

ARTICLE 11

FORCE MAJEURE; INDEMNITY; LIMITATION OF LIABILITY

11.1 Force Majeure.

(a) If either Party is rendered unable by a Force Majeure event to carry out, in whole or in part, its obligations under this Agreement, then, during the pendency of such event of Force Majeure, but for no longer period, the obligations of the affected Party (other than the obligation to make payments hereunder when due) shall be suspended to the extent required. The affected Party shall (ai) give the other Party written notice within 48 hours of the commencement of the effect of such Force Majeure event, with details to be supplied within three (3) Business Days after the commencement of the Force Majeure event further describing the particulars of the occurrence of the Force Majeure event, and (bii) take all reasonable steps to remedy the cause of the Force Majeure event with all reasonable dispatch. ~~Notwithstanding the foregoing, (a)~~ In the event of a Force Majeure that affects less than all of the wind turbines at the Facility, Generator's affected obligations shall be reduced during the pendency of such Force Majeure on a pro-rata basis.

(b) Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period; provided, however, that in no event will any Force Majeure event extend this Agreement beyond its Term, ~~and~~.

(b) Notwithstanding the foregoing, in no event will the provisions of this Section 11.1 affect or limit any Party's rights in Section ~~2.2.2.2(b).~~

11.2 Indemnification.

(a) Each Party shall indemnify and hold harmless the other Party and its officers, directors, agents and employees from and against any and all claims, demands, actions, losses, liabilities, expenses (including reasonable legal fees and expenses), suits and proceedings of any nature whatsoever for personal injury, death or property damage to each other's property or facilities or personal injury, death or property damage to third parties (collectively "Liabilities") caused by the breach or gross negligence or willful misconduct of the indemnifying Party that arise out of or are in any manner connected with the performance of this Agreement except to the extent such injury, death or damage is attributable to the gross negligence or willful misconduct or breach of this Agreement by the Party seeking indemnification hereunder.

(b) Without limiting the foregoing, each Party shall indemnify, defend and hold harmless the other Party from any Liabilities that occur when risk of loss of the Excess Electricity is vested in the indemnifying party.

(c) Any fines, penalties or other costs incurred by a Party or its agents, employees or subcontractors for non-compliance by such Party, its agents, employees or subcontractors with any Requirement of Law will not be reimbursed by the other Party but will be the sole

responsibility of such non-complying Party.

11.3 Limitations of Remedies, Liability and Damages.

The Parties agree that the remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no measure of damages or other remedy is expressly provided herein, the obligor's liability shall be limited to direct actual damages only, which direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless otherwise provided herein, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, (other than consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages recovered by an unaffiliated third party against a Party subject to indemnification hereunder), whether such damages are allowed or provided by statute, in tort, under any indemnity provision or otherwise.

ARTICLE 12

CONFIDENTIALITY

12.1 Confidentiality

The Parties agree that the Parties' proposals and negotiations prior to the ~~date~~ hereof Effective Date concerning this Agreement, the terms of this Agreement and the actual charges billed to and by ComEd under this Agreement constitute the Confidential Business Information of both Parties. Generator and ComEd each agree to hold such Confidential Business Information wholly confidential. Such Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, investors, prospective investors, employees, officers and directors), without the prior written consent of the other Party; provided that either Party may disclose Confidential Business Information, if such disclosure is required by any Requirement of Law or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by any Requirement of Law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three Business Days in advance of such disclosure. Each Party agrees that violation of the terms of Article 12 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

ARTICLE 13

NOTICES AND ADDRESS FOR PAYMENT

13.1 Notices

(a) Except as provided in Section 8.5 and Exhibit 4, all notices, requests, statements or payments by check shall be made to the addresses set out below. Notices required to be in writing shall be delivered by **overnight** letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by ~~mail or~~ overnight courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To ComEd: Commonwealth Edison Company
440 S. LaSalle, Suite 3300
Chicago, Illinois 60605
Attn: Vice President, Energy Acquisition, ComEd

with a copy to: Commonwealth Edison Company Distribution Rate Design &
Administration Three Lincoln Center
3rd Floor
Oak Brook Terrace, Illinois 60181-4260 Attn: Senior Rate
Administrator

to Generator:

(b) All amounts due Generator under this Agreement ~~that are paid by check must be sent via United States mail to the address specified below~~ **shall be paid by wire transfer in the manner specified by Generator from time-to-time in a notice delivered in accordance with this Section.**

(c) All amounts due ComEd under this Agreement that are paid by check must be sent via United States mail to the address specified below:

Commonwealth Edison Company Attn: Control Desk
P.O. Box 805375
Chicago, Illinois 60680-5375

(d) A Party's address or addressee to which notices or invoices shall be sent may be changed from time to time by such Party by notice served as hereinabove provided.

ARTICLE 14

DISAGREEMENTS

14.1 Negotiations

The Parties shall attempt in good faith to resolve all disputes arising out of or related to

or in connection with this Agreement promptly by negotiation, as provided in this Section. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) Business Days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) Business Days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) Business Days after such referral, either Party may initiate arbitration as provided in Section 14.2. All negotiations pursuant to this clause are confidential, shall be considered to be in the nature of settlement discussions and shall be subject to Section 14.3.

14.2 Arbitration

(a) If the negotiation process provided for in Section 14.1 has not resolved the dispute, the dispute shall be decided by binding arbitration at Chicago, Illinois in accordance with the Commercial Arbitration Rules of the American Arbitration Association (except as expressly provided otherwise herein). The arbitration shall be governed by the United States Arbitration Act (9 U.S.C. § 1 et seq.), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Any arbitration may be consolidated with any other arbitration proceedings between the Parties commenced under this Section 14.2. The award of the arbitrator shall be specifically enforceable in a court of competent jurisdiction.

(b) Either Party may commence the arbitration by giving to the other Party written notice in sufficient detail of the existence and nature of any dispute proposed to be arbitrated. The demand must be made within a reasonable time after dispute has arisen. In no event may the demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations. The Parties shall attempt to agree on a person with respect to the matter at issue to serve as arbitrator. If the Parties cannot agree on an arbitrator within ten (10) Business Days ~~of~~after such notice, each shall then appoint one individual to serve as an arbitrator within 30 days ~~of~~after such notice and the two (2) thus appointed shall select a third arbitrator to serve as chairman of the panel of arbitrators; and such three (3) arbitrators shall determine all matters by majority vote; provided however, if the two (2) arbitrators appointed by the Parties are unable to agree upon the appointment of the third arbitrator within ten (10) Business Days after their appointment, both shall give written notice of such failure to agree to the Parties, and, if the Parties fail to agree upon the selection of such third arbitrator within five (5) Business Days ~~of~~after such notice, then either of the Parties upon written notice to the other may require such appointment from, and pursuant to the rules of, the Chicago office of the American Arbitration Association for commercial arbitration. Any arbitrator appointed shall be a present or former executive of an electric utility, or private power producer, or an attorney, in each case with substantial experience in electric power purchase agreements. Prior to appointment, each arbitrator shall agree to conduct such arbitration in accordance with the terms of this Agreement.

(c) The Parties shall have sixty (60) calendar days after appointment of all arbitrators to perform discovery and present evidence and argument to the arbitrators. During that period, the arbitrators shall be available to receive and consider all such evidence as is relevant and, within reasonable limits due to the restricted time period, to hear as much argument as is feasible, giving a fair allocation of time to each Party to the arbitration. The arbitrators shall use all reasonable means to expedite discovery and to sanction noncompliance with reasonable discovery requests or any discovery order. The arbitrators shall not consider any evidence or argument not presented during such period and shall not extend such period except by the written consent of both parties. At the conclusion of such period, the arbitrators shall have forty-five (45) calendar days to reach a determination.

(d) The arbitrators shall have the right only to interpret and apply the terms and conditions of this Agreement and to order any remedy allowed by this Agreement, but may not change any term or condition of this Agreement, deprive either Party of any right or remedy expressly provided hereunder, or provide any right or remedy that has been excluded hereunder.

(e) The arbitrators shall give a written decision to the Parties stating their findings of fact, conclusions of law and order, and shall furnish to each Party a copy thereof signed by them within five (5) calendar days from the date of their determination. Each party shall pay the cost of the arbitrator or arbitrators, with respect to those issues as to which they do not prevail, as determined by the arbitrator or arbitrators.

14.3 Settlement Discussions

The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in Section 14.1 above will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

14.4 Preliminary Injunctive Relief

Nothing in this Article 14 shall preclude, or be construed to preclude, the resort by either party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending arbitration pursuant to this Article 14.

14.5 Confidential Proceedings

The fact that either Party has invoked the provisions of this Article 14, the arbitration proceedings and related communications, and the decision of the arbitrators shall all be considered Confidential Business Information subject to Article 12, and the arbitrators shall make no disclosure of any confidential information that would not be permitted by a Party under Article 14.

ARTICLE 15 MISCELLANEOUS

15.1 Entirety

This Agreement and the Exhibits hereto constitute the entire agreement between the Parties and supersede any prior or contemporaneous agreements or representations of the Parties affecting the same subject matter.

15.2 Choice of Law

Except as otherwise provided in Article 14, this Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Illinois applicable to contracts made and performed entirely within such state, without regard to principles of conflicts of law.

15.3 Jurisdiction and Venue

By execution and delivery of this Agreement, the Parties irrevocably acknowledge and agree that the federal and state courts located in Chicago, Illinois are the most appropriate and convenient courts to adjudicate any disputes arising in connection with this Agreement or any arbitration conducted pursuant to this Agreement, and to enforce any arbitration award, and each Party waives any right to and agrees not to a r e to the contrary. Each Party agrees that any legal action, suit or proceedings arising out of or in connection with this Agreement or any arbitration pursuant to this Agreement shall be brought exclusively in a federal and state court located in Chicago, Illinois, and each Party irrevocably consents and submits to the jurisdiction of such courts. The foregoing provisions shall not be interpreted to obviate or excuse the Parties from abiding by the dispute resolution and arbitration provisions of this Agreement.

15.4 Non-Waiver

No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

15.5 Headings; Attachments

The headings used for the Articles, Sections or Exhibits herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all attachments referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

15.6 Counterparts

This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

15.7 Rate Changes.

(a) The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the Term. Absent the Parties' written agreement, this Agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(b) Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the "Mobile-Sierra doctrine").

15.8 Other

(a) This Agreement:

(i) shall not be altered or amended except by an instrument in writing executed by authorized representatives of the Parties;

(ii) except as provided in Section 11.2(a), does not confer any rights upon any person other than the Parties and their respective successors and permitted assigns; and

(iii) may be performed by ~~ComEd~~ **either Party** through the use of agents and subcontractors (but such use shall not relieve ~~ComEd~~ **such Party** of any obligation hereunder).

(b) Any provision of this Agreement which is prohibited or unenforceable in a specific situation in any jurisdiction shall not affect the validity or enforceability of:

(i) that provision in another situation or in any other jurisdiction, or

(ii) the other provisions of this Agreement if such other provisions could then continue to conform to the purposes and terms of this Agreement and any applicable Requirement of Law. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set out above. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

GENERATOR

By: _____
Name:
Title:

COMMONWEALTH EDISON COMPANY

By: _____
Name: Arlene A. Juracek
Title: Vice President, Energy Acquisition,

**EXHIBIT 1
FACILITY DESCRIPTION**

Description of Facility turbines and related facilities (including number, manufacturer and model of Facility turbines, description of collector system, Facility turbine spacing and layout):

Description of Interconnection Facilities:

Nameplate Capacity Rating:

Contract Amount: _____ MW

Applicable Percentage (Contract Amount/Nameplate Capacity Rating): _____ Estimated

Capacity Factor:

The attached site map indicates the location and layout of the Facility turbines and other site details.

The attached diagram shows the Delivery Point, metering devices and other equipment installed at the Facility substation.

**EXHIBIT 2
GENERATOR'S MILESTONE SCHEDULE**

Major Permits [list here]: 1.
 2.
 3.

Major Permits Milestone date:

Financing Milestone date:

Notice to Proceed Date to Turbine Supplier:

Notice to Proceed Date to Balance of Plant Contractor:

Construction Milestone Dates:

Commercial Operation Date Milestone: On or before December 31, 2007

**EXHIBIT 3
CONTRACT TERMS**

Contract Price: \$ _____ per MWh

Estimated Annual Energy Output: _____ MWh

EXHIBIT 4

MILESTONE PROGRESS REPORTING FORM

Commencing on the first day of the second full calendar month after the Effective Date of this Agreement and ending upon ~~Generator's receipt of its Development Fee, if any~~ **the Commercial Operation Date**, Generator shall prepare each Month a written report (a "Milestone Progress Report") on its progress during the immediately preceding Month relative to the development, construction and startup of the Facility and the Milestone Schedule. Each such report shall be sent via email to such address as shall be furnished from time to time by ComEd in the form of a single Adobe Acrobat file or facsimile to ComEd's Authorized Representative, as provided in Section 3.9, on the fifth (5th) Business Day of each Month.

Each Milestone Progress Report shall include the following items:

1. Cover Page
2. Brief Facility description
3. Description of any planned changes to the Facility and the ~~Site~~ **Premises** description in Exhibit 1.
4. Bar chart schedule showing progress on achieving Generator's Milestone Schedule, together with a written explanation of such progress.
5. PERT or GANT chart showing critical path schedule of major items and activities.
6. Summary of activities during the Month covered by the report.
7. Forecast of activities scheduled for the current Month.
8. List of issues that could potentially impact achievement of Generator's Milestone Schedule.
9. Enumeration and schedule of any support or actions requested of ComEd.
10. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
11. A status report of start-up activities, including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) Months.

EXHIBIT 5
RECs ATTESTATION AND BILL OF SALE

Generator hereby sells, assigns, transfers and delivers to ComEd all RECs associated with the delivery of the indicated Excess Electricity to the Delivery Point (as such term(s) are defined in the Purchase Agreement for Wind Energy and RECs made between Generator and ComEd (the "Agreement") dated XXX) arising from the generation for delivery to the Delivery Point of the Excess Electricity by the Facility described below: Facility name and location:

Fuel Type:

Capacity (MW): First Date of Operation:

Dates: MWhrs delivered:

Such sale, assignment, transfer and delivery to be in the amount of one REC for each megawatt hour delivered to the Delivery Point

Generator further attests, warrants and represents as follows:

i) that the Facility generated an amount of electric energy not used for on-site generation or to serve on-site load in the amount of RECs set forth in the above table;

ii) the RECs have been sold once and only once exclusively to ComEd, and such sale and transfer are made free and clear of any liens, claims or encumbrances of Generator or anyone claiming by or through Generator;

ii) the Facility delivered an amount of Excess Electricity to the Delivery Point equal to the amount of RECs set forth above; and

iv) to the best of its knowledge, the information provided herein is true and correct; "RECs" means any credits, credit certificates, offsets or other benefits or similar items created, allocated, assigned or otherwise awarded or certified (such as those for

greenhouse gas reduction, or the generation of green power or renewable energy) by any Requirement of Law and/or independent certification board or created pursuant to private bilateral contracts, in each case generally recognized in the electric power generation industry, and generated by or associated with the Facility, but specifically excluding any and all state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Facility.

This document serves as a bill of sale, transferring from Generator to ComEd all of Generator's right, title and interest in and to all RECs associated with the aforementioned delivery of Excess Electricity to the Delivery Point.

Contact Person:

WITNESS MY HAND,

an _____ [entity description]

By _____

Its _____

Date: _____

This Attestation may be disclosed by Generator and ComEd to others, in order to substantiate and verify the accuracy of ComEd's submission to regulatory authorities or ComEd's advertising and public communication claims, as well as in ComEd's advertising and other public communications.

**EXHIBIT 6
SAMPLE LETTER OF CREDIT**

[On Issuing Bank's Letterhead]

IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT

_____ (Date) Letter of Credit No.

To: Commonwealth Edison Company [address]

Attention: _____

1. We hereby establish this Irrevocable Transferable Standby Letter of Credit (this "Letter of Credit") in your favor in the amount of USD \$ _____ effective immediately and available to you at sight upon demand at our counters at _____ [designate Issuing Bank's location for presentments] and expiring at ~~5:00~~ _____ PM [New York, NY time] on _____, 200_, [one year _____ after _____ date of issuance] (the "Initial Expiration Date"), unless terminated earlier in accordance with the provisions of Paragraph 11 hereof or extended one or more times in accordance with the provisions of Paragraph 10 hereof (the "Extended Expiration Date"; the latest of the Initial Expiration Date and any Extended Expiration Date being referred to herein as the "Expiration Date").

~~2. This Letter of Credit is issued at the request and for the account of~~

~~(including its successors~~

2. This Letter of Credit is issued at the request and for the account of _____ (including its successors and assigns, the "Applicant"), to secure its obligations under ~~one or more~~ the Purchase ~~Agreements~~ **Agreement** for Wind Energy ~~And RECs and RECS, dated as of _____ by and~~ between you and the Applicant ~~or its affiliates.~~

3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any ~~Business Day~~ _____ (each a "Business Day") on or prior to the Expiration Date by delivering or transmitting to ~~(identify (identify Issuing Bank),~~ _____ (U.S. _____ address), _____ (a) _____ a _____ notice executed by you substantially in the form of Annex 1 hereto, appropriately completed and duly signed by your Authorized Officer and (b) your draft substantially in the form of Annex 2 hereto, appropriately completed and duly signed by your Authorized

Officer.

~~If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly~~

~~Issuing Bank), _____ (U.S. address), (a) a notice executed by you substantially in the form of Annex 1 hereto, appropriately completed and duly signed by your Authorized Officer and (b) your draft substantially in the form of Annex 2 hereto, appropriately completed and duly signed by your Authorized Officer~~

~~4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____~~

4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____ and confirmed by telephone to us at the following number: _____ . In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents. [SUBJECT TO BANK APPROVAL OF FAX COMMUNICATIONS]

5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 [] PM [New York, NY time] on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM [] [New York, NY time] on a Business Day, ~~but at the opening of business~~ on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM [] [New York, NY time] on any Business Day.

6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.

7. Unless otherwise hereafter designated in writing to us by your Authorized Officer, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to you

pursuant to the following instructions:

Commonwealth Edison Company
Account No.: _____ Bank: _____
Bank's Address: _____
ABA Routing No.: _____
Contact: _____
Telephone No.: _____

8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced to the extent of the amount of any drawings referencing this Letter of Credit paid by us. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof, provided that the amounts payable on any such demand shall not exceed the amount then available to be drawn under this Letter of Credit.

~~9. We may, but shall not be obligated to, accept any request by you to amend this Letter of Credit to increase or decrease the amount available hereunder. Such request may be made pursuant to a "New Availability Request" in the form of Annex 3 hereto appropriately completed and executed by your Authorized Officer delivered to us requesting us to amend this Letter of Credit to change the amount available hereunder to the amount set forth in such New Availability Request. Upon acceptance by us of your New Availability Request to change the amount of this Letter of Credit, we will issue to you an amendment of this Letter of Credit in the amount set forth in the New Availability Request. The amount available under this Letter of Credit from the date of such amendment shall be the full amount stated therein regardless of our honor and payment of draws under this Letter of Credit prior to such amendment. If we fail to issue an amendment complying with your New Availability Request within two (2) Business Days after we receive it, any such amendment issued thereafter decreasing the amount of this Letter of Credit, even if in accordance with your New Availability Request, shall require your express acceptance before it is effective.~~

~~10. It is a condition of this Letter of Credit that its Expiration Date shall be automatically extended from its Initial Expiration Date, or any Extended Expiration Date, for successive one year periods unless you receive written notice from us at least ninety (90) but not more than one hundred twenty (120) days prior to the then current Expiration Date, sent by Federal Express or other nationally recognized next business day courier or delivery service to you at your address stated above (or such other address an Authorized Officer of your notifies us of in writing) that we elect not to extend this Letter of Credit for such additional one year period.~~

~~9.~~ 11. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 4 hereto together with the original of this Letter of Credit returned for cancellation, or (c) ~~unless extended, 5:00 PM~~ [_____] [New York, NY time] on the Expiration Date.

~~12. Rule 3.14(a) of the ISP as it applies to this Letter of Credit is hereby modified to provide as follows:~~

~~If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.~~

Rule 3.14(b) of the ISP is hereby modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

13. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President or any Assistant Treasurer.

~~"Business Day" shall mean any day on which commercial banks are not authorized or required to close in [New York, New York] and any day on which payments can be effected on the Fedwire system.~~

~~"New Availability Request" shall mean a request form substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your Authorized Officer.~~

14. This Letter of Credit is transferable pursuant to a notice of transfer in the form of Annex 5 hereto, to an entity you identify to us in such instrument as your transferee, and we hereby consent to such transfer. Any and all transfer fees, expenses and costs shall be borne by the Applicant. Any payments made under this Letter of Credit after its transfer shall be made to the account of the transferee as designated to you by an Authorized Officer of the transferee.
15. This Letter of Credit is subject to and shall be governed by the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590), or any successor publication thereto (the "ISP"), except to the extent that the terms hereof are inconsistent with the provisions of the ISP, in which case the terms of this Letter of Credit shall govern. This Letter of Credit shall, as to matters not governed by the ISP or matters inconsistent with the ISP, be governed and construed in accordance with the laws of the State of [New York], without regard to principles of conflicts of law.
16. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 5 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein,
this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the beneficiary.

~~17. We certify that as of the date of issuance of this Letter of Credit our senior unsecured debt is rated "A" or better by Standard & Poor's Rating Service.~~

17. ~~18.~~ This original Letter of Credit has been delivered to you as beneficiary in accordance with the Applicant's instructions. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by your Authorized Officer.

Very truly yours, (Issuing Bank)

By: _____

1 If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly