

**SMALL GENERATION RENEWABLE ENERGY
PURCHASE AND SALE AGREEMENT**

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND



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THIS SMALL GENERATION RENEWABLE ENERGY PURCHASE AND SALE AGREEMENT (the "Agreement"), effective as of _____, _____, is entered into by and between Arizona Public Service Company, an Arizona Corporation ("APS" or "Buyer") and _____ ("_____" 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, the Seller and APS may be individually referred to as a "Party" or collectively as "Parties".

ARTICLE ONE: DEFINITIONS

The terms set forth below, when used in this Agreement shall have the meanings set forth below. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or plural or the present or past tense. Other terms used in this Agreement but not listed in this Article shall have the meanings as commonly used in the English language and, where applicable, in Good Utility Practice.

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

"Agreement" means the Renewable Energy Purchase and Sale Agreement and the Appendices attached hereto, which are incorporated herein by reference, as the same may be amended, modified or supplemented from time to time.

"Annual Contract Quantity" expressed in MWhs, means the expected annual output of the Facility for a given Contract Year, guaranteed by Seller throughout the Term of this Agreement, as set forth in Section 2.1.

"APS" means Arizona Public Service Company.

"APS Purchase Damages" shall be defined as follows:

- (a) The APS Purchase Damages shall be the discounted value of the positive difference, if any, of:
 - (i) All dollar amounts that APS 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 comparable to what is being purchased under this Agreement through the remainder of the Term of the Agreement

plus

- (ii) All incremental costs over and above those that APS would otherwise incur; provided that such costs are quantifiable and directly related to the termination of this Agreement

less

- (iii) All dollar amounts APS would have been expected to pay to Seller under this Agreement through the remainder of the Term of this Agreement

- (b) APS shall calculate the APS Purchase Damages in a Commercially Reasonable manner using relevant market and/or industry data that it deems appropriate. In no event shall APS' Purchase Damages include any penalties or 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. If APS Purchase Damages are owed as a result of an Event of Default and the APS Purchase Damages are a negative number then the APS Purchase Damages shall be deemed to equal zero dollars (e.g. if the estimated cost for APS of obtaining substantially similar products is less than the amount it would have paid Seller, neither Party shall owe any damages to the other).

APS shall provide the APS Purchase Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the APS Purchase Damages to the degree APS deems pertinent. Upon receipt of the APS Purchase Damages, if Seller disputes the calculation of the 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; provided, however, Seller can only dispute the calculation based on a failure as to the material assumptions used in preparation of the APS Purchase Damages. APS shall nevertheless be entitled during the pendency of any dispute to draw the entire amount due from the Credit Support. Any dispute as described above shall be pursued through the Alternative Dispute Resolution process as described in Section 11.9 of this Agreement. Upon resolution of the dispute, any amount required to be returned to Seller by APS shall be paid within thirty (30) Business Days of such resolution along with interest accrued at the Interest Rate.

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or

commenced against it; (ii) makes an assignment or any general arrangement for all or substantially all of its assets 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.

"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.

"Buyer Failure" means the failure of Buyer to Schedule and/or accept all or part of any quantity of the Product delivered by Seller to the Delivery Point and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, pursuant to Section 5.2.

"Buyer Failure Damages," expressed in U.S. Dollars, means the value of the Contract Price for the quantity of Product not scheduled and/or accepted by Buyer pursuant to a Buyer Failure for the period of such Buyer Failure.

"Capacity", expressed in megawatts, means the output the Facility can supply to the Delivery Point on an instantaneous basis.

"Certificate of Commercial Operation" means the certificate evidencing that conditions precedent for Commercial Operation have been satisfied, the form of which is attached as Appendix C.

"Claiming Party" means the Party prevented by Force Majeure from carrying out, in whole or part, its obligations under this Transaction, as more fully defined in Section 4.4.

"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.

"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 including, without limitation, electric system reliability and stability, state or other regulatory mandates relating to Renewable Energy portfolio requirements, the amount of notice of the need to take a particular action, the duration and type of the 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.

"Commercial Operation" means the satisfaction and/or waiver of all the conditions precedent to the commercial operation of the Facility, as more fully described in Section 4.1.

"Commercial Operation Date" ("COD") means the date that the Project is expected to reach Commercial Operation, which is [Date].

"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.

"Contract Price," expressed in U.S. Dollars, means the On-Peak and Off-Peak price to be paid per MWh by APS to Seller for the purchase of the Product, as specified in this Agreement.

"Contract Quantity," expressed in megawatts, means the amount of Product Seller agrees to sell and deliver to Buyer, and that Buyer agrees to purchase and receive from Seller at the Delivery Point. The Contract Quantity shall be measured based on the metered data from the Seller Metering Equipment.

"Contract Year" means the annual period, beginning on the Commercial Operation Date and renewing thereafter on each anniversary of the Commercial Operation Date.

"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 using energy resources that are not Renewable Energy Resources.

"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 all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"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.

"Credit Support" means: (i) a Letter of Credit; (ii) cash; or (iii) such other form of credit support acceptable to APS in its sole discretion.

"Defaulting Party" means the Party in default under this Agreement, as described in Section 6.1.

"Delivery Period" means the period of delivery under this Agreement, as specified in Section 2.1.

"Delivery Point" means the point at which the Product will be delivered and received, as specified in Section 2.1.

"Distributed Renewable Energy Resources" are applications of the technologies, defined in RES A.A.C. R14-2-1802(B), 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.

"Early Termination Date" means the date that is designated by the Non-Defaulting Party as the termination date of this Agreement.

"Effective Date" means the date on which this Agreement is effective, having been executed by both Parties.

"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 APS 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 10MWs 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.

"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, offset, allowances or benefits; actual SO₂, NO_x, CO₂, CO, Carbon, VOC, 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. Environmental Attributes do not include Tax Benefits, or any energy, Capacity, reliability, or other power attributes used by Seller to provide electricity services.

"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.

"Event of Default" means at such time as a Party is in material default of its obligations pursuant to this Agreement upon the occurrence of any one or more of the events of default as set forth in Section 6.1.

"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.

"Expansion Product" means, if applicable, the increased production of the Facility beyond the Contract Quantity as more fully defined in Section 11.12(a).

"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.

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

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

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the date the Agreement 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 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; (iv) the delay in or inability of Seller to obtain financing or economic hardship of any kind; (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.

"Force Majeure Extension" means the extension of the Commercial Operation Date by reason of Force Majeure, in accordance with Section 4.2.

"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.

"Government 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.

"Governmental Charges" means taxes imposed by any Government Authority.

"Interconnection Agreement" means the agreement for interconnection service relating to the Facility between the Transmission Provider and Seller, as it may be amended, supplemented or modified, a copy of which, within ten (10) days after its execution (or subsequently within ten (10) days after execution of any supplement amendment) shall be provided by Seller to APS and attached hereto as Appendix E.

"Interconnection Point" means the physical point at which electrical interconnection is made between the Facility and the transmission system, as set forth in Appendix F.

"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.

"KW" means kilowatt.

"KWh" means kilowatt-hour.

"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 and A2 from Moody's, in substantially the form set forth in Appendix D 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. All costs associated with any Letter of Credit provided pursuant to this Agreement shall be borne by the Seller.

"Month" means a calendar month. The term "Monthly" shall have a meaning correlative to a Month.

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

"MW" means megawatt.

"MWh" means megawatt-hour.

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

"Non-Defaulting Party" means the Party under this Agreement not in default as described in Section 6.2.

"Notice" means any notice, request, consent or other communication as set forth in Section 11.7.

"On-Peak" means hour ending 0700 through hour ending 2200 PPT June 1 through September 30, Monday through Sunday, including NERC Holidays.

"Off-Peak" means all other hours.

"Outage" means the period during which the Project is out of service.

"Outside Commercial Operation Date" means the date that is ninety (90) days from the COD, which is [DATE], in accordance with Section 4.2.

"Planned Outage" means any Outage that is not a forced or unexpected Outage, and refers to the shutdown or unavailability of the Project for inspection or maintenance in accordance with an advance schedule.

"Post-Development Security" means Credit Support held by APS as security for Seller's obligations following the Commercial Operation Date.

"Posting Date" means the date that Seller is required to post Credit Support as described in Section 9.1.

"PPT" means Pacific Prevailing Time.

"Product" means all Capacity and Renewable Energy produced by the Project and delivered to the Delivery Point (i.e., net of transmission losses), together with any and all Renewable Energy Credits associated with all Renewable Energy produced by the Project.

"PUHCA" means the Public Utility Holding Company Act of 1935, as amended from time to time.

"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.

"Renewable Energy" means energy derived from a Renewable Energy Resource.

"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.

"Renewable Energy Resource" means an energy resource that is replaced rapidly by a natural, ongoing process and that is not nuclear or fossil fuel.

"Renewable Energy Standard and Tariff" ("RES") means the Arizona Renewable Energy Standard Rules, A.A.C. R14-2-1801 *et seq.*, which establish 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 this Agreement.

"ROFR Product" means the product to which APS is entitled to a right of first refusal in accordance with Section 4.2.

"RTUs" means remote terminal units.

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

"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.

"Seller Failure" means the failure, by Seller, to Schedule and/or deliver a certain quantity of Product as more fully described in Section 5.1.

"Seller Interconnection Facilities" means the equipment between the [high/low] side of the step-up transformer and the Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities, as more fully described in Appendix F, attached hereto. The diagram proposed in Appendix F is based on information available to the Parties as of the Effective Date of this Agreement, and is subject to change upon execution of the Interconnection Agreement. For purposes of this definition, Seller is responsible for all costs associated with Seller's Interconnection Facilities even if it does not have physical control over such facilities.

"Seller Metering Equipment" means all metering equipment and data processing equipment used to measure the Contract Quantity delivered at the Delivery Point, subject to the final executed Interconnection Agreement, may be the same metering equipment that is part of the Seller Interconnection Facilities.

"Seller Sales Damages" shall be defined as follows:

- (a) The Seller Sales Damages shall be the discounted value of the positive difference, if any, of:
- (i) All dollar amounts that Seller would, in the manner set forth below, be expected to receive from the sale of the Product under this Agreement, including Tax Benefits, through the remainder of the Term of the Agreement

plus

 - (ii) All incremental costs over and above those that APS would otherwise incur when delivering the Product to the Delivery Point

less

 - (iii) All dollar amounts, including 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 through the remainder of the Term of this Agreement
- (b) Seller shall calculate the Seller Sales Damages in a Commercially Reasonable manner using relevant market and/or industry data that it deems appropriate. In no event shall Seller Sales Damages, include any penalties, or 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 the purposes of this definition, Seller shall not be required to actually resell the Product to calculate the Seller Sales Damages as set forth herein. If Seller Sales Damages are owed as a result of an Event of Default and the Seller Sales Damages are a negative number then the Seller Sales Damages shall be deemed to equal zero dollars (e.g. if the estimated cost for Seller to sell substantially similar products is more than the amount it would have received from APS, neither party shall owe any damages to the other).

Seller shall provide the Seller Sales Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Seller Sales Damages to the degree Seller deems pertinent. Upon receipt of the Seller Sales Damages, if APS disputes the calculation of the Seller 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, however, APS can only dispute the calculation based on a failure as to the material assumptions used in preparation of the Seller Sales Damages. Any dispute as described above shall be pursued through the Alternative Dispute Resolution process as described in Section 11.9 of this Agreement. Upon resolution of the dispute, any payment required from one Party to the other shall be made by the owing Party within thirty (30) Business Days of such resolution.

"Settlement Amount" means: (i) APS Purchase Damages; or (ii) Seller Sales Damages, as applicable.

"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).

"Term" means the date that is from the Effective Date through the end date of this Agreement, as described in Section 11.1.

"Termination Payment" means any or all other amounts due to the Non-Defaulting Party under this Agreement; all such amounts shall be netted out to a single liquidated amount as more fully described in Section 6.3.

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

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

"Unit Contingent" means that the Product is intended to be supplied from the Project as it is produced.

ARTICLE TWO: COMMERCIAL TERMS

2.1 The following commercial terms apply to this Agreement, each as more fully described herein:

Buyer: APS	Seller: _____
Project: _____	
Delivery Point: _____	
Contract Quantity (MWs/hr): Up to _____ megawatts	Annual Contract Quantity(MWhs): _____
Contract Price: On Peak Price (\$/MWh): _____ (applies to energy delivered during On Peak hours) Off Peak Price (\$/MWh): _____ (applies to energy delivered during Off Peak hours) The Contract Price shall be escalated at _____ percent (____%) per Contract Year throughout the Term of this Agreement.	
Product Type: Unit Contingent	Delivery Period: _____
Day(s) of week: Monday through Sunday, including NERC Holidays	Hours: Hour Ending 0100 – Hour Ending 2400, PPT
Term: _____	
Commercial Operation Date: No later than _____, subject to the extension provisions set forth in <u>Article Four</u> .	

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;
- (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 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 Products referred to in the Agreement.

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

- (a) Seller shall maintain and operate the Project pursuant to Good Utility Practice;
- (b) All acts necessary to the valid execution, delivery and performance of this Agreement has or will be taken and performed as required under Seller's ordinances, bylaws, or other regulations; specifically, and by way of example and not limitation, Seller represents and warrants that the person executing this Agreement has the valid authority to bind Seller, and the term of this Agreement does not extend beyond any applicable limitation imposed by relevant governing documents and applicable law;
- (c) For the Term of this Agreement, the energy source from which the energy will be sold to APS will be a Renewable Energy Resource, as that term is defined herein;

- (d) During the Term of this Agreement, Seller shall not engage in third party sales of the Product or any portion thereof from the Facility; and
- (e) It is a qualified entity able to offer Renewable Energy and Renewable Energy Certificates.

ARTICLE FOUR: PERFORMANCE REQUIREMENTS

4.1 Commercial Operation. Seller shall achieve Commercial Operation of the Project no later than the Commercial Operation Date set forth in Section 2.1. 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:

- (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 on terms and conditions reasonably acceptable to Seller and the Transmission Provider and all interconnection facilities shall be complete and in operation and capable of accepting, transmitting and delivering Renewable Energy to the Delivery Point;
- (c) Seller shall have installed all equipment needed to enable telemetering of the Product from the Project to the Delivery Point, as may be necessary pursuant to the Interconnection Agreement, and shall demonstrate that such equipment, if needed, is fully operational;
- (d) Seller shall in all other respects be capable of delivering the Product to APS at the Delivery Point.

Commercial Operation shall be deemed to occur on the date Seller has presented APS a Certificate of Commercial Operation, the form of which is attached as Appendix C, verifying that each of the foregoing conditions has been satisfied or waived in writing by the Parties, and APS countersigns such certificate evidencing its approval, such approval and signature not to be unreasonably withheld. 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. The Commercial Operation Date is expected to occur on or before _____, as the same may be extended in accordance with Section 4.2, APS will terminate this Agreement without payment or penalty to either Party.

4.2 Force Majeure Extension of Commercial Operation Date. The Commercial Operation Date may 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. Pursuant to this Section 4.2, if the Project does not achieve

Commercial Operation on or before the Outside Commercial Operation Date, then APS will terminate this Agreement without penalty or further obligation to the other Party.

In the event that APS terminates this Agreement due to the failure by Seller to reach Commercial Operation in accordance with Section 4.1, 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 terms that are no less favorable to Buyer than the terms offered to the third party. Seller will negotiate in good faith with APS, provided that if the Parties have not executed an agreement within six (6) Months of Seller's offer to Buyer, Seller may revoke such offer and shall have no further obligations under this Section 4.2 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 it shall constitute an Event of Default and APS shall be entitled to any remedies available at law or in equity.

In addition, 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 rights to the ROFR Product as set forth in the preceding paragraph and any other remedies available at law or in equity.

4.3 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 at the Delivery Point, and APS shall pay Seller the Contract Price. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. 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. In no event shall Seller be permitted to sell any of the Product to a third party.

4.4 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives Notice and details of the Force Majeure to the other Party as soon as practicable, then, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (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.

4.5 Transmission and Scheduling. 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 Providers 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.

4.6 Telemetry. APS shall, in cooperation with Seller, be responsible for the design, procurement and installation of industry standard RTUs required pursuant to the Interconnection Agreement, 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 APS. Seller shall provide APS with reasonable Notice as far in advance as possible, if and when any Facility control system changes are anticipated.

4.7 Project Outages. Seller shall provide APS with thirty (30) days written Notice prior to conducting any Planned Outage of the Project in order to minimize the impact of the Outage on the performance of the Project. The proposed Outage schedule shall be submitted electronically to APS, using a reasonably acceptable format provided by APS. Seller shall provide updates to the Planned Outage schedule as such updates become available. Seller shall not schedule any Planned Outage during the Months of June through September.

4.8 Monthly Planned Delivery Schedules. Seller shall provide APS with a Monthly Schedule. In the event there are changes to previously submitted Monthly Schedules, Seller shall provide updated weekly schedules at least seven (7) days prior to the date of delivery. Any material changes in operating conditions that require modifications to Monthly or 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 no later than thirty (30) days prior to the Commercial Operation Date, Seller shall provide APS with an estimate of the Contract 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 4.8 shall be made by Seller in good faith based on information available to it at such time, and as long as Seller acts in good faith such Schedules shall not be binding on Seller nor shall Seller be liable for any inaccuracies in such Schedules.

4.9 Construction and Operating Status Reports. From the Effective Date of this Agreement, promptly upon request by APS, Seller shall provide updates and other data relevant to the construction and operation of the Project in a form reasonably acceptable to APS.

4.10 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.

4.11 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 Project as set forth in this Agreement. As soon as practicable after the occurrence of any event that would constitute or is reasonably likely to lead to a violation of any applicable permit, but in no

event more than two (2) Business Days thereafter, Seller shall provide APS with written notice of the same.

4.12 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 B, together with the invoice referenced in Section 7.1.

ARTICLE FIVE: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

5.1 Seller Failure. If Seller fails to Schedule and/or deliver [REDACTED] MWh per Contract Year and such failure is not excused under terms of this Agreement or is not a direct result of APS' failure to Perform ("Seller Failure") then such failure shall constitute an Event of Default for Seller and 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 this Article Six.

5.2 Buyer Failure. In the event of a Buyer Failure, then APS shall pay Seller Buyer Failure Damages for the period of such Buyer Failure. Such payment shall be due within ten (10) Business Days after APS receives an invoice for the same from Seller.

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 Six) if such failure is not remedied within three (3) Business Days after written Notice;
- (d) such Party becomes Bankrupt;
- (e) with respect to Seller, the occurrence of a Seller Failure, as described in Section 5.1; and

- (f) with respect to Seller, a material permit violation occurs, as determined by APS in its sole, reasonable discretion, and such violation is not remedied within three (3) Business Days after Notice by either APS or the relevant permitting authority, or in the event that Seller fails to provide Notice of an actual or potential material permit violation as required by Section 4.11.

6.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the 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 to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement; (ii) withhold any payments due to the Defaulting Party under this Agreement and; (iii) suspend performance pursuant to Section 6.6. The Non-Defaulting Party shall calculate, in a Commercially Reasonable manner, a Settlement Amount for this Transaction as of the Early Termination Date.

6.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Nine, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate, payable as set forth in Section 6.4.

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 Sales 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; provided, however, that if Seller owes the Termination Payment, Buyer shall be entitled to first draw from the Post-Development Security, as set forth in Section 9.1, to satisfy Seller's Termination Payment obligation. To the extent that the value of the Termination Payment exceeds the value of the Post-Development Security, Buyer shall be entitled to further payment from Seller in accordance with the terms of this Section 6.4 and Section 9.1.

6.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Credit Support to the Non-Defaulting Party in an amount equal to the Termination Payment.

6.6 Suspension of Performance. Notwithstanding any other provision of 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 any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an Early Termination Date shall have been declared and Notice thereof pursuant to Section 6.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SEVEN: BILLING AND PAYMENT

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. As soon as practicable after the end of each Month, Seller shall render to APS an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with Seller'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. APS will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the Seller. 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. 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 its Interconnection Agreement. 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.

APS retains the right to read the meters remotely as it deems necessary, which right APS may exercise for the purpose, among others, of verifying any payments purportedly owed to Seller. In the alternative, or additionally, APS may read the meter at the Project site.

7.5 Invoices. Seller shall maintain and read the metering equipment for measuring the energy delivered hereunder. For review purposes, Seller shall furnish APS with a written invoice reflecting the Contract Price; interval data from the meter used to calculate that invoice and any other charges due, within ten (10) Business Days after Seller reads the meter. 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.

ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS

9.1 Post-Development Security. Within five (5) Business Days following the Commercial Operation Date, Seller shall provide Credit Support in the amount of \$ [REDACTED].

[Instruction to Bidders: Include amount of Post-Development Security required for your project. Post Development Security will be required in an amount equal to the first five (5) years of average notional value of the transaction multiplied by a stress factor of twenty percent (20%). The cost of such Post-Development Security should be priced into your bid accordingly.]

The Post-Development Security shall be held by APS as security for Seller's obligations following the Commercial Operation Date. 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.

ARTICLE TEN: GOVERNMENTAL CHARGES

10.1 Cooperation. Each Party shall use 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 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 until the end date set forth in Section 2.1, unless earlier terminated by either Party in accordance with Section 6.2; 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 Title and Risk of Loss. Title to and risk of loss related to the Project shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Contract

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. Nothing herein shall be deemed to limit in any way APS' right to receive all RECs produced by the Project.

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 as provided in Section 11.3, unless there have been an assertion or finding in connection with such Claim is due, in whole or in part, to such Party's gross negligence or willful misconduct. 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 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 Contract 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.

11.6 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 11.6. 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 and consultants 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, Seller specifically agrees not to use APS' name in connection with this Agreement or the Project 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 APS. 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.

11.7 Notices. All Notices, requests, statements or payments shall be made as specified on Appendix A 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. A Party may change its addresses by providing Notice of same in accordance herewith.

11.8 Seller's Election. Seller covenants that, so long as during the Term, 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 QF, or (b) cause Seller to be an 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.

11.9 Alternative Dispute Resolution. All disputes arising under this Agreement are subject to the provisions of this Section 11.9.

- (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 11.9. 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 11.9.

- (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 11.11, 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 11.9.

11.10 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.

11.11 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; provided, however, that if the federal courts sitting in Phoenix, Arizona refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Maricopa, State of 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.

11.12 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 Contract Quantity, whether by expansion of the Facility, increased technological efficiencies, or otherwise, Seller shall first offer the excess Product above the 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 11.12(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 11.12(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 11.12(a), Seller shall first offer the revised terms and conditions to APS in accordance with this Section.

11.13 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.

11.14 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.

11.15 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.

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

11.17 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 the Term Sheet as well as any other documents) 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).

11.18 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.

11.19 Non-Solicitation. For a period of two (2) years following the execution of this Agreement, Seller agrees that neither it nor any of its employees, agents or representatives will,

directly or indirectly solicit, recruit or otherwise encourage any APS employee who was involved directly or indirectly, in the negotiation and/or execution of this Agreement to terminate employment with APS.

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.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
(SIGNATURE PAGE FOLLOWS)**

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: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

**APPENDIX A
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: Power Procurement Dept Leader, MS 9674

Phone: (602) 250-3579

Facsimile: (602) 250-2753

Duns: 00-690-1995

Federal Tax ID Number: 86-0011170

Invoices:

Attn: Energy Settlements

Phone: (602) 250-3151

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 to:

Attn: Law Department, Mail Station 8695

Phone: (602) 250-2052

Facsimile: (602) 250-2663

Attn: Power Procurement Manager, Mail Station 9674

Phone: (602) 250-2004

Facsimile: (602) 250-2753

Name _____
("Counterparty" or "Seller")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

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

Attn: _____

Phone: _____

Facsimile: _____

**APPENDIX B
ENVIRONMENTAL ATTRIBUTE CERTIFICATE AND BILL OF SALE**

_____ ("Seller") hereby sells, transfers and delivers to Arizona Public Service Company ("Buyer") the Environmental Attributes associated with the generation of Renewable Energy at the Facility, as detailed in the RENEWABLE ENERGY PURCHASE AND SALE AGREEMENT between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

Name of Renewable Energy Facility

Fuel Type	Capacity (MW)	Operation Date
	<u>Dates</u>	<u>kWh generated</u>
	_____, 20__	_____

One (1) REC represents the Environmental Attributes and REC reporting rights associated with one (1) kWh generated from the Renewable Energy resource.

Seller further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to APS is its one and only sale of the Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such Environmental Attributes;
- iii) the Facility identified above produced the number of kWh above during the period indicated above;
- iv) Seller has title to and ownership of the RECs sold hereunder; and
- iv) Seller owns the _____.
Name of the Renewable Energy Facility

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: _____ phone: _____; fax: _____
[Seller]

Signed: _____
Name: _____
Title: _____
Date: _____

**APPENDIX C
CERTIFICATE OF COMMERCIAL OPERATION**

Contact Information:

Counterparty Name: _____
Contact Name: _____
Address: _____
Telephone: _____
Email Address: _____

Project Details:

Project Name: _____
Commercial Operation Date: _____
Technology: _____
Nameplate Capacity: _____

_____ (Seller) hereby certifies that the following conditions precedents to Commercial Operation of the Project have been satisfied. Terms used but not defined shall have the meaning set forth in the Agreement:

- (a) Seller has 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 has executed an Interconnection Agreement and all interconnection facilities are complete and in operation and capable of accepting, transmitting and delivering Renewable Energy to the Delivery Point;
- (c) Seller has installed all equipment needed to enable telemetering of the Product from the Project to the Delivery Point, as may be necessary pursuant to the Interconnection Agreement, and such equipment, if needed, is fully operational;
- (d) Seller is capable of delivering the Product to APS at the Delivery Point in accordance with all of the terms of the Agreement.

I certify that all statements made in this Certificate are correct to the best of my knowledge and that I have the authority to bind Seller to the statements made herein.

COUNTERPARTY
("COUNTERPARTY")

Signed: _____
Name: _____
Title: _____
Date: _____

**ACKNOWLEDGED AND AGREED:
ARIZONA PUBLIC SERVICE COMPANY
("APS")**

Signed: _____

Name: _____

Title: _____

Date: _____

**APPENDIX D
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 E

**INTERCONNECTION AGREEMENT
[To Be Provided Upon Its Execution]**

APPENDIX F
Interconnection Diagram

[To be attached]

This diagram is based on information available as of the Effective Date of the Agreement, and is subject to change upon execution of the Interconnection Agreement.