assistant secretary for the Lone Star Gas Company division of ENSERCH Corporation, in Dallas. At Lone Star, he headed the Utility Operations group dealing primarily with gas supply and contract administration matters, industrial and electric generation sales, real property, municipal franchise matters, and business acquisitions and divestitures. Previously, he was employed by Amoco Corporation, in Texas City as a process engineer with assignments in refinery utility operations, ammonia production operations, and planning.

Mr. Chapman is a member of the Energy Bar Association, Memphis Bar Association, and the Houston Energy Association.

He received his BS from the University of Tennessee in Knoxville and his law degree from the Bates College of Law at the University of Houston.

Michael A. Goldstein

Michael A. Goldstein is senior vice president and general counsel for Sempra Energy Trading. As chief legal counsel for Sempra Energy Trading, he regularly advises on commodity and derivative transactions, product development and marketing, trade contract negotiations, regulatory issues, commercial disputes, and day-to-day operations.

Prior to his position at Sempra, Mr. Goldstein was the deputy general counsel for AIG Trading Group and before that, a corporate associate with the law firms of Paul, Weiss, Rifkind, Wharton and Garrison, and Milbank, Tweed, Hadley and McCloy of New York City.

Mr. Goldstein is a member of the New York City Bar Association.

Mr. Goldstein graduated from Bucknell University with a BA and received his masters in international affairs from the Columbia University School of International and Public Affairs. Mr. Goldstein received his law degree from Emory University School of Law where he was the founding editor of the *Journal of International Dispute Resolution*.

Edward J. Kania

Attorney

Edison Mission Energy



AMERICAN CORPORATE COUNSEL ASSOCIATION

ENERGY RISK MANAGEMENT & CONTRACTING

October 23, 2002

Michael K. Chapman, Senior Counsel - Energy
International Paper Company




The Energy Buyer's Viewpoint

Avoiding uncertainty and
unintended consequences in
energy procurement
contracts





Checklist for Contract Review

- Is the value of the contract large enough or critical to business operations so as to support active negotiations? e.g. monthly cost of \$1,000 or \$1,000,000





Retail Electric Sale Contracts

-  A retail electric sale is a sale for consumption of electric power. A retail sale is subject to regulation by the state public service commission whether or not the state has implemented retail customer choice of its generation suppliers. Approximately 22 state jurisdictions have implemented retail customer choice.
-  A wholesale sale of electric power is a sale for resale. Power sales among electric utilities, power marketers, qualifying facilities and exempt wholesale generators come under the purview of FERC oversight and/or regulation under the Federal Power Act.
-  Retail Customer Choice means unbundling generation from transmission and distribution charges.

Retail Electric Sale Contracts




-  Choices for Generation Supply
 -  Keep the incumbent (if permitted by state rules)
 -  Do nothing and be assigned to default supplier
 -  Solicit bids from those on the list of state-approved generation suppliers

Retail Electric Sale Contracts





-  Pricing Options for Deregulated Generation Service
 -  Fixed price for the contract term
 -  Supplier guarantees a discount to the costs that would have been incurred if the customer had remained on the utility's service tariff
 -  Grid or System Operator Pricing

Per kwh cost of: (a) energy (b) spinning reserve (c) ancillary services (d) losses (e) congestion costs (f) installed capacity, and (g) competitive transition charge. Cost elements are posted daily by the independent system operator on the internet. Connected generators bid in advance to supply the day ahead market. There is a fairly high degree of pricing transparency in PJM, ISO-NE, and NYISO. (For example, see www.ISO-NE.com)







Retail Electric Sale Contracts

-  Pricing Options for Deregulated Generation Service (*cont.*)
 -  The retail electric consumer in a deregulated jurisdiction typically receives two bills – one for generation supply and one for transmission and distribution ("T&D") service. Stranded costs charges are typically set out as line items in the bill for T&D service. Charges for T&D service are determined by the state commissions on a traditional, regulated cost of service basis.
 -  In contracts with generation suppliers and contracts with "T & D", insure that the contracts clearly state what cost elements are included in the contract price and what elements are excluded from the contract price.

Retail Electric Sale Contracts





-  Pricing Options for Deregulated Generation Service (*cont.*)
-  Deregulated Electric Service Contract Issues
 -  How much capacity in kw does the Customer's load require? Has the Customer's load profile been shared with the prospective supplier? Does the customer own the transformers that are necessary to take service at a transmission system voltage (generally 115 kv or higher) or does the utility provide the transformation (voltage reduction) service for the customer?
 -  Term of Contract – avoid long term contracts with new generation suppliers. Avoid granting matching rights or rights of first refusal.

Retail Electric Sale Contracts





-  Deregulated Electric Service Contract Issues (*cont.*)
 -  Performance Issues
 -  Will the supplier be in the retail marketing business over the long term
 -  Does the supplier own generation that is directly connected to grid that serves your client's load
 -  What is the source of the power – gas/combined cycle, coal, oil, hydro, nuclear.
 -  Force Majeure Issues

Under what conditions would "failure" of generation be a bona fide force majeure event? General statements that loss of markets or suppliers should be excluded. Act of God or Acts of God affecting generation and transmission and distribution supplies should be covered.

Retail Electric Sale Contracts

-  Deregulated Electric Service Contract Issues (*cont.*)
 -  Electric Service Provider Seeking Protection Under Chapter 11 of the Bankruptcy Code
 -  Continuing performance and the executory contract issues under Section 365 of the Code
 -  The "forward contract" exception for swift contract termination – 11 U.S.C.A. Sec 556

Retail Electric Sale Contracts

-  Deregulated Electric Service Contract Issues (*cont.*)
 -  Billing and Payment Issues
 -  Avoid remitting payments based on "estimated" invoices. The "estimating" process could allow a supplier to accelerate cash flow faster than actual purchases. Billing based on actual meter reading ensures that the meter continues to be maintained for data collection.
 -  Preserve the right to audit all records used for billings and preserve the ability to dispute for a minimum of two years metering data, invoices, and billing computations.





Retail Electric Sale Contracts

- ✎ Deregulated Electric Service Contract Issues (*cont.*)
 - ✎ Defaults
 - ✎ Failure to pay an invoice due to a bona fide dispute should not trigger remedies attributable to a default
 - ✎ Damages
 - ✎ The traditional UCC approach – cost of replacement purchases or sales
 - ① Acceleration of related financial transactions – intention of the parties – know what your client is signing up for.




Retail Electric Sale Contracts

- ✎ Deregulated Electric Service Contract Issues (*cont.*)
 - ✎ Load Aggregation
 - ✎ A good way to achieve some economy of scale to secure a lower price
 - ① Is there some possibility that any of the client's electric service sites will be sold or closed during the term of the contract?
 - ① Will electric load materially increase over the term of the contract?
 - ✎ Assignments
 - ✎ No assignment without having first obtained the consent of the other party, which consent may not be unreasonably withheld

Retail Electric Sale Contracts

-  Deregulated Electric Service Contract Issues (*cont.*)
 -  The Complete Agreement
 -  All amendments must be in writing and signed by duly authorized representatives of both parties
 -  What is the scope of the complete agreement? Be sure to supercede and merge into the agreement all letters of intent service specifications, etc. Does the agreement reference any documents, such as utility tariffs that you have not? Does your agreement "lock-in" third party agreements as to the terms in effect on the date of your contract or are these terms subject to change?

Retail Electric Sale Contracts

-  Deregulated Electric Service Contract Issues (*cont.*)
 -  Joint Preparation and Neutrality in Interpretation Statements
 -  Avoid permitting these statements to be included in contracts when neither you nor your client were permitted the opportunity to provide substantive input

SEMPRA ENERGY TRADING CORP.

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

GENERAL TERMS AND CONDITIONS.....

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

 2.1 Transactions.....

 2.2 Governing Terms.....

 2.3 Confirmation.....

 2.4 Additional Confirmation Terms.....

 2.5 Recording.....

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

 3.1 Seller's and Buyer's Obligations.....

 3.2 Transmission and Scheduling.....

 3.3 Force Majeure.....

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE.....

 4.1 Seller Failure.....

 4.2 Buyer Failure.....

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.....

 5.1 Events of Default.....

 5.2 Declaration of an Early Termination Date and Calculation of Settlement
 Amounts.....

 5.3 Net Out of Settlement Amounts.....

 5.4 Notice of Payment of Termination Payment.....

 5.5 Disputes With Respect to Termination Payment.....

 5.6 Closeout Setoffs.....

 5.7 Suspension of Performance.....

ARTICLE SIX: PAYMENT AND NETTING

 6.1 Billing Period.....

 6.2 Timeliness of Payment.....

 6.3 Disputes and Adjustments of Invoices.....

 6.4 Netting of Payments.....

 6.5 Payment Obligation Absent Netting.....

 6.6 Security

 6.7 Payment for Options.....

 6.8 Transaction Netting.....

ARTICLE SEVEN: LIMITATIONS.....

 7.1 Limitation of Remedies, Liability and Damages.....

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

- 8.1 Party A Credit Protection.....
 - (a) Financial Information..
 - (b) Credit Assurances..
 - (c) Collateral Threshold.
 - (d) Downgrade Event
- 8.2 Party B Credit Protection.....
 - (a) Financial Information..
 - (b) Credit Assurances..
 - (c) Collateral Threshold.
 - (d) Downgrade Event.
- 8.3 Grant of Security Interest/Remedies.....

ARTICLE NINE: GOVERNMENTAL CHARGES.....

- 9.1 Cooperation.....
- 9.2 Governmental Charges.....

ARTICLE TEN: MISCELLANEOUS

- 10.1 Term of Master Agreement.....
- 10.2 Representations and Warranties.
- 10.3 Title and Risk of Loss.....
- 10.4 Indemnity..
- 10.5 Assignment.....
- 10.6 Governing Law.....
- 10.7 Notices..
- 10.8 General.....
- 10.9 Audit.
- 10.10 Forward Contract.....
- 10.11 Confidentiality.....

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

CONFIRMATION LETTER

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: June 22, 2000 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name ("Sempra Energy Trading Corp." or "Party A")

Name ("_____ " or "Party B")

All Notices:

All Notices:

Street: 58 Commerce Road

Street: _____

City: Stamford, CT Zip: 06902

City: _____ Zip: _____

Attn: Operations

Attn: Contract Administration

Phone: 203 355-5602

Phone: _____

Facsimile: 203 355-5630

Facsimile: _____

Duns: 60-9746565

Duns: _____

Federal Tax ID Number: 13-3653551

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: Operations

Attn: _____

Phone: 203 355-5602

Phone: _____

Facsimile: 203 355-5630

Facsimile: _____

Scheduling:

Scheduling:

Attn: David Mueller

Attn: _____

Phone: 203-355-5077

Phone: _____

Facsimile: 203-355- 5435

Facsimile: _____

Payments:

Payments:

Attn: Operations

Attn: _____

Phone: 203 355-5602

Phone: _____

Facsimile: 203 355-5630

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: Bank One N.A.

BNK: _____

ABA: 071000013

ABA: _____

ACCT: 1001320

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: Operations

Attn: _____

Phone: 203 355-5602

Phone: _____

Facsimile: 203 355-5630

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: Legal Department

Attn: _____

Phone: 203-355-5407

Phone: _____

Facsimile: 203-355-5410

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 FERC Rate Schedule No. 1 Dated November 28, 1994

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies

- Cross Default for Party A:
- Party A: _____ Cross Default Amount \$ _____
- Other Entity: _____ Cross Default Amount \$ _____
- Cross Default for Party B:
- Party B: _____ Cross Default Amount \$ _____
- Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

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

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

- Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: Sempra Energy

Guarantee Amount: _____

Article 10

Confidentiality

- Confidentiality Applicable If not checked, inapplicable.

Schedule M

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

Other Changes

- 1) In section 1.50, replace Section 2.4 with Section 2.5
- 2) In section 1.51, delete the phrase "at Buyer's option," from the fifth line, and replace with, "absent a purchase." In Section 1.53, delete the words "at Seller's option," from the fifth line, and replace with, "absent a sale."
- 3) In section 2.1, delete "either Party" in the second line and replace with "both Parties". In section 2.5, delete "Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation,".
- 4) In section 2.5, insert the phrase "absent manifest error" after the first appearance of the word "Confirmation" on the eleventh line.
- 5) In section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.
- 6) In sections 8.1(b) and 8.2 (b) change three (3) business days to two (2) business days. In sections 8.1(c) and 8.2 (c) on lines 9, 10 and 16 change "three (3) business days" to "one (1) business day" and in the tenth line delete the phrase "of the date of such request" and replace with "after such Termination Payment is calculated".
- 7) In section 8.3, insert the following at the end of the section, "All cash collateral shall bear interest calculated on a daily basis at overnight LIBID as from time to time in effect (as reported on Telerate), with the net amount of interest accrued monthly being payable on the third

Business Day of the following month. Each party shall have the free and unrestricted right to use and dispose of all cash collateral which it holds, subject only to its obligations to return such collateral if and when so required under this Agreement.”

- 8) In section 10.6 add the following after the last line: “EACH PARTY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK CITY, BOROUGH OF MANHATTAN, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”
- 9) In section 10.9 delete the words “and during normal working hours” and insert the words “copies of” after the word “examine”. In line 9, change twelve (12) months to twenty-four (24) months.

[Include this provision if Canadian transactions are contemplated.]

- 10) **The following new Section 9.3 is inserted:**

If any GST is payable in connection with Contract Power delivered hereunder, then such GST shall be paid by Buyer to Seller, as agent for the Crown, and Seller shall remit such GST as required by law. The term "GST" shall mean the Goods and Services Tax which is or may be imposed in respect of the Contract Power under Part IX of the Excise Tax Act (Canada), as amended, or any successor or parallel legislation (including provincial legislation)].

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

Party A **Sempra Energy Trading Corp.**
 By: _____
 Name: _____
 Title: _____

Party B
 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

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

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

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

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

regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

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

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

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

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

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

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

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

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

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

“Capacity” has the meaning specified in the Transaction.

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

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

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

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

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to

which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

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

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

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

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

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

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

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

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

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

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated

congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

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

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

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for

Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

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

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

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

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

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with

whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

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

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

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

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

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

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance.

In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

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

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

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

Seller: _____

Buyer: _____

Product:

Into _____, Seller's Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____

Confirmation Letter
Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

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

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

SEMPRA ENERGY TRADING CORP.**EXHIBIT B
SPECIAL PROVISIONS TO BASE CONTRACT FOR
SALE AND PURCHASE OF NATURAL GAS**

The amendments to the Base Contract for Sale and Purchase of Natural Gas and its accompanying General Terms and Conditions (collectively, the "Agreement"), set forth in this Exhibit B shall supplement and form part of the Agreement and shall govern with respect to any conflicting or inconsistent provision in the Agreement. Except as amended, the Agreement shall remain in full force and effect.

1. In Section 1.2 under Oral Transaction Procedure immediately after the parenthetical on the third to last line, insert the words, "or provide for Alternative Damages, a Termination Option, or alternative Force Majeure provisions".
2. In the last sentence of Section 1.3 insert the words, (a) "absent manifest error" at the end of clause (i).
3. The last sentence of Section 1.4 is deleted.
4. A new Section 1.5, is added:

All Gas purchase and sale transactions are entered into in reliance on the fact that the General Terms and Conditions, each Gas purchase and sale transaction hereunder, and each Transaction Confirmation constitute a single agreement between the parties. All Gas purchase and sale transactions in effect on the date hereof, and all Gas purchase and sale transactions entered into between the parties on or after the date hereof shall be governed by this Agreement. The parties to this Agreement expressly intend that this Agreement govern all transactions for the purchase and sale of Gas between them, regardless of the term of such transaction.

5. In Section 2.10, delete the parenthetical on the third line of the definition of Cover Standard, and in the same section, add the following sentence to the end thereof:

The amount of such unfavorable difference shall be payable one business day after presentation of the non-breaching party's invoice for such amount which shall set forth the basis upon which such amount was calculated.

6. In Section 7.2, at the beginning thereof, add the words, "Except as set forth in Section 3.2,".
7. In Section 7.6, the first line, delete the words "and at reasonable times" and after the word "examine" in the same line, insert the words "copies of".
8. Add the following new Section 7.8 at the end of Section 7:

7.8 If, at the time the parties enter into a Gas purchase and sale transaction under which one party is to sell Gas to the other, one or more other Gas purchase and sale transactions are outstanding under which such other party is to sell Gas to such first party for delivery during the same Delivery Period and at the same Delivery Point for payment on the same Payment Date, then (subject to paragraph 10) all such offsetting transactions shall be netted into a single transaction under which (a) the party required to deliver the larger amount of Gas shall deliver

to the other party the difference between the amount of Gas it is to deliver and the amount it is to receive under such offsetting transactions, and (b) the party owing the greater purchase price under such offsetting Gas purchase and sale transaction shall pay to the other party the difference between the amount it owes and the amount owed to it under such offsetting transactions. The single resulting transaction shall be deemed entered into automatically and, once entered into, outstanding obligations under the offsetting transactions shall terminate. Such netting shall not affect that transaction's status as a Forward Contract based on the date it was originally entered into.

9. In Section 8.2, on the first line, add an “(a)” after the word “that” and, at the end of the first sentence, add the following:

, (b) its sale to Buyer is in compliance with all applicable laws and regulations, and (c) Buyer is not the first purchaser of the Gas.

10. In Section 9.3, the last sentence, replace the words “five Business Days after mailing” with the words “upon actual receipt”.

11. In Section 10.2, delete the word “second” on the ninth line.

12. In Section 10.3, insert after the word “Notice” on the first line, “except in the case of an Event of Default described in Section 10.2 (i) through (v), in which case no Notice shall be required”.

13. In Section 14.1, the third line thereof, delete everything after “The non-assigning party.”

14. In Section 14.10, insert the words “party’s and the party’s affiliates” at the beginning of the third line.

15. Delete Section 14.11 and add the following new Sections at the end of the Agreement:

14.11 Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement or any transaction.

14.12. If Buyer at any time exceeds the delivery credit line then in effect as from time to time established by Seller, Seller may, not later than the second Business Day before the last day on which Gas deliveries for that delivery month or Delivery Period, as applicable, can be nominated on Seller's Transporter (the “Last Nomination Day”), require Buyer, to the extent of such excess, to prepay for that transaction or to provide an irrevocable letter of credit in Seller's favor in a form and substance and having such terms and conditions as Seller shall reasonably specify, issued by a major bank which is and remains acceptable to Seller; such prepayment will be made to, or such letter of credit received by, Seller within two Business Days after Seller's request (but no later than the Business Day before the relevant Last Nomination Day). All charges at Buyer's bank relating to any letter of credit are for Buyer's account.

14.13. EACH PARTY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK CITY, BOROUGH OF MANHATTAN, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.

MASTER POWER PURCHASE AND SALE AGREEMENT

Version 2.1 (modified 4/25/00)
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National Energy Marketers Association

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date:
_____, 2001 ("Effective Date"). The Master Agreement, together with the exhibits, schedules
and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated
collateral, credit support or margin agreement or similar arrangement between the Parties and all
Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred
to as the "Agreement." The Parties to this Master Agreement are the following:

Name ("Sempra Energy Trading Corp." or "Party A")

Name ("_____ " or "Party B")

All Notices:

All Notices:

Street: 58 Commerce Road

Street: _____

City: Stamford, CT Zip: 06902

City: _____ Zip: _____

Attn: Operations
Phone: 203 355-5602
Facsimile: 203 355-5630
Duns: 60-9746565
Federal Tax ID Number: 13-3653551

Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:

Attn: Operations
Phone: 203 355-5613
Facsimile: 203 355-6614

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Scheduling:

Attn: David Mueller
Phone: 203-355-5077
Facsimile: 203-355- 5435

Scheduling:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Attn: Operations
Phone: 203 355-5613
Facsimile: 203 355-6614

Payments:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK: Bank One, N.A.
ABA: 071000013
ACCT: 1001320

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: Credit
Phone: 203 355-5430
Facsimile: 203-355-6430

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: Legal Department
Phone: 203-355-5407
Facsimile: 203-355-5410

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 FERC Rate Schedule No. 1 Dated November 28, 1994 Docket Number ER94-1691-000

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies

- Cross Default for Party A:
- Party A: _____ Cross Default Amount \$ _____
- Other Entity: _____ Cross Default Amount \$ _____
- Cross Default for Party B:
- Party B: _____ Cross Default Amount \$ _____
- Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

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

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

- Other:
Specify: _____

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

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

Other Changes

- 1) In section 1.12 insert "and if such ratings are different, the lowest of such ratings shall apply" after the word "Sheet" in the last line.
- 2) In section 1.50, replace Section 2.4 with Section 2.5
- 3) In section 1.51, delete the phrase "at Buyer's option," from the fifth line, and replace with, "absent a purchase." In Section 1.53, delete the words "at Seller's option," from the fifth line, and replace with, "absent a sale."
- 4) In section 2.1, delete "either Party" in the second line and replace with "both Parties". In section 2.5, delete "Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation,".
- 5) In section 2.5, insert the phrase "absent manifest error" after the first appearance of the word "Confirmation" on the eleventh line.
- 6) In section 5.1 (a) change "three (3) Business Days" to "one (1) Business Day".
- 7) In section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.
- 8) In sections 8.1(b) and 8.2 (b) change "three (3) Business Days" to "two (2) Business Days". In sections 8.1(c) and 8.2 (c) on lines 9, 10 and 16 change "three (3) Business Days" to "one (1) Business Day" and in the tenth line delete the phrase "of the date of such request" and replace with "after such Termination Payment is calculated". In

section 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “two (2) Business Days”.

- 9) In section 8.3, insert the following at the end of the section, “All cash collateral shall bear interest calculated on a daily basis at overnight LIBID as from time to time in effect (as reported on Telerate), with the net amount of interest accrued monthly being payable on the third Business Day of the following month. Each party shall have the free and unrestricted right to use and dispose of all cash collateral which it holds, subject only to its obligations to return such collateral if and when so required under this Agreement.”
- 10) In section 10.6 add the following after the last line: “EACH PARTY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK CITY, BOROUGH OF MANHATTAN, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”
- 11) In section 10.9 delete the words “and during normal working hours” and insert the words “copies of” after the word “examine”. In line 9, change twelve (12) months to twenty-four (24) months.

[Include this provision if Canadian transactions are contemplated.]

12) The following new Section 9.3 is inserted:

If any GST is payable in connection with Contract Power delivered hereunder, then such GST shall be paid by Buyer to Seller, as agent for the Crown, and Seller shall remit such GST as required by law. The term "GST" shall mean the Goods and Services Tax which is or may be imposed in respect of the Contract Power under Part IX of the Excise Tax Act (Canada), as amended, or any successor or parallel legislation (including provincial legislation)].

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

Party A **Sempra Energy Trading Corp.**

Party B

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

FERC RATE SCHEDULE NO. 1

1. Availability: Sempra Energy Trading Corp. ("SET") makes electric energy and capacity available under this Rate Schedule to any purchaser for resale.
2. Applicability: This schedule is applicable to all sales of energy or capacity by SET not otherwise subject to a particular rate schedule of SET.
3. Rates: All sales shall be made at rates established by agreement between the purchaser and SET.
4. Other Terms and Conditions: All other terms and conditions shall be established by agreement between the purchaser and SET.
5. Affiliates Sales Prohibited: No sales may be made pursuant to this Rate Schedule to any entity controlled by, under common control with, or controlling SET.
6. Effective Date: This Rate Schedule is effective November 28, 1994.

(Multicurrency - Cross Border)

Schedule to the

ISDA Master Agreement

dated as of

_____, 20__

between SEMPRA ENERGY TRADING CORP., a Delaware corporation ("Party A"), and _____,
a _____ ("Party B").

Part 1. Termination Provisions.

- (a) **"Specified Entity"** means in relation to Party A for the purpose of:

Section 5(a)(v), none
Section 5(a)(vi), none
Section 5(a)(vii), none
Section 5(b)(iv), none

and in relation to Party B for the purpose of:

Section 5(a)(v), _____
Section 5(a)(vi), _____
Section 5(a)(vii), _____ and any [**subsidiary/affiliate**] of Party B
Section 5(b)(iv), none

- (b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement, except that such term is amended on line 8 after the words "currency option" by adding a comma and the words "agreement for the purchase, sale or transfer of any commodity or any other commodity trading transaction". For this purpose, "commodity" means any tangible or intangible commodity of any type or description (including, without limitation, electric energy and/or capacity, petroleum and natural gas, and the products or by-products thereof).

- (c) The **"Cross Default"** provisions of Section 5(a)(vi) will apply to Party A and to Party B.

"Specified Indebtedness" will have the meaning specified in Section 14.

"Threshold Amount" means the greater of (i) \$10,000,000 or its equivalent in any currency and (ii) 3% of the shareholders' equity of Sempra Energy (in the case of Party A) and Party B (in the case of Party B).

- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(iv) will apply to Party A and to Party B.

If such provisions apply: Section 5(b)(iv) is hereby amended by inserting after the words "another entity" the phrase "or another entity consolidates or amalgamates with, or merges into, or transfers all or substantially all its assets to, X or any Credit Support Provider of X or any applicable Specified Entity of X".

- (e) The **"Automatic Early Termination"** provisions of Section 6(a) will not apply to Party A or Party B;

provided, however, that the “Automatic Early Termination” provision of Section 6(a) will apply to either such party if at any time an Event of Default specified in Section 5(a)(vii) (1), (2), (3), (4), (5), (6) or, to the extent analogous thereto, (8), with respect to a party has occurred and is then continuing, and either (A) the relevant voluntary or involuntary case or other proceeding or bankruptcy or insolvency giving rise to an Event of Default specified in such Sections is governed by a system of law which in the judgment of the Non-Defaulting Party, does not permit the termination and liquidation of Transactions after the occurrence of the relevant Event of Default or (B) any court, tribunal or regulatory authority with competent jurisdiction acting pursuant to any such system of law makes an order which has or purports to have the effect of prohibiting the other party from designating an Early Termination Date in respect of all outstanding Transactions at any time after such Event of Default has occurred.

- (f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:
- (i) Loss will apply.
 - (ii) The Second Method will apply.
- (g) **“Termination Currency”** means United States Dollars.
- (h) **“Additional Termination Event”** will not apply.
- (i) **Amendments.** The parties agree to the following changes to this Agreement:
- (i) Section 5(a)(i) is amended by deleting “third” and substituting “first”.
 - (ii) Section 5(a)(v)(2) is amended by deleting the parenthetical.
 - (iii) Section 5(a)(vii)(4) is amended by inserting a semi-colon after the word “liquidation” the first time it appears and deleting the rest of Section 5(a)(vii)(4).
 - (iv) The word “or” is deleted at the end of Section 5(a)(vii), the period at the end of Section 5(a)(viii) is deleted and replaced by “; or” and the following new Section 5(a)(ix) is added:

“(ix) Adequate Assurance. The party fails to provide adequate assurance of its ability to perform all of its outstanding obligations to the other party, whether hereunder or otherwise, within two Local Business Days of a written request therefor from the other party when the other party has reasonable grounds for insecurity.”
 - (v) Section 6(c) is amended by adding the following new paragraph (iii):

(iii) Notwithstanding the foregoing, the Non-defaulting Party shall not be obligated to terminate and liquidate Transactions to the extent that, in the good faith opinion of the Non-defaulting Party, (i) such termination and liquidation is not permitted under applicable law or (ii) the Non-defaulting Party cannot enter into or liquidate offsetting transactions (including, without limitation, Specified Transactions) in a commercially reasonable manner or at commercially reasonable prices. In addition, the Non-defaulting Party may, at its election, take a reasonable amount of time to complete any aspect of the termination and liquidation.

Part 2. Tax Representations.

- (a) **Payer Representations.** For the purpose of Section 3(e), Party A **[will/will not]** make the following representation and Party B **[will/will not]** make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on: (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement, and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

[NOTE: For foreign counterparts, Sempra generally must receive (1) a treaty representation (paragraph (b)(i) below) and Form 1001, (2) an “effectively connected” representation (paragraph (b)(ii) below) and Form 4224, or (3) a “not effectively connected” representation (paragraph (b)(iv) below) and Form W-8. Counsel should be consulted before relying solely on alternate (3) above. Please note that the tax situation may be different for each foreign jurisdiction.]

- (b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement, Party A and Party B make the representations specified below, if any:

- (i) The following representation **[will/will not]** apply to Party A and **[will/will not]** apply to Party B:

It is fully eligible for the benefits of the “Business Profits” or “Industrial and Commercial Profits” provision, as the case may be, the “Interest” provision or the “Other Income” provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then:

“**Specified Treaty**” means with respect to Party A and Party B _____.

“**Specified Jurisdiction**” means with respect to Party A, _____, and with respect to Party B, the United States of America.

- (ii) The following representation will apply to Party A and **[will/will not]** apply to Party B:

Each payment received or to be received by it in connection with this Agreement will be effectively connected with its conduct of a trade or business in the Specified Jurisdiction.

If such representation applies, the “**Specified Jurisdiction**” with respect to Party A, means the United States of America, and with respect to Party B, means _____.

(iii) The following representation will not apply to Party A and **[will/will not]** apply to Party B:

(A) It is entering into each Transaction in the ordinary course of its trade as, and is, either (1) a recognized U.K. bank or (2) a recognized U.K. swaps dealer (in either case (1) and (2), for purposes of the United Kingdom Inland Revenue extra statutory concession C17 on interest and currency swaps dated March 14, 1989), and (B) it will bring into account payments made and received in respect of each Transaction in computing its income for United Kingdom tax purposes.

(iv) Other Payee Representations: The following representation will not apply to Party A and **[will/will not]** apply to Party B:

Each payment received or to be received by it under or with respect to this Agreement or a Transaction is not effectively connected with a U.S. trade or business (within the meaning of the U.S. Internal Revenue Code), and income therefrom will not be properly reflected on the books of a qualified business unit (as defined in Section 989 of the U.S. Internal Revenue Code) of it with a principal place of business in the United States.

[NOTE: The above representations may need modification if Party B is a Multibranch Party.]

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

- (1) Tax forms, documents or certificates to be delivered are: **[NOTE: Conform forms to tax representations:]**

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>
Party B	An executed United States Internal Revenue Service Form W-8BEN (or any successor thereto) with respect to any payments received or to be received by Party B that are not effectively connected or otherwise attributable to Party B's conduct of a trade or business in the United States.	(i) Upon the execution of this Agreement; (ii) promptly upon reasonable demand by Party A; and (iii) promptly upon any Form W-8BEN (or any successor thereto) previously provided by Party B becomes obsolete, incorrect or expired.

- (2) Other documents to be delivered are:

<u>Party Required to Deliver Document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Section 3(d) Representation</u>
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Party A:	Guarantee of Sempra Energy	[Upon Execution/ Previously Delivered]	No
	Annual Financial Statements of Sempra Energy	When Available, Upon Request	Yes
Party B	Guarantee of _____	[Upon Execution/ Previously Delivered]	No
	Annual Financial Statements of _____	When Available, Upon Request	Yes
Party A&B:	Certified copies of board resolutions approving this Agreement and the Transactions contemplated by this Agreement and any exhibits or supplements attached hereto and the Confirmations hereunder.	Upon Execution	Yes
Party A&B:	Evidence of authority of signatories	Upon Execution	Yes

Part 4. Miscellaneous

(a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A:

Address: 58 Commerce Road, Stamford, Connecticut 06902

Attention: Energy Operations

Telex No.: 6737767

Answerback: SEMPRATD

For electric energy and/or capacity invoices and Confirmations:

Facsimile No.: 203-355-6614; Telephone No.:203-355-5613

For petroleum:

Facsimile No.: Invoices: 203-355-6615

Telephone No.:203-355-5632

Confirmations: 203-355-6617

For natural gas:

Facsimile No.: Invoices: 203-355-6612
Confirmations: 203-355-6630

Telephone No.:203-355-5604
Telephone No.:203-355-5624

Attention: FX or Metals Operations
Facsimile No.: 203-355-6605

Telephone No.: 203-355-5607

Electronic Messaging System details: None until mutually agreed otherwise.

And for notices or communications other than Confirmations: Attention of the Legal Department.

Facsimile No.: 203-355-5410

Telephone No.:203-355-5510

Address for notices or communications to Party B:

Address: _____

Attention: _____

Telex No.: _____ Answerback: _____

Facsimile No.: _____ Telephone No.: _____

Electronic Messaging System Details: None until mutually agreed otherwise.

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement: Party B appoints as its Process Agent _____.

(c) **Offices.** The provisions of Section 10(a) will apply to this Agreement. **[(Add next sentence if Section 10(a) (which refers only to Party B's head or home office) is not sufficient for a Counterpart; do not delete for a bank counterpart without credit approval:)]** Without limiting the generality of Section 10(a) of this Agreement, **[each party, Party B]** represents to **[the other party/Party A]** and agrees that its obligations are unconditional, irrespective of the validity or enforceability of this Agreement against any of its Offices, whether or not such Office has undergone a change in its status, functions, control or ownership, and that each of its worldwide Offices is responsible for the obligations of any of its Offices hereunder.]

(d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

Party A is not a Multibranch Party.

(Select one for Party B:)

[Party B is not a Multibranch Party].

[Party B is a Multibranch Party and may act through the following Offices:

_____]

- (e) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise agreed with respect to the relevant Transaction, provided, however, that in the event that a calculation or determination is disputed by Party B, the parties shall first endeavor to resolve such dispute and if they are unable to do so within a commercially reasonable time, they shall mutually select a dealer in the applicable commodity to act as Calculation Agent with respect to the issue in dispute.
- (f) **Credit Support Document.** ~~[(Delete one of the next two sentences:)]~~ [The Guarantee of Sempra Energy, substantially in the form of Exhibit A hereto, is to be delivered by Party A to Party B.] [The Guarantee of **Sempra Energy** in the form previously delivered by Party A to Party B, a copy of which is attached hereto as Exhibit A.] **The Guarantee of _____, substantially in the form of Exhibit B hereto, is to be delivered by Party B to Party A.**
- (g) **Credit Support Provider.** Credit Support Provider means in relation to Party A, Sempra Energy, together with any additional, replacement or substitute Credit Support Provider of Party A's obligations hereunder. Credit Support Provider means in relation to Party B,
_____.
- (h) **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT IN ANY WAY APPLY TO, OR GOVERN, THIS AGREEMENT.
- (i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to all Transactions starting from the date of this Agreement.
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.

Part 5. Other Provisions.

- (a) **Definitions.** Any capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the 2000 ISDA Definitions, the 1993 Commodity Derivative Definitions, and the 2000 Supplement to the 1993 Commodity Derivative Definitions (as published by the International Swaps and Derivatives Association, Inc.) (collectively, the "Definitions"), which are incorporated into this Agreement. In the event of any inconsistency between the Definitions and the provisions of this Agreement, this Agreement will prevail.
- (b) **Annual Financial Statements.** "Annual Financial Statements" mean a copy of the annual report of the relevant person containing audited consolidated financial statements for such party's fiscal year certified by independent auditors and prepared in accordance with accounting principles that are generally accepted in the country in which the party is organized.
- (c) **Agreed Changes.** The parties agree to the following changes in this Agreement:
- (i) Section 1(b) is amended by deleting the period at the end and substituting "except for Sections 5 and 6, which may only be amended by a written amendment executed by the parties."
- (ii) Section 3 is amended by adding the following at the end of that Section:
- (g) **Non-Reliance.** In connection with this Agreement, any Credit Support Document to which

it is a party, each Transaction, and any other documentation relating to this Agreement to which it is a party or that it is required by this Agreement to deliver:

(i) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement, such Credit Support Document and in any Confirmation;

(ii) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging and trading decisions (including decisions regarding the suitability of any Transaction pursuant to this Agreement) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party;

(iii) it has a full understanding of all the terms, conditions and risks (economic and otherwise) of the Agreement and each Transaction and is capable of assuming and willing to assume (financially and otherwise) those risks;

(iv) it is entering into this Agreement, such Credit Support Document, each Transaction and such other documentation as principal, and not as agent or in any other capacity, fiduciary or otherwise; and

(v) the other party is not acting as a fiduciary or financial, investment or commodity trading advisor for it.

(h) Eligible Commercial Entity and Eligible Contract Participant. It is an “eligible commercial entity” as defined in Section 1a (11) of the Commodity Exchange Act, and it is an “eligible contract participant” within the meaning of Section 1a (12) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000.

(i) Commercial User. When it enters into a Transaction which is an option, it will be a producer, processor or commercial user of, or a merchant handling, the commodity covered by such Transaction (or the products or by-products thereof), and will enter into such Transaction solely for purposes related to its business as such.

[For Banks, include the Financial Institution Representation below, otherwise delete]

(j) Financial Institution. It is a “financial institution” as defined in Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 or Regulation EE of the Board of Governors of the Federal Reserve System.

(iii) **[Add for Foreign Counterparts (other than banks)]** Section 7 is amended by adding the following new sentence at the end thereof: “In the event any such transfer is consented to, such transfer shall be effective only if the Confirmations evidencing the Transactions being transferred are returned to the party that has so consented (together with this Agreement, if such Transactions constitute all outstanding Transactions) and new Confirmations (and an agreement comparable to this Agreement) are entered into with, and issued to, the transferee.”

(iv) Add the following paragraphs at the end of Section 9:

(h) Consent to Recording. The parties agree that each may electronically record all telephone conversations between them and that any such recordings may be submitted in evidence to any

court or in any proceeding for the purpose of establishing any matters pertinent to any Transaction.

(i) **Severability.** In the event that any provision of this Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision, unless the deletion of such provision shall substantially impair the benefits of the remaining portions of this Agreement.

(j) **Dealer Market Practices.** To the extent applicable, the obligations of the parties are to be construed in accordance with practices in the international financial or commodity, as applicable, dealer market.

(v) In Section 14: "Terminated Transactions" is amended on line 2 by deleting "all Transactions" and substituting "any or all Transactions terminated in accordance with Section 6(c)(iii)".

(vi) Section 9(e)(ii) is amended by adding the following new sentence at the end thereof: "Notwithstanding the foregoing, Party A shall promptly confirm each Transaction and unless objected to in writing within two Local Business Days, the Confirmation shall be final and binding on the parties, absent manifest error. Failure to send or agree upon a Confirmation shall not affect a Transaction entered into by the parties."

(d) **Set-Off.** Any amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(iv) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off); provided that any amount not then due which is included in such setoff shall be discounted to present value as at the time of setoff (to take account of the period between the time of setoff and the date on which such amount would have otherwise been due) at the applicable rate for that period determined by the Non-defaulting Party in any commercially reasonable manner. X will give notice to the other party of any set-off effected under this Part 5(d).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Part 5(d) shall be effective to create a charge or other security interest. This Part 5(d) shall be without prejudice and in addition to any right of set-off, 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).

- (e) (1) **Market Disruption Events.** Each of the following events shall constitute a Market Disruption Event hereunder:
- (i) Price Source Disruption
 - (ii) Trading Suspension
 - (iii) Disappearance of Commodity Reference Price
 - (iv) Material Change in Formula
 - (v) Material Change in Content
 - (vi) *De Minimis* Trading (provided that the Confirmation specifies a Minimum Futures Contract amount)

[CHOOSE ONE OF THE FOLLOWING TWO DISRUPTION FALLBACK OPTIONS]

[THE FOLLOWING DISRUPTION FALLBACKS ARE FOR COUNTERPARTIES]

(2) **Disruption Fallbacks.** If a Market Disruption Event occurs on a Pricing Date, then the Commodity Reference Price for such day (a "Missing Day") shall be determined in accordance with the Market Disruption provisions agreed to by the parties in the Confirmation for the relevant Transaction. If no Market Disruption terms have been agreed upon, then the Commodity Reference Price shall be determined in the following manner.

- (i) With respect to a Transaction with a Calculation Period consisting of eight or more Commodity Business Days, the Commodity Reference Price for such Missing Day shall be the Commodity Reference Price published on the next Commodity Business Day on which such Commodity Reference Price is available, provided, however, that if the Market Disruption Event occurs for eight (8) consecutive Commodity Business Days in the Calculation Period or if another Commodity Reference Price is not available within the Calculation Period, then the Commodity Reference Price for the Missing Day or Missing Days shall be calculated in the manner set forth in (ii) below, for Calculation Periods consisting of less than eight Commodity Business Days.
- (ii) With respect to a Transaction with a Calculation Period consisting of less than eight Commodity Business Days, the parties shall promptly endeavor to agree on an alternative source for determination of the Commodity Reference Price for the Missing Day(s). If such agreement is not reached by the parties within three (3) business days, Party A shall determine the Commodity Reference Price by taking the average of the price quotations for the relevant Commodity and the relevant Missing Day(s) obtained from at least two and no more than four internationally recognized dealers in such Commodity, as selected by Party A.

[THE FOLLOWING DISRUPTION EVENTS ARE FOR FUNDS]

(2) **Disruption Fallbacks.** Subject to the provisions herein, if a Market Disruption Event occurs on a Pricing Date, then the Commodity Reference Price for such day (a "Missing Day") shall be determined in accordance with the Disruption Fallback provisions agreed to by the parties in the Confirmation for the relevant Transaction. If no Disruption Fallback terms have been agreed upon, and the parties cannot agree to a Disruption Fallback within one Local Business Day, then either party may, upon notice to the other

party, declare such event to be an Additional Termination Event. For the purposes of this provision, Party B shall be deemed to be the Affected Party.

[NOTE: Include paragraph (f) if Party B is a U.S. bank or a U.S. branch (or trades through a U.S. branch) of a foreign bank.]

- (f) **QFC's.** Each party agrees that it intends and regards this Agreement and each Confirmation, Transaction and Specified Transaction to be a "qualified financial contract," as such term is defined in the Financial Institutions Reform, Recovery and Enforcement Act of 1989. This Agreement, the Confirmations, the Transactions and Specified Transactions and all other agreements contemplated hereby or thereby are and shall be maintained continuously from the date of execution thereof by Party B as official records of Party B.]

[renumber if QFC is deleted - ALSO CHECK BOLDED REFERENCES IN THE MARGIN SECTION]

- (g) **Illegality.** For purposes of Section 5(b)(i), the obligation of either Party to comply with any official directive issued or given by any government agency or authority with competent jurisdiction which has the result referred to in Section 5(b)(i) will be deemed to be an "Illegality".

[CHECK THESE MARGIN PROVISIONS WITH LEGAL/CREDIT BEFORE SENDING]

[FORM FOR ONE WAY VARIATION MARGIN ONLY]

- (h) **Margin.**
- (i) Party B agrees to margin and mark-to-market its obligations under outstanding Transactions as provided in this paragraph **(h)**.
- (ii) For purposes of this paragraph **(h)**, Party A's "Exposure" means on any date an amount that would be payable to Party A by Party B under Section 6(e)(i) of this Agreement. Party A shall determine such amount in accordance with this Agreement.
- (iii) Party A's Exposure shall be calculated by Party A at the close of Party A's business each Local Business Day. If, at the close of business on any Local Business Day, Party A's Exposure exceeds \$_____, then margin ("Margin") shall be delivered and/or returned so that Party A holds Margin in an amount equal to **[such excess] [its then Exposure]**. If, at the close of business on any Local Business Day Party A's Exposure is less than \$_____, then at Party B's request Party A shall return all Margin then held by it. All payments and returns of Margin shall be rounded to the nearest integral multiple of \$_____ (and rounded up if exactly between two integral multiples of \$_____). All Margin due hereunder shall be provided or returned by the close of Party A's business on the next Local Business Day after the day as of which occurs the calculation determining that such Margin is due or is to be returned. Party A shall not be required to pay any Margin, but only to return Margin when and if so provided in this Agreement. Margin shall be delivered by wire transfer of immediately available U.S. Dollars ("Funds") to an account specified by Party A.
- (iv) Subject only to Party A's obligation to return Margin provided to it hereunder when and if so provided in this paragraph **(h)**, Party A shall have the free and unrestricted right to use and dispose of Margin provided to it hereunder. Except as otherwise specified herein, the limitations on the rights of a secured party under Section 9-207 of the New York Uniform Commercial Code

will not apply to Party A when it holds Margin. Funds held as Margin shall bear interest calculated on a daily basis at the overnight Eurodollar Bid Rate as advised from time to time by Party A, with the amount of interest accrued monthly payable on the third business day of the following month.

- (v) Party B grants to Party A a first priority continuing security interest in and lien on and right of set-off against all Margin from time to time hereunder provided to Party A to secure all present and future obligations of Party B to Party A under this Master Agreement and under any Transactions from time to time outstanding.

[FORM FOR ONE WAY ORIGINAL AND VARIATION MARGIN]

(h) Margin.

(i) Party B agrees to margin and mark-to-market its obligations under outstanding Transactions as provided in this paragraph **(h)**.

(ii) Party B shall provide such original margin ("Original Margin") as follows: for each Swap Transaction, ___% of the Contract Value of that Transaction; provided that there will be no Original Margin requirement for Transactions with a Cap Price or Floor Price and in which Party A is paying the Floating Price.

(iii) For the purposes of the preceding subsection (ii), "Contract Value" shall be expressed in U.S. Dollars and shall equal to the notional amount of such Transaction; provided, however, that if the notional amount of a Swap Transaction is not expressed in U.S. Dollars, the Contract Value shall be determined based upon the then open-market value (expressed in U.S. Dollars) of such notional amount (bid or asked, as appropriate) for delivery on the relevant date, as determined by Party A in any commercially reasonable manner.

(iii) For purposes of this paragraph **(h)**, Party A's "Exposure" means on any date an amount that would be payable to Party A by Party B under Section 6(e)(i) of this Agreement. Party A shall determine such amount in accordance with this Agreement.

(iv) Party A's Exposure shall be calculated by Party A at the close of Party A's business each Local Business Day. If, at the close of business on any Local Business Day, Party A's Exposure exceeds \$ _____, then variation margin ("Variation Margin") shall be delivered and/or returned so that Party A holds Variation Margin in an amount equal to **[such excess] [its then Exposure]**. If, at the close of business on any Local Business Day Party A's Exposure is less than \$ _____, then at Party B's request Party A shall return all Variation Margin then held by it. All payments and returns of Variation Margin shall be rounded to the nearest integral multiple of \$ _____ (and rounded up if exactly between two integral multiples of \$ _____). All Variation Margin due hereunder shall be provided or returned by the close of Party A's business on the next Local Business Day after the day as of which occurs the calculation determining that such Variation Margin is due or is to be returned. Party A shall not be required to pay any Original Margin or Variation Margin (collectively, "Margin"), but only to return Margin when and if so provided in this Agreement. Margin shall be delivered by wire transfer of immediately available U.S. Dollars ("Funds") to an account specified by Party A.

(v) Subject only to Party A's obligation to return Margin provided to it hereunder when and if so provided in this paragraph **(h)**, Party A shall have the free and unrestricted right to use and dispose of Margin provided to it hereunder. Except as otherwise specified herein, the limitations on the rights of a secured party under Section 9-207 of the New York Uniform Commercial Code will not apply to Party A when it holds Margin. Funds held as Margin shall bear interest calculated on a daily basis at the overnight Eurodollar Bid Rate as advised from time to time by Party A, with the amount of interest accrued monthly payable on the third business day of the

following month.

(vi) Party B grants to Party A a first priority continuing security interest in and lien on and right of set-off against all Margin from time to time hereunder provided to Party A to secure all present and future obligations of Party B to Party A under this Master Agreement and under any Transactions from time to time outstanding.

(vii) Party A, at its election, may also calculate a separate Net Exposure in a comparable manner for Spot Contracts, and require Party B to deliver additional Margin to cover any such Net Exposure separately from the Margin provided under such preceding provisions. Margin provided under this paragraph f also secures Party B's obligations to Party A under Spot Contracts.

[(viii) Party A may from time to time make intra-day Margin calls and/or change the Margin provisions contained in this Schedule (including, without limitation, by increasing and/or decreasing the percentages and/or amounts in subsections (ii) and (iv) of Part _ of this Schedule), effective immediately on notice to Party B. Such changed Margin provisions shall apply to Transactions outstanding at the time such provisions become effective as well as to Transactions entered into thereafter.]

[FORM OF ONE WAY ORIGINAL & VARIATION MARGIN WITH T-BILLS]**(h) Margin.**

(i) Party B agrees to margin and mark-to-market its obligations under outstanding Transactions as provided in this paragraph **(h)**.

(ii) Party B shall provide such original margin ("Original Margin") as follows: for each Swap Transaction, ___% of the Contract Value of that Transaction; provided that there will be no Original Margin requirement for Transactions with a Cap Price or Floor Price and in which Party A is paying the Floating Price.

(iii) For the purposes of the preceding subsection (ii), "Contract Value" shall be expressed in U.S. Dollars and shall equal to the notional amount of such Transaction; provided, however, that if the notional amount of a Swap Transaction is not expressed in U.S. Dollars, the Contract Value shall be determined based upon the then open-market value (expressed in U.S. Dollars) of such notional amount (bid or asked, as appropriate) for delivery on the relevant date, as determined by Party A in any commercially reasonable manner.

(iii) For purposes of this paragraph **(h)**, Party A's "Exposure" means on any date an amount that would be payable to Party A by Party B under Section 6(e)(i) of this Agreement. Party A shall determine such amount in accordance with this Agreement.

(iv) Party A's Exposure shall be calculated by Party A at the close of Party A's business each Local Business Day. If, at the close of business on any Local Business Day, Party A's Exposure exceeds \$ _____, then variation margin ("Variation Margin") shall be delivered and/or returned so that Party A holds Variation Margin in an amount equal to **[such excess] [its then Exposure]**. If, at the close of business on any Local Business Day Party A's Exposure is less than \$ _____, then at Party B's request Party A shall return all Variation Margin then held by it. All payments and returns of Variation Margin shall be rounded to the nearest integral multiple of \$ _____ (and rounded up if exactly between two integral multiples of \$ _____). All Variation Margin due hereunder shall be provided or returned by the close of Party A's business on the next Local Business Day after the day as of which occurs the calculation determining that such Variation Margin is due or is to be returned. Party A shall not be required to pay any Original Margin or Variation Margin (collectively, "Margin"), but only to return Margin when and if so provided in this Agreement. All Margin shall be delivered in the form of U.S. Dollars ("Funds") or U.S. Treasury Bills ("Acceptable Collateral").

(v) Funds shall be delivered as Margin shall be sent by wire transfer to an account designated by Party A. Acceptable Collateral delivered as Margin shall be transferred to Party A, or such other party as Party A designates, in such manner and form as Party A shall specify. If Party A is to return Margin when it holds Acceptable Collateral, it may determine what form of Margin to return and, if it returns Acceptable Collateral, which items of Acceptable Collateral. Party A need not return any item of Acceptable Collateral held as Margin unless the entire value thereof (determined pursuant to this paragraph) is required to be returned. For purposes of determining the amount of Margin held by Party A at any time, Acceptable Collateral shall be valued at 95% of its then current market value as determined by Party A in a commercially reasonable manner.

(vi) Subject only to Party A's obligation to return Margin provided to it hereunder when and if so provided in this paragraph **(h)**, Party A shall have the free and unrestricted right to use and dispose of Margin provided to it hereunder. Except as otherwise specified herein, the limitations on the rights of a secured party under Section 9-207 of the New York Uniform Commercial Code will not apply to Party A when it holds Margin. Funds held as Margin shall bear interest calculated on a daily basis at the overnight Eurodollar Bid Rate as advised from time to time by Party A, with the amount of interest accrued monthly payable on the third business day of the following month.

(vii) Party B grants to Party A a first priority continuing security interest in and lien on and right of set-off against all Margin from time to time hereunder provided to Party A to secure all present and future obligations of Party B to Party A under this Master Agreement and under any Transactions from time to time outstanding.

(viii) Party B further agrees in connection with the enforcement by Party A of its rights under the Agreement that, in the event of a sale or other disposition of Acceptable Collateral: (i) if notice is necessary under applicable law, written notice given to Party B at the address specified herein three Local Business Days prior to the date of public sale of any Acceptable Collateral or three Local Business Days prior to the date after which private sale or any other disposition of any Acceptable Collateral will be made shall constitute reasonable notice, (ii) Party A may be the purchaser of all or any part thereof (unless prohibited by applicable law) and shall thereafter hold the same free from any right or claim of any kind whatsoever, (iii) Party A may apply the proceeds of any such sale or disposition to the satisfaction of its reasonable attorneys' fees and disbursements and other costs and expenses incurred in connection with its taking, re-taking, holding, preparing for sale and selling of any Acceptable Collateral, with only the remaining amount being applied under this Agreement, (iv) Acceptable Collateral may be sold for cash, upon credit or for future delivery, and for such price or prices as Party A may deem satisfactory, and (v) Party B shall remain responsible for any deficiency. If an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Party B, Party A may liquidate any Acceptable Collateral held as Margin at public or private sale or liquidate or value the same in any other commercially reasonable manner; Party A may include Acceptable Collateral and/or any amounts so realized or determined in the set-off under Section 6 of the Agreement and Part 5, paragraph () [insert letter of Set-Off clause above] of the Schedule.

[(ix) Party A may from time to time make intra-day Margin calls and/or change the Margin provisions contained in this Schedule (including, without limitation, by increasing and/or decreasing the percentages and/or amounts in subsections (ii) and (iv) of Part _ of this Schedule), effective immediately on notice to Party B. Such changed Margin provisions shall apply to Transactions outstanding at the time such provisions become effective as well as to Transactions entered into thereafter.]

[FORM OF TWO WAY MARGIN TIED TO RATINGS]

(h) **Margin.**

(i) The parties agree to margin and mark-to-market their obligations under outstanding Transactions as provided in this paragraph (h).

(ii) Each party's "Net Exposure" means on any date an amount (if positive) that would be payable to such party ("Party X") by the other party ("Party Y") under Section 6(e)(i) of this Agreement. Party A shall determine such amount in accordance with this Agreement.

(iii) The Net Exposure shall be calculated by Party A at the close of Party A's business each Local Business Day. If, at the close of business on any Business Day, the Net Exposure exceeds the "Margin Threshold", then margin ("Margin") shall be delivered and/or returned so that the party having the Net Exposure holds Margin in an amount equal to such excess over the "Margin Threshold" and the other party holds no Margin. If, at the close of business on any Local Business Day the Net Exposure is less than the "Margin Threshold", then all Margin then held shall be returned. All payments and returns of Margin shall be rounded to the nearest integral multiple of the applicable amount defined below as the "Increment Amount" (and rounded up if exactly between two integral multiples of the applicable Increment Amount). All Margin due hereunder shall be provided or returned by the close of business on the next Local Business Day after the day as of which occurs the calculation determining that

such Margin is due or is to be returned.

(iv) (a) The "Margin Threshold" applicable to a party and the corresponding "Increment Amount" shall be the amount specified below opposite such party's Credit Rating at that time:

<u>Credit Rating</u>		<u>Margin Threshold</u>	<u>Increment Amount</u>
<u>Moody's</u>	<u>Standard & Poors</u>		\$ _____
"A2" to "Aaa"	"A" to "AAA"	\$ _____	\$ _____
"A3" to "Baa1"	"A-" to "BBB+"	\$ _____	\$ _____
Below "Baa2" (or no rating other than due to repayment of rated indebtedness)	Below "BBB" (or no rating other than due to repayment of rated indebtedness)	Zero	

(b) "Credit Rating" means the most recent rating by Moody's Investor Services and comparable rating by Standard & Poor's Corporation (and if such ratings are different, the lower of such ratings) for the long term, senior unsecured debt of (i) in the case of Party A, Sempra Energy and (ii) in the case of Party B, its Credit Support Provider.

(v) All Margin shall be delivered in the form of: (a) Funds or (b) a standby letter of credit ("L/C") meeting the requirements set forth below. For purposes of determining the amount of margin held by a party at any time, a L/C shall be valued at its principal amount (provided that a L/C shall be valued at zero unless it expires more than 30 days after the date of such valuation). A party need not return a L/C held as Margin unless the entire principal amount is required to be returned. If more than one type of Margin is held, a party may elect which to return as and if required under this Agreement. Each L/C shall (a) be an irrevocable letter of credit in the beneficiary's favor, (b) be issued or confirmed by a bank in New York City which is and continue to be acceptable to the party receiving the L/C, (c) have such terms and conditions as the party receiving such L/C shall specify, and (d) be fully enforceable and not the subject of any action restraining or attempting to restrain payment thereunder. All costs relating to any L/C shall be for the account of the party providing the L/C.

(vi) Each party shall have the free and unrestricted right to use and dispose of Margin provided to it hereunder. Except as otherwise specified herein, the limitations on the rights of a secured party under Section 9-207 of the New York Uniform Commercial Code will not apply to a party when it holds Margin. Funds held as Margin shall bear interest calculated on a daily basis at overnight LIBID as from time to time in effect (as reported by Telerate), with the amount of interest accrued monthly payable on the third business day of the following month.

(vii) Each party grants to the other party a first priority continuing security interest in and lien on and right of set-off against all Margin from time to time hereunder provided by such party to the other party to secure all present and future obligations of such party to the other party under this Master Agreement and under any Transactions from time to time outstanding.

(viii) If Party B objects to any Net Exposure determined by Party A then (i) Party B shall notify Party A of such disagreement by telephone, (ii) during the pendency of any such disagreement, Party A's calculation of Net Exposure shall be controlling and (iii) the parties shall confer in good faith with a view towards mutually agreeing upon the Net Exposure. In the event the parties are unable to mutually agree upon the Net Exposure within one Local Business day of any such disagreement, any component of such determination upon which the parties are unable to agree shall be determined based on dealer quotations. A "dealer quotation" means such price or payment as is quoted for the relevant commodity or Transaction, for a transaction between the party obtaining the quote and

the quoting dealer. A "dealer" is a person who regularly quotes as part of its business a two-way market to commercial parties in the relevant commodity or Transaction. Each party shall obtain quotes from as many dealers as is mutually agreed or, absent agreement, from two dealers so selected. The dealer quotation shall be the arithmetic mean of the quotations so obtained.

IN WITNESS WHEREOF, the parties have executed this Schedule as of the date specified on the first page hereof.

SEMPRA ENERGY TRADING CORP.

By: _____
Name:
Title:

[NAME OF COUNTERPART]

By: _____
Name:
Title:

General Terms and Conditions

Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.7.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

- 2.1. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.2. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.
- 2.8. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.11. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.16. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.17. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.20. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.23. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.24. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.27. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.28. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.29. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

- 3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall

be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 14.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payments and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; or (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount 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, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court

order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6 and Section 10, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

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. A PARTY'S LIABILITY HEREUNDER 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, A PARTY'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.

SECTION 14. MISCELLANEOUS

14.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

14.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

14.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

14.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

14.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

14.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

14.7. There is no third party beneficiary to this Contract.

14.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

14.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

14.11 The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, ____ Transaction Confirmation #: _____	
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.		
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	
Contract Price: \$_____/MMBtu or _____		
Delivery Period: Begin: _____, ____ End: _____, ____		
Performance Obligation and Contract Quantity: (Select One)		
Firm (Fixed Quantity): _____ MMBtus/day ® EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of ® Buyer or o Seller	Interruptible: Up to _____ MMBtus/day
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):		
Special Conditions: 		
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____	

ACCA PRESENTATION

ENERGY COMMODITY DERIVATIVES

**Michael A. Goldstein, Senior Vice President & General Counsel
Sempra Energy Trading Corp.**

October 23, 2002

Below is some practical instruction in negotiating the ISDA Schedule for energy products. Many of these suggestions will also be relevant to derivatives for other commodity and financial products.

The ISDA Schedule between Customer and Marketer

A. "Specified Transactions"

Marketing and trading relationships between marketers of energy commodity, or between marketers and their customers (typically, producers and end-users), frequently involve both swaps and physical delivery transactions. Even though part of the same corporate entity, many market participants will tell you that their "swaps group" and their "physical group" are distinct, that they have separate profit and loss "books" and, perhaps, may even tell you that they are separate divisions. Of course, from a legal and credit perspective, these characterizations are irrelevant. Legally, there is one corporate entity engaging in two types of business, and for credit purposes, that corporate entity is responsible for the obligations related to both types of business. As an example, a material failure of a party to deliver gas under a physical transaction (assuming no valid excuse, like force majeure), or to pay for gas delivered to it, may have a direct bearing on that party's ability to perform its payment obligations under outstanding swaps transactions.

To mitigate against the credit risk which arises from this situation, each party should want a "cross default" between the swaps and physical transactions. This may be accomplished by amending the definition of "Specified Transaction" in Part I of the Schedule as follows:

"Specified Transaction" will have the meaning specified in Section 14 of this Agreement, except that such term is amended on line 8 after the words "currency option" by adding a comma and the words "agreement for the purchase, sale or transfer of any commodity or any other commodity trading transaction." For this purpose, "commodity" means any tangible or intangible commodity of any type

or description (including, without limitation, electric energy and/or capacity, petroleum and natural gas, and the products or by-products thereof).

You will note that this language is very broad, and not limited to purchases and sales of commodity. In the energy business, commodity can be transferred in a variety of ways, including loaned or delivered at one location for redelivery elsewhere - - on the same day or at different times of the year. The term "transfer" is intended to capture these types of transactions.

You will also note that "commodity" is defined to include intangible commodity, which is to make clear that the cross-default would apply to purchases and sales of electricity. Trading of emission allowances or "installed capacity" would also be captured by this clause.

B. "Automatic Early Termination"

The Automatic Early Termination provisions of Section 6(a) of the ISDA relate to the ability to terminate and liquidate swaps and other derivatives transactions after an event of insolvency. This is not an issue for U.S. counterparts because Section 560 of the U.S. Bankruptcy Code permits the termination of swaps transactions after a petition for bankruptcy is filed and notwithstanding the "automatic stay" provisions of the Bankruptcy Code.

When dealing with counterparts whose home jurisdiction is outside the United States, it is imperative to seek local counsel's advice about creditors' rights in insolvency proceedings. Also, check with ISDA's office in New York City, which has copies of "netting" opinions for various jurisdictions. However, many times the insolvency laws of foreign jurisdictions will be unclear about the treatment of derivatives, in which case you should assume the worst and plan to be "stayed" from closing-out your counterpart after its insolvency. Nonetheless, since laws and interpretations change, the following clause may permit you to take advantage of that changing legal environment:

The "Automatic Early Termination" provisions of Section 6(a) will not apply to Party A or Party B; provided, however, that the "Automatic Early Termination" provision of Section 6(a) will apply to either such party if at any time an Event of Default specified in Section 5(a)(vii) (1), (2), (3), (4), (5), (6) or, to the extent analogous thereto, (8), with respect to a party has occurred and is then continuing, and either (A) the relevant voluntary or involuntary case or other proceeding or bankruptcy or insolvency giving rise to an Event of Default specified in such Sections is governed by a system of law which in the judgment of the Non-Defaulting Party, does not permit the termination and liquidation of Transactions after the occurrence of the relevant Event of Default or (B) any court, tribunal or regulatory authority with competent jurisdiction acting pursuant to any such system of law makes an order which has or purports to have the effect of prohibiting the other party from designating an Early Termination Date in respect

of all outstanding Transactions at any time after such Event of Default has occurred.

C. Payments on Early Termination: Loss versus Market Quotations

The Loss and Market Quotations methods are alternative means to determine the liquidation values of transactions that are being terminated.

Under the Loss method, the Non-defaulting Party reasonably determines its total losses (or gains) in good faith. The Non-defaulting Party has some reasonable leeway in how it determines Loss. These losses may in fact be determined by the Non-defaulting Party's using the traditional merchant method of "cover", that is, by entering into a replacement transaction in the market for each transaction being terminated. If practicable, this is in fact a good practice since it results in a "Loss" for ISDA purposes which is equal to the Non-defaulting Party's actual loss as a result of the Event of Default. Loss may also (but need not) be determined by reference to quotations from leading dealers. The key requirement is that the determination be reasonable.

One risk of the Loss method for the Non-defaulting Party is that the Defaulting Party later challenges the Non-defaulting Party's calculations. This is still a risk, however, if Market Quotation is selected. Also, if the Non-defaulting Party deals with a creditworthy counterpart within the current bid-offer spread, it is highly likely that the price so determined will be found to be commercially reasonable.

For the Non-defaulting Party, the Loss method has the advantage of speed. If its counterpart is bankrupt, the Non-defaulting Party will want to close-out and liquidate all outstanding transactions without delay or confusion. From a risk management perspective, the certainty of obtaining close-out values is paramount; delay caused by shopping the market for quotes or to gain advantage creates unwanted risk. This is especially true in a turbulent market, where prices are moving quickly or erratically (which could be due to the news of the Defaulting Party's bankruptcy). Under the Loss method, the Non-defaulting Party can enter into a replacement transaction or determine Loss quickly by calling a dealer which regularly quotes in the market, or in any other reasonable manner. In addition, for transactions which are long-dated or have unique features, obtaining multiple quotes may be difficult and time consuming, creating more unwanted risk.

Market Quotations is a method which averages the prices at which the Non-defaulting Party *could* enter into replacement transactions. Under this method, the Non-defaulting Party collects quotes for entering into a replacement transaction and takes the arithmetic mean of those quotes. For the Defaulting Party, this method has the perceived advantage of forcing the Non-defaulting Party to "poll the market" to obtain an array of prices, rather than dealing on the first or best price obtained by the Non-defaulting Party. However, the disadvantage for the Defaulting Party is that the calculation of damages will be based on a mean price, which will

likely be higher (or lower) than the actual price at which the Non-defaulting Party deals with the market to enter into a replacement transaction.

One compromise suggested is to use Market Quotations for transactions which have a short term of performance remaining (for example, less than one year), and to use Loss for all other transactions. The rationale for this compromise is that the market is deep and liquid for shorter term transactions and, therefore, multiple quotes for a close-out can be obtained quickly (an advantage for the Non-defaulting Party) and will be within a fairly narrow bid-offer spread (an advantage for the Defaulting Party). However, this compromise may compound confusion for the Non-defaulting Party because it will have to execute separate termination methods.

The selection of Market Quotation will put the Non-defaulting Party at a disadvantage at the time an Event of Default occurs. Since I believe the ISDA Master Agreement should be focused on protecting the Non-defaulting Party, I strongly recommend that the Loss method be selected.

D. Amendments to grace periods after an Event of Default

1. Failure to Pay, Section 5(a)(i) - the ISDA provides a grace period of 3 days for a failure to pay an amount owed. I believe a 1 day grace period is more appropriate. Swap transactions have one essential performance obligation, which is payment of the periodic settlement amount. The settlement amount is typically invoiced several days before payment is due, which allows each party time to review and confirm the payment calculation and arrange for funding any amount owed by it. If there is no dispute about the amount owed, a counterpart's inability or unwillingness to pay on time may be an early warning sign of financial difficulties. Under these circumstances, the party which is owed payment should have the ability to demand immediate satisfaction of that payment; waiting an additional 2 days to declare an Event of Default subjects this party to the risk during those 2 days that its financial exposure to the non-paying party will increase.

Unfortunately, payment failures are a regular part of the business. However, even with 1 day grace periods for non-payment, these payment failures do not result in the termination of transactions. That is because dealers and other market participants are extremely reluctant to declare an Event of Default for non-payment without substantiating that the failure to pay is due to financial difficulties. Commercial relationships are at stake and potential liability exists for a party which terminates transactions when the other party could have performed its obligations. However, the 1 day grace period gives the party owed money an opportunity to react quickly to a potential credit situation, to demand information about the non-performing party's financial wherewithal, and to craft a solution for that situation (for example, an agreed-to liquidation of outstanding swaps).

2. Involuntary Bankruptcy Proceeding, Section 5(a)(vii) - the ISDA provides 30 days for a party to dismiss or stay a bankruptcy petition filed or proceeding commenced against

that party. There should be no grace period for this event. A bankruptcy filing by a counterpart's creditors (an "involuntary" filing) is the single most significant credit event for a company (other than the company voluntarily making the filing) and, for that company's trading counterparts, is a certain and immediate sign of financial weakness. For most creditors, a bankruptcy filing jeopardizes the repayment of a fixed principal amount of credit extended or for goods and services provided or to be provided. However, for swaps and other trading counterparts, the amounts which could be owed for outstanding transactions changes each day with changes in the underlying commodity markets. Market volatility, coupled with the size of the notional amount of commodity underlying the swap, can cause enormous swings in exposure and will mean the difference between owing money to or being owed money by the bankrupt entity. The risk of this potential exposure is magnified if a party must wait 30 days to learn if its counterpart is truly insolvent.

When faced with this dire credit situation, most parties want to immediately fix their market exposure to the bankrupt entity and not risk a deterioration of that exposure (even if that means forgoing the chance that market changes may improve the party's exposure to the bankrupt entity). Therefore, many market participants will shorten the 30-day grace period significantly, including to zero days.

The counter-argument to shortening the 30-day grace period is that any shorter period deprives a company of sufficient time to dismiss a frivolous petition. However, frivolous petitions are rare in the United States because an involuntary proceeding must be commenced by at least three creditors (which ensures some independent evaluation of the target company's credit), the filing parties risk court sanctions for commencing spurious litigation and, moreover, risk exposure to suit for damages (actual and consequential) which may result from filing a false petition. In addition, as between the parties to a swap transaction, the party which is the target of the involuntary petition is in the best situation to manage the risk of such an event and, therefore, should be allocated that risk.

E. Additional Event of Default: Adequate Assurance

Adequate assurance is a statutory remedy in the Uniform Commercial Code (see Section 2-609 of the New York UCC). In circumstances where one party reasonably believes that the other party will not be able to perform its future obligations, that first party may demand "assurance" of the ability to perform. The UCC gives the party which must supply assurances up to 30 days, depending upon the circumstances, to supply those assurances.

The right to request adequate assurance from a swap counterpart is an extremely effective risk management tool. For example, assume a party's counterpart were to suffer a material adverse financial change, announce plans to restructure its debt obligations and take other significant steps to reorganize its businesses. If the counterpart was also a customer for physical product, it might even ask the party to "buy down" or defer the counterpart's purchase obligations for gas, oil or electricity consumed in the counterpart's manufacturing process.

Notwithstanding these events, under the standard ISDA terms a party is helpless to remedy this situation: there is no bankruptcy Event of Default because the counterparty is not yet the subject of a bankruptcy proceeding; there is also no payment Event of Default and, unless a payment settlement date is imminent, it could be weeks until the party learns whether the counterparty will be able to pay its swap obligations, and then only if the counterparty is the paying party on that settlement date. In addition, a downgrade of the counterparty's rated debt (if it has any) by the credit rating agencies may be days or weeks away until the agencies complete an assessment of the counterparty's financial health and, therefore, an "Additional Event of Default" that is triggered by a credit downgrade is ineffectual in this situation. Also, margin provisions are not entirely helpful in this situation because there may be no right to request margin from the counterparty and, even if there is, the margin payment is calculated to secure exposure based on prior market prices (usually as of the close of business on the previous trading day) and does not secure against future exposure. Therefore, under the standard ISDA terms, there is no contractual right to ensure that the counterparty will be able to perform through the tenor of its outstanding swaps or, failing such assurance, a right to close-out outstanding transactions.

An adequate assurance provision can be added to the ISDA Schedule as follows:

The word "or" is deleted at the end of Section 5(a)(vii), the period at the end of Section 5(a)(viii) is deleted and replaced by "; or" and the following new Section 5(a)(ix) is added:

"(ix) **Adequate Assurance.** The party fails to provide adequate assurance of its ability to perform all of its outstanding obligations to the other party, whether hereunder or otherwise, within two Local Business Days of a written request therefor from the other party when the other party has reasonable grounds for insecurity."

Adequate assurance can be provided in several forms which, if requested by either party, can be stipulated in the amendment. A letter of credit, original margin and variation margin (in the form of cash, letters of credit or Treasuries) are typical forms of adequate assurance that might be provided to the party making the demand.

F. Set-Off Rights

Although the ISDA Agreement reserves each parties rights to set-off, the ISDA Schedule should expressly provide for those rights to ensure legal certainty. This is especially the case if the parties want to preserve their rights to set-off amounts owed under the ISDA Agreement against amounts owed under other agreements (for example, physical delivery transactions). This will be the case if the parties have elected to include in the ISDA Schedule a cross-default to physical commodity transactions between them.

Set-off is a self-help remedy which must be exercised in respect of mutual obligations; that is, obligations that have a relationship to each other based on some exchange of consideration. Set-off in respect of other obligations must be bargained for and contractually agreed to. Because it may not be clear to a judge or a jury that there exists "mutuality of obligations" between swaps and physical delivery transactions entered into under separate master agreements, a broad setoff provision is essential to preserve the right to setoff obligations between these agreements.

ISDA's suggested set-off language is very useful and is as follows:

Set-Off. Any amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(iv) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off); provided that any amount not then due which is included in such setoff shall be discounted to present value as at the time of setoff (to take account of the period between the time of setoff and the date on which such amount would have otherwise been due) at the applicable rate for that period determined by the Non-defaulting Party in any commercially reasonable manner. X will give notice to the other party of any set-off effected under this Part 5(d).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Part 5(d) shall be effective to create a charge or other security interest. This Part 5(d) shall be without prejudice and in addition to any right of set-off, 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).

G. Force Majeure in the Underlying Commodity Market

Simply stated, there is no force majeure for swaps transactions. Freezing wells, curtailment of transportation on pipelines, hurricanes, floods, explosions and other catastrophes that affect the production or delivery of commodity are not relevant to the ability of each party to perform its obligations under a swap transaction. The primary obligation under a swap is to pay money, which is not directly affected by any of the forgoing events. However, failure of payment systems due to malfunctions, electric outages and other events which affect the ability to transfer money may constitute a force majeure. In these events, the grace period for a failure to pay should be suspended until the event which causes the delay in payment is remedied. One suggestion for language to add to the ISDA Schedule is as follows:

(i) Section 5(a)(i) is amended by deleting "third" and substituting "first", and adding to the end thereof the following: "provided, however, if a party is unable to make a payment because of an operational or administrative problem in the payments system from which a payment is being made or to which it is being sent on such day due to the failure or breakdown of transmission or communication facilities, and funds were available to such party to enable it to make the relevant payment when due, as confirmed by such party's bank at the request of the other party, then no Event of Default shall occur unless such party fails to remedy the failure on or before the third Local Business Day after notice of such failure is given to the party."

ISDA's Commodity Definitions do include several "Market Disruption" events which affect the parties ability to price out a swap, such as the suspension of trading of a relevant futures contract or the disappearance of other pricing sources. These events should be incorporated into the ISDA Schedule.

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