

(a) Invoices. Seller shall invoice Buyer each month in a manner consistent with Seller's billing cycle and at the address set forth on Appendix I. Seller shall calculate the amount(s) due based upon Buyer's actual usage information. Seller may reasonably estimate usage and charges at the time of invoicing; provided, that Seller shall adjust subsequent invoices to reflect actual usage and charges after such information is received by Seller.

(b) Payment Terms. All invoices under this Agreement shall be sent electronically via e-mail and shall be due and payable by Buyer to Seller, without Set-off, in accordance with Seller's invoice instructions on or before the fifteenth (15th) day following the date of invoice. All past due payments shall accrue interest at the Interest Rate calculated from the due date until the date payment is received in full by Seller.

(c) Local Utility Invoice. Where applicable, Buyer will receive a separate invoice from Buyer's Local Utility for the services it provides in delivering Electricity to Buyer's Facilities. Buyer shall be solely responsible for payment of such invoice(s) and of any other charges billed by Buyer's Local Utility in connection herewith.

(d) Billing Disputes. If there is a good faith dispute regarding any invoice, Buyer shall pay to Seller the undisputed amount of such invoice. If any part of the dispute is resolved in Seller's favor, Buyer shall pay the resolved amount within five (5) Business Days of such resolution and shall include interest at the Interest Rate calculated as of the due date specified in the invoice. In the event that Buyer pays amounts to Seller and the Parties subsequently have a dispute over such amount, Seller shall pay Buyer interest at the Interest Rate on the resolved amount calculated as of the Due Date if such dispute is resolved in Buyer's favor. Buyer's right to dispute an invoice will be deemed waived if not made within two (2) years after the date of invoice. During the term of this Agreement and during the two year period following the termination of this Agreement, the Parties may enter into a mutually agreed upon Audit Agreement permitting Buyer, its duly authorized agents, representatives, employees or federal or state agencies having jurisdiction over Buyer, to conduct an audit of invoices issued for the Transactions entered into by the Parties.

(e) Credit. Upon any request of either Party (the "Requesting Party") from time to time, the other Party (the "Providing Party") shall promptly provide to the Requesting Party information sufficient to adequately assess the Providing Party's creditworthiness. If the Requesting Party has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of the Providing Party under this Agreement (including, without limitation on account of the occurrence of a material change in the Providing Party's creditworthiness or any Default), the Requesting Party may demand Adequate Assurances in an amount determined by the Requesting Party in a commercially reasonable manner, which Adequate Assurances shall be provided by the Providing Party within two (2) Business Days of such demand. In the event that Adequate Assurances are provided in the form of cash collateral, the Providing Party shall be deemed to have granted the Requesting Party a continuing first priority security interest in, lien on, and right of Set-off against such collateral.

ARTICLE 6. FORCE MAJEURE

Except for payment obligations, if either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, to the extent affected by the Force Majeure the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force Majeure. The Party claiming Force Majeure shall use commercially reasonable efforts to remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty (20) days, the Party not claiming Force Majeure may terminate the affected portions of any Transaction upon written notice to the other Party. Any termination due to Force Majeure will not be subject to an early termination payment.

ARTICLE 7. DEFAULT AND TERMINATION

(a) If a Default as defined herein occurs and is continuing, the non-defaulting Party shall have the right to suspend its delivery obligations and/or designate a date upon which all outstanding Transactions will liquidate and terminate and all amounts owing will accelerate and be netted into a single amount in accordance with Article 7(c) as of such date ("Early Termination Date").

(b) The non-defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount for each terminated Transaction as of the Early Termination Date. For purposes of calculating such Settlement Amount for any terminated Transaction for which the Contract Quantity hereunder is not a fixed quantity, the Contract Quantity shall be the estimated baseline quantity for the period from the Early Termination Date through the maturity date of each Transaction set forth in the Addendum.

(c) The non-defaulting Party shall calculate a termination payment owed by the defaulting Party to the non-Defaulting Party by: netting out (i) all Settlement Amounts that would be 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, plus any or all other amounts due to the defaulting Party under this Agreement against (ii) all Settlement Amounts that would be 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 to a single amount, which shall not be less than zero (the "Termination Payment"). The Termination Payment shall be due and payable by the defaulting Party to the non-defaulting Party within five (5) Business Days after receipt of a Termination Payment invoice.

(d) Notwithstanding any provision to the contrary, in the event that Seller is required under Law to continue to make deliveries to Buyer under this Agreement or any Transaction after the Early Termination Date ("Post-Termination Deliveries"), the Parties agree that such obligation shall in no event prohibit, limit or otherwise impair Seller's rights under this Article 7 (including, without limitation, the right to terminate and liquidate any Transaction and accelerate any amounts owing).

ARTICLE 8. INDEMNIFICATION AND LIMITATION OF LIABILITY

(a) Each Party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party and all of its affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives successors and assigns (collectively the "Indemnified Party") from and against all claims, losses, expenses (including reasonable attorney's fees and courts costs) damages, demands, judgments, causes of action or suits (collectively "Claims") of any kind, including but not limited to Claims for personal injury, death, or property damage to the extent arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Electricity is vested in such Party as provided in Article 4(e). Notwithstanding the foregoing, regardless of which Party is in exclusive control and holds title to Electricity, each Party agrees to indemnify and hold the other Party harmless from and against Claims caused by an act or omission during a Party's performance of this Agreement that constitutes gross negligence or willful misconduct.

(b) FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE,