

APS Contract No. 

**RENEWABLE ENERGY
PURCHASE AND SALE AGREEMENT**

**BETWEEN
ARIZONA PUBLIC SERVICE COMPANY
AND**



RENEWABLE ENERGY
PURCHASE AND SALE AGREEMENT
BETWEEN
ARIZONA PUBLIC SERVICE COMPANY
AND

TABLE OF CONTENTS

Recitals.....	1
ARTICLE ONE: DEFINITIONS	1
ARTICLE TWO: COMMERCIAL TERMS	18
2.1 Commercial Terms.....	18
ARTICLE THREE: REPRESENTATIONS AND WARRANTIES	18
3.1 Mutual Representations and Warranties	18
3.2 Seller's Representations and Warranties.....	19
ARTICLE FOUR: PERFORMANCE REQUIREMENTS	20
4.1 Commercial Operation.....	20
4.2 Extension of Commercial Operation Date	22
4.3 Project Milestones.....	24
4.4 Termination Damages.....	24
4.5 Seller's and Buyer's Obligations	25
4.6 Operation of the Facility	26
4.7 Availability of the Facility	26
4.8 Availability Default and Termination.....	26
4.9 Production Default.....	27
4.10 Capacity Testing	27
4.11 Generation Imbalance Charges	28
4.12 Transmission and Scheduling	28
4.13 Dynamic Transfer	29
4.14 Monthly Planned Delivery Schedules.....	29
4.15 Force Majeure	30
4.16 Facility Outages and Maintenance Scheduling.....	30
4.17 Operating Status Reports	31
4.18 Resource Quality Reporting; Forecasting.....	31
4.19 Permit Violations	31
4.20 Delivery of RECs.....	31
ARTICLE FIVE: FAILURE TO DELIVERY/RECEIVE	32
5.1 Seller Failure.....	32
5.2 Buyer Failure	32

ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES	32
6.1 Events of Default	32
6.2 Declaration of an Early Termination Date and Calculation of Settlement Amount	34
6.3 Net Out of Settlement Amount; Termination Payment	34
6.4 Notice of Payment of Termination Payment	35
6.5 Disputes With Respect to Termination Payment	35
6.6 Suspension of Performance.....	35
 ARTICLE SEVEN: BILLING AND PAYMENT	35
7.1 Billing Period	35
7.2 Timeliness of Payment.....	35
7.3 Disputes and Adjustments of Invoices.....	36
7.4 Metering.....	36
7.5 Invoices.....	37
 ARTICLE EIGHT: LIMITATIONS	37
8.1 Limitation of Remedies, Liability and Damages	37
 ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS	38
9.1 Development Security.....	38
9.2 Forfeiture of Development Security	39
9.3 Return of Development Security	39
9.4 Post-Development Security	39
9.5 Financial Information	40
9.6 Grant of Security Interest/Remedies.....	40
 ARTICLE TEN: GOVERNMENTAL CHARGES	41
10.1 Cooperation.....	41
10.2 Governmental Charges.....	41
 ARTICLE ELEVEN: MISCELLANEOUS	41
11.1 Term of Agreement.....	41
11.2 Insurance.....	41
11.3 Indemnity	41
11.4 Assignment	42
11.5 Site Access and Inspection of Records	42
11.6 Audit	42
11.7 Confidentiality	42
11.8 Notices	44
11.9 Right of First Offer on Additional Product.....	44
11.10 Notice of Sale of Facility	44
11.11 Seller's Election.....	44
11.12 Alternative Dispute Resolution.....	45
11.13 Governing Law	47

11.14	Jurisdiction and Costs	47
11.15	Financial Accounting Standards	47
11.16	Letter Regarding Generation Control	47
11.17	Forward Contract	47
11.18	FERC Standard of Review; Certain Covenants and Waivers	47
11.19	General	47
11.20	Entire Agreement; Amendment	48
APPENDIX A:	CONTRACT PRICE	50
APPENDIX B:	DAMAGES CALCULATION EXAMPLES	51
APPENDIX C:	NOTICES AND BILLING INFORMATION	52
APPENDIX D:	ENVIRONMENTAL ATTRIBUTE CERTIFICATE AND BILL OF SALE	53
APPENDIX E:	INDEPENDENT ENGINEERS	54
APPENDIX F:	CONSTRUCTION PERMITS/MATERIAL CONTRACTS	55
APPENDIX G:	FORM OF LETTER OF CREDIT	56
APPENDIX H:	FORM OF GUARANTY AGREEMENT	58
APPENDIX I:	TRANSMISSION AGREEMENT	59
APPENDIX J:	INTERCONNECTION AGREEMENT	60
APPENDIX K:	CAPACITY TESTING	61

**RENEWABLE ENERGY
PURCHASE AND SALE AGREEMENT
BETWEEN
ARIZONA PUBLIC SERVICE COMPANY
AND**

THIS RENEWABLE ENERGY PURCHASE AND SALE AGREEMENT (the "Agreement"), effective as of _____, is entered into by and between and Arizona Public Service Company, an Arizona corporation ("APS" or "Buyer") and _____, a _____ "_____" or "Seller"). The purpose of this Agreement is to establish the terms and conditions under which Seller shall sell and APS shall purchase Renewable Energy and associated Renewable Energy Credits ("RECs"), as defined herein. In this Agreement, Seller and APS may be individually referred to as a "Party" or collectively as "Parties."

WHEREAS, Seller desires to sell to APS at the Delivery Point all of the Product (as defined below) from the Facility and APS desires to buy the same from the Seller at the Delivery Point; and

Therefore, for good and valuable consideration, including, without limitation, the covenants and agreements of the Parties contained in this Agreement, the receipt and sufficiency of which consideration is acknowledged, the Parties agree as follows:

ARTICLE ONE: DEFINITIONS

The following definitions apply to this Agreement:

1.1 "Actual Production" means the actual output of the Facility (expressed in MWhs), measured at the Delivery Point, over the Production Measurement Period. Actual Production shall be measured by the Seller Metering Equipment, and adjusted as applicable in accordance with Section 7.4.

1.2 "Affiliate" means, with respect to any party, any other party (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 party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 "Annual Capacity Test" has the meaning set forth in Section 4.10.

1.4 "APS Purchase Damages" means:

(a) The positive difference, if any, between the value of:

(i) All dollar amounts that APS reasonably would, in the manner set forth below, be expected to pay at then-prevailing market conditions (utilizing Commercially Reasonable Efforts) to buy from a third party

Product, including any increase or decrease in transmission charges, if applicable, to deliver such Product to the APS system that is comparable to the Product that would be provided to APS until the end date of this Agreement,

plus

- (ii) All incremental costs (not otherwise covered in clause (i) above) over and above those that APS incurs (or would otherwise incur) when taking delivery at the Delivery Point,

less

- (iii) All dollar amounts APS reasonably would have been expected to pay to Seller for the Product under this Agreement until the end date of this Agreement.

Notwithstanding anything herein to the contrary, in the event that Seller willfully breaches or willfully defaults under the terms of this Agreement, the limitation on the price of the Product set forth in subparagraph (i) above shall not apply to the calculation of the APS Purchase Damages.

(b) APS Purchase Damages shall be derived as follows:

- (i) APS shall calculate the APS Purchase Damages in a Commercially Reasonable manner by calculating the arithmetic mean of at least three (3) price quotations (either firm or indicative) from independent third party sellers or market brokers (which third parties shall not be Affiliates or former employees of APS) based on the same or a substantially similar product to the Product for the relevant period (the “APS Damage Calculations”).
- (ii) If APS is not able, after Commercially Reasonable Efforts, to obtain at least three (3) price quotations as provided in Section 1.4(b)(i), then APS shall calculate the APS Damage Calculations by taking the arithmetic mean of at least three (3) forward price assessments prepared by non-affiliated third party experts in the industry. The experts shall be selected by APS, in its sole discretion; provided, however, such experts shall not have been employees of APS and/or any Affiliates of APS (the “APS Third Party Experts”). The APS Third Party Experts shall calculate the APS Damage Calculations based upon products substantially similar to the Product, as well as Product availability and/or output, additional transmission charges, and access and credit considerations and credit enhancements as

found in this Transaction. The Parties shall equally divide the costs of APS Third Party Experts.

- (iii) If APS is not able, after using Commercially Reasonable Efforts, to obtain at least three (3) forward price assessments as provided in Section 1.4(b)(ii), then APS shall calculate the APS Purchase Damages in a Commercially Reasonable manner using relevant market data it has available to it, including index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data. Third parties supplying such information may include, without limitation, dealers in the relevant markets, market brokers and other sources of market information; provided, such third parties shall not be Affiliates or former employees of APS.

In calculating APS' Purchase Damages, in no event shall such damages include any penalties, ratcheted demand or similar charges, nor shall APS 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, APS shall not be required to actually have purchased replacement Product to calculate APS Purchase Damages as set forth herein; provided, however, in the event that APS elects to purchase replacement Product it shall do so in a Commercially Reasonable manner. If the APS Purchase Damages are a negative number then the APS Purchase Damages shall be deemed to equal zero (-0-) dollars. In addition, for the purposes of calculating APS Purchase Damages, the value of the REC portion of the Product shall be determined in the manner set forth in this Section, without reference to or reliance upon the REC Premium defined in Section 1.106 of this Agreement.

APS shall provide to Seller the APS Damage Calculations, including the following support data: (i) all pertinent price quotations and forward assessment curves, (ii) all pertinent transmission costs and charges, (iii) other relevant assumptions and market information used to calculate the APS Damage Calculations, including the names of all APS Third Party Experts, and (iv) such other data and supporting documentation as may reasonably be requested by Seller in order to audit and verify such APS Purchase Damages. Upon receipt of the APS Purchase Damages, if Seller disputes the calculation of APS' Purchase Damages, in whole or in part, Seller shall, within fifteen (15) Business Days of receipt of Notice, provide to APS a detailed written explanation of the basis for such dispute. Seller shall nevertheless during the pendency of any dispute pay the invoice within five (5) Business Days of receipt of such invoice; provided however, that if any amount is later required to be returned to Seller as overpayment, such amount shall be returned together with interest at the Interest Rate. Moreover, any dispute as described above shall be pursued through the Alternative Dispute Resolution process as described in Section 11.12 hereof.

1.5 "ACE" or "Area Control Error" means the instantaneous difference between the actual and scheduled power interchange between two (2) points, taking into account the effects of frequency bias.

1.6 "AGC" or "Automatic Generation Control" means the equipment that automatically adjusts the Balancing Authority Area's (as defined herein) generation to maintain its interchange schedule plus its share of frequency regulation.

1.7 "Availability," expressed as a percentage, means a measure of a portion of time that the Facility or a portion thereof is capable of producing and delivering the Product. Availability shall be calculated Monthly and shall be measured in minutes (or portions thereof) in which the Facility or any portion thereof is unavailable based on SCADA, operating logs and metered data with respect to the Facility (as weighted based on the contribution of the portion to the overall Capacity of the Facility). Availability shall be expressed as a percentage for each Availability Measurement Period, using the following calculation: $(\text{Contract Hours} - \text{Unavailable Hours}) / \text{Contract Hours}$.

1.8 "Availability Damages" means the measure of damages that result from Seller's failure to meet the Guaranteed Availability as set forth in Section 4.7 hereof. APS shall calculate the Availability Damages in accordance with Section 4.9 hereof.

1.9 "Availability Measurement Period" has the meaning set forth in Section 4.8.

1.10 "Balancing Authority" or "Balancing Authorities" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

1.11 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

1.12 "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 valid petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

- 1.14 "Buyer Failure" has the meaning set forth in Section 5.2.
- 1.15 "Buyer Failure Damages" has the meaning set forth in Section 5.2.
- 1.16 "Capacity" means the capability of the facility to generate electricity, expressed in megawatts.
- 1.17 "Claiming Party" has the meaning set forth in Section 4.15.
- 1.18 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.19 "Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Good Utility Practices, including, without limitation, electric system reliability and stability, state or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. "Commercially Reasonable" or "Commercially Reasonable Efforts" shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.
- 1.20 "Commercial Operation" has the meaning set forth in Section 4.1.
- 1.21 "Commercial Operation Date" or "COD" means the date that Commercial Operation of the Project has been achieved in accordance with Section 4.1.
- 1.22 "Confidential Information" means all information, whether written or oral, that is disclosed or otherwise available in connection with this Agreement or the performance by either Party of any of its duties hereunder, except any information which: (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement); (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Confidential Information, provided that such source is not and was not known by the receiving Party to be bound by a confidentiality agreement that protected the Confidential Information; or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Agreement.

- 1.23 "Contract Hours" means all of the hours in the applicable Contract Year.
- 1.24 "Contract Price" means the price in U.S. Dollars (unless otherwise provided for) to be paid by APS to Seller for the purchase of the Product, as specified in Section 2.1 and more fully described in Appendix A.
- 1.25 "Contract Year" means the annual period, beginning on the Commercial Operation Date, and renewing thereafter on each anniversary of the Commercial Operation Date.
- 1.26 "Conventional Energy Resource" is an energy resource that is non-renewable in nature, such as natural gas, coal, oil, and uranium, or electricity that is produced with energy resources that are not Renewable Energy resources.
- 1.27 "Corrected Capacity" means Capacity adjusted to correspond to conditions of [redacted] [***Applicable weather conditions to be determined based on technology***], as measured at the Delivery Point.
- 1.28 "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 after using Commercially Reasonable Efforts to mitigate costs either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction under this Agreement; and reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.
- 1.29 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties.
- 1.30 "Credit Support" means (i) a Letter of Credit; (ii) cash; (iii) a Guaranty; or (iv) such other form of Credit Support acceptable to the secured Party.
- 1.31 "Credit Support Provider" means (i) a Guarantor; (ii) an Issuer; or (iii) such other provider of Credit Support acceptable to the secured Party.
- 1.32 "Cure Plan" has the meaning set forth in Section 4.8.
- 1.33 "Defaulting Party" has the meaning set forth in Section 6.1.
- 1.34 "Delivery Period" means the period of delivery under this Agreement, commencing on the Commercial Operation Date and continuing for a Term of [redacted] ([redacted]) years.

1.35 "Delivery Point" means the point at which the Product will be delivered and received, as specified in Section 2.1 herein, or such other delivery point as may be agreed to by the Parties.

1.36 "Development Security" has the meaning set forth in Section 9.1.

1.37 "Distributed Renewable Energy Resource" means the application of certain technologies that are located at a customer's premises and that displace Conventional Energy Resources that would otherwise be used to provide electricity to Arizona customers. Such technologies are defined under the RES (A.A.C. R14-1802(B)).

1.38 "Dynamic Interchange Schedule" means a telemeter reading or value that is updated in real time and used as a schedule in the AGC/ACE equation and the integrated value of which is treated as a schedule for interchange accounting purposes. Commonly used for scheduling jointly owned generation to or from another Balancing Authority Area.

1.39 "Dynamic Transfer" means the use of real-time monitoring, telemetering, computer software, hardware, communications, engineering, energy accounting (including inadvertent interchange), and administrative services in order to electronically move all or a portion of the real energy services associated with a generator or load out of one Balancing Authority Area into another.

1.40 "Early Termination Date" has the meaning set forth in Section 6.2.

1.41 "Effective Date" means the date on which this Agreement has been executed by both Parties.

1.42 "Eligible Renewable Energy Resources" are applications of the following defined technologies that displace Conventional Energy Resources that would otherwise be used to provide electricity to an affected utility's Arizona customers: Biogas Electricity Generator, Biomass Electricity Generator, Distributed Renewable Energy Resources, Eligible Hydro Facilities, Fuel Cell that Use Only Renewable Fuels, Geothermal Generator, Hybrid Wind and Solar Electric Generator, Landfill Gas Generator, New Hydropower Generator of 10 MWs or Less, Solar Electricity Resources, Wind Generator. Capitalized terms used in this definition but not specifically defined in this Agreement shall have the meanings given to them in the Renewable Energy Standard and Tariff.

1.43 "Emergency" means any abnormal interconnection or system condition (including, without limitation, equipment or transmission limitations and constraints caused by thermal limits, stability, voltage, or loop flows) that Buyer determines, in its sole discretion (exercised in accordance with Good Utility Practices): (a) requires automatic or immediate manual operation to prevent or limit loss of Buyer's system or generation supply; (b) could adversely affect the reliability of the Buyer system or generation supply; (c) could adversely affect the reliability of any interconnected electric system; or (d) could otherwise pose a threat to public safety.

1.44 "EMS" means Energy Management System.

1.45 "Environmental Attributes" means environmental characteristics that are attributable to Renewable Energy, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Credits; greenhouse gas or emissions reductions, credits, offsets, allowances or benefits; actual SO₂, NO_x, CO₂, CO, Carbon, VOC, PM₁₀, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh or, as applicable in the case of emissions credits, in tonne equivalent or other allowance measurement. Environmental Attributes does not include Tax Benefits, or any energy, Capacity, reliability, or other power attributes used by Seller to provide electricity services.

1.46 "EPC Contractor" means the contractor(s) under the engineering, procurement and construction contract for the Project.

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

1.48 "Event of Default" has the meaning set forth in Section 6.1.

1.49 "Exempt Wholesale Generator" has the meaning set forth in the version of 18 C.F.R. 366.7 in effect as of the Effective Date of this Agreement.

1.50 "Expansion Product" has the meaning set forth in Section 11.9.

1.51 "Facility" means all of the following: the Project, as defined in Section 2.1 of this Agreement, the purpose of which is to produce Renewable Energy including Seller's Interconnection Facilities and all equipment and other tangible assets, land rights and contract rights reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Renewable Energy being sold under this Agreement.

1.52 "Facility Debt" means the obligations of Seller or its Affiliates to any Facility lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing. Facility Debt does not include trade debt or obligations incurred in the ordinary course of business.

1.53 "Federal Funds Effective Rate" means the average interest rate that federal funds actually trade at in a day.

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

1.55 "Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Facility (including any portfolio debt financing of which the Facility is included), including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller and/or its Affiliates in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

1.56 "Forced Outage" means the shutdown or unavailability of the Facility, or a portion thereof other than as a Planned Outage, for reasons including, but not limited to, unanticipated equipment breakdown, human error, or emergency conditions. A Forced Outage shall not include any Outage that may be deferred consisted with Good Utility Practices and without causing safety risk damage to equipment or additional costs.

1.57 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Transaction, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a "Force Majeure" event may include, but shall not be limited to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, terrorism or riot. Notwithstanding the foregoing, 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, including materials or equipment, unless such loss or failure is caused by a Force Majeure event (iv) the delay in or inability of Seller to obtain financing or economic hardship of any kind; or (v) Seller's ability to sell the Product at a price greater than the Contract Price; or (vi) strike or other labor dispute. 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.

1.58 "Force Majeure Hours" means the hours in the applicable Contract Year in which Seller has declared Force Majeure.

1.59 "[REDACTED] Off Peak ICE Day Ahead Index Price" means the average, measured over the Production Measurement Period, of the index price for each calendar day as published in the [REDACTED] section of ICE Data End of Day Power Enterprise Report for HE 0100 – HE 0600, 2300, 2400 PPT Monday through Saturday and HE 0100 – HE 2400 PPT Sundays

and NERC holidays or, if such report is no longer available, then such successor publication or such other publication or report as mutually agreed to by the Parties.

1.60 " [REDACTED] On Peak ICE Day Ahead Index Price" means the average, measured over the Production Measurement Period, of the index price for each calendar day as published in the [REDACTED] section of ICE Data End of Day Power Enterprise Report for HE 0700 – HE 2200 PPT Monday through Saturday, excluding Sundays and NERC holidays or, if such report is no longer available, then such successor publication or such other publication or report as mutually agreed to by the Parties.

1.61 "Good Utility Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods, or acts.

1.62 "Governmental Authority" means any federal, state, local or municipal government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

1.63 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party.

1.64 "Guaranty" means a guaranty, security agreement or any other document containing an obligation of a Guarantor in favor of, and supporting any obligations of, one Party to the other Party, in substantially the form attached as Appendix H hereto.

1.65 "Guaranteed Availability" has the meaning set forth in Sections 2.1 and 4.7.

1.66 "Guaranteed Capacity" has the meaning set forth in Sections 2.1 and 4.10.

1.67 "Guaranteed Production" has the meaning set forth in Sections 2.1 and 4.9.

1.68 "HE" means hour ending.

1.69 "ICE" means Intercontinental Exchange.

1.70 "ICE Data End of Day Power Enterprise Report" means the report, as published by ICE, which contains data from actively traded day ahead markets during the morning's trading session on ICE.

1.71 "Imbalance" means the excess or deficiency of the actual amount of Product delivered into the system of the receiving Transmission Provider at the Delivery Point over the Scheduled delivery of energy into the system of the receiving Transmission Provider at the Delivery Point independent of any adjustments for losses on the systems required by the Transmission Provider.

1.72 "Imbalance Charges" means all charges, fees and other penalties incurred by either Party as a result of an Imbalance.

1.73 "Independent Engineer" shall mean one of the engineering firms set forth in Appendix E hereto, and any other independent engineer or engineering firm mutually agreed to by the Parties.

1.74 "Interconnection Agreement" means the agreement for interconnection service relating to the Facility between the Transmission Provider and Seller, (with all associated costs being borne by Seller) as it may be amended, supplemented or modified a copy of which, within ten (10) days after its execution, shall be provided by Seller to APS and attached hereto as Appendix J.

1.75 "Interconnection Failure" means any time the Transmission Provider's Interconnection Facilities are not available to transmit energy to the Delivery Point as the result of an Emergency, a Force Majeure event, or a curtailment of transmission service, or for any other reason.

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

1.77 "Issuer" means a U.S. commercial bank or a U.S. branch of a foreign bank, with such bank having a Credit Rating of at least A- from S&P and A3 from Moody's and a shareholder's equity of at least ten billion United States dollars (\$10,000,000,000.00).

1.78 "kWh" means kilowatt hour.

1.79 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's, in substantially the form set forth in Appendix G hereto; provided, however that such form may be modified by the issuing bank as long as such modifications are acceptable to the beneficiary in its sole discretion. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.80 "Maintenance Schedule" means the schedule for all anticipated or unanticipated maintenance for the Facility, including both breakdown and preventative maintenance.

- 1.81 "Maximum Contract Quantity" has the meaning set forth in Section 2.1.
- 1.82 "Merger Event" means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity's Credit Rating is lower than that of such Party immediately prior to such action.
- 1.83 "Month" means a calendar Month. The term "Monthly" shall have a meaning correlative to a Month.
- 1.84 "Moody's" means Moody's Investor Services, Inc. or its successor.
- 1.85 "MW" or "MWh" means megawatt or megawatt hour.
- 1.86 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council ("NERC") or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.
- 1.87 "Non-Defaulting Party" has the meaning set forth in Section 6.2.
- 1.88 "Notice" has the meaning set forth in Section 11.8 herein.
- 1.89 "Notice to Proceed" means the written notice provided by Seller to the EPC Contractor to begin procurement and construction activity at the Project site.
- 1.90 "Outage" means the period during which the Facility or a portion thereof is out of service.
- 1.91 "Outside Commercial Operation Date" has the meaning set forth in Section 4.2(b).
- 1.92 "Performance Assurance" means collateral in the form of cash (subject to a form of account control agreement reasonably acceptable to both Parties), Letter(s) of Credit, or other security acceptable to the requesting party.
- 1.93 "Planned Outage" means any Outage that is not a Forced Outage, and refers to the shutdown or unavailability of the Facility or a portion thereof for inspection or maintenance in accordance with an advance schedule.
- 1.94 "Potential Event of Default" means an event which, with Notice or passage of time or both, would constitute an Event of Default.

- 1.95 "Pre-COD Capacity Test" has the meaning set forth in Section 4.1(i).
- 1.96 "Product" means (i) all Renewable Energy produced exclusively by the Facility as measured by the Seller Metering Equipment at the Delivery Point, and (ii) all Renewable Energy Credits associated with all Renewable Energy produced by the Facility, regardless of the amount Renewable Energy actually delivered at the Delivery Point.
- 1.97 "Production Measurement Period" has the meaning set forth in Section 4.9.
- 1.98 "Production Shortfall" has the meaning set forth in Section 4.9.
- 1.99 "Project" has the meaning set forth in Section 2.1.
- 1.100 "PUHCA" means the Public Utility Holding Company Act of 2005 as amended from time to time.
- 1.101 "Qualifying Facility" has the meaning set forth in the version of 18 C.F.R. part 292 in effect as of the Effective Date of this Agreement.
- 1.102 "Quantity" means the actual quantity of Product sold by Seller and purchased by and delivered to APS pursuant to this Agreement. The Quantity shall be measured based on the metered data from the Seller Metering Equipment at the Delivery Point.
- 1.103 "Renewable Energy" means energy derived from a Renewable Energy Resource.
- 1.104 "Renewable Energy Credit" ("REC") means the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by Distributed Renewable Energy Resources.
- 1.105 "Renewable Energy Resource" means an energy resource that is replaced rapidly by a natural, ongoing process and that is not nuclear or fossil fuel.
- 1.106 "REC Premium" shall mean \$ [REDACTED] per MWh (equivalent to \$ [REDACTED] per kWh), until such time as the Parties agree (i) there exists a liquid trading market for RECs comparable to the RECs purchased by APS under this Agreement, and (ii) upon a methodology for determining the average market price of such comparable RECs during the Availability Measurement Period (such agreement by the Parties not to be unreasonably withheld), at which time the REC Premium shall mean the market price of such comparable RECs, as determined pursuant to such methodology, during the Availability Measurement Period .
- 1.107 "Renewable Energy Standard and Tariff" ("RES") means the Arizona Renewable Energy Standard Rules, A.A.C. R14-2-1801 *et seq.*, which establishes the requirements for APS' use of Renewable Energy to supply electricity to its customers, and shall include any amendments to the

RES as well as any subsequent regulatory rule or provision that adopts, incorporates and/or otherwise replaces the RES Standard in place as of the Effective Date of the Agreement.

1.108 "Replacement Price" means the price at which Buyer, acting in a Commercially Reasonable manner, purchases at the Delivery Point a replacement for the Product not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a Commercially Reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall not be required to actually purchase a replacement for the Product.

1.109 "ROFR Product" has the meaning set forth in Section 4.4.

1.110 "RTUs" has the meaning set forth in Section 4.13.

1.111 "Sales Price" means the price at which Seller, acting in a Commercially Reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product, (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers; or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a Commercially Reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall not be required to actually resell the Product.

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

1.113 "SCADA" means "supervisory control and data acquisition" and shall refer to that category of software application program that can be used to gather data from the Facility remotely in real time in order to monitor Facility equipment and conditions. SCADA information shall also refer to any other resource related data as required by APS.

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

1.115 "Seller Ancillary Service" shall mean those specified services (and related charges) for which transmission customer is responsible for under the terms of the Transmission Services Agreement.

- 1.116 "Seller Failure" has the meaning set forth in Section 5.1.
- 1.117 "Seller Failure Damages" has the meaning set forth in Section 5.1.
- 1.118 "Seller's Interconnection Facilities" means the equipment as specified in the Interconnection Agreement.
- 1.119 "Seller Metering Equipment" means all metering equipment and data processing equipment used to measure the Quantity delivered to the Delivery Point.
- 1.120 "Seller Sales Damages" means:
- (a) The positive difference, if any, between the value of:
 - (i) All dollar amounts Seller reasonably would have been expected to receive from the sale of the Product under this Agreement, including Tax Benefits, until the end date of this Agreement;
plus
 - (ii) All incremental costs over and above those that Seller would otherwise incur when delivering the Product to the Delivery Point,
less
 - (iii) All dollar amounts, including any Tax Benefits, Seller actually received (or reasonably would be expected to receive at then-prevailing market conditions utilizing Commercially Reasonable Efforts), from the sale to a third party of the Product that it would have provided to APS until the end date of this Agreement.
 - (b) Seller Sales Damages shall be derived as follows:
 - (i) Seller shall calculate the Seller Sales Damages in a Commercially Reasonable manner by calculating the arithmetic mean of at least three (3) price quotations (either firm or indicative) from independent third party sellers or market brokers (which third parties shall not be Affiliates or former employees of Seller) based on the same or a substantially similar product to the Product for the relevant period (the "Seller Damage Calculations").
 - (ii) If Seller is not able, after Commercially Reasonable Efforts, to obtain at least three (3) price quotations as provided in Section 1.120(b)(i), then Seller shall calculate the Seller Damage Calculations by taking the arithmetic mean of at least three (3) forward price assessments prepared by non-affiliated third party experts in the industry. The experts shall be selected by Seller, in its sole discretion; provided,

however, such experts shall not have been employees of Seller and/or any Affiliates of Seller (the "Seller Third Party Experts"). The Seller Third Party Experts shall calculate the Seller Damage Calculations based upon products substantially similar to the Product, as well as Product Availability and/or output, additional transmission charges, and access and credit considerations and credit enhancements as found in this Transaction. The Parties shall equally divide the costs of Seller Third Party Experts.

- (iii) If Seller is not able, after using Commercially Reasonable Efforts, to obtain at least three (3) forward price assessments as provided in Section 1.120(b)(ii), then Seller shall calculate the Seller Sales Damages in a Commercially Reasonable manner using relevant market data it has available to it, including index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data. Third parties supplying such information may include, without limitation, dealers in the relevant markets, market brokers and other sources of market information; provided, such third parties shall not be Affiliates or former employees of Seller.

In calculating Seller's Sales Damages, in no event shall such damages 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 or market positions to minimize APS' liability. For purposes of this definition, Seller shall not be required to actually sell the subject Product to calculate the Seller Sales Damages as set forth herein; provided, however, in the event that Seller elects to sell the subject Product it shall do so in a Commercially Reasonable manner. If the Seller Sales Damages are a negative number then the Seller Sales Damages shall be deemed to equal zero (-0-) dollars. In addition, for the purposes of calculating Seller Sales Damages, the value of the REC portion of the Product shall be determined in the manner set forth in this Section, without reference to or reliance upon the REC Premium defined in Section 1.206 of this Agreement.

Seller shall provide the Seller's Sales Damages calculations including the following support data: (i) all pertinent forward curves, (ii) all pertinent transmission costs and charges, and (iii) other relevant assumptions used to calculate the Seller Sales Damages to the degree APS deems pertinent. Upon receipt of the Seller's Sales Damages, if APS disputes the calculation of Seller's Sales Damages, in whole or in part, APS shall, within fifteen (15) Business Days of receipt of Notice, provide to Seller a detailed written explanation of the basis for such dispute; provided, APS can only dispute the calculation based on a failure as to the material assumptions used in preparation of Seller's Sales Damages and/or the qualifications of the Seller Third Party Experts. APS shall nevertheless during the pendency of any dispute pay the invoice within five (5) Business Days of receipt of such invoice; provided however, that if any amount is later required to be returned to Seller as

overpayment, such amount shall be returned together with interest at the Interest Rate. Moreover, any dispute as described above shall be pursued through the Alternative Dispute Resolution process as described in the Agreement.

1.121 "Settlement Amount" means the APS Purchase Damages or Seller Sales Damages, as applicable, together with Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of the liquidation of the Transaction under this Agreement pursuant to Section 6.2.

1.122 "Tax Benefits" means Renewable Energy related tax credits established under Section 45 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code, except for any credits or other tax benefits that are associated with any carbon tax or other assessment (regardless of how any present or future law or regulation attributes or allocates such characteristics).

1.123 "Term" has the meaning set forth in Section 11.1.

1.124 "Termination Damages" has the meaning set forth in Section 4.4.

1.125 "Termination Payment" has the meaning set forth in Section 6.3.

1.126 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

1.127 "Test Energy" means non-firm Renewable Energy generated prior to the Commercial Operation Date, subject to immediate interruption, fluctuations or reduction/increase with no prior Notice, due to unit performance.

1.128 "Transaction" means the transaction relating to the purchase or sale of Product as contemplated in this Agreement.

1.129 "Unavailable Hours" means the sum of any hours, or parts thereof, in any Month during the Delivery Period when an equipment component is out of service or derated, for any reason, minus Force Majeure Hours. The hours, or parts thereof, as described above, shall be weighted based on the contribution of the equipment component to the overall Facility output.

1.130 "Unit Contingent" means that the Product is intended to be supplied from the Facility as it is produced, subject to the Guaranteed Availability requirement set forth in Section 4.8.

ARTICLE TWO: COMMERCIAL TERMS

2.1 Commercial Terms. The following commercial terms apply to the Transaction that is the subject of this Agreement, each as more fully described herein:

Buyer: APS	Seller: _____
Project: _____	
Delivery Point: _____	
Maximum Contract Quantity (MW/hr.): _____ not to exceed _____ MWhs per year	Guaranteed Production: (MWhs): _____ [Required for all resources]
Guaranteed Availability (%): _____ [Required for wind resources only]	Guaranteed Capacity (MWs): _____ [Required for all resources, except wind]
Delivery Period: _____	Contract Price (\$/MWh): See Appendix A
Product Type: Unit Contingent and associated RECs	Development Security: \$ _____
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Pacific Prevailing Time ("PPT")
Commercial Operation Date: No later than _____, subject to the extension provisions set forth in Article Four.	
Test Energy: Seller agrees to sell and Buyer agrees to purchase all Test Energy from the Facility. The price of such Test Energy shall be _____ percent (___ %) of the first year's Contract Price. Test Energy shall be delivered pursuant to a Dynamic Transfer in accordance with the Scheduling provisions contained herein. Both Parties agree that Seller will use Commercially Reasonable Efforts to pre-schedule the Test Energy, but Buyer shall nonetheless be obligated to accept all Test Energy pursuant to a Dynamic Transfer up to _____ MW per hour of Test Energy. Seller shall provide to Buyer all RECs associated with the Test Energy produced by the Facility in accordance with Section 4.20.	

ARTICLE THREE: REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. On the Effective Date of this Agreement, 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 Agreement (other than permits or regulatory authorizations to be obtained by Seller for the construction, operation or

maintenance of the Facility, which Seller reasonably anticipates it will be able to obtain in due course);

- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses.
- (d) 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;
- (e) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (f) 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 Agreement;
- (g) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement 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 Agreement;
- (h) It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; and
- (i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product referred to in the Agreement.

3.2 Seller Representations and Warranties. Seller affirmatively represents and warrants to APS that:

- (a) On the Effective Date of this Agreement, or in due course as required in accordance with the Project Milestones (as may be extended as provided in Section 4.3), Seller has (or reasonably expects to have in due course), good defensible title, or valid and effective leasehold rights in the case of leased property, to the Facility, free and clear of all liens, charges, claims, pledges,

security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances relating to Facility Debt as provided for herein, or that in the aggregate do not detract from or interfere with the ability of Seller to deliver the Quantity of the Product;

- (b) All acts necessary to the valid execution, delivery and performance of this Agreement by Seller have or will be taken and performed as required under Seller's ordinances, bylaws, or other regulations including, but not limited to (i) the valid authority of the person executing this Agreement to bind Seller and (ii) the Term of this Agreement does not extend beyond any limitation applicable to Seller imposed by relevant governing documents and applicable law;
- (c) As of the Effective Date of this Agreement, the energy source from which the Product will be sold to APS is from a Renewable Energy Resource, as that term is defined herein; and
- (d) Seller will have at the time of sale, title to and ownership of the RECs sold hereunder.

ARTICLE FOUR: PERFORMANCE REQUIREMENTS

4.1 Commercial Operation. Seller shall achieve Commercial Operation of the Project no later than [REDACTED], except to the extent such date is extended pursuant to Section 4.2, in which case Commercial Operation shall occur on or prior to the Outside Commercial Operation Date. Commercial Operation shall be achieved as of the date on which each of the following conditions precedent has been satisfied or waived in writing by the Parties, as applicable ("Commercial Operation"):

- (a) Seller shall have obtained all governmental and regulatory authorizations, including any applicable permits, required for the construction, ownership, operation and maintenance of the Project and for the sale of the Product therefrom;
- (b) Seller shall have entered into an Interconnection Agreement and, if applicable, a Transmission Agreement, each on terms and conditions reasonably acceptable to Seller and the Transmission Provider (with all associated costs being borne by Seller) and all interconnection facilities shall be complete and in operation and capable of accepting, transmitting and delivering Renewable Energy to the Delivery Point;
- (c) All documents necessary for the operation of the Facility and the transmission of the Product from the Facility to the Delivery Point shall be

fully executed including, but not limited to, those documents between Seller and the associated with transmission services;

- (d) The Facility shall demonstrate performance in excess of [REDACTED] MWh of output and [REDACTED] percent ([REDACTED] %) Availability for a continuous ten (10) day operations period as evidenced by SCADA reports and metered data required under this Agreement;
- (e) Seller shall have established SCADA information and data feed to enable APS to view parameters or data points that relate to Availability, production data, and other actual resource data for the Facility [and, depending upon the resource, APS may require additional resource information and measurement equipment for the Facility];
- (f) Seller shall have installed all equipment needed to enable Dynamic Transfer of the Product from the Facility to the Delivery Point, as may be necessary pursuant to the Interconnection Agreement, and shall demonstrate that such equipment, if needed, is fully operational;
- (g) Seller shall have provided to APS an energy dispatch and Scheduling protocol, in accordance with Section 4.14, that is acceptable to APS in its sole and reasonable discretion; and
- (h) Seller shall in all other respects be capable of delivering the Product to APS at the Delivery Point.
- (i) Seller shall perform a capacity test in accordance with the protocol outlined in Appendix K to determine the Capacity of the Facility, which shall not be less than the Guaranteed Capacity set forth in Section 2.1 (“Pre-COD Capacity Test”). APS shall receive the entire Product from the Facility during such test. Product deliveries during testing shall be measured at the Delivery Point.

Seller shall present to APS a certificate from an Independent Engineer, verifying that each of the foregoing conditions has been satisfied or waived in writing by the Parties and Commercial Operation shall be deemed to have occurred upon the delivery of such certificate to APS. If both Parties expressly and in writing agree to waive any of the conditions precedent set forth above, such condition shall no longer be a condition precedent to Commercial Operation of the Project. If the Commercial Operation Date does not occur on or before [REDACTED], as such date may be extended in accordance with Section 4.2 herein; either Party shall have the right to terminate the Agreement upon written Notice to the other. In the event of such termination by either Party, APS shall be entitled to Termination Damages set forth in Section 4.4; provided, however, that in accordance with Section 4.2(c), APS shall not be entitled to such Termination Damages if the Outside Commercial Operation Date is not achieved due to solely a Force Majeure event.

4.2 Extension of Commercial Operation Date.

- (a) Planned Extension. The Parties agree that the Commercial Operation Date is expected to be [REDACTED]. Seller may elect to extend the Commercial Operation Date beyond [REDACTED] (the "COD Extension") by paying APS for such extension (the "COD Extension Payment"). The COD Extension Payment shall be in the amount of \$ [REDACTED] per day for each day (or portion thereof) after but not including [REDACTED] until, but not including, the date on which the Project actually achieves Commercial Operation. [***Note To Bidders: The amount of the COD Extension Payment will be derived using the following formula: (Development Security as set forth in Section 9.1 ÷ 365) x .5 = daily COD Extension Payment***] To extend the Commercial Operation Date, Seller must, as early as reasonably possible, but in no event later than fourteen (14) days prior to the first day of the proposed extension, provide APS with Notice of its election to extend the Commercial Operation Date along with an estimate of the duration of the extension. The COD Extension Payment is in addition to and not to be considered part of the Development Security, and shall be paid to APS at the time of the Notice hereunder. Seller's request to extend the Commercial Operation Date shall not be valid unless proper Notice and payment are timely received by APS. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein, and APS shall not have the right to terminate the Agreement or to receive Termination Damages with respect to such extension so long as Seller has provided the Notice, estimation and payment as provided in this Section 4.2(a). Seller may further extend the Commercial Operation Date beyond the original COD Extension, subject to the foregoing Notice, estimation and payment terms applicable to the original COD Extension.

Seller shall be entitled to a prompt refund, without interest, of any portion of the COD Extension Payment held by APS which exceeds the amount required to cover the number of days by which the Commercial Operation Date was actually extended. In no event may Seller extend the Commercial Operation Date by more than ninety (90) days through the payment of the COD Extension Payment, except as provided in Section 4.2(b)(ii). In the event that the Project does not achieve Commercial Operation on or before the expiration of any COD Extension period as provided herein, either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Sections 4.2(b) or (c) below. In the event of such termination by either Party in accordance with this provision, APS shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (b) Unplanned Extension/Additional Planned Extension. In the event that (i) the Project does not achieve Commercial Operation by [REDACTED] and Seller fails to provide sufficient Notice and/or payment in order to extend the Commercial Operation Date as provided in Section 4.2(a), or (ii) the Commercial Operation Date shall not have occurred within the ninety (90) day planned extension period provided under Section 4.2(a), then Seller may still extend the Commercial Operation Date by paying APS damages ("Daily Delay Liquidated Damages"). The Daily Delay Liquidated Damages shall be in the amount of \$ [REDACTED] per day for each day (or portion thereof) after but not including [REDACTED] or the extended Commercial Operation Date, whichever is applicable, until, but not including, the date on which the Project actually achieves Commercial Operation, and shall be payable within five (5) Business Days following receipt of an invoice from APS for any such Daily Delay Liquidated Damages. [***Note To Bidders: The amount of the COD Extension Payment will be derived using the following formula: Development Security as set forth in Section 9.1 ÷ 365 = Daily Delay Liquidated Damages***] No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein and APS shall not have the right to terminate the Agreement with respect to such extension or to receive Termination Damages so long as Seller has extended the Commercial Operation Date and pays the Daily Delay Liquidated Damages as provided in this Section 4.2(b).

In no event may the Commercial Operation Date be extended more than ninety (90) days through the payment of Daily Delay Liquidated Damages, without the express written consent of APS. In the event that the Project does not achieve Commercial Operation on or before [date that is 90 days from COD] (the "Outside Commercial Operation Date"), then either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Sections 4.2(c) below. In the event of such termination by either Party in accordance with this provision, APS shall be entitled to Termination Damages as set forth in Section 4.4 as it's sole and exclusive remedy, subject to Section 4.2(c).

- (c) Force Majeure Extension. The Commercial Operation Date shall also be extended, without payment or other penalty, on a day-for-day basis for each day of delay caused by reason of Force Majeure (a "Force Majeure Extension"); provided, however, that the Commercial Operation Date shall occur no later, under any circumstances than the Outside Commercial Operation Date. Any Force Majeure Extension shall also extend the period of any planned or unplanned extensions pursuant to Sections 4.2(a) or (b) on a day-for-day basis for each day during the Force Majeure Extension, and Seller shall not be required to pay any COD Extension Payments or Daily Delay Liquidated Damages, as applicable, for any days during the Force Majeure Extension. Notwithstanding any other provision in this Agreement,

if, due solely to a Force Majeure event, the Project does not achieve Commercial Operation on or before the Outside Commercial Operation Date, then either Party may, terminate this Agreement without penalty or further obligation to the other Party. For the sake of clarity, in the event of such termination by either Party, APS shall not be entitled to Termination Damages.

4.3 Project Milestones. In order to ensure timely completion of the Project, Seller shall meet the following deadlines in connection with the construction of the Project (“Project Milestones”):

- _____ : All rights necessary to develop Project site secured;
- _____ : All material construction, environmental, operational or other permits necessary to build and begin construction on the Project, as set forth in Appendix F obtained;
- _____ : Interconnection Agreement and, if applicable, Transmission Agreement executed; and
- _____ : Notice to Proceed given to EPC Contractor.

Seller shall provide written Notice, including supporting documentation acceptable to APS in its sole and reasonable discretion, promptly upon its satisfaction of each Project Milestone. A Project Milestone will not be considered achieved, for purposes of this Agreement, until APS has received such acceptable Notice and supporting documentation. If Seller fails to achieve any of the foregoing Project Milestones within thirty (30) days following the applicable deadline (as may be extended by reason of Force Majeure), then either Party may terminate this Agreement upon written Notice to the other. In the event of a termination by APS, APS shall be entitled to the Termination Damages set forth in Section 4.4 as its sole and exclusive remedy; provided, however, that, in accordance with Section 4.2(c), APS shall not be entitled to such Termination Damages if failure to achieve such Project Milestone is due to a Force Majeure event and Seller shall be given a day-for-day extension of time to achieve such Project Milestone; provided, further, in the event that Seller's failure to achieve such Project Milestone was solely due to an Event of Default by APS, in no event shall APS have a right to terminate the Agreement or to receive Termination Damages.

In addition to the foregoing, Seller shall provide APS with prompt written Notice (and in any event within ten (10) days) following its becoming aware of information that leads to a reasonable conclusion that a Project Milestone will not be met, and shall convene a meeting with APS to discuss the situation not later than twenty (20) days after becoming aware of such information.

4.4 Termination Damages. APS shall be entitled to termination damages, payable solely from the Development Security established in Section 9.1 ("Termination Damages"), if: (a) subject to the last sentence of this Section 4.4, Seller terminates the Agreement prior to the

Commercial Operation Date for any reason other than: (i) a Force Majeure event or (ii) an Event of Default by APS; (b) APS terminates the Agreement as a result of Seller failing to meet any Project Milestone after the passage of the applicable grace period; and/or (c) APS terminates the Agreement as a result of Seller failing to achieve the Commercial Operation Date on or prior to [REDACTED], as the same may have been extended pursuant to Section 4.2. The Termination Damages are designed to help compensate APS for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and APS' potential failure to meet its applicable renewable energy portfolio requirements and do not constitute a penalty payment; provided, however, the Parties agree that APS may be damaged in an amount that exceeds the Termination Damages and APS shall be entitled to such additional remedies set forth in Section 1.4. Accordingly, Seller shall pay to APS, from the Development Security, Termination Damages in the following amounts, based upon when the termination occurs:

Prior to Posting Date:	\$0.00
Posting Date to [REDACTED]:	25% of Development Security
[REDACTED] to [REDACTED]:	50% of Development Security
[REDACTED] to [REDACTED]:	75% of Development Security
[REDACTED] forward:	100% of Development Security

Notwithstanding the foregoing, in the event that Seller terminates this Agreement for any reason prior to the Posting Date as set forth in Section 9.1 herein, then Seller shall owe APS no Termination Damages and such termination shall be without penalty to Seller.

In the event that Seller terminates this Agreement in accordance with Section 4.4 herein, Seller shall not be entitled to enter into an agreement to sell electricity and/or related Environmental Attributes and capacity attributes from the Facility (the "ROFR Product") to a party other than APS for a period of three (3) years from the relevant termination date unless, within six (6) Months of entering into such contract, Seller provides Buyer with a written offer to sell to Buyer ROFR Product of a quantity equal to the ROFR product sold or offered to a third party under the same terms to which APS is entitled under this Agreement. Seller will negotiate in good faith with APS, provided that if the Parties have not agreed within six (6) Months of Seller's offer to Buyer, Seller may revoke such offer and shall have no further obligations under this Section 4.4 in connection with the instigating third party sale. In the event that Seller fails to provide Buyer with a written offer to sell to Buyer the ROFR product as described herein, or fails to negotiate in good faith, then APS shall be entitled to both the Termination Damages and any other remedies available at law or in equity to the extent that APS' actual damages exceed the value of the Termination Damages.

In addition, and notwithstanding any other characterization of the Termination Damages herein, if Seller terminates the Agreement prior to the Commercial Operation Date for the sole purpose of engaging in a third party sale, then APS shall be entitled to the Termination Damages, the rights to the ROFR product as set forth in the preceding paragraph and any other remedies available at law or in equity.

4.5 Seller's and Buyer's Obligations. Seller shall sell and deliver, or cause to be delivered, and APS shall purchase and receive, or cause to be received, all of the Product generated by the Facility up to the Maximum Contract Quantity, at the Delivery Point, and APS shall pay Seller the Contract Price for such Quantity of Product as measured by the Seller's Metering Equipment at the Delivery Point. 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. APS shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point. Title to and risk of loss of the Product from the Facility delivered to the Delivery Point shall transfer to APS at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. Notwithstanding the foregoing, in the event that transmission of Renewable Energy from the Facility to the Delivery Point is unavailable or derated for any period for any reason other than due to APS' electric system, Seller's obligation to supply and sell, and APS' obligation to accept and purchase, Renewable Energy shall be limited to such Renewable Energy that is actually deliverable from the Facility to the Delivery Point during such period.

4.6 Operation of Facility. Seller shall operate and maintain the Facility in accordance with Good Utility Practices.

4.7 **[Guaranteed Availability is required for Wind resources only]** Availability of the Facility. The Facility shall achieve _____ percent (____ %) Availability throughout the Term of this Agreement (the "Guaranteed Availability"). Seller shall provide APS with Notice of any actual or anticipated deratings, production limitations, interruptions, partial outages, or curtailments of generation which in whole or in part affect the Availability of the Facility, including the estimated duration of such condition(s) and a description thereof. Such Notice shall be given as soon as reasonably practicable following such event or, if such event is anticipated prior to its occurrence, such Notice shall be given as soon as practicable upon learning that such event may occur. Seller shall use Commercially Reasonable Efforts to cure any circumstances that impair the Availability of the Facility. If the Facility is expected to be unavailable in whole or in part for longer than three (3) days, Seller shall provide APS with regular status reports, in form and substance acceptable to APS, relating to the expected duration and Seller's plan to correct such unavailability. Notwithstanding anything herein to the contrary, in the event that the Facility fails to achieve the Guaranteed Availability over any given Availability Measurement Period, as defined in Section 4.8, APS shall have the right to terminate this Agreement in accordance with the terms thereof.

4.8 Availability Default and Termination. APS shall calculate the Availability of the Facility as soon as reasonably practicable at the end of each rolling six (6) Month period during the Term of the Agreement beginning with the Commercial Operation Date (the "Availability Measurement Period"). In the event that the Availability of the Facility during any Availability Measurement Period falls below _____ percent (____ %), it shall constitute an "Availability Default." Upon the occurrence of an Availability Default, APS may provide Seller with written Notice of its intent to terminate the Agreement. On or before the fourteenth (14th) calendar day following its receipt of such Notice, Seller shall provide APS with a written plan, acceptable to APS in form and substance, for curing its failure to meet its Availability obligations set forth herein (a

“Cure Plan”). The Cure Plan must specify in reasonable detail Seller’s analysis of the cause(s) of the unavailability, the action(s) that Seller plans to take to correct such underperformance, and the time needed to complete such corrective action(s). Seller shall undertake any and all corrective action in a Commercially Reasonable manner and shall complete all such corrective action as soon as is commercially practicable. In no event shall such corrective action take longer than sixty (60) days to complete. Notwithstanding anything in this provision to the contrary, in the event that Seller does not timely submit a Cure Plan, or the Cure Plan is not acceptable to APS in form and substance, then APS may immediately terminate the Agreement upon written Notice to Seller.

Promptly upon completing its corrective action, Seller shall provide Notice to APS of the same. Beginning on the date of such notification, the next Availability Measurement Period shall begin. If the Facility fails to achieve the Guaranteed Availability over the term of the subsequent Availability Measurement Period, APS shall have the right to immediately terminate this Agreement upon written Notice to Seller and shall be entitled to all of the rights and remedies associated with such termination as set forth in this Article Six. Seller shall be entitled to exercise its Cure Plan rights no more than two (2) times during the Term of this Agreement and there shall be a minimum of twelve (12) Months between Cure Plans.

4.9 **[Guaranteed Production is required for all resources]** Production Default. The Facility is expected to produce _____ MWhs of Renewable Energy each Contract Year. As referenced in Section 6.1 herein, it shall constitute an Event of Default for Seller if, at any time during the Term of this Agreement, the average production from the Facility is below _____ MWh for any Contract Year during the Term of the Agreement (“Production Measurement Period”) (such MWh production is the “Guaranteed Production,” the failure of which shall be deemed a “Production Default”). Upon the occurrence of a Production Default, APS shall have the right to immediately terminate this Agreement upon written Notice to Seller and shall be entitled to all of the rights and remedies associated with such termination, as well as any and all other default remedies, all as set forth in Article Six.

In addition, regardless of whether or not APS elects to terminate the Agreement in accordance with this provision, APS shall be entitled to receive damages for Seller's failure to provide sufficient production during the Production Measurement Period (the "Shortfall Damages").

APS shall calculate its Shortfall Damages as follows (and in accordance with the example set forth in Appendix B):

Production Shortfall = Guaranteed Production – Actual Production

Shortfall Damages = Production Shortfall x {[33% of the _____ Off-Peak Ice Day Ahead Index Price + 67% of the _____ On Peak Ice Day Ahead Index Price) + REC Premium] – Contract Price}

If the Shortfall Damages are a negative number then the Shortfall Damages are deemed to be zero (-0-) dollars.

4.10 **[Guaranteed Capacity is required for all resources, except Wind]** Capacity Testing.

- (a) Annual Capacity Test. The Facility shall achieve the Guaranteed Capacity during each Contract Year. In addition to the pre-COD Capacity Test referenced in Section 4.1(i), the Guaranteed Capacity of the Facility shall be tested during the first week in June of each Contract Year during the Delivery Period, unless some other test period is mutually agreed upon the Parties (the “Annual Capacity Test”). Seller shall notify APS of the specific date on which it intends to conduct the Annual Capacity Test at least ten (10) Business Days in advance and shall permit APS to be present at such test. APS shall have the right to receive copies of the results of the Annual Capacity Test, which shall be conducted in accordance with the protocol set forth in Appendix K. Any dispute regarding the results of the Annual Capacity Test shall be resolved through the Alternative Dispute Resolution process described in Section 11.12 of this Agreement. APS shall receive the entire Product from the Facility during any Annual Capacity Test or re-test (as set forth in Section 4.10(b) (ii)). Product deliveries during testing shall be measured at the Delivery Point.
- (b) Failure to Achieve Guaranteed Capacity.
- (i) In the event that the Annual Capacity Test demonstrates that the Facility has a Corrected Capacity of less than the Guaranteed Capacity, Seller shall use Commercially Reasonable Efforts to restore the Facility to a Corrected Capacity at least equal to the Guaranteed Capacity. Moreover, APS shall be entitled to a reduction in the Contract Price equal to █% of the Contract Price for each one (1) megawatt by which the Corrected Capacity is below the Contract Capacity, which price reduction shall remain in effect and apply to all Product delivered by Seller until Seller demonstrates via retesting (as set forth below) the Facility has Corrected Capacity at least equal to the Guaranteed Capacity.
- (ii) Following any Annual Capacity Test that demonstrates that the Facility has Corrected Capacity less than the Guaranteed Capacity, Seller shall have the right to repeat the same testing protocol at its next earliest opportunity (and to continue to repeat the capacity test as needed), so long as it notifies Buyer at least ten (10) Business Days in advance of any such test and permits Buyer to be present as described above. Seller shall bear the expense of all capacity testing.

4.11 Generation Imbalance Charges. If applicable, any and all generation Imbalance Charges relating directly or indirectly to the delivery of the Product to the Delivery Point during the Term of this Agreement shall be the sole responsibility of APS; provided, however, that generation Imbalance Charges caused by the gross negligence, willful misconduct of, or breach of contract by Seller shall be the sole responsibility of Seller.

4.12 Transmission and Scheduling. If applicable, Seller shall arrange and be responsible for firm transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to the Delivery Point. APS 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 Provider to receive the Product at the Delivery Point. Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.

4.13 Dynamic Transfer. Prior to the Commercial Operation Date, the Parties shall work together and use Commercially Reasonable Efforts to enable the Facility to Dynamically Transfer the Product from the Facility to the Delivery Point. Seller, in cooperation with the Transmission Provider, shall be responsible for the design, procurement and installation of industry standard remote terminal units ("RTUs") required to implement Dynamic Interchange Scheduling, as well as any other equipment necessary to communicate with the APS EMS, the cost of which shall be borne by Seller. Seller shall be responsible for all needed connections from the Facility to the RTUs. Such connections must be compatible with the RTUs installed by the Transmission Provider. Once Dynamic Interchange Scheduling is implemented, the Product shall be Dynamically Transferred to the Delivery Point. Seller shall provide APS with reasonable Notice as far in advance as possible, if and when any Facility control system changes are anticipated.

If at any time during the Term of this Agreement the existing Dynamic Interchange Scheduling program is altered and/or replaced by any other program for Scheduling and delivering Renewable Energy from the Facility to the Delivery Point which creates a material and substantial burden on either Party associated with Scheduling, Imbalance or other similar charges that are not applicable on the date hereof, then the Parties shall work together in good faith to amend this Agreement in a manner to allow participation in such program while at the same time maintaining or restoring (as applicable) to each Party the net economic benefits of the Agreement existing immediately prior to the implementation of such alteration or replacement, as reasonably determined by the Parties.

4.14 Monthly Planned Delivery Schedules. Seller shall provide APS with a Monthly thirty (30) day Schedule, including identifications of receiving and generating Balancing Authorities. Seller shall provide updated weekly Schedules at least seven (7) days prior to the date of delivery, which shall include identifications of receiving and generating Balancing Authorities. Any material changes in operating conditions that require modifications to weekly Schedules shall be submitted on a pre-schedule day-ahead basis, by 6:30 a.m. PPT on the last work day observed by both Parties prior to the Scheduled date of delivery.

In addition, and not later than thirty (30) days prior to the Commercial Operation Date, Seller shall provide APS with an estimate of the Quantity of Product it expects the Facility to produce during the first Contract Year. Seller shall revise and update such estimate, as applicable, and provide such updates to APS in writing on a Monthly basis for the first Contract Year under the Agreement.

The Schedules and estimates provided pursuant to this Section shall be made by Seller in good faith and based on information available to it at such time, but in no event shall such Schedules be binding on Seller nor shall Seller be liable for any inaccuracies in such Schedules.

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

4.16 Facility Outages and Maintenance Scheduling.

- (a) Planned Outages. Seller shall provide written Notice to APS' prior to conducting any Planned Outages of the Facility. Within ninety (90) days prior to the Commercial Operation Date, as the same may be extended in accordance with the provisions of Section 4.2, and on or before the first day of each subsequent Contract Year, Seller shall provide APS with a schedule of such proposed Planned Outages. The proposed Planned Outages schedule shall be submitted electronically to APS, using a reasonably acceptable format provided by APS. Such format is subject to change from time-to-time during the Term of this Agreement, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist APS in planning for the decreased output and/or Availability of the Facility as a result of the Outage.

APS shall promptly review Seller's proposed schedule and may request modifications within thirty (30) days of APS' receipt of such schedule. Changes to the schedule may be requested by either Party and each Party shall make Commercially Reasonable Efforts to accommodate such changes, provided further that Seller shall have no obligation to agree to APS' proposed modifications or revisions to any Planned Outage schedule.

Notwithstanding any of the foregoing, Seller shall not commence a Planned Outage that is expected to result in an Outage of ten percent (10%) or more of the Facility without notifying APS of the Planned Outage at least five (5) Business Days prior to the start of such Planned Outage.

- (b) Forced Outages. In the event of any Forced Outage, Seller shall promptly notify APS of the same. Seller shall immediately notify APS verbally and shall then, within twenty-four (24) hours thereafter, provide written Notice to APS (the "Forced Outage Notice"). The Forced Outage Notice shall be

submitted electronically to APS, using a reasonably acceptable format provided by APS. Such format is subject to change from time-to-time during the Term of this Agreement, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist APS in planning for the decreased output and/or Availability of the Facility as a result of the Outage. Seller shall return the Facility to service as soon as possible, consistent with Good Utility Practices, after the Forced Outage ceases to exist.

4.17 Operating Status Reports. From the Effective Date of this Agreement, through the date of Commercial Operation, Seller shall provide APS with Monthly reports regarding material data pertaining to the operation of the Facility (the "Operations Data"). The Operations Data is generally identified as performance, Outage, and risk data and shall be sent electronically to APS using a reasonably acceptable format provided by APS (the "Operations Report"). The Operations Report format may be modified by APS from time-to-time during the Term of this Agreement.

4.18 Resource Quality Reporting; Forecasting. Seller shall provide to APS copies of non-proprietary resource quality and/or Availability data that could reasonably be expected to affect, in any material manner, the operation and/or productivity of the Facility, whether produced, compiled or otherwise generated by Seller or any third party in a Commercially Reasonable manner, so that APS can evaluate the expected performance of the Facility. Seller shall provide such data as it is produced or otherwise made available to Seller. Upon Commercial Operation of the Facility, to the extent generated or procured by Seller, Seller shall also provide to APS Monthly and day-ahead forecasting information for the Facility. Such information shall be in a format agreed to by the Parties and include, among other things: Seller's forecasts for the performance of the Facility based on Facility specifications, weather-based forecasting, and weather-related studies. Such information, which will be used by APS solely for evaluation, Scheduling, and other purposes related to this Agreement, shall be provided as soon as reasonably practicable. In no event shall the data and/or information provided to APS pursuant to this Section be binding upon Seller, nor shall Seller be liable for any penalties, charges or other damages based on the inaccuracy of such data or information.

4.19 Permit Violations. Seller shall at all times during the Term of this Agreement maintain and comply with all applicable permits for the development, ownership and maintenance of the Facility. As soon as practicable after the occurrence of any event known to Seller that would constitute or is reasonably likely to lead to a violation of any applicable permit, but in no event more than ten (10) Business Days thereafter, Seller shall provide APS with written Notice of the same.

4.20 Delivery of RECs. Seller shall transfer and assign to APS all Environmental Attributes associated with the Renewable Energy produced by the Facility. On or before the tenth (10th) day following the end of each Month, Seller shall complete and provide to APS an Environmental Attribute and Bill of Sale in the form attached hereto as Appendix D, together with the invoice referenced in Section 7.1.

ARTICLE FIVE: FAILURE TO DELIVER/RECEIVE

5.1 Seller Failure. In the event Seller fails to deliver to APS any Quantity of Product to which APS is entitled in accordance with the terms of this Agreement and instead sells such Quantity of Product to which APS is entitled to a third party in violation of this Agreement, then Seller shall pay to APS the "Seller Failure Damages," which shall mean the positive difference, if any, between the Replacement Price and the Contract Price for the period of such Seller failure. APS shall calculate the Seller Failure Damages and shall provide to Seller an invoice for such amount, including a written statement explaining in reasonable detail the calculation of such amount. Seller shall pay the Seller Failure Damages not later than ten (10) days following its receipt of such an invoice from APS. If the Replacement Price is less than the Contract Price, then the Seller Failure Damages are deemed to be zero (-0-) dollars. The Seller Failure Damages represent the sole and exclusive remedy for Seller's failure as described herein, except as provided in Section 6.1(h).

Nothing herein shall be deemed to be inconsistent with or to limit any of Seller's obligations pursuant to Article Four with respect to maintaining the Guaranteed Availability of the Facility. If, at any time, the Facility fails to achieve the required Guaranteed Availability as described in Section 4.7, then Seller shall be subject to the Availability Damages set forth in Section 4.9.

5.2 Buyer Failure. If APS fails to Schedule and/or accept all or part of any Quantity of the Product delivered by Seller to the Delivery Point, including a failure caused by a curtailment and such failure is not excused under the terms of this Agreement, then APS shall pay Seller the "Buyer Failure Damages," which shall mean the positive difference, if any, between the Sales Price and the Contract Price for the period of such Buyer failure. Seller shall calculate the Buyer Failure Damages and shall provide to APS an invoice for such amount, including a written statement explaining in reasonable detail the calculation of such amount. APS shall pay the Buyer Failure Damages not later than ten (10) days following its receipt of such an invoice from Seller. If there is no positive difference as described above, then the Buyer Failure Damages are deemed to be zero (-0-) dollars. The Buyer Failure Damages represent the sole and exclusive remedy for APS' failure as described herein, except as provided in Section 6.1(i).

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 this Agreement if such failure is not remedied within three (3) Business Days after written Notice;
- (b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or

repeated, if such failure is not remedied within three (3) Business Days after written Notice;

- (c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for such Party's obligations to deliver or receive the Product, the remedies for which are provided in Article Five) if such failure is not remedied within five (5) Business Days after written Notice;
- (d) Such Party becomes Bankrupt;
- (e) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against such Party as debtor or its parent or any other Affiliate that could materially impact such Party's ability to perform its obligations hereunder;
- (f) The failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Nine hereof if such failure is not remedied within five (5) Business Days after written Notice;
- (g) A Merger Event occurs with respect to such Party;
- (h) If during the Term of this Agreement there have occurred three (3) or more Seller Failures as that term is used in Section 5.1, regarding which Seller shall be deemed to be the Defaulting Party and regarding which Buyer shall also be entitled to its remedies under Section 5.1;
- (i) With respect to Seller, a material permit violation occurs and such violation is not remedied within five (5) Business Days after Notice by either APS or the relevant permitting authority; and
- (j) With respect to Seller's Credit Support Provider, if applicable, any of the following shall have occurred, and following such occurrence, such Party shall have failed to provide substitute Credit Support as required by Article Nine hereof within five (5) Business Days after such Party's receipt of written Notice thereof:
 - (i) If any representation or warranty made by a Credit Support Provider in connection with this Agreement is false or misleading in any material respect when made or when deemed made;
 - (ii) The failure of a Credit Support Provider to make any payment required or to perform any other material covenant or obligation under any Credit Support made in connection with this Agreement

and such failure shall not be remedied within three (3) Business Days after written Notice;

- (iii) A Credit Support Provider becomes Bankrupt;
- (iv) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against such Credit Support Provider as debtor or its parent or any other Affiliate that could materially impact such Credit Support Provider's ability to perform its obligations under any Credit Support made in connection with this Agreement; provided, however, that such Credit Support Provider does not obtain a stay or dismissal of the proceeding within ninety (90) Business Days of such filing.
- (v) The failure of a Credit Support Provider's Credit Support to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under the Transaction without the written consent of the other Party; or
- (vi) A Credit Support Provider shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Credit Support.

6.2 Declaration of an Early Termination Date and Calculation of Settlement Amount.

If an Event of Default with respect to a Defaulting Party shall have occurred on or after the Commercial Operation Date and be continuing, the other Party (the "Non-Defaulting Party") shall have the right but not the obligation to: (i) designate a day, no earlier than the day such Notice is effective and no later than twenty (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 this Agreement between the Parties; (ii) withhold any payments due to the Defaulting Party under this Agreement and; (iii) suspend its performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to this Transaction unless an Early Termination Date shall have been declared and Notice thereof pursuant to this Section 6.2 given. The Non-Defaulting Party shall calculate, in a Commercially Reasonable manner, the Settlement Amount due to the Non-Defaulting Party, if any, as of the Early Termination Date.

6.3 Net Out of Settlement Amount; Termination Payment. The Non-Defaulting Party shall net any Settlement Amount that is due to the Non-Defaulting party (together with any accrued but unpaid amounts due to the Non-Defaulting Party on or prior to the Early Termination Date) against all accrued but unpaid amounts otherwise due to the Defaulting Party on or prior to the Early Termination Date, including: (i) any payments due to the Defaulting Party and withheld pursuant to Section 6.2(ii); and (ii) any unused portion of any Credit Support held by or on behalf of the Non-

Defaulting Party but required to be returned to the Defaulting Party pursuant to Article Nine, so that all such amounts shall be netted into a single liquidated amount (the "Termination Payment").

6.4 Notice of Payment of Termination Payment. As soon as practicable after such calculation is made, 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 pursuant to Section 6.3 and include such other information required pursuant to the definition of "APS Purchase Damages" or "Seller Sale Damages," as the case may be. The Termination Payment shall be made by the Party that owes it within five (5) Business Days after such Notice is effective.

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 fifteen (15) 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 Suspension of Performance. Except as otherwise expressly provided in this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; 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 including any specific remedies set forth in this Agreement; provided, however, that: (x) any damages shall include only the direct actual damages incurred by the Non-Defaulting Party as provided in Section 8.1, (y) in the event such Event of Default occurs prior to the Commercial Operation Date, then the calculation of actual damages shall be made without regard to the calculation of "APS Purchase Damages" and "Seller Sales Damages" as set forth in Section 1.4 and Section 1.107, respectively.

ARTICLE SEVEN: PAYMENT AND NETTING

7.1 Billing Period. Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement. No later than the tenth (10th) day after the end of each Month, each Party will render to the other Party an invoice for the payment obligations of non-invoicing Party, 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 Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed

delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

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 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. Except as otherwise provided in this Agreement, 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 Metering. Seller shall be responsible, at its sole expense, for providing the Seller Metering Equipment in accordance with Good Utility Practices. In accordance with the terms of the Interconnection Agreement, the Seller may elect to have the Transmission Provider provide Seller with the Seller Metering Equipment; provided, however, the cost of such meters shall be borne solely by Seller at no cost to APS. Seller shall be solely responsible for operating, maintaining, and repairing the Seller Metering Equipment at its own expense throughout the Term of this Agreement. Seller shall inspect and test the Seller Metering Equipment upon its installation and at least once every year at Seller's expense. Seller shall give APS reasonable advance Notice of any test, and promptly provide APS with the results of any such test. APS may observe the test and conduct its own tests, at APS' expense, to verify Seller's procedures and results.

Upon an inaccurate read of the Seller Metering Equipment or if Seller knows of any inaccuracy or material defect in Seller Metering Equipment, Seller shall notify APS in writing within forty-eight (48) hours of such defect. Seller shall be solely responsible for adjusting, repairing, replacing or recalibrating such metering device as near as practicable to a condition of zero (-0-) error, and for paying any expenses associated with such adjustment, repair, replacement or recalibration. If a metering device fails to register or is found upon testing to be inaccurate, an adjustment will be made correcting all measurements by the inaccurate or defective metering device in the following manner:

- (a) In the event that an adjustment factor cannot be reliably calculated, the Parties shall use the measurements from APS-owned meters if they are

installed, fully operational and calibrated in accordance with Good Utility Practices. If for any reason the measurements cannot be obtained from APS-owned meters, the Parties shall use production data from Seller's computer monitoring system to determine the relevant measurements. If Seller's computer monitoring system is found to be inaccurate by more than two (2) percent, the Parties shall estimate the amount of the necessary adjustment using the site meteorological information for the period of the inaccuracy based upon deliveries of electrical Quantity delivered to APS at the Delivery Point from the Facility during periods of similar operating conditions when the Seller Metering Equipment was registering accurately. The adjustment will be made for the period during which inaccurate measurements were made.

- (b) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted will be the shorter of: (1) the last one-half of the period from the last previous test of the metering device to the test that found the metering device to be defective or inaccurate; or (2) the 180-day period immediately preceding the test that found the metering device to be defective or inaccurate.
- (c) Upon determination of corrected measurements, the required payment adjustment shall be made according to the procedures set forth in Section 7.3.

7.5 Invoices. Seller shall maintain and read the Seller Metering Equipment for measuring the Product delivered hereunder. For review purposes, Seller shall furnish APS with a written invoice reflecting the Contract Price; interval data from the Seller Metering Equipment used to calculate that invoice; and any other charges due, within ten (10) Business Days after Seller reads the Seller Metering Equipment. Such invoices may be furnished to APS by facsimile transmission or by such other method as the Parties agree.

ARTICLE EIGHT: LIMITATIONS

8.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A

TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

Notwithstanding the foregoing, if APS is the Defaulting Party, the Parties agree that the actual damages recoverable to Seller hereunder on account of an Event of Default by APS shall include loss of Tax Benefits on a grossed up after tax basis, as provided in Section 1.122.

ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS

9.1 Development Security. In order to secure Seller's obligations prior to Commercial Operation of the Facility, Seller shall post Credit Support only in the form of a Letter of Credit or cash in the amount of \$ [REDACTED] (the "Development Security"). [*Note To Bidders: The amount of the Development Security will be derived using the following formula: 20% of the average Contract Price over the Term of the Agreement multiplied by the equivalent production over the time period the project is in development (i.e., Effective Date of the Agreement until the Commercial Operation Date). Bidders should use this formula to complete the applicable portion of Section 2.1 as required by the RFP.*] The Development Security shall be held by APS as security for Seller's obligations prior to the Commercial Operation Date including its obligation to satisfy the Project Milestones. Seller shall post the Development Security in accordance with the following terms and conditions:

- (a) Seller shall post the Development Security within ten (10) days following the Effective Date of this Agreement.
- (b) If the Development Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Exhibit G.
- (c) Any Development Security posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.3 of this Agreement.

9.2 Forfeiture of Development Security. Subject to Seller's right to extend the Commercial Operation Date as provided in Section 4.2 and as the result of Force Majeure where Seller is the Claiming Party, in the event that the Commercial Operation Date does not occur on or before [REDACTED], or such extended date (including due to any termination as a result of an Event of Default by Seller occurring prior to such date) and provided such failure is not caused by an Event of Default by APS or a Force Majeure event, APS shall be entitled to retain up to the entire Development Security as payment for Termination Damages due pursuant to Section 4.4 and terminate this Agreement as its sole and exclusive remedy and neither Party shall have any liability for damages hereunder. Seller acknowledges and agrees that forfeiture of the Development Security, as provided herein, represents reasonable compensation to APS for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and APS' potential failure to meet its applicable renewable energy portfolio requirements as a result of Seller's failure to achieve commercial operation by the agreed-upon date. Notwithstanding the foregoing, if Seller terminates the Agreement prior to the Commercial Operation Date for the sole purpose of selling the Product to a third party, APS shall be entitled to both the Termination Damages and any other remedies available at law or in equity to the extent that APS' actual damages exceed the value of the Termination Damages, as set forth in Section 4.4.

9.3 Return of Development Security. Not more than thirty (30) days following the date of Commercial Operation, APS shall return to Seller any remaining portion of the Development Security still held by APS and to which APS has no claim pursuant to the terms of this Agreement. If the Development Security was posted as a Letter of Credit, APS shall return the Letter of Credit to Seller and Seller shall be entitled to immediately cancel such Letter of Credit. If the Development Security was posted in cash, APS shall return to Seller the balance of the Development Security, together with daily interest at the Federal Funds Effective Rate, from and including the date that the Development Security was posted until, but not including, the date on which the Development Security is returned by APS.

9.4 Post-Development Security. Following Commercial Operation of the Project, Seller shall provide Credit Support ("Post-Development Security") in the amount of \$ [REDACTED]. [**Note to Bidders: The Post-Development Security amount will be determined by APS at a later date.**] The Post-Development Security shall be held by APS as security for Seller's obligations following the Commercial Operation Date. The Parties hereby agree that a Guaranty issued in the form attached as Exhibit H hereto shall be an acceptable form of Post-Development Security. During the Term, Seller may substitute one form of Credit Support for another as provided herein. APS shall return to Seller any unused portion of the Post-Development Security held by APS and to which APS has no claim pursuant to the terms of this Agreement upon the expiration or termination of this Agreement. If the Post-Development Security was posted as a Letter of Credit, APS shall return the Letter of Credit to Seller and Seller shall be entitled to immediately cancel such Letter of Credit. If the Post-Development Security was posted in cash, APS shall return to Seller the balance of the Post-Development Security, together with daily interest at the Federal Funds Effective Rate, from and including the date that the Post-Development Security was posted until, but not including, the date on which the Post-Development Security is returned by APS. The purpose of the Post-Development Security is to secure Seller's obligations to APS following the Commercial Operation Date, but the Parties acknowledge that it may be insufficient to satisfy a Termination

Payment pursuant to Article Six and in such event Seller shall be liable for the entire Termination Payment in accordance with Section 6.4.

9.5 Financial Information. If requested by either Party, the other Party shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report or the annual report of its Credit Support Provider, if any, containing in each case audited consolidated financial statements for such fiscal year certified by independent certified public accountants and (ii) within ninety (90) days after the end of each of its (or its Credit Support Provider's, if any) first three (3) fiscal quarters of each fiscal year, a copy of its quarterly report or the quarterly report of its Credit Support Provider, if any, 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 in the country in which such Party is organized provided that, should any such statements not be available timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such Party diligently pursues the preparation, certification and delivery of the same. If at any time either Party is required to file financial statements under the Securities Exchange Act of 1934, such Party need not deliver financial information pursuant to this Section 9.5 but shall notify the other Party promptly upon its filing of any Form 8-K.

9.6 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE TEN: GOVERNMENTAL CHARGES

10.1 Cooperation. Each Party shall use Commercially Reasonable Efforts to implement the provisions of and to administer this 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 this Agreement arising prior to the Delivery Point. APS shall pay or cause to be paid all Governmental Charges on or with respect to the Product or this Agreement 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 APS' responsibility hereunder, APS shall promptly reimburse Seller for such Governmental Charges. If APS is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, APS may deduct the amount of any such Governmental Charges from the sums due to Seller under Article Seven of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE ELEVEN: MISCELLANEOUS

11.1 Term of Agreement. The Term of this Agreement shall commence on the Effective Date and shall remain in effect for the duration of the Delivery Period, as set forth in Section 2.1, unless earlier terminated by either Party in accordance with Article Four and Article Six herein (the "Term"); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.

11.2 Insurance. At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Facility and its tangible assets in such amounts and against such risks and losses as are consistent with Good Utility Practices. Such insurance policies shall be maintained only with insurers rated at least A- VII by AM Best or comparable ratings agency.

Within ten (10) Business Days after receipt of a request for the same from APS, Seller shall deliver to APS a certificate of insurance for any or all policies maintained in accordance with this Section 11.2, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions. If Seller fails to comply with the provisions of this Section 11.2, Seller shall save harmless and indemnify APS from any direct or indirect loss and liability, including attorneys' fees and costs of litigation, resulting from the injury or death of any person or damage to any property if APS would have been protected had Seller complied with the requirements of this Section 11.2.

11.3 Indemnity. To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Product is vested in such Party, unless a Claim is due to such Party's willful misconduct or gross

negligence. To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Ten. Notwithstanding anything to the contrary contained in this Agreement, no individual representative of either Party shall have any personal liability to the other Party as a result of the breach of any representation, warranty, covenant or agreement contained herein.

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

11.5 Site Access and Inspection of Records. Seller shall provide APS with reasonable access to the Facility site for purposes of review and inspection during regular business hours within a reasonable time after a request for the same is made by APS. During such reviews and inspections, APS representatives shall be permitted to review such records relating to the Facility and reasonably related to the performance of this Agreement, including Facility maintenance and operations logs. APS shall have access to the Facility site for the limited purposes described herein, but Seller shall at all times remain responsible and liable for the control and operation of the Facility and the Facility site. APS representatives shall follow Seller's safety procedures when accessing the Facility site and shall conduct themselves in a manner that will not interfere with the operation of the Facility. Seller will provide APS with information about such safety procedures to enable APS to comply with this requirement.

11.6 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 Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) Months from the rendition thereof, and thereafter any objection shall be deemed waived.

11.7 Confidentiality. The Parties will make best efforts to safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that Party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 11.7. Specifically, no receiving

Party shall itself, or permit its employees, consultants and/or agents to disclose to any person, corporation or other entity the Confidential Information without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its board members, officers, employees, agents, consultants, potential investors and Facility Lenders and others who have a need for such Confidential Information.

The Parties acknowledge, however, that APS may need to disclose the Confidential Information in connection with its regulatory filings or to otherwise satisfy its regulatory requirements. In the event that APS intends to disclose any of the Confidential Information to its regulatory authorities including, but not limited to, the Arizona Corporation Commission ("ACC"), the Residential Utility Consumer Office ("RUCO"), the Federal Energy Regulatory Commission ("FERC"), or any employee, staff member, consultant, and/or agent of the foregoing, it shall give Seller prompt prior written Notice of its intention so that Seller may seek a protective order or other appropriate remedy. In the event that a protective order or other remedy is not obtained, Seller waives compliance with the terms hereof with respect to such Confidential Information. Nothing herein shall be deemed to permit Seller to disclose the Confidential Information to the foregoing regulatory agencies, or any other party, unless such disclosure is otherwise permitted by this Agreement. In addition, each Party specifically agrees not to use the other Party's name in connection with this Agreement or the Facility in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service, without the express written consent of the other Party. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Confidential Information to the media and the Parties anticipate entering into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Agreement shall be binding with respect to such disclosure.

In the event that any Party receiving the Confidential Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the legally compelled Party shall give the other Party providing the Confidential Information prompt prior written Notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof.

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Agreement, whether a claim is based in contract, tort or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of Confidential Information in violation of the terms of this Agreement.

11.8 Notices. All Notices, requests, statements or payments shall be made as specified on Appendix C attached hereto and incorporated herein by reference. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Notices relating to Facility operations and Scheduling, as required pursuant to Sections 4.15 and 4.16, may be given electronically and shall be deemed effective upon receipt. A Party may change its addresses by providing Notice of same in accordance herewith.

11.9 Right of First Offer on Additional Product.

- (a) Seller's Duty to Offer Additional Product. If, at any time during the Term of this Agreement, Seller intends to increase the production from the Facility beyond the Maximum Contract Quantity, whether by expansion of the Facility, increased technological efficiencies, or otherwise, Seller shall first offer the excess Product above the Maximum Contract Quantity ("the Expansion Product") to APS. Such offer shall set forth the terms and conditions of the offer in writing and in reasonable detail.
- (b) APS Acceptance of Offer. If APS accepts an offer made by Seller pursuant to Section 11.9(a), the Parties shall within ninety (90) days enter into a power purchase agreement in substantially the same form as this Agreement for the purchase and sale of such Expansion Product.
- (c) APS Rejection of Offer. If APS does not accept the offer made pursuant to Section 11.9(a) within sixty (60) days after receiving such offer, Seller may enter into an Agreement to sell the Expansion Product to a third party on terms and conditions no more favorable to the third party than those offered to APS. If Seller wishes to enter into an agreement with a third party on terms more favorable to APS than those previously offered to APS pursuant to Section 11.9(a), Seller shall first offer the revised terms and conditions to APS in accordance with this Section.

11.10 Notice of Sale of Facility. In the event that Seller desires to sell the Facility during the Term of this Agreement, or if at the end of the Term, Seller intends to continue to sell the output from the Facility, Seller shall provide prior written Notice of the same to APS, and agrees to engage in good faith discussion with APS if APS desires to purchase the Facility.

11.11 Seller's Election. Seller covenants that, so long as during the Term that Seller is otherwise subject to the requirements of PUHCA, and before delivering any energy output to APS under this Agreement, Seller shall either (a) cause the facility to be a Qualifying Facility ("QF"), or (b) cause Seller to be an Exempt Wholesale Generator ("EWG").

- (a) QF Facility. If the Facility is a QF, Seller shall provide APS with copies of

the appropriate certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. At any time during the Term, APS may require Seller to provide APS with a written legal opinion from an attorney in good standing in the State of Arizona who has no economic relationship, association or nexus with Seller or the Facility (other than an attorney-client relationship), stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data that APS may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF. During the Term, Seller shall maintain its QF status.

- (b) EWG. If Seller is an EWG, Seller shall provide APS with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall maintain its EWG status and its authority to sell power under this Agreement.

11.12 Alternative Dispute Resolution. All disputes arising under this Agreement are subject to the provisions of this Section 11.12.

- (a) Mediation. Any disputes between the Parties shall first be submitted to a non-binding mediation. The mediation shall be commenced by written request of either Party and shall begin within thirty (30) calendar days of such written Notice. The mediator shall be chosen by mutual agreement of the Parties within fifteen (15) calendar days of submission of the above written Notice. Any discussions or materials presented during or for purposes of the mediation shall be confidential and governed by the limitations and restrictions of Rule 408 of the Federal and Arizona Rules of Evidence and/or any like regulatory rules. The compensation and any costs and expenses of the mediation shall be borne equally by the Parties. Any arbitration commenced under this Section shall not be initiated until following the completion of the mediation detailed herein; provided, however, that if a Party refuses to participate in the mediation process as provided herein, the other Party may immediately initiate arbitration as set forth in this Section 11.12. Any dispute that remains unresolved thirty (30) days after the appointment of a mediator shall be settled by binding arbitration in accordance with the procedures set forth in this Section 11.12.
- (b) Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under claim, counterclaim, demand, cause of action, dispute, and/or controversy relating to the terms of this Agreement, or the breach thereof (collectively 'Claims'), shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing Commercial Arbitration Rules of the American

Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the Notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written Notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute within six (6) Months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitration proceeding shall be conducted in a neutral location mutually agreed to by the Parties. It is further agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed Confidential Information.

- (c) Judicial Relief. Either Party may petition a court of appropriate jurisdiction, as described in Section 11.14, for non-monetary relief relating to any claim of breach of this Agreement in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 11.12.

11.13 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES

ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

11.14 Jurisdiction and Costs. Subject to the mandatory arbitration provisions herein, with respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the Parties hereby consent to the exclusive jurisdiction of the federal courts sitting in **Phoenix, Arizona**. Both Parties waive any right to trial by jury in such action. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and reasonable attorneys' fees incurred in connection with such proceedings.

11.15 Financial Accounting Standards. Under the latest interpretations of the Financial Accounting Standards Board's Interpretation No. 46(R) (FIN No. 46(R)), "Consolidation of Variable Interest Entities," APS may be required to consolidate a Seller's entity for which APS has entered into a long-term power purchase agreement. Seller agrees to provide all information needed in order for APS to determine whether or not the special purpose entity which owns the Seller's generating facility must be consolidated by APS under FIN No. 46(R). If it is determined that APS needs to consolidate such special purpose entity, Seller agrees to provide all information needed to comply with the consolidation requirements of FIN 46(R) in a timely manner every calendar quarter. If APS is required to consolidate the special purpose entity that owns the Seller's generating facility in its financial statements, Seller agrees to provide access to any needed records and personnel, as requested, so APS' independent auditor, Deloitte & Touche LLP, can conduct financial statement audits in accordance with generally accepted auditing standards, as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002. Seller agrees to have adequate controls over financial information.

11.16 Letter Regarding Generation Control. Seller agrees that, upon request by APS, it shall provide a letter to FERC, in a form reasonably acceptable to APS, stating that it has not transferred control of the Facility to APS nor does APS otherwise control the Facility for purposes of FERC's analysis under its market-based rate program.

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

11.18 FERC Standard of Review; Certain Covenants and Waivers. Absent the agreement of the Parties to the proposed change, the standard of review for changes to any section of the Agreement (including any other documents referenced herein) specifying terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp. and Federal Power Commission v. Sierra Pacific Power Co. (the "Mobile-Sierra" doctrine).

11.19 General. No delay of a Party in the exercise of, or the failure to exercise, any rights under this Agreement shall operate as a waiver of such rights, a waiver of any other rights under this Agreement or a release of the other Party from any of its obligations under this Agreement. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or

deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) Months. This Agreement shall be binding on each Party’s successors and permitted assigns.

11.20 Entire Agreement; Amendment. This Agreement, together with any appendices, schedules, and any written supplements hereto constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

IN WITNESS THEREOF, the Parties hereto made and executed this Agreement, signed by their duly authorized officers or individuals, as of the day and year first above written.

ARIZONA PUBLIC SERVICE COMPANY
APS or Buyer

_____ or Seller

By: _____

By: _____

Name: Patrick Dinkel

Name: _____

Title: Director, Resource Acquisitions and
Renewables

Title: _____

APPENDIX A
Contract Price

APPENDIX B
DAMAGES CALCULATION EXAMPLES

APPENDIX C
NOTICES AND BILLING INFORMATION

Name **ARIZONA PUBLIC SERVICE COMPANY**, a Corporation organized under the laws of the State of Arizona ("APS" or "Buyer")

All Notices:

Street: 400 North 5th Street

City: Phoenix, Zip: 85004

Attn: Contracts Manager, MS 9860
Phone: (602) 250-2780
Facsimile: (602) 250-3199
Duns: 00-690-1995
Federal Tax ID Number: 86-0011170

Invoices:

Attn: Energy Settlements
Phone: (602) 250-3150
Facsimile: (602) 250-2325

Scheduling:

Attn: N/A
Phone: (602) 250-4601
Facsimile: (602) 250-3199

Payments:

Attn: Energy Settlements
Phone: (602) 250-3150
Facsimile: (602) 250-2325

Wire Transfer:

BNK: Wells Fargo Bank
ABA: 121 000 248
ACCT: 415 954 0921

Credit and Collections:

Attn: Credit Risk Manager
Phone: (602) 250-3256
Facsimile: (602) 250-2325

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

Attn: Law Department, Mail Station 8695
Phone: (602) 250-2052
Facsimile: (602) 250-2663

Attn: Manager, Power Procurement, MS 9674
Phone: (602) 250-2004
Facsimile: (602) 250-2753

Name

("Counterparty" or "Seller")

All Notices:

Street:

City: Zip:

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

Invoices:

Attn:
Phone:
Facsimile:

Scheduling:

Attn:
Phone:
Facsimile:

Payments:

Attn:
Phone:
Facsimile:

Wire Transfer:

BNK:
ABA:
ACCT:
ACCT. NAME:

Credit and Collections:

Attn:
Phone:
Facsimile:

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

Attn:
Phone:
Facsimile:

Attn: Compliance Dept
Phone:
Facsimile:

APPENDIX E
INDEPENDENT ENGINEERS

**APPENDIX G
FORM OF LETTER OF CREDIT**

STANDBY LETTER OF CREDIT

DATE:

BENEFICIARY:
ADDRESS: _____

GENTLEMEN:

BY THE ORDER OF:

APPLICANT:
ADDRESS:

WE, **BANK NAME** ("ISSUER"), ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____ ("LETTER OF CREDIT") IN FAVOR OF [_____] ("BENEFICIARY") FOR THE ACCOUNT OF _____ ("APPLICANT"), FOR AN AMOUNT OF USD \$ _____ (AMOUNT IN WORDS AND 00/100 UNITED STATES DOLLARS), WE UNDERSTAND THIS LETTER OF CREDIT IS ISSUED RELATIVE TO THE OBLIGATIONS OF THE APPLICANT UNDER THE [_____] CONTRACT DATED _____ (THE "RELEVANT CONTRACT") AVAILABLE BY PAYMENT AT SIGHT WHEN ACCOMPANIED BY ONE OR MORE OF THE FOLLOWING STATEMENTS DATED AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY (SIGNED AS SUCH):

1. "AN EARLY TERMINATION DATE, AS DEFINED IN THE RELEVANT CONTRACT, HAS BEEN DESIGNATED AS THE RESULT OF AN EVENT OF DEFAULT, TERMINATION EVENT OR ANY SIMILAR EVENT, AND APPLICANT HAS FAILED TO MAKE PAYMENTS IN AN AGGREGATE AMOUNT OF \$ _____. THE AMOUNT IS PAST DUE AND OWING TO THE BENEFICIARY IN ACCORDANCE WITH THE TERMS OF THE RELEVANT CONTRACT; THEREFORE, THE BENEFICIARY DEMANDS PAYMENT OF \$ _____ UNDER **BANK NAME** LETTER OF CREDIT NO. ~~+~~_____."

OR

2. "WE HAVE RECEIVED YOUR NOTICE OF NON-RENEWAL EXPIRY DATE OF LETTER OF CREDIT AND THIS LETTER OF CREDIT WILL EXPIRE IN LESS THAN TWENTY (20) DAYS, APPLICANT IS REQUIRED UNDER THE RELEVANT CONTRACT TO MAINTAIN A COMPARABLE LETTER OF CREDIT UNDER THE RELEVANT CONTRACT AFTER THIS LETTER OF CREDIT HAS EXPIRED, AND BENEFICIARY HAS NOT RECEIVED AN EXTENSION OF SAID LETTER OF CREDIT OR OTHER REPLACEMENT COLLATERAL FROM APPLICANT, WHEREFORE, THE UNDERSIGNED BENEFICIARY DOES HEREBY DEMAND PAYMENT OF \$ _____."

THIS LETTER OF CREDIT EXPIRES ON _____ ("EXPIRATION DATE") AT THE OFFICE OF OUR SERVICER, _____

SPECIAL CONDITIONS:

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED, AND THE AMOUNT OF THIS LETTER OF CREDIT WILL BE REDUCED BY THE AMOUNT OF EACH DRAWING HONORED BY US.

ALL ISSUING BANK CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR ADDITIONAL PERIOD(S) OF ONE YEAR FROM THE EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE UNLESS AT LEAST 30 (THIRTY) DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU BY CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY ANY OTHER RECEIPTED MEANS THAT WE ELECT NOT TO CONSIDER EXPIRY DATE OF THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER; PROVIDED, HOWEVER, THE AMOUNT AVAILABLE FOR DRAWING UNDER THIS LETTER OF CREDIT MAY BE REDUCED AUTOMATICALLY, WITHOUT AMENDMENT, FROM TIME TO TIME UPON OUR RECEIPT OF REDUCTION CERTIFICATE STATING THE AMOUNT OF REDUCTION AND AVAILABLE AMOUNT AFTER SUCH REDUCTION, EXECUTED BY BOTH APPLICANT AND BENEFICIARY.

IF A COMPLYING PRESENTATION IS MADE PRIOR TO 12:00 P.M. NEW YORK TIME ON A BUSINESS DAY THEN ISSUER SHALL, PRIOR TO CLOSE OF BUSINESS ON THE FIRST FOLLOWING BUSINESS DAY, MAKE PAYMENT IN IMMEDIATELY AVAILABLE FUNDS. IF A COMPLYING PRESENTATION IS MADE AT OR AFTER 12:00 P.M. ([LOCAL TIME]) ON A BUSINESS DAY, THEN ISSUER SHALL, PRIOR TO CLOSE OF BUSINESS ON THE SECOND FOLLOWING BUSINESS DAY, MAKE PAYMENT IN IMMEDIATELY AVAILABLE FUNDS. BUSINESS DAY AS STATED IN THIS LETTER OF CREDIT MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY, OR BANK HOLIDAY IN THE STATE OF NEW YORK.

WE HEREBY ENGAGE WITH YOU THAT DOCUMENTS PRESENTED UNDER AND IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON PRESENTATION IF PRESENTED ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT AT THE OFFICE OF OUR SERVICER,

THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE "ISP98"); IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF _____, INCLUDING THE LETTER OF CREDIT NUMBER MENTIONED ABOVE. FOR TELEPHONE ASSISTANCE, PLEASE CONTACT _____.

VERY TRULY YOURS,
[INSERT BANK NAME]

PREPARER/AUTHORIZED SIGNER

AUTHORIZED SIGNER

APPENDIX H
FORM OF GUARANTY AGREEMENT

APPENDIX I

TRANSMISSION AGREEMENT
(TO BE PROVIDED UPON ITS EXECUTION)

APPENDIX J
INTERCONNECTION AGREEMENT
(TO BE PROVIDED UPON ITS EXECUTION)

APPENDIX K

CAPACITY TESTING

[Note to bidders: To be developed to conform to proposed resource.]