



North American Energy Markets Association



International Energy Credit Association

2019 Power and Gas Master Agreement

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2019 POWER AND GAS MASTER AGREEMENT

This 2019 Power and Gas Master Agreement (“**Master Agreement**”)
made as of _____

by _____ (“**Party A**”)
and _____ (“**Party B**”).

Article One: Purpose, Applicability and Governance

1.1 **Purpose.** The purpose of this Master Agreement is to provide for sales of Product by the Parties.

1.2 **Disclaimer.** This Master Agreement was prepared by NAEMA and IECA to facilitate orderly trading in and development of wholesale power, gas and associated markets. Neither NAEMA, IECA nor any of their members, agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom, except as expressly provided herein. By providing this Master Agreement, NAEMA and IECA 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.

Article Two: General Definitions

2.1 “**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.

2.2 “**Agreement**” means this Master Agreement, including its exhibits (including but not limited to the Supplemental Terms attached hereto as Exhibit B), schedules and any written supplements, any collateral, credit support or margin agreement or similar arrangement between the Parties to a Transaction, and all Transactions (including any Confirmations).

2.3 “**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.

2.4 “**Business Day**” means any day except a Saturday, a Sunday, a Federal Reserve Bank holiday, or a Canadian banking holiday where the Buyer or Seller has its principal place of business located in Canada. 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 to whom the notice, payment or delivery is being sent.

2.5 “**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.

2.6 “**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 shall be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

2.7 “**Claiming Party**” has the meaning set forth in Section 4.3.

2.8 “**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 the Agreement.

2.9 “**Confirmation**” has the meaning set forth in Section 3.1.

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

2.11 “**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.

2.12 “**Credit Rating**” means, with respect to any entity, on any date of determination, the respective ratings (or lowest rating, if there is a difference) then assigned by S&P or Moody’s to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancement) or, in the absence of such a debt rating, to such entity as a corporate credit or issuer rating.

2.13 “**Defaulting Party**” has the meaning set forth in Section 6.1.

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

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

2.16 “**Downgrade Event**” means any of the following events as specified in the Supplemental Terms:

- (A) A “**Credit Rating Type Downgrade Event**” will have occurred with respect to a Party if a Credit Rating for the Party, its Guarantor, if any, or such other party specified in the Supplemental Terms is withdrawn, and there is no longer a Credit Rating assigned by either S&P or Moody’s, or it drops to lower than BBB- by S&P or Baa3 by Moody’s; or

- (B) A “**Tangible Net Worth Type Downgrade Event**” will have occurred with respect to a Party if the book value of the tangible net worth (as such term is commonly defined in accordance with generally accepted accounting principles) of such Party, its Guarantor, if any, or such other party specified in the Supplemental Terms declines by more than thirty percent (30%) within the previous 365 days; or
- (C) Any other event specified as a Downgrade Event in the Supplemental Terms.

2.17 “**Early Termination Date**” has the meaning set forth in Section 6.2.

2.18 “**Electronic Confirmation**” has the meaning set forth in Section 3.4.

2.19 “**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.

2.20 “**Event of Default**” has the meaning set forth in Section 6.1.

2.21 “**Federal Power Marketing Agency**” means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy.

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

2.23 “**Force Majeure**” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, 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 in the applicable schedule.

2.24 “**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.

2.25 “**Governmental Charges**” has the meaning set forth in Section 10.2.

2.26 “**Guarantor**” means, with respect to a Party, the guarantor, if any, set forth in the Supplemental Terms.

2.27 “**IECA**” means the International Energy Credit Association, which is a Minnesota nonprofit corporation. Additional information about IECA and materials related to this Master Agreement are available on IECA’s website.

2.28 “**IECA Website**” means the website maintained by IECA at <https://www.ieca.net> or successor site.

2.29 “**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.

2.30 “**Imaged Document**” has the meaning set forth in Section 11.17.

2.31 “**Letter(s) of Credit**” means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having an asset base of at least \$10 billion and a Credit Rating of at least A- from S&P or A3 from Moody’s, or a Canadian commercial bank as defined by the Bank Act of Canada that satisfies the foregoing Credit Rating requirements, or such other Letter of Credit issuer as agreed to by the Parties, including but not limited to CoBank, ACB or National Rural Utilities Cooperative, in all cases 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.

2.32 “**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.

2.33 “**Market Disruption Event**” has the meaning set forth in Section 11.19.

2.34 “**Moody’s**” means Moody’s Investors Service, Inc., or any successor that is a nationally recognized statistical rating organization.

2.35 “**NAEMA**” means the North American Energy Markets Association, which is a Minnesota nonprofit corporation. Additional information about NAEMA and materials related to this Master Agreement are available on NAEMA’s website.

2.36 “**NAEMA Website**” means the website maintained by NAEMA at <https://www.naema.com> or successor site.

2.37 “**Non-Defaulting Party**” has the meaning set forth in Section 6.2.

2.38 “**Offsetting Transactions**” means any two or more outstanding Transactions, having the same or overlapping Delivery Period(s) and Delivery Point, 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.

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

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

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

2.42 “**Oral Confirmation**” has the meaning set forth in Section 3.3.

2.43 “**Party**” means a party to the Agreement (collectively, “Parties”).

2.44 “**Performance Assurance**” means collateral in the form of either cash, Letter(s) of Credit, or other assurance acceptable to the Party requesting an assurance of performance.

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

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

2.47 “**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 shall be obligated to purchase and receive the Product.

2.48 “**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.

2.49 “**Replacement Price**” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point from an entity that is not an Affiliate of Buyer 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 absent a purchase, 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.

2.50 “**S&P**” means S&P Global Ratings, or any successor that is a nationally recognized statistical rating organization.

2.51 “**Sales Price**” means the price at which Seller, acting in a commercially reasonable manner, resells to an entity that is not an Affiliate of Seller 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 absent a sale to a third party purchaser, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however if Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such Product shall be deemed equal to zero (0); 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.

2.52 “**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.

2.53 “**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.

2.54 “**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 6.2.

2.55 “**Specified Payment Day**” has the meaning given to it in Section 7.2.

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

2.57 “**Master Agreement**” means this 2019 Power and Gas Master Agreement.

2.58 “**Terminated Transaction**” has the meaning set forth in Section 6.2.

2.59 “**Termination Payment**” has the meaning set forth in Section 6.3.

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

2.61 “**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.

2.62 “**Written Confirmation**” has the meaning set forth in Section 3.2.

Article Three: Transaction Terms and Conditions

3.1 Confirmations. A Transaction shall be entered into upon the agreement of the Parties and memorialized by a confirmation (a “**Confirmation**”) in accordance with one or more of the following methods as evidenced in paragraph I of the Supplemental Terms attached hereto as Exhibit B:

- (A) in writing in accordance with Section 3.2;
- (B) orally in accordance with Section 3.3; or
- (C) by electronic means of communication in accordance with Section 3.4.

The Supplemental Terms may contain additional terms relating to a Transaction as may be agreed to by the Parties. If the Parties do not enter into the Supplemental Terms or if no method for entering transactions is selected in the Supplemental Terms between the Parties, then the Transactions shall be entered into orally. 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.

3.2 Written Confirmation. When confirming a Transaction in writing, Seller shall forward to Buyer within three (3) Business Days after the Transaction is entered into a written confirmation substantially in the form of Exhibit A or other format as mutually agreed to by the Parties (“**Written Confirmation**”). When evidencing a Transaction by way of Oral Confirmation or Electronic Confirmation, Seller may also confirm the Transaction by forwarding to Buyer within three (3) Business Days after the Transaction is entered into, a Written Confirmation. If Buyer objects to any term(s) of such Written 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 Written Confirmation within three (3) Business Days after the Transaction is entered into, a Written Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Written 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 Written Confirmation and neither Party objects to the other Party’s Written Confirmation within two (2) Business Days of receipt, Seller’s Written Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller’s Written Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer’s Written Confirmation was sent prior to Seller’s Written Confirmation, in which case Buyer’s Written 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 Written Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

3.3 Oral Confirmation. Each Party consents to the creation of a tape or electronic recording (“**Oral Confirmation**”) of all telephone conversations between the Parties relating to transacting under this Master Agreement, and that any such Oral Confirmation shall be retained in

confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to such proposed Transaction, subject to applicable rules of evidence. 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 Oral Confirmation, 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 Written Confirmation or Electronic Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Written Confirmation or Electronic Confirmation, such Written Confirmation or Electronic Confirmation shall control in the event of any conflict with the terms of an Oral Confirmation, or in the event of any conflict with the terms of this Master Agreement, absent manifest error.

3.4 Electronic Confirmation. When confirming a Transaction by an electronic means of communication for which a written record can be retrieved and which is mutually agreed upon by the Parties as evidenced in the Supplemental Terms (“**Electronic Confirmation**”), the record of Electronic Confirmation shall be retained in electronic form in confidence secured from improper access, and may, if properly authenticated, be submitted in evidence in any proceeding or action relating to such proposed Transaction, subject to applicable rules of evidence. The Electronic Confirmation and the terms and conditions described therein, if admissible, shall be the controlling evidence of the Parties' agreement with respect to a particular Transaction in the event a Written Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Written Confirmation, such Written Confirmation shall control in the event of any conflict with the terms of an Electronic Confirmation, or in the event of such conflict with the terms of this Master Agreement, absent manifest error.

3.5 Additional Terms. The Parties to a Transaction may mutually agree to additional commercial terms which modify or supplement the general terms and conditions of this Master Agreement either through Written Confirmation or Supplemental Terms. The Parties to a Transaction may mutually agree to additional non-commercial terms which modify or supplement the general terms and conditions of this Master Agreement either through Written Confirmation signed by both Parties or Supplemental Terms. The failure of the Parties to comply with the requirements of this Section 3.5 shall not invalidate any Transaction agreed to by the Parties.

Article Four: Obligations and Deliveries

4.1 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. 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. However, with respect to Options, the obligations set forth in this Section 4.1 shall only arise if the Option Buyer exercises its Option in accordance with its terms.

4.2 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.

4.3 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, provided that, in the event a labor dispute constitutes a Force Majeure, a Claiming Party shall have sole discretion as to how and when to settle such a dispute affecting it. If a Force Majeure Allowable Period is specified in the Supplemental Terms, and the Force Majeure continues for longer than such period, 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.

4.4 Market Redesign. If this Section 4.4 (the “**Market Redesign Provision**”) is elected in the Supplemental Terms as applicable, in the event the current definition of the Delivery Point set forth in a Transaction is modified, redefined, replaced or eliminated in the Transmission Provider’s or other applicable tariff, the Parties agree to promptly negotiate in good faith to designate an alternate Delivery Point that reasonably approximates the characteristics of the originally designated Delivery Point so that the Parties shall be in the same economic position after such designation as they were at the time the Parties entered into such Transaction, or as mutually agreed to by the Parties. Failure of the Parties to so agree shall constitute a Market Disruption Event.

Article Five: Remedies for Failure to Deliver or Receive

5.1 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, 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.

5.2 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, 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 Six: Events of Default; Remedies

6.1 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 a Transaction 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 a Transaction (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 Five) 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 or collateral requirements of the Agreement;
- (F) a Party, or its Guarantor, if any, ("**X**") consolidates, amalgamates, combines with, acquires, is taken over by, merges with or into, transfers all or substantially all of its assets to, or reorganizes, reincorporates or reconstitutes into or as, another entity ("**X2**"), and upon such change, (i) X2 fails to assume all of the obligations of X under any Transaction or guaranty, if applicable, or (ii) the benefits of any Performance Assurance or guaranty provided to the other Party ("**Y**") pursuant to the Agreement cease to be effective without Y's consent (a "**Merger Event with Non-Assumed Obligations**");
- (G) if elected in the Supplemental Terms as applicable, with respect to such Party, its Guarantor, if any, or any other party specified in the Supplemental Terms for such Party, a default under one or more forward contracts, swap agreements, master netting agreements, or spot contracts with the other Party, its Guarantor, if any, or any other party specified in the Supplemental Terms for such Party (individually or collectively, "**X**"), where any right to terminate such contract(s) or agreement(s) as a result of such default shall have been exercised by X (an "**Other Agreement Default Among Specified Parties**");
- (H) if elected in the Supplemental Terms as applicable for such Party, with respect to such Party, its Guarantor, if any, or any other party specified in the Supplemental Terms for such Party (individually or collectively, "**X**"), (i) a default, event of default or other similar condition or event in respect of X 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 Supplemental Terms), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and

payable, (ii) a default, event of default or other similar condition or event in respect of X under one or more forward contracts, swap agreements, master netting agreements, spot contracts or futures contracts, individually or collectively, with negative exposure or negative termination amounts, the absolute value of which, in an aggregate amount is not less than the applicable Cross Default Amount (as specified in the Supplemental Terms), which results in such contracts or agreements becoming, or becoming capable at such time of being, terminated early, with X being liable under contract to pay the absolute value of such amounts, or (iii) a default by X 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 Supplemental Terms), and for the purposes of the foregoing, any of the aggregate amounts in (i), (ii) or (iii) may be combined for the purpose of determining whether or not the Cross Default Amount has been reached (a “**Cross Default**”);

- (I) if elected in the Supplemental Terms as applicable, there is a change in control structure in respect of a Party, or its Guarantor, if any (“**X**”), involving its consolidation, amalgamation or business combination with, acquisition or takeover of or by, merger with or into, or transfer of all or substantially all of its assets to, or reorganization, reincorporation or reconstitution into or as, another entity (“**X2**”), and such change does not constitute a Merger Event with Non-Assumed Obligations, but upon such change, the creditworthiness of X2 is Materially Weaker (as defined in the Supplemental Terms) than that of X (a “**Merger Event with Materially Weaker Credit**”); or
- (J) with respect to such Party’s Guarantor, if any:
 - (1) any representation or warranty made by such Guarantor in connection with a Transaction is false or misleading in any material respect when made or when deemed made or repeated;
 - (2) the failure of such Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with a Transaction and such failure shall not be remedied within three (3) Business Days after written notice;
 - (3) such Guarantor becomes Bankrupt;
 - (4) the failure of such Guarantor’s guaranty to be in full force and effect for purposes of the 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

- (5) such Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty provided by such Guarantor in connection with the Agreement.

6.2 Declaration of an Early Termination Date and Calculation of Settlement. 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 to (i) 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 and (ii) suspend performance pursuant to Section 6.7. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date then each such Transaction (each an “**Excluded Transaction**”) shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 6.3 below). The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information.

6.3 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 Nine, plus any or all other amounts due to the Defaulting Party under the Agreement, against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Nine, plus any or all other amounts due to the Non-Defaulting Party under the 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.

6.4 Notice of Payment of Termination Payment.

- (A) 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.

- (B) If this subsection (B) (the “**Conditional Payment Provision**”) is elected in the Supplemental Terms as applicable, notwithstanding any provision to the contrary contained in the Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article Six until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Master Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed.

6.5 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.

6.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 6.3, 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 6.2, 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).

6.7 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 or the Party that would be a Non-Defaulting Party if a Potential Event of Default were to become an Event of Default (in either case, “**X**”), upon written notice to the other Party (“**Y**”), shall have the right (i) to suspend performance (including payments) under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ninety (90) days with respect to any single Transaction unless an Early Termination Date shall have been declared and notice thereof pursuant to Section 6.2 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 Seven: Payment and Netting

7.1 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 Master Agreement (other than Termination Payments, payments pursuant to Section 5.1 or 5.2, and Option premium payments pursuant to Section 7.7). As soon as practicable after the end of each month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

7.2 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 (the "**Specified Payment 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 shall 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 shall be deemed delinquent and shall 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.

7.3 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 Master 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 7.3 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.

7.4 Netting of Payments. The Parties 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 Five, 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. Notwithstanding the previous sentence, netting shall not apply to option premiums which shall be settled in accordance with Section 7.7.

7.5 Payment Obligation Absent Netting. If Parties agree not to do netting of payments pursuant to Section 7.4 or 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 Five, interest, and payments or credits, that Party shall pay such sum in full when due.

7.6 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 Six, all amounts netted pursuant to this Article Seven 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 Master Agreement.

7.7 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 7.1.

7.8 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 separate and subsequent agreement of the Parties, be netted into a single Transaction under which:

- (A) the Party obligated to deliver the greater amount of the Product shall 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 shall pay the net difference owed between the Parties.

The outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

Article Eight: Limitations

8.1 LIMITATION OF LIABILITY. 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 THE 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 IN THE AGREEMENT 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. 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 Nine: Credit and Collateral Requirements

9.1 Credit Elections. The applicable credit and collateral requirements shall be as agreed to by the Parties as set forth in the Supplemental Terms.

9.2 Performance Assurance. The Parties may elect to choose one or more of the options listed below. If the Parties do not enter into the Supplemental Terms or if no option is selected in the Supplemental Terms between the Parties, Option 1 shall apply exclusively.

Option 1 - Standard Performance Assurance

The following is an Event of Default: A Party (“X”) fails to provide Performance Assurance to the other Party (“Y”), in an amount or type determined by Y, as assurance of its ability to perform all of X’s outstanding obligations hereunder to Y on or before three (3) Business Days after a request for such assurance is made in writing by Y when Y has reasonable grounds for insecurity.

Option 2 - Performance Assurance Upon Downgrade Event

The following is an Event of Default: A Party (“X”) fails to provide Performance Assurance to the other Party (“Y”), in an amount or type determined by Y, on or before three (3) Business Days after a request for such assurance is made in writing by Y when a Downgrade Event has occurred with respect to X.

9.3 Grant of Security Interest/Remedies. To secure its obligations under the Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, unless prohibited by applicable law, 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.

9.4 Collateral Threshold. If specified as applicable in the Supplemental Terms, if at any time and from time to time during the term of the Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to a Party ("X") plus the Independent Amount of the other Party ("Y"), if any specified for Y in the Supplemental Terms, exceeds Y's Collateral Threshold, then X, on any Business Day, may request that Y provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Y's Independent Amount, if any specified for Y in the Supplemental Terms, exceeds Y's Collateral Threshold (rounding upwards for any fractional amount to the next Rounding Amount, if any is specified for Y in the Supplemental Terms) ("**Y Performance Assurance**"), less any Y Performance Assurance already posted with X. If Y receives written notice from X by 1:00 p.m. on a Business Day, Y shall post acceptable Performance Assurance on the second Business Day following the date of notice and on the third Business Day following the date of notice if received by Y after 1:00 p.m. on a Business Day. On any Business Day, Y, at its sole cost, may request that such Y Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Y's Independent Amount, if any specified for Y in the Supplemental Terms (rounding upwards for any fractional amount to the next Rounding Amount, if any is specified for Y in the Supplemental Terms). For purposes of this provision, the calculation of the Termination Payment shall be calculated pursuant to Section 6.3 by X as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Y to X, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions. In the event that Y fails to provide X with Y Performance Assurance pursuant to the terms hereof when due, then an Event of Default under Section 6.1(E) shall be deemed to have occurred and X will be entitled to the remedies set forth in Article Six of this Master Agreement.

9.5 Financial Information. Unless specified otherwise in the Supplemental Terms, if requested by a Party ("X"), the other Party hereto ("Y") shall deliver the following, if not available on Y's internet home page: (i) within 120 days following the end of each fiscal year, a copy of the annual report of Y (or that of any party or parties specified for Y in the Supplemental Terms) 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 the quarterly report of Y (or that of any party or parties specified for Y in the Supplemental Terms) 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, 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 Y diligently pursues the preparation, certification and delivery of the statements.

Article Ten: Governmental Charges

10.1 Cooperation. Each Party to a Transaction shall use reasonable efforts to implement the provisions of and to administer the 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.

10.2 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 Seven of this Master 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. Any Party entitled to an exemption from any such Governmental Charges shall furnish to the other Party any necessary documentation thereof.

Article Eleven: Miscellaneous

11.1 Term of Agreement. The Agreement shall be effective as of the Effective Date set forth in the Supplemental Terms.

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

- (A) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (B) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation);
- (C) the execution, delivery and performance of the Agreement and each Transaction (including any Confirmation) 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;
- (D) this Master Agreement, each Transaction (including any Confirmation), and each other document executed and delivered in accordance with this Master Agreement (including but not limited to the Supplemental Terms) constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

- (E) 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;
- (F) there is not pending or, to its knowledge, threatened against it, its Guarantor, or any other party specified in the Supplemental Terms any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation) (the representation in this subsection (F) referred to herein as the “**Pending Proceedings Representation**”);
- (G) 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);
- (H) it is acting for its own account, has made its own independent decision to enter into each Transaction (including any Confirmation) and as to whether this Master Agreement and each such Transaction (including any Confirmation) 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); information and explanations of the terms and conditions of each such Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction; no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other Party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;
- (I) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (J) it has entered into each Transaction (including any Confirmation) 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;
- (K) with respect to each Transaction (including any Confirmation) 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
- (L) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

11.3 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 shall 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.

11.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, including but not limited to personal injury (including death) or property damage from Product, any circumstance, including but not limited to claims of title, any 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 11.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Ten.

11.5 Assignment. No Party shall assign a Transaction or any of its rights under a Transaction without the prior written consent of the other Party, which consent may not unreasonably be withheld; 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 a Transaction or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign a Transaction 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 a Transaction 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.

11.6 Governing Law. This Master Agreement and the rights and duties of Parties to a Transaction, to the extent permitted by law, shall be governed by and construed, enforced and performed in accordance with the laws of the state of New York, other than any conflict of laws rule which would apply the law of another jurisdiction, with the exception of United States federal law or Canadian laws with respect to sales in Canada. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Master Agreement.

11.7 Notices. All notices, requests, statements or payments shall be made as specified in the Supplemental Terms or if the Parties do not enter into the Supplemental Terms then as specified in a Transaction (including any Confirmation). Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, 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 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. Notwithstanding the foregoing, a Party is entitled to rely on the other Party's invoice regarding payment instructions.

11.8 General. This Master Agreement (including the exhibits, schedules, the Supplemental Terms and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation) 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 a

Transaction and shall be incorporated therein by reference. Each Party to a Transaction agrees if it seeks to amend any applicable wholesale power sales tariff during the term of a Transaction, such amendment shall not in any way affect such Transaction under the Agreement without the prior written consent of the other Party. Each Party to a Transaction further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Master 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**”) shall not otherwise affect the remaining lawful obligations that arise under this Master Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform their Transaction in order to give effect to the original intention of the Parties. The term “including” when used in this Master 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.

11.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine copies of 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 copies of 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 shall 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 shall 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.

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

11.11 Confidentiality. The Parties agree that neither Party shall disclose the terms or conditions of the Supplemental Terms, any credit arrangements or any Transaction(s) to a third party (other than the Party’s or its Affiliate’s employees, lenders, counsel, accountants, credit rating agencies or advisors who have a need to know such information and who the Party is satisfied will keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area, regional reliability council, or independent system operator rule, or in connection with any court or regulatory proceeding or request by a regulatory authority; 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. Notwithstanding the foregoing, it shall not be a breach of this Section 11.11 if a Party discloses the commercial terms of a Transaction to an energy pricing information aggregator, provided that the name of the other Party is redacted.

11.12 Resolution of Disputes. Prior to the initiation of arbitration, any controversy, dispute or claim between the Parties involving or arising under the Agreement first shall be referred for resolution to a senior representative of each Party. A Party claiming that a dispute has arisen must give written notice within a reasonable period of time to the other Party describing the dispute and designating the Party’s senior representative. Upon receipt of a notice describing the dispute, the other Party shall promptly designate its senior representative to the notifying Party. The senior

representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within thirty (30) days after the notifying Party's notice was received by the other Party, or within such other period as the Parties may jointly agree, the Parties shall submit the dispute to arbitration in accordance with the arbitration procedure set forth in Section 11.13.

11.13 Arbitration. Any controversy, dispute or claim involving or arising under the Agreement which cannot be resolved pursuant to Section 11.12 shall be submitted to binding arbitration by one independent arbitrator qualified by education, experience or training to render a decision upon the issues in dispute and who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be mutually agreed upon by the Parties within thirty (30) days after written notice from either Party requesting arbitration, or failing agreement, the arbitration shall be conducted by a panel of three arbitrators having the qualifications set forth in the preceding sentence, one to be selected by each Party and the third arbitrator to be selected by the two arbitrators selected by the Parties. If either Party fails to notify the other Party of the arbitrator selected by it within ten (10) days after receiving notice of the other Party's arbitrator, or if the two arbitrators selected fail to select a third arbitrator within ten (10) days after notice is given of the selection of the second arbitrator, then such arbitrator shall be selected under the expedited rules of the American Arbitration Association (the "AAA"). The Parties shall divide equally the cost of the hearing, and each Party shall be responsible for its own expenses and those of its counsel or other representative. The commercial arbitration rules of the AAA shall apply to the extent not inconsistent with the rules specified above.

11.14 Laws of the United States. This Master Agreement shall not make any laws or regulations governing employment or production of goods and services enacted by the Congress of the United States or by any other legislative or governmental body in the United States or any state thereof applicable to any power or other service provided or used in Canada. This Master Agreement shall not confer or extend the authority or jurisdiction of FERC or any regulatory agency over sales in Canada.

11.15 Compliance with Applicable Laws. This Master Agreement shall be binding on all Parties to the maximum extent permitted by United States federal and state law or regulation, and Canadian federal and/or provincial government law or regulation, but notwithstanding any other provision of this Master Agreement, no Party shall be required to take any action or do any other thing with respect to rates, charges, terms or conditions of service, the resolution of disputes under this Master Agreement, or any other matter, that (a) it is not permitted by law to undertake or that is prohibited in whole or in part by any law or regulation applicable to such a Party, or (b) would require such a Party to violate a provision of such law or regulation in order to comply with this Master Agreement. Each Party shall seek such approvals, grant such waivers, and take such other actions as may be necessary to comply with this Master Agreement, to the maximum extent permitted by United States federal or state law or regulation, or Canadian federal or provincial law or regulation.

11.16 Effect of Canadian Laws. The sale, purchase and transmission of electricity in Canada and the rates, charges, terms and conditions of service therefore are subject in all respects to Canadian Laws. This includes but is not limited to:

- (A) The final authority of the Government of Canada in all matters relating to the export of electric power; and
- (B) The final authority of the government of a Canadian province in all matters relating to the installation or construction of facilities.

11.17 Imaged Documents. Any original executed document relating to the Agreement may be scanned and stored electronically (the “**Imaged Document**”). The Imaged Document if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Imaged Document on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

11.18 FERC Standard of Review; *Mobile-Sierra* Waiver.

- (A) Absent the agreement of all Parties to the Agreement to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of the Agreement, whether proposed by a Party (to the extent that any waiver in subsection (B) below is unenforceable or ineffective as to such Party), a non-party or FERC or any other regulatory body acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and refined in *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010) (the “**Mobile-Sierra**” doctrine).
- (B) In addition, and notwithstanding the foregoing subsection (A), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under section 205 or section 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any part of the Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of the Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (B) shall not apply, provided

that, consistent with the foregoing subsection (A), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing subsection (A).

11.19 Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

- (A) Market Disruption. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “**Disrupted Day**”), then:
- (1) The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
 - (2) If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price (or a method for determining a Floating Price), taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.
 - (3) If the Parties cannot agree on a substitute Floating Price on or before the fifth (5th) Business Day following the first (1st) Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party, two such quotes provided by each Party from dealers of the highest credit standing which satisfy all the criteria that Seller applies generally at the time (“**Specified Dealers**”), without regard to the quotations with the highest and lowest values, subject to the following qualifications:
 - (a) If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
 - (b) If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.

- (4) Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent quotations obtained from Specified Dealers.

(B) Certain Definitions:

- (1) “**Determination Period**” means each calendar month a part or all of which is within the Delivery Period of a Transaction; provided that if the term of the Transaction is less than one calendar month the Determination Period shall be the term of the Transaction.
- (2) “**Exchange**” means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.
- (3) “**Floating Price**” means a Contract Price specified in a Transaction that is based upon a Price Source.
- (4) “**Market Disruption Event**” means, with respect to any Price Source, any of the following events:
 - (a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;
 - (b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;
 - (c) the temporary or permanent discontinuance or unavailability of the Price Source;
 - (d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
 - (e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.
- (5) “**Price Source**” means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or

information from which a price is determined, as specified in the relevant Transaction.

- (6) “**RTO**” means any regional transmission operator or independent system operator.
 - (7) “**RTO Transaction**” means a Transaction in which the Price Source is an RTO.
 - (8) “**Trading Day**” means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.
- (C) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within thirty (30) days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO’s procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to subsection (A) above unless the Parties expressly agree otherwise.
- (D) Rounding. When calculating a Floating Price for energy, all numbers shall be rounded to five (5) decimal places. If the sixth (6th) decimal number is five (5) or greater, then the fifth (5th) decimal number shall be increased by one (1), and if the sixth (6th) decimal number is less than five (5), then the fifth (5th) decimal number shall remain unchanged. When calculating a Floating Price for capacity, all numbers shall be rounded to two (2) decimal places. If the third (3rd) decimal number is five (5) or greater, then the second (2nd) decimal number shall be increased by one (1), and if the third (3rd) decimal number is less than five (5), then the second (2nd) decimal number shall remain unchanged.

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

[Party A]

[Party B]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

SCHEDULE G: GAS TRANSACTIONS

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX
IN THE SUPPLEMENTAL TERMS IS MARKED)

This Schedule G is intended to facilitate the Parties' entering into Transactions involving the sale and purchase of Gas on Firm and Interruptible bases ("**Gas Transactions**"). All of the terms of the Master Agreement apply to Gas Transactions except to the extent any such terms are explicitly excluded or otherwise amended by the provisions in this Schedule G. This Schedule G modifies and supplements the Master Agreement and forms part of the Agreement between the Parties.

G1. Other Schedules. Schedules M, P and Q to the Master Agreement do not apply to Gas.

G2. Additional Definitions. The following additional definitions apply to Gas Transactions:

G2.1 "**Btu**" means British thermal unit (International Table).

G2.2 "**Alternate Spot Market Price**", if any, has the meaning specified in the Supplemental Terms or the meaning specified in a Confirmation for a Transaction.

G2.3 "**Day**" means a period of twenty-four (24) consecutive hours, beginning at 9:00 a.m. central prevailing time (CPT) or such other time specified by the Transporter's applicable terms. The date of a Day shall be that of its beginning.

G2.4 "**EFP**", if specified in a Confirmation, means a Firm Transaction to sell, purchase or exchange Gas with the concurrent obligation to buy or sell natural gas futures contracts in compliance with and subject to the rules ("**EFP Rules**") of the applicable commodity exchange. The terms of the Agreement apply to such an EFP to the extent not necessarily superseded by the EFP Rules.

G2.5 "**Firm**" (and "firm", as it is used in Section 2.23) means that a Party may not interrupt its performance unless excused by Force Majeure. Imbalance Penalties are not excused by Force Majeure, and a Party claiming Force Majeure may be responsible for any Imbalance Penalties resulting from Nominations made before the Claiming Party notifies the other Party of the Force Majeure and the time that Transporter is able to make necessary Scheduling adjustments.

G2.6 "**Gas**" means any mixture of hydrocarbons or of hydrocarbons and non-combustible gases in a gaseous state, consisting predominantly of methane. Gas constitutes a type of Product under this Master Agreement.

G2.7 "**Gas Product**" means Product that is Gas.

G2.8 "**Imbalance Penalties**" are fees, charges or penalties assessed against a Party by a Transporter as the result of under-deliveries or over-deliveries of Gas or a failure to adjust nominations or satisfy balancing or scheduling requirements in accordance with the Transporter's tariff or its applicable terms.

- G2.9 “**Interruptible**” means 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, other than Imbalance Penalties assessed by the Transporter resulting directly from such an interruption.
- G2.10 “**MMBtu**” means one million Btu.
- G2.11 “**Scheduled Quantity of Gas**” refers to Gas that has been Nominated by a Party or its agent and confirmed by a Transporter for delivery by Transporter.
- G2.12 “**Spot Market Price**” means the Alternate Spot Market Price, if any, otherwise it refers to a price listed in Gas Daily, as published by S&P Global Platts (or successor publication) that is the Midpoint specified in the Daily Price Survey table for the location which is geographically the nearest to the Delivery Point(s) for the pertinent day. If instead of listing a single price for such location, Gas Daily lists a range of prices for such location, then the Spot Market Price is the average of such range. In the absence of a single price or a range of prices for the pertinent day, the Spot Market Price is determined by taking the average of what would be the Spot Market Price available on the day nearest in time before the pertinent day and what would be the Spot Market Price available on the day nearest in time after the pertinent day.
- G3. Confirmations.** For the purpose of Section 3.2, the applicable form of Confirmation for a Gas Transaction is attached to Schedule G as Exhibit G1.
- G4. Conforming Amendments.** The following conforming amendments are made to certain Sections of the Master Agreement in respect to Transactions involving Gas:
- G4.1 The definition in Section 2.61 is amended by replacing the text ““Transmission Provider”” with the text ““**Transmission Provider**” or “**Transporter**””.
- G4.2 References in the Master Agreement to “Transmission Provider(s)” are deemed to refer to “Transporter(s)”, and the term “Transporter(s)” includes owners and operators of Gas gathering, pipeline, local distribution, and storage facilities.
- G4.3 The word “transportation” replaces the word “transmission” in each instance that it appears. In one instance (i.e., in the heading of Section 4.2), the word is capitalized.
- G4.4 The definition in Section 2.52 is amended by replacing the text ““Schedule” or “Scheduling”” with the text ““**Schedule**” or “**Scheduling**” (or “**Nominate**” or “**Nominating**” with respect to Gas Transactions)”.
- G4.5 In Section 4.2, each of the two instances of the text “shall Schedule” is replaced with the text “shall Nominate”. In Section 5.1, the text “fails to schedule” is replaced with the text “fails to Nominate”. In Section 5.2, the text “fails to schedule” is replaced with the text “fails to Nominate”. In the second sentence of Section 11.7, the text “(other than scheduling requests)” is removed, and the text “, provided that communications related to Scheduling coordination need not be in writing, unless

required by Transporter” is inserted immediately before the period at the end of such sentence.

G5. Force Majeure.

G5.1 Additional Force Majeure Events or Circumstances. Force Majeure also includes the events or circumstances, if any, specified as additional Force Majeure events or circumstances in the Supplemental Terms.

G5.2 Additional Force Majeure Exclusions. Performance of obligations under the Agreement is also not excused to the extent an inability to perform such obligations is attributable to the circumstances, if any, specified as additional Force Majeure exclusions in the Supplemental Terms.

G6. Remedies for Failure to Deliver or Receive.

G6.1 Market Price. For the purposes of Article Five and determining the amounts owed, if any, as a result of a failure by a Party to deliver or receive Gas Product, the term “market price” as used in the definitions of Sales Price and Replacement Price, in Sections 2.51 and 2.49, respectively, means the Spot Market Price.

G6.2 Imbalance Penalties. The definitions of Sales Price and Replacement Price are amended further to replace the text “ratcheted demand” with the text “such as Imbalance Penalties”.

G6.3 Alternate Fuel. For the purposes of determining a Replacement Price pursuant to Section 2.49, it is within Buyer’s discretion to choose to obtain an alternate fuel if Buyer is unable to obtain Gas as a replacement.

G7. Payments.

G7.1 Payment. For Gas Transactions, Section 7.2 is amended to change the Specified Payment Day from the twentieth (20th) day to the twenty-fifth (25th) day.

G7.2 Payment Netting. Unless otherwise specified in the Supplemental Terms, Section 7.4 applies to Transactions involving Gas in the same manner as other Products. Accordingly, and by way of example, should any payments pursuant to Transactions involving energy (e.g., payments under Article Five for a failure to deliver or receive electric energy) and pursuant to Transactions involving Gas (e.g., an ordinary settlement payment for Gas delivered in the prior month) be due on the same date, then the netting terms of Section 7.4 will apply to such Transactions.

G7.3 Invoices and Delivery Information. Section 7.1 is amended to add the following text as a new sentence at the end thereof: “If the Quantity of Gas actually delivered is not known in time for a timely rendering of an invoice, the invoice will be prepared based on the Scheduled Quantity of Gas, subject to adjustment based upon the delivery information when available.”.

G8. Transportation and Scheduling.

G8.1 Scheduling Coordination. The following text is added after Section 4.2 as new subsections (A) and (B):

“(A) The Parties agree to coordinate their Scheduling efforts. Information exchanged between the Parties’ respective operational personnel will be prompt and include necessary details to ensure ample time to meet the deadlines of the applicable Transporter(s). The Parties’ operational personnel will cooperate in establishing acceptable and efficient methods of communication (such as telephone, instant message, or other electronic message) and identify essential contact information so that they may provide each other with rapid updates of key Scheduling events. Notice of nomination will be timely and sufficient to meet the requirements of the applicable Transporter(s) with respect to Gas delivered and received on each applicable Day. If either Party becomes aware of any reason why delivery of a Scheduled Quantity of Gas may not be accepted or that actual deliveries at an applicable Delivery Point are more or less than a Scheduled Quantity of Gas, such Party’s operational personnel will promptly alert the other Party’s operational personnel via accepted method of communication.

(B) The Parties will use commercially reasonable efforts to avoid the assessment of Imbalance Penalties by a Transporter. If a Transporter assesses Imbalance Penalties on a Party, the Parties will seek to promptly determine whether or not the Imbalance Penalties are valid, and if so, what caused them. To the extent the Imbalance Penalties are imposed as a result of Buyer’s actions or inactions (e.g., Buyer’s receipt of more than or less than the Scheduled Quantity of Gas), then Buyer is responsible for such Imbalance Penalties. To the extent the Imbalance Penalties are imposed as a result of Seller’s actions or inactions (e.g., Seller’s delivery of more or less than the Scheduled Quantity of Gas), then Seller is responsible for such Imbalance Penalties. The Party responsible for such Imbalance Penalties must pay such Imbalance Penalties to the Transporter or reimburse the other Party for any such Imbalance Penalties already paid by such other Party to the Transporter.”

G9. Quality Requirements and Measurement Specification; Liability.

G9.1 Quality Requirements. Gas delivered pursuant to the Agreement must meet or exceed the heat, pressure, component, and quality specifications of the applicable Transporter. The measurement unit hereunder is one MMBtu of Gas on a dry basis. Measurement is to be conducted in accordance with applicable Transporter’s procedures.

G9.2 Nonconforming Quality. Notwithstanding Section 8.1 of this Master Agreement, Seller will be liable for any Claims to the extent they arise from the failure of Gas delivered by it pursuant to a Transaction to conform to the quality requirements provided in Section G9.1.

EXHIBIT G1: GAS TRANSACTION CONFIRMATION

This confirmation (“**Confirmation**”) confirms the Gas Transaction entered into between [] (“**Party A**”) and [] (“**Party B**”) regarding the sale and purchase of the Gas Product under the terms and conditions specified below.

The definitions and provisions contained in the Master Agreement (“**Master Agreement**”), Schedule G thereto and the Supplemental Terms entered into by Party A and Party B dated as of [] (collectively, the “**Agreement**”), are incorporated into, and supplemented by, this Confirmation.

In the event of any inconsistency between the Master Agreement and Schedule G, Schedule G will govern with respect to such inconsistency. In the event of any inconsistency between Schedule G and this Confirmation, this Confirmation will govern with respect to such inconsistency.

Date: []
Buyer: []
Seller: []
Gas Product: []
Delivery Period: Begin: []
End: []

Type of Performance

Obligation: [Firm (Fixed Quantity)] / [Firm (Variable Quantity)] / [Interruptible]

Contract Quantity: [Details for Firm (Fixed Quantity)]:
_____ MMBtus/Day
EFP: Yes/No
[Details for Firm (Variable Quantity)]:
_____ MMBtus/Day minimum
_____ MMBtus/Day maximum
[Details for Interruptible]:
Up to _____ MMBtus/Day

Contract Price: [USD ___\$___ / MMBtu]

Delivery Point(s): []

Buyer Contact Details: []

Seller Contact Details: []

Special Conditions: []

Account Details for Party A: []

Account Details for Party B: []

Please confirm that the foregoing correctly sets forth the material terms of our Gas Transaction by returning an executed copy of this Confirmation.

[Party A]

[Party B]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

SCHEDULE M: FEDERAL POWER MARKETING AGENCY

(THIS SCHEDULE IS INCLUDED IF A PARTY
IS A FEDERAL POWER MARKETING AGENCY)

A. If either Party is a Federal Power Marketing Agency, the Parties agree that the following provisions apply to this Master Agreement and any Transaction conducted under this Master Agreement:

1. Participation by the United States. The participation by the United States through a Federal Power Marketing Agency in this Master Agreement is subject in all respects to acts of Congress and to regulations of the Secretary of Energy established thereunder, and to rate schedules promulgated by the Secretary of Energy or delegate. This reservation includes, but is not limited to, the statutory limitations upon the authority of the Secretary of Energy to submit disputes arising under this Master Agreement to arbitration and waiver of jury trial. In the event of a conflict between this Schedule M and any other provision in this Master Agreement, this Schedule M shall have precedence with respect to the application of this Master Agreement to the United States.
2. Indemnity. Due to statutory limitations under the Anti-Deficiency Act, a Federal Power Marketing Agency is not bound by Master Agreement provision 11.4, Indemnity. Instead, Claims must be directly made by the third party, and the United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, and 2674-2680, as amended or supplemented.
3. Contingent Upon Appropriations. Where activities provided for in this Master Agreement extend beyond the current fiscal year of a Federal Power Marketing Agency, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the obligations of the United States under this Master Agreement. In case such appropriation is not made, a Party to a Transaction with a Federal Power Marketing Agency hereby releases the United States from its contractual obligations under this Master Agreement and from all liability due to the failure of Congress to make such appropriation.
4. Officials Not To Benefit. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Master Agreement or to any benefit that may have arisen from this Master Agreement, but this restriction shall not be construed to extend to this Master Agreement if made with a corporation or company for its general benefit.

5. Covenant Against Contingent Fees. A Party to a Transaction with a Federal Power Marketing Agency warrants that no person or selling agency has been employed or retained to solicit or secure participation by a Federal Power Marketing Agency in this Master Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Party for the purpose of securing business. For breach or violation of this warranty, the Party that is a Federal Power Marketing Agency shall have the right to annul its participation in this Master Agreement without liability or, in its discretion, to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.
6. Contractor Agreement. For the purpose of this Schedule M the term “Master Agreement” shall mean this Master Agreement and the term “Contractor” shall mean a Party having a Transaction with a Federal Power Marketing Agency. During the performance of a Transaction under this Master Agreement, the Contractor agrees to the following provisions. In addition, the Contractor shall include the following provisions in every subcontract or purchase order involving the Federal Power Marketing Agency unless exempted by rules, regulations or order of the Secretary of Labor.
7. Equal Opportunity Employment Practices. Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in this Master Agreement.
8. Contract Work Hours and Safety Standards. This Master Agreement, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (the “Act”), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, and to regulations promulgated by the Secretary of Labor pursuant to the Act.
9. Use of Convict Labor. The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this Master Agreement except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order 11755, 39 Fed. Reg. 779 (1973).

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.

“Environmental Attributes” means an aspect, claim, characteristic or benefit associated with the generation of a quantity of Energy by an electricity generation facility that is capable of being measured, verified or calculated, including any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation of such quantity of Energy by an electricity generation facility and its displacement of conventional, non-renewable electricity generation together with the right(s) to report ownership of such attributes to any agency, authority, or third party. Environmental Attributes shall not include (i) any Energy, Capacity, reliability or other power attributes from the electricity generation facility; (ii) production tax credits associated with the construction or operation of the electricity generation facility and other financial incentives in the form of credits, reductions or allowances associated with the electricity generation facility that are applicable to a state, provincial or federal income taxation obligation; (iii) fuel-related subsidies, “tipping fees”, or other local subsidies received by the electricity generation facility for the destruction of particular preexisting pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the electricity generation facility for compliance with local, state, provincial or federal operating and/or air quality permits.

“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 Five.

“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 Five, 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 2.23 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 Five, 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 2.23 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 Five. 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 of this Schedule, 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 Five.
- 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 Five.
- 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 Five.

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 Five.

- 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 2.23.
 - 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 of this Schedule.
 - 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.

“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.

“Renewable Energy Credit” or “REC” has the meaning specified in the Transaction.

“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 Five.

“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 Five, 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 Section 2.23 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 Five.

SCHEDULE Q: POST-MAPP PRODUCT

GENERAL TERMS AND CONDITIONS

1. General

1.1 The Product described herein was one of several products related to the former Mid-Continent Area Power Pool (“MAPP”). Although MAPP ceased operations as of October 1, 2015, the Product described herein may continue to be relevant for certain industry participants. The Product employs market-based rates for interchange of capacity and energy.

2. Transmission Loading Relief

2.1 Delivery of energy shall be subject to the applicable Transmission Provider’s loading relief procedures.

3. Definitions

3.1 “Public Utility” means a public utility as defined in section 201(e) of the Federal Power Act, as amended.

3.2 “General Purpose Energy” means non-firm energy that is reserved and scheduled on an as-available basis and is subject to curtailment or interruption.

4. Uncontrollable Forces

4.1 Force Majeure (Section 2.23), as defined and used in this Master Agreement, does not apply to the Product in this Schedule Q.

4.2 The Product in this Schedule Q is subject to “uncontrollable forces” or “force majeure”. A Party shall not be considered to be in default in respect to any obligation under the Product in this Schedule Q if prevented from fulfilling such obligation by reason of “uncontrollable forces” or “force majeure”, except that the obligation to pay money in a timely manner is absolute and shall not be subject to “uncontrollable forces” or “force majeure”. Any Party unable to fulfill any obligation by reason of “uncontrollable forces” or “force majeure” will exercise due diligence to remove such disability with reasonable dispatch, but such obligation shall not require the settlement of a labor dispute except in the sole discretion of the Party experiencing such labor dispute. For the purposes of this Section 4.2, “uncontrollable forces” and/or “force majeure” shall have the meaning ascribed to such terms in the Transmission Provider’s tariff.

Product M: General Purpose Energy Service

1. Service to be Provided

1.1 This Product provides for the supply of General Purpose Energy by a Seller to a Buyer to enhance economic system operation.

2. Conditions of Service

2.1 To the extent practicable, General Purpose Energy shall be used to improve the overall economy of the systems involved in the Transaction.

2.2 General Purpose Energy shall be supplied through transmission facilities which have adequate capacity for transmitting such energy, in accordance with any applicable reliability standards and procedures.

3. Schedule of Rates

3.1 The rates and term for General Purpose Energy shall be negotiated by the Parties arranging the Transaction when the Seller (i) is a Public Utility that has been granted market-based rate authority by the FERC, or (ii) is not a Public Utility.

EXHIBIT A: TRANSACTION CONFIRMATION
2019 POWER AND GAS MASTER AGREEMENT
CONFIRMATION LETTER

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

Schedule P Product:

- Into _____, Seller’s Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- Non-Firm
- 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: _____)

Schedule Q Product:

- Product M - General Purpose Energy Service
- Contract Quantity: _____
- Delivery Point: _____
- Contract Price: _____
- Energy Price: _____
- Other Charges: _____
- Delivery Period: _____

Special Conditions: _____

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

The definitions and provisions contained in the Master Agreement (“**Master Agreement**”) and the Supplemental Terms entered into by Seller and Buyer dated as of [_____] (collectively, the “**Agreement**”), are incorporated into, and supplemented by, this confirmation letter.

Please confirm that the foregoing correctly sets forth the material terms of our Transaction by returning an executed copy of this Confirmation.

[Seller]

Signature: _____
Name: _____
Title: _____

[Buyer]

Signature: _____
Name: _____
Title: _____

EXHIBIT B: SUPPLEMENTAL TERMS
2019 POWER AND GAS MASTER AGREEMENT
SUPPLEMENTAL TERMS

These Supplemental Terms are made as of _____ (“**Effective Date**”) by _____ (“**Party A**”) and _____ (“**Party B**”) (“**Supplemental Terms**”).

Whereas, Party A and Party B desire to transact in accordance with the terms and conditions contained in the Master Agreement, as amended, restated or replaced from time to time; and

Whereas, if and to the extent that Party A and Party B carry on business, transact or act pursuant to the Agreement, Party A and Party B wish to make elections with respect to certain options contained in the Master Agreement, as set forth in these Supplemental Terms.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that if and to the extent that Party A and Party B carry on business, transact or act pursuant to the Agreement, the Parties agree as follows:

I. Article Three Elections - Confirmations.

- Written Confirmation
- Oral Confirmation
- Electronic Confirmation

If the box for Electronic Confirmation is checked, complete the appropriate specific confirmation provisions below:

Specific Confirmation Provisions

A. Electronic Confirmation Method:
Electronic means of communication to be used by Party A and Party B shall be:

B. Other Provisions: (if required): _____

II. Article Four Elections.

A. Force Majeure Allowable Period means: _____ (not applicable, if no period of time is specified)

B. Applicability of Section 4.4, the Market Redesign Provision:
 Applicable
 Not Applicable

III. Article Six Elections.

A. Other Agreement Default Among Specified Parties in Section 6.1(G):
 Applicable
 Not Applicable

Party A specified parties: _____
Party B specified parties: _____

- B. Cross Default in Section 6.1(H):
 Applicable
 Not Applicable
Party A Cross Default Amount \$ _____
specified parties: _____
Party B Cross Default Amount \$ _____
specified parties: _____
- C. Merger Event with Materially Weaker Credit in Section 6.1(I):
 Applicable
 Not Applicable
If applicable, then “Materially Weaker” is defined as follows (if not defined, then not applicable): _____
- D. Conditional Payment Provision in Section 6.4(B):
 Applicable
 Not Applicable

IV. Article Nine Elections - Credit and Collateral Requirements.

For the purposes of Article Nine, the Parties hereto make the following elections:

- A. Section 9.2 Performance Assurance:
 Option 1
 Option 2
- If Option 2 is applicable, complete the following:
Downgrade Event for Party A means the occurrence of the following (if no event is elected, then not applicable to Party A) to Party A or the party or parties specified below:
specified parties: Party A’s Guarantor, if any, and _____
 Credit Rating Type Downgrade Event
 Tangible Net Worth Type Downgrade Event
 Other: _____
- Downgrade Event for Party B means the occurrence of the following (if no event is elected, then not applicable to Party B) to Party B or the party or parties specified below:
specified parties: Party A’s Guarantor, if any, and _____
 Credit Rating Type Downgrade Event
 Tangible Net Worth Type Downgrade Event
 Other: _____

B. Section 9.4 Collateral Threshold:

In respect of Party A:

Applicable

Not Applicable

If applicable, then:

Collateral Threshold for Party A shall mean: _____ (deemed to be zero if no amount is specified)

Independent Amount for Party A shall mean: _____ (deemed to be zero if no amount is specified)

Rounding Amount for Party A shall mean: _____ (not applicable, if no amount is specified)

In respect of Party B:

Applicable

Not Applicable

If applicable, then:

Collateral Threshold for Party B shall mean: _____ (deemed to be zero if no amount is specified)

Independent Amount for Party B shall mean: _____ (deemed to be zero if no amount is specified)

Rounding Amount for Party B shall mean: _____ (not applicable, if no amount is specified)

C. Section 9.5 Financial Information:

The financial statements to be provided by Party A shall be those of the following:

Party A

Other(s): _____

Not Applicable

The financial statements to be provided by Party B shall be those of the following:

Party B

Other(s): _____

Not Applicable

V. Article Eleven Elections.

A. Pending Proceedings Representation in Section 11.2(F):

Additional parties specified for Party A: _____

Additional parties specified for Party B: _____

VI. Guarantors.

Party A:

Applicable

Not Applicable

If applicable, complete the following:

Guarantor for Party A: _____

Party B:

Applicable

Not Applicable

If applicable, complete the following:

Guarantor for Party B: _____

VII. Amendments to Master Agreement.

Pursuant to Section 3.5 of the Master Agreement, Party A and Party B agree to amend the Master Agreement as follows (if none specified, then not applicable):

VIII. Notices.

Party A:

Address: _____

Attention: _____
Telephone No.: _____
Facsimile No.: _____

Party B:

Address: _____

Attention: _____
Telephone No.: _____
Facsimile No.: _____

IX. Schedule G: Natural Gas Transactions.

To be included as part of the Agreement, Schedule G must be affirmatively elected (by checking the box below) as being included, otherwise it is not included.

- Schedule G is included.** If checked, then Schedule G is included as part of the Agreement. The default elections of Schedule G apply, unless the Parties have specified other elections to apply.

Elections to Schedule G (if none checked, the default elections apply):

A. Article Five and Section G6. Remedies for Failure to Deliver or Receive.

Spot Market Price: The default election is that the Spot Market Price will be based on a Gas Daily Midpoint and not on an Alternate Spot Market Price. This default election will apply unless otherwise specified below.

- If checked, then instead of the default election, the following Alternate Spot Market Price applies (if following field is left blank, it is the same as if the box is not checked): _____.

B. Sections 2.23, 4.3 and G5. Force Majeure.

Additional Force Majeure events or circumstances: The default election is that there are no additional Force Majeure events or circumstances. This default election will apply unless otherwise specified below.

- If checked, then instead of the default election, the following additional Force Majeure events or circumstances apply (if following field is left blank, it is the same as if the box is not checked): _____.

Additional Force Majeure exclusions: The default election is that there are no additional Force Majeure exclusions. This default election will apply unless otherwise specified below.

- If checked, then instead of the default election, the following additional Force Majeure exclusions apply (if following field is left blank, it is the same as if the box is not checked): _____.

C. Sections 7.2 and G7.1 Payment.

The default election is that the Specified Payment Day for Gas Transactions is the twenty-fifth (25th) day. This default election applies unless otherwise specified below.

- The 20th.** If checked, then instead of the default election, the Specified Payment Day for Gas Transactions is the twentieth (20th) day.

or

- The 25th.** If checked, then instead of the default election, the Specified Payment Day is the twenty-fifth (25th) day, and furthermore, the Specified Payment Day for all other Transactions (e.g., including electric energy) is changed from the twentieth (20th) day to the twenty-fifth (25th) day.

D. Sections 7.4 and G7.2 Payment Netting.

The default election is that the payment netting terms of Section 7.4 apply across all Transactions (Gas or otherwise) under the Agreement that are due on the same date. This default election applies unless otherwise specified below.

- Payments for Gas netted separately.** If checked, then instead of the default election, Section 7.4 will apply separately to Gas Transactions and to all other Transactions, so that payments for Gas will be netted separately from other Products (and payments for other Products will be netted separately from Gas).

X. **Effect.** These Supplemental Terms shall be applicable to all Transactions entered into between Party A and Party B pursuant to the Agreement on or after the Effective Date without the need to reference these Supplemental Terms in any such Transaction unless

Party A and Party B mutually agree otherwise with respect to a particular Transaction. Capitalized terms used but not defined in these Supplemental Terms shall have the meanings ascribed to them in the Master Agreement.

- XI. Entire Agreement.** These Supplemental Terms constitute the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
- XII. Counterparts.** These Supplemental Terms may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.
- XIII. Authority to Bind.** By signing below, each individual additionally warrants that he or she is authorized to sign these Supplemental Terms on behalf of the Party for which it was executed.
- XIV. Headings.** The headings used in these Supplemental Terms are for convenience of reference only and are not to effect the construction of or to be taken into consideration in interpreting these Supplemental Terms.

IN WITNESS WHEREOF, the Parties have executed these Supplemental Terms with effect from the Effective Date as specified above.

[Party A]

[Party B]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____