

(Multicurrency — Cross Border)

ISDA[®]

International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of September 22, 2009

SEMPRA ENERGY TRADING LLC
("Party A")

MXENERGY ELECTRIC INC.
("Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

(a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) **General Conditions.**

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise

pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) ***Deduction or Withholding for Tax.***

(i) ***Gross-Up.*** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party (“Y”) of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If: —

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and (3) a liability resulting from such Tax is assessed directly against X, then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount

to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event 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 or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it

with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”) and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: —

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) ***Merger Without Assumption.*** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) ***Termination Events.*** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event (i) Illegality. Due to the adoption of, or

any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party): —

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if

such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If: —

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the

party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future

risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) ***Payment in the Contractual Currency.*** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) ***Judgments.*** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or

order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) **Separate Indemnities.** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to

this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

“Burdened Party” has the meaning specified in Section 5(b).

“Change in Tax Law” means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

“consent” includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

“Credit Event Upon Merger” has the meaning specified in Section 5(b).

“Credit Support Document” means any agreement or instrument that is specified as such in this Agreement.

“Credit Support Provider” has the meaning specified in the Schedule.

“Default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning specified in Section 6(a).

“Early Termination Date” means the date determined in accordance with Section 6(a) or 6(b)(iv).

“Event of Default” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“Illegality” has the meaning specified in Section 5(b).

“Indemnifiable Tax” means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

“law” includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and “lawful” and “unlawful” will be construed accordingly.

“Local Business Day” means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined

pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

“Loss” means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

“Market Quotation” means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be

obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

“Non-default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

“Non-defaulting Party” has the meaning specified in Section 6(a).

“Office” means a branch or office of a party, which may be such party’s head or home office.

“Potential Event of Default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Reference Market-makers” means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

“Relevant Jurisdiction” means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

“Scheduled Payment Date” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“Set-off” means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

“Settlement Amount” means, with respect to a party and any Early Termination Date, the sum of: —

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meanings specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other

Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

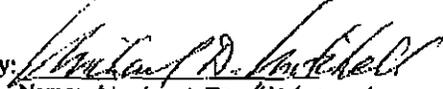
“Termination Event” means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“Termination Rate” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

SEMPRA ENERGY TRADING LLC

By: 
Name: Michael R. Mitchell
Title: VICE PRESIDENT

MXENERGY ELECTRIC INC.

By: _____
Name:
Title:

Acknowledged and Agreed:

MXENERGY HOLDINGS INC.

By: _____
Name:
Title:

MXENERGY INC.

By: _____
Name:
Title:

MXENERGY (CANADA) LTD.

By: _____
Name:
Title:

[Signature Page to Power ISDA Master Agreement]

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

SEMPRA ENERGY TRADING LLC

By: _____
Name:
Title:

MXENERGY ELECTRIC INC.

By: _____
Name:
Title:

Acknowledged and Agreed:

MXENERGY HOLDINGS INC.

By: _____
Name:
Title:

MXENERGY INC.

By: _____
Name:
Title:

MXENERGY (CANADA) LTD.

By: _____
Name:
Title:

[Signature Page to Power ISDA Master Agreement]

ONLINECHOICE, INC.

By: _____

Name:
Title:

MXENERGY GAS CAPITAL HOLDINGS
CORP.

By: _____

Name:
Title:

MXENERGY ELECTRIC CAPITAL
HOLDINGS CORP.

By: _____

Name:
Title:

MXENERGY GAS CAPITAL CORP.

By: _____

Name:
Title:

MXENERGY ELECTRIC CAPITAL CORP.

By: _____

Name:
Title:

[Signature Page to Power ISDA Master Agreement]

MXENERGY CAPITAL HOLDINGS CORP.

By: _____

Name:
Title:

INFOMETER.COM INC.

By: _____

Name:
Title:

[Signature Page to Power ISDA Master Agreement]

(Multicurrency - Cross Border)

Schedule to the
ISDA Master Agreement

dated as of

September 22, 2009

between SEMPRA ENERGY TRADING LLC, a Delaware
limited liability company ("Party A"), and MXENERGY ELECTRIC INC.,
a Delaware corporation ("Party B").

Part 1. Termination Provisions.

- (a) "**Specified Entity**" means in relation to Party A for the purpose of:

Section 5(a)(v), none
Section 5(a)(vi), none
Section 5(a)(vii), none
Section 5(b)(iv), none

and means in relation to Party B for all purposes under this Agreement: each Affiliate of Party B (other than shareholders of MX Holdings that are not Subsidiaries of MX Holdings).

- (b) "**Specified Transaction**" will have the meaning specified in Section 14 of this Agreement, except that such term is amended on line 8 after the words "currency option" by adding a comma and the words "agreement for the purchase, sale or transfer of any commodity or any other commodity trading transaction". For this purpose, "commodity" means any tangible or intangible commodity of any type or description including electric energy and/or capacity, petroleum and natural gas, the products or by-products thereof, coal, emissions, and base or precious metals.

- (c) The "**Cross Default**" provisions of Section 5(a)(vi) will not apply to Party A and will apply to Party B.

"**Specified Indebtedness**" shall not apply to Party A, and with respect to Party B and each Specified Entity of Party B, Specified Indebtedness shall have the meaning specified in Section 14 and shall also include all Indebtedness, including the Notes, the Old Notes, the Promissory Notes (if any) and the Loans.

"**Threshold Amount**" means, in the aggregate, with respect to Party B and all Specified Entities of Party B, \$1,000,000.

- (d) The "**Credit Event Upon Merger**" provisions of Section 5(b)(iv) will not apply to Party A and will apply to Party B.

If such provisions apply: Section 5(b)(iv) is hereby amended by inserting after the words "another entity" the phrase "or another entity consolidates or amalgamates with, or merges into, or transfers all or substantially all its assets to, X or any Credit Support Provider of X or any applicable Specified Entity of X".

- (e) The "**Automatic Early Termination**" provisions of Section 6(a) will not apply to Party A or Party B.

- (f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:

(i) Loss will apply.

- (ii) The Second Method will apply.
- (g) “Termination Currency” means United States Dollars.
- (h) “Additional Termination Event” will apply.

(i) The following event shall constitute an Additional Termination Event with respect to Party B pursuant to Section 5(b)(v) (for the purposes of which, Party B shall be the sole Affected Party and all Transactions shall be Affected Transactions):

The occurrence of February 28, 2014.

(ii) The following events shall also constitute Additional Termination Events with respect to Party A pursuant to Section 5(b)(v) for the purposes of which Party A shall be the sole Affected Party; provided, however, that, notwithstanding anything to the contrary in Section 6 of the Agreement, the calculations required by Section 6(e) and any other calculations to be made as the result of the occurrence of such Additional Termination Event shall be made by Party A:

- (A) If at any time The Royal Bank of Scotland plc’s Credit Rating falls below BBB- from S&P or Baa3 from Moody’s, and Party A fails to provide adequate assurances in an amount determined by Party B in a commercially reasonable manner within two Business Days of a written request therefor from Party B.
- (B) Any permit or license necessary for Party A to perform its material obligations hereunder is revoked and such revocation is not cured within ten Business Days of written notice from Party B.

(i) **Amendments.** The parties agree to the following changes to this Agreement:

- (i) Section 2(a)(i) is amended by inserting “, the Schedule or any Promissory Note” immediately after the term “Confirmation”.
- (ii) Section 2(a)(ii) is amended by inserting “, Promissory Note, any other ISDA Document” immediately after the term Confirmation in lines 2 and 6 of such Section.
- (iii) Section 2(e) is hereby amended by inserting the phrase “and unless otherwise specified in this Agreement with respect to any Loan” immediately after “Transaction” in the second line of such Section.
- (iv) Section 5(a)(i) is amended by deleting “third” and substituting “second”.
- (v) Section 5(a)(ii) is amended by inserting “or under Part 12 or Part 13” immediately after “or 4(d)” in the parenthetical.
- (vi) Section 5(a)(iv) is deleted in its entirety and replaced with the following new Section:

“**Misrepresentation.** A representation (other than a representation under Section 3(e) or (f) or under Part 5(j)(xxiv) or (xxv)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider or Specified Entity of such party in this Agreement or any Specified Agreement, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any Specified Agreement, proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.”

- (vii) Section 5(a)(v)(2) is amended by deleting the parenthetical and substituting with “(unless with respect to a performance default, the exclusive remedy for such failure to perform under the terms of the Specified Transaction is the payment of damages as defined in such Specified Transaction)”.
- (viii) Section 5(a)(vi) is amended by deleting the words “becoming capable at such time of being declared,” in the seventh line and substituting with the words “becoming capable at such time or with the passage of time or the giving of notice (regardless of whether such time has elapsed or such notice has been given) of being declared.”.
- (ix) Section 5(a)(vii)(4) is amended by deleting it in its entirety and replacing with the following:

“Institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition:

 - (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation, or
 - (B) is not withdrawn, dismissed, discharged, stayed or restrained, in each case within:
 - (1) thirty (30) days of its institution or presentation if as of and during the pendency of such proceeding or petition, the party or its Credit Support Provider (such reference to Credit Support Provider shall be applicable if all such party’s financial obligations under the Agreement are fully guaranteed or assured under a Credit Support Document provided by such Credit Support Provider) has a Credit Rating of at least BBB+ by S&P or Baa1 by Moody’s; or
 - (2) fifteen (15) days of its institution or presentation in all cases other than those set out under Section 5 (a)(vii) (4) (B) (1) above;”
- (x) Section 14 is amended by deleting the existing definition of “Default Rate” contained therein and replacing it in its entirety as follows:

“**Default Rate**” means the Base Rate plus 9%, or, if a rate is specified in this Agreement to be applicable prior to a Default, such rate plus 2%.
- (xi) **Additional Events of Default.** The occurrence at any time with respect to Party B or, if applicable, any Specified Entity of Party B of any of the following events will constitute an additional Event of Default under Section 5(a) with respect to Party B and such Events of Default shall be in addition to, and not in limitation of, any other Events of Default or Termination Events in this Agreement:
 - (A) Failure by Party B or any Specified Entity of Party B to comply with or perform any agreement or obligation to be complied with or performed by such party in accordance with Part 12 (“Affirmative Covenants”), if such failure is not remedied within 3 Business Days (or, in the case of Part 12(a)(vi) and Part 12(a)(vii), 5 Business Days) after notice of such failure is given to Party B;
 - (B) Failure by Party B or any Specified Entity of Party B to comply with or perform any agreement or obligation to be complied with or performed by Party B or such Specified Entity in accordance with Part 13 (“Negative Covenants”);

- (C) At any time the outstanding Aggregate Unpaid Value exceeds the amount of Margin then held or (if Party A is required to establish replacement custodial accounts pursuant to Part 11(f)) controlled by Party A pursuant to any Master ISDA by \$45,000,000 or more;
- (D) A Change of Control shall have occurred;
- (E) Any money judgment, writ or warrant of attachment or similar process involving in any individual case or in the aggregate at any time an amount in excess of the lower of (1) 5% of Party B's or any Specified Entity of Party B's total assets as reflected on its most recent balance sheet (not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) or (2) \$1,000,000 shall be entered or filed against Party B or any Specified Entity of Party B or any of their respective assets;
- (F) (1) At any time after the execution and delivery thereof, any Specified Agreement, or any provision thereof, shall cease to be in full force and effect, shall be terminated or shall be declared to be null and void, (2) Party A shall not have or shall cease to have a valid and perfected first-priority lien in any Collateral with a fair market value in excess of \$500,000, except as permitted hereunder or under the ISDA Security Documents (or as to which Party A may grant consent from time to time), purported to be covered by the ISDA Security Documents hereunder, or (3) Party B or any Specified Entity of Party B shall repudiate or contest the validity or enforceability of any Specified Agreement or any provision thereof in writing or deny in writing that it has any further liability under any Specified Agreement or any provision thereof to which it is a party;
- (G) Any time there occurs an "Event of Default" or "Termination Event" with respect to MX Energy under, and as defined in the MX Energy Agreement;
- (H) Any time the Collateral Coverage Ratio is less than 1.25:1.00 when determined in respect of the months of October through March (inclusive), or is less than 1.4:1.00, when determined for any other month;
- (I) [Intentionally Omitted];
- (J) There is, at any time, a material adverse change (as reasonably determined by Party A) in (A) the financial condition, the results of operations, business, prospects or results of Party B and Party B's Specified Entities taken as a whole, or (B) the collection rate or aging of accounts receivable for Party B or any Specified Entity of Party B;
- (K) At any time, (1) the rights of the holders of Class B Common Stock (included in MX Holdings' Second Amended and Restated Certificate of Incorporation, Bylaws and otherwise set forth in a Specified Agreement) shall have been modified in any manner (regardless of whether such modification is written or whether it occurs due to an action or a failure to act) adverse to the holders of Class B Common Stock without the prior written consent of Party A or (2) MX Holdings or any of its Affiliates shall take any action or omit to take any action inconsistent with the continued existence of, or the ability of the holders of Class B Common Stock to exercise, the rights afforded to such holders and referred to in clause (1) of this Part 1(i)(xi)(K);
- (L) Jeff Mayer shall cease to be the Chief Executive Officer and President of MX Holdings or Chaitu Parikh shall cease to be the Chief Financial Officer of MX Holdings, or either of them shall cease to be involved in the day-to-day management of Party B, MX Energy or MX Canada in substantially the same roles as of the date hereof and, 60 days following any such person leaving such position, such person is not replaced in such position by a person or persons that is/are approved by Party A in writing;

- (M) [Intentionally Omitted];
 - (N) Any default, event of default or termination event (or terms of like import) by Party B or any Specified Entity of Party B shall occur under any Specified Agreement or any other agreement between any such party and Party A and such default, event of default, termination event or similar event shall not have been fully and completely cured within the grace period provided for in such agreement, or if no grace period is so provided, within three Business Days;
 - (O) An ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;
 - (P) The terms of the Notes, the Indenture, the Old Notes or the Old Notes Indenture shall be amended, restated or otherwise modified in a manner that is adverse to Party A;
 - (Q) Principal or interest on the Notes or the Old Notes shall have been paid or any of such notes have been purchased by Party B or its Specified Entities in whole or in part, prior to the respective due dates, except (with respect to the Notes) as permitted by the Intercreditor Agreement or (with respect to the Old Notes) as permitted by this Agreement.
- (xii) Section 6(c) is amended by adding the following new paragraph (iii):

“(iii) Notwithstanding the foregoing, the Non-defaulting Party shall not be obligated to terminate and liquidate Transactions to the extent that, in the good faith opinion of the Non-defaulting Party, (A) such termination and liquidation is not permitted under applicable law or (B) the Non-defaulting Party cannot enter into or liquidate offsetting transactions (including Specified Transactions) in a commercially reasonable manner or at commercially reasonable prices. In addition, the Non-defaulting Party may, at its election, take a reasonable amount of time to complete any aspect of the termination and liquidation.”

Part 2. Tax Representations.

- (a) **Payer Representations.** For the purpose of Section 3(e), Party A will make the following representation and, for the purpose of Part 5(j)(xxiv) Party B will make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Designated Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on: (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement, and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement with respect to Party A and for the purpose of Part 5(j)(xxv) with respect to Party B, Party A and Party B make the representations specified below, if any:

- (i) The following representation will apply to Party A and will apply to Party B:

It is entering into this Agreement, including each Transaction, as principal and not as agent of any Person.

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(1) Tax forms, documents or certificates to be delivered are:

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>
Party A	An executed United States Internal Revenue Service Form W-8ECI (or any successor thereto).	(i) Upon the execution of this Agreement; (ii) promptly upon reasonable demand by the other Party; and (iii) promptly upon learning that any such form previously provided has becomes obsolete, incorrect or expired.
Party B	An executed United States Internal Revenue Service Form W-9 (or any successor thereto).	(i) Upon the execution of this Agreement; (ii) promptly upon reasonable demand by the other Party; and (iii) promptly upon learning that any such form previously provided has becomes obsolete, incorrect or expired.

(2) Other documents to be delivered are:

<u>Party Required to Deliver Document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Section 3(d) or Part 5(j)(xxiii) (as applicable) Representation</u>
MX Holdings and Party A	An executed subscription agreement for the Class B Common Stock	Upon Execution	Yes
Party B	Guarantee and Collateral Agreement	Upon Execution	Yes
	Wachovia Control Agreements	Upon Execution	Yes
	Huntington Control Agreement	Upon Execution	Yes
	Trademark Security Agreements for filing with the United States Patent and Trademark Office	Upon Execution	Yes
	UCC-1 Financing Statements as required by Party A; and assignments by SocGen of UCC-1	Upon Execution	Yes

Financing Statements as required by Party A.

Novation Agreement(s) with respect to the novation of the interest rate swaps set forth on Exhibit 12(a)(xix)	As soon as practicable, but in any event not later than 30 days after the Closing Date	Yes
Intercreditor Agreement	Upon Execution	Yes
Certificate of Incorporation	Upon Execution	Yes
Registration Rights Agreement	Upon Execution	Yes
Stockholders Agreement	Upon Execution	Yes
The Financial Statements specified in Part 12(a)(vi)	As provided in Part 12(a)(vi)	Yes
The Budgets specified in Part 12(a)(xiii)	As provided in Part 12(a)(xiii)	Yes
The Notices and Reports specified in Part 12(a)(v) and Part 12(a)(vii)	As provided in Part 12(a)(v) and Part 12(a)(vii)	Yes
Copies of information technology infrastructure systems (including, without limitation, billing systems)	As provided in Part 12(a)(xvi)	
An opinion of New York legal counsel, in form and substance satisfactory to Party A, covering such matters as Party A shall reasonably require.	Upon Execution	
An Officers' Certificate from MX Holdings certifying that the aggregate principal amount of the Old Notes outstanding following the consummation of the Exchange Offer does not exceed \$10,000,000 and that aggregate principal amount of the Notes outstanding following the Exchange Offer does not exceed \$75,000,000.	Upon Execution	Yes

<p>An Officers' Certificate from Party B and each Specified Entity of Party B certifying that each of the representations and warranties of Party B and each of the Specified Entities of Party B contained in this Agreement is true and correct in all material respects as of the date of this Agreement (except for any such representations and warranties made as of a specific date, which shall remain true and correct in all material respects as of such date)</p>	<p>Upon Execution</p>	
<p>A proposed consolidated operating Budget for Party B, its Subsidiaries and MX Energy, for fiscal year 2010 which shall be in form and substance satisfactory to Party A.</p>	<p>Upon Execution</p>	<p>Yes</p>
<p>A proposed consolidated business plan for Party B, its Subsidiaries and MX Energy, for the first two years of the term of this Agreement which shall be in form and substance satisfactory to Party A.</p>	<p>Upon Execution</p>	<p>Yes</p>
<p>Evidence, satisfactory to Party A, that each EDC and all other payers have been instructed to make all payments owing to Party B or to any Specified Entity of Party B directly to the Lockbox Accounts.</p>	<p>Upon Execution</p>	<p>Yes</p>
<p>Evidence, satisfactory to Party A, that each EDC and all other payers have been instructed to make all payments owing to Party B or to any Specified Entity of Party B directly to the Lockbox Accounts and not to any other accounts</p>	<p>As soon as practicable, but in any event not later than 10 Business Days after the Closing Date</p>	

without the prior written consent of Party A.

Evidence satisfactory to Party A that all master agreements between Party B or any Specified Entity of Party B and any third party have been terminated.

As soon as practicable, but in any event not later than 30 days after the Closing Date

Evidence, satisfactory to Party A, that (i) Party B and each Specified Entity of Party B has in place the types of insurance set forth on Exhibit 12(a)(iii), and (ii) all such insurance names Party A as an additional insured and/or loss payee, as appropriate.

Upon Execution

Yes

Party A&B:

Certified copies of board resolutions approving this Agreement and the Transactions contemplated by this Agreement and any exhibits or supplements attached hereto and the Confirmations hereunder.

Upon Execution

Yes

Party A&B:

Evidence of authority of signatories

Upon Execution

Yes

Part 4. Miscellaneous

(a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications with respect to Confirmations only to Party A:

Address: 600 Washington Blvd, Mail Code CS0930, Stamford, Connecticut 06901

Attention: Energy Operations

For electric energy and/or capacity invoices and Confirmations:

Facsimile No.: 203-355-6614

Telephone No.: 203-897-5926

E-mail: PowerTeam@RBSSempra.com

For petroleum:

Facsimile No.: Invoices: 203-355-6615

Telephone No.: 203-897-5632

Confirmations: 203-355-6617

For natural gas:

Facsimile No.: Invoices: 203-355-6612

Telephone No.: 203-897-5647

Confirmations: 203-355-6630

Attention: FX or Metals Operations
Facsimile No.: 203-355-6605

Telephone No.: 203-355-5607

Electronic Messaging System details: None until mutually agreed otherwise.

And for notices or communications other than Confirmations:

Address: 600 Washington Blvd, Stamford, CT
06901

Attention of the Legal Department.

Facsimile No.: 203-355-5410

Telephone No.: 203-897-5510

Address for notices to, or Energy Confirmations for,
Party B:

Address: 510 Thornall Street, Suite 270
Edison, NJ 08837-2207

Attention: Eve Hoffman, Manager Supply
Administration

Facsimile No.: 732-805-4044

Telephone No.: 732-805-0300 ext. 6812

Address for any other notices for Party B:

Address: 595 Summer Street, Suite 300
Stamford, CT 06901-1407

Attention: Chief Financial Officer
Chief Legal Officer

Facsimile No.: 203-975-9659

Telephone No.: 203-356-1318

Electronic Messaging System Details: None until mutually agreed otherwise.

- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement: Party B appoints as its Process Agent Not Applicable.
- (c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.
- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.
- (e) **Calculation Agent.** The Calculation Agent is Party A.
- (f) **Credit Support Document.** With respect to Party A means, none. With respect to Party B means the ISDA Security Documents and the Intercreditor Agreement.

- (g) **Credit Support Provider.** Credit Support Provider means, in relation to Party A, none. Credit Support Provider means, in relation to Party B, each Specified Entity of Party B.
- (h) **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE, OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT IN ANY WAY APPLY TO, OR GOVERN, THIS AGREEMENT.
- (i) **Waiver of Certain Damages.** 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. A PARTY'S LIABILITY HEREUNDER 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 ANY TRANSACTION, A PARTY'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.
- (j) **Waiver of Jury Trial.** Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement, any Specified Agreement or any Transaction.
- (k) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to all Transactions starting from the date of this Agreement.
- (l) **"Affiliate"** will have the meaning set forth below:
- "Affiliate" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by agreement or otherwise; and the terms "controlling" and "controlled" have meanings correlative of the foregoing; provided that beneficial ownership of 10% or more of the voting securities of a Person shall be deemed to be a controlling interest; provided further that (i) Party A shall be deemed not to be an Affiliate of Party B and its Specified Entities; and (ii) no Holder of Notes shall be deemed to be an Affiliate of Party B or any Specified Entity of Party B solely by reason of holding the shares of Class A Exchange Common Stock such Holder has received in the Exchange Offer and being party to the equity agreements entered into in connection with the Exchange Offer.

Part 5. Other Provisions.

- (a) **Definitions.** Any capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the 2006 ISDA Definitions and the 2005 Commodity Definitions (as

published by the International Swaps and Derivatives Association, Inc.) (collectively, the “Definitions”), which are incorporated into this Agreement. In the event of any inconsistency between the Definitions and the provisions of this Agreement, this Agreement will prevail. Capitalized terms used herein and not defined in this Agreement or in the Definitions shall have the meanings set forth in the Intercreditor Agreement.

- (b) **Events of Default; Termination Events.** The parties acknowledge and agree that, with the exception of the Event of Default specified in Section 5(a)(vii) and the Additional Termination Events specified in Part 1(h)(ii), no other Events of Default or Termination Events will apply to Party A.
- (c) **Agreed Changes.** The parties agree to the following changes in this Agreement:
 - (i) Section 1(b) is amended by deleting the period at the end and substituting “except for Sections 5 and 6, which may only be amended by a written amendment executed by the parties.”
 - (ii) Section 1(c) is deleted in its entirety and replaced with the following new Section:

“(c) All Transactions (including any Loans) are entered into in reliance on the fact that the Master ISDAs, all Confirmations thereunder, all Promissory Notes thereunder, the ISDA Security Documents and each other ISDA Document form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions (including any Loans) contemplated by the Master ISDAs, the other ISDA Documents and the Specified Agreements.”
 - (iii) Section 3 is amended by deleting the first paragraph thereof and replacing it with the following new paragraph:

“Party A represents to Party B (which representations will be deemed to be repeated by Party A on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—”
 - (iv) Add the following paragraphs at the end of Section 9:
 - (h) **Consent to Recording.** The parties agree that each may electronically record all telephone conversations between them and that any such recordings may be submitted in evidence to any court or in any proceeding for the purpose of establishing any matters pertinent to any Transaction.
 - (i) **Severability.** In the event that any provision of this Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision, unless the deletion of such provision shall substantially impair the benefits of the remaining portions of this Agreement.
 - (j) **Dealer Market Practices.** To the extent applicable, the obligations of the parties are to be construed in accordance with practices in the international financial or commodity, as applicable, dealer market.
 - (k) **Trader Authority.** The parties hereby expressly waive all rights to, and expressly agree not to contest, any Transaction, or assert or otherwise raise any defenses or arguments related to any Transaction to the effect that such is not binding, valid or enforceable in accordance with its terms because either the employee(s) or representative(s) who entered into the Transaction on behalf of a party, and who appeared to have the requisite authority to do so, did not, in fact, have such authority or because the provisions of certain applicable laws require the Transaction to be in writing and/or executed by one or both parties.

- (v) Section 7 is amended by (1) deleting “and” at the end of clause (a) of such section, (2) deleting the period at the end of clause (b) and replacing it with “; and”, and (3) inserting the following new clause (c) immediately after clause (b):

“Party A may at any time assign and transfer this Agreement (i) by novation to any Affiliate of Party A, to The Royal Bank of Scotland plc or any Affiliate thereof, and, upon such novation, such Affiliate of Party A, The Royal Bank of Scotland plc or any such Affiliate of The Royal Bank of Scotland plc will assume all of Party A’s rights and obligations under this Agreement and Party A shall be released and discharged from all liabilities under this Agreement; provided, however, that any such Affiliate shall have a Credit Rating of at least BBB- by S&P or Baa3 by Moody’s or the obligations of such Affiliate shall be guaranteed by The Royal Bank of Scotland plc or (ii) pursuant to a Wholesale Transfer.”

- (vi) Section 9(e)(ii) is amended by adding the following new sentence at the end thereof: “Notwithstanding the foregoing, Party A shall promptly confirm each Transaction and unless objected to in writing within two Local Business Days, the Confirmation shall be final and binding on the parties, absent manifest error. Failure to send or agree upon a Confirmation shall not affect a Transaction entered into by the parties.”

- (vii) Section 13(b) shall be deleted in its entirety and replaced with the following new Section:

“(b) *Consent to Arbitration.*

(i) Any dispute, controversy, or claim arising out of, relating to, or in connection with this Agreement, or the breach, termination, or validity thereof, shall be finally settled by arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) in effect at the time of the arbitration, except as they may be modified herein or by mutual agreement of the parties. Notwithstanding the provisions of Part 4(h), the arbitration and this clause shall be governed by Title 9 (Arbitration) of the United States Code. The seat of the arbitration shall be New York, New York, United States of America, and it shall be conducted in the English language. The parties submit to jurisdiction in the state and federal courts in the State, County and City of New York for the limited purpose of enforcing this agreement to arbitrate.

(ii) The arbitration shall be conducted by three neutral arbitrators, who shall be appointed by the AAA. The arbitrators shall be impartial and independent.

(iii) In order to facilitate the comprehensive resolution of related disputes, and upon request of any party to the arbitration proceeding, the arbitration tribunal may consolidate the arbitration proceeding with any other arbitration proceeding involving any of the parties hereto relating to this Agreement or to the Related Agreements (whether or not such other proceeding involves all of the parties hereto). The arbitration tribunal shall not consolidate such arbitrations unless it determines that (x) there are issues of fact or law common to the various arbitrations so that a consolidated proceeding would be more efficient than separate proceedings and (y) no party would be prejudiced as a result of such consolidation through undue delay or otherwise. In the event of different rulings on this question by the arbitration tribunal constituted hereunder and the tribunal constituted under any other Related Agreement, the ruling of the arbitration tribunal governing the first proceeding to have been filed shall control. In the event of the consolidation of one or more proceedings pursuant to this subsection, the arbitration tribunal governing the first such proceeding to have been filed shall govern the consolidated proceeding unless otherwise agreed by all parties to the proceedings being consolidated. Solely for purposes of this subsection (iii), (x) a proceeding shall be deemed to have been filed when the related demand for arbitration is served by the complaining party and (y) in the event that two proceedings shall have been filed on the same day, the proceeding involving the largest dollar amount in dispute shall be deemed to have been the first filed.

- (iv) The arbitration award shall be final and binding on the parties. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets.”
- (viii) In Section 14: “Terminated Transactions” is amended on line 2 by deleting “all Transactions” and substituting “any or all Transactions terminated in accordance with Section 6(c)(ii)”.
- (ix) The definition of “Loss” in Section 14 is deleted in its entirety and replaced with the following new definition:
- “‘Loss’ means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including an amount equal to 100% of the Credit Support Amount outstanding on the Early Termination Date, any losses and costs relating to the provision of Credit Support to any third party, any losses and costs relating to any Loan, any losses or costs relating to any financing or similar fees, loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.”
- (x) Section 11 is deleted in its entirety and replaced with the following new Section 11:
- “A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of (i) the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party, (ii) the enforcement or protection of its rights with respect to any outstanding Credit Support Amount, including any costs incurred in recovering any such amounts, or (iii) the early termination of any Transaction, including, but not limited to, costs of collection.”
- (d) **Set-Off.** Section 6 of this Agreement shall be amended by the insertion of the following additional provision:
- “(f) **Set-Off.** At any time or from time to time after an Event of Default or Termination Event occurs, the party (“X”) that is the Non-defaulting Party or the party other than the Affected Party (and without prior notice to the Defaulting Party or the Affected Party (“Y”)) may, at X’s election, set off any or all amounts which Y or any Affiliate of Y owes to X or any Affiliate of X against any or all amounts which X or any Affiliate of X owes to Y or any Affiliate of Y (in each case, whether under this Agreement, any other agreement or otherwise, and whether or not then due, and irrespective of the currency, place of payment or booking office of the obligation); provided that any amount not then due which is included in such setoff shall be discounted to present value as at the time of setoff (to take account of the period between the time of setoff and the date on which such amount would have otherwise been due) at the applicable rate for that period determined by X in any commercially reasonable manner. X may give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, any amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any Lien to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).”

- (e) **Imaged Agreement.** Any fully executed Agreement, Confirmation, Specified Agreement or other related document, or recording may be scanned and stored electronically, or stored on computer tapes and disks, as may be practicable (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidence on paper, the Confirmation if introduced as evidence in automated facsimile form, any recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of any Imaged Agreement (or photocopies of the transcription of such Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.
- (f) **(1) Market Disruption Events.** Each of the following events shall constitute a Market Disruption Event hereunder:
 - (i) Price Source Disruption
 - (ii) Trading Disruption
 - (iii) Disappearance of Commodity Reference Price
 - (iv) Material Change in Formula
 - (v) Material Change in Content**(2) Disruption Fallbacks.** If a Market Disruption Event occurs on a Pricing Date, then the Commodity Reference Price for such day (a “Missing Day”) shall be determined in accordance with the provisions of the 2005 Commodity Definitions as if no elections had been made.
- (g) **Illegality.** For purposes of Section 5(b)(i), the obligation of either Party to comply with any official directive issued or given by any government agency or authority with competent jurisdiction which has the result referred to in Section 5(b)(i) will be deemed to be an “Illegality”.
- (h) **Term.** Subject to the earlier occurrence of an Early Termination Date, Party A shall not be obliged to enter into further Transactions under this Agreement commencing on August 31, 2012 (the “Termination Date”); provided, however, that Party A, on or before the date that is 180 days prior to the then current Termination Date but no sooner than April 1, 2011, shall have the right to extend the Termination Date on the then current terms and conditions to August 31, 2013 (the “Extended Term”) (in which case Party A shall not be obliged to enter into further Transactions beyond the Termination Date so extended). For the avoidance of doubt, this Agreement and the Specified Agreements shall otherwise remain in full force and effect until the Discharge of ISDA Obligations. Neither Party B, nor any Specified Entity of Party B, shall enter into any agreement or series of agreements which provide for transactions similar to those contemplated by any

one or more of the Specified Agreements unless such agreement or agreements do not become effective until after the Termination Date and after the Discharge of ISDA Obligations has occurred.

(i) **No Obligation.** Notwithstanding any other provision in this Agreement to the contrary, Party A (A) shall have no obligation to enter into any Transaction with Party B or to provide Credit Support that has a term, calculation period, delivery period, maturity or expiration which extends beyond the date that is 12 months prior to the maturity date of the Notes, and (B) shall not be obligated to enter into any transaction (including any Transaction hereunder) with Party B or any Specified Entity of Party B following the occurrence of a Default or Potential Termination Event (however defined) by Party B or any Specified Entity of Party B under any of the Specified Agreements, which Default or Potential Termination Event has not been cured or waived by Party A in accordance with the terms of the applicable Specified Agreement.

(j) **Further Representations of Party B and its Specified Entities.** Each Specified Entity of Party B, Party B in respect of each of its Specified Entities and Party B as to itself as set forth below, represents and warrants to Party A (which representations will be deemed to be represented by Party B and each such Specified Entity on each date on which a Transaction is entered into and on each date that Party A issues or arranges for the issuance of Credit Support and, other than in respect of Part 5(j)(iii) and Part 5(j)(iv), at all times until this Agreement is terminated):

(i) Existence and Authorization.

(A) Such party is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is qualified as a foreign corporation in each jurisdiction where it conducts business where such qualification is required, except where the failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect;

(B) Such party has delivered to Party A true and complete copies of its organizational documents as amended or amended and restated through the date hereof and as in effect on the date hereof;

(C) Such party has the full corporate power and corporate authority to execute and deliver this Agreement and the other Specified Agreements and to perform its obligations hereunder and thereunder; and

(D) The execution, delivery and performance of this Agreement and any other Specified Agreement by such party have been and remain duly authorized by all necessary corporate, limited liability company or partnership action, as applicable, and do not contravene (i) any provision of its organizational documents, (ii) Applicable Law, or (iii) the terms of any Material Contract.

(ii) Enforceability. This Agreement and each Specified Agreement to which it is a party constitute the legal, valid and binding obligations of such party, enforceable against such party in accordance with their respective terms, except as enforcement hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally or by general equity principles.

(iii) Capitalization, Indebtedness and Hedging Transactions.

(A) Exhibit 5(j)(iii)(A) sets forth the capitalization of such party as of the date hereof, including (i) the authorized capital, (ii) the equity interests outstanding and (iii) each Person owning, of record or beneficially, 10% or more of any class of such party's equity interests, together with the number of equity interests of each such class and the percentage so held by each such Person. All outstanding equity interests are duly and validly issued, fully paid and non-assessable. Except for options and warrants of MX Holdings outstanding on the date hereof or which may be issued pursuant to the

Management Incentive Plan, such party does not have outstanding any securities convertible into or exchangeable for its equity interests or any rights to subscribe for or to purchase, or any option for the purchase of, or any agreement, arrangement or understanding providing for the issuance (contingent or otherwise) of, or any call, commitment or claims of any character relating to, its equity interests.

- (B) Exhibit 5(j)(iii)(B) sets forth the Indebtedness of such party as of the date of this Agreement, including, as to each item of Indebtedness (to the extent applicable) including Credit Support, (i) the counterparty or counterparties or issuers, (ii) the nature of the Indebtedness or credit support, (iii) the amount of the obligations, remaining purchase price or face amount, (iv) the final maturity date or expiration or termination date and a description of required interim payments and (v) the rate, and the timing of payments, of interest, fees and similar charges.
- (C) Exhibit 5(j)(iii)(C) sets forth a list of all Hedging Transactions to which such party is a party as of the date of this Agreement, including, as to each Hedging Transaction (to the extent applicable), (i) the counterparty or counterparties, (ii) the nature of said Hedging Transaction, (iii) the term of such Hedging Transaction and (iv) the amount payable by, or payable to, such party if such Hedging Transaction were liquidated as of the date of this Agreement.
- (iv) Subsidiaries and Beneficial Interest. Except as set forth on Exhibit 5(j)(iv), such party does not, directly or indirectly, beneficially own the whole or any part of the issued share capital or other ownership interest of any other Person.
- (v) Governmental Approvals.
 - (A) All Governmental Approvals necessary or advisable for the due execution, delivery and performance of this Agreement and the other Specified Agreements by such party have been obtained from or, as the case may be, filed with the relevant Governmental Authorities having jurisdiction over such party and remain in full force and effect, and are listed in Exhibit 5(j)(v)(A), and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any Governmental Authority having jurisdiction is required for such execution, delivery or performance of this Agreement or the other Specified Agreements by such party.
 - (B) All Governmental Approvals necessary or advisable for the conduct of each such party's businesses as of the date of this Agreement and as contemplated herein have been duly obtained, are set forth in Exhibit 5(j)(v)(B), are in full force and effect, not subject to appeal, are held in the name of such party, as the case may be, and are free from conditions or requirements which if not complied with could reasonably be expected to have a Material Adverse Effect, or conditions or requirements which such party does not expect to be able to satisfy on or prior to the date required.
 - (C) Such party has no reason to believe that any Governmental Approvals which have not been obtained by or on behalf of such party, as the case may be, but which will be required to be obtained by it in the future, will not be obtained in due course on or prior to the date required and will not contain any condition or requirements, the compliance with which could reasonably be expected to result in a Material Adverse Effect.
 - (D) Party B and the Specified Entities of Party B are not in violation of any Governmental Approval applicable to any such Person, the violation of which could reasonably be expected to result in either a Material Adverse Effect, a cease and desist order or an aggregate monetary fine applicable to Party B and the Specified Entities of Party B in excess of \$1,000,000.

- (vi) Financial Condition and No Material Adverse Change.
- (A) Party B has heretofore furnished to Party A the consolidated balance sheet and statements of income, and statements of equity and cash flows of MX Holdings (i) as of and for the fiscal year ended June 30, 2008, reported by Ernst & Young LLP, independent public accountants, and (ii) as of and for the fiscal quarter ending March 31, 2009, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of MX Holdings and its subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.
- (B) Since March 31, 2009, no event has occurred which has or could reasonably be expected to have, and no series of events has occurred which in the aggregate has or could reasonably be expected to have, a Material Adverse Effect.
- (vii) Insurance. Such party maintains, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations; provided, that, except for directors and officers insurance, such party may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which such party operates.
- (viii) Material Contracts and Licenses.
- (A) Exhibit 5(j)(viii)(A) sets forth a list of all Material Contracts as of the date of this Agreement. To such party's knowledge, after due inquiry, and without prejudice to any dispute that they may have with any third party, no breach, default or event of default (each as defined in the applicable Material Contract) has occurred and is continuing with respect to any party to any Material Contract.
- (B) To such party's knowledge, after due inquiry, such party owns, has the right to use or has the benefit of, all permits, licenses, trademarks, patents, franchises and similar rights with respect to the usage of technology or other property (other than those constituting Governmental Approvals) that are necessary or advisable for the conduct of its business as contemplated herein, except where it could not reasonably be expected to result in a Material Adverse Effect.
- (ix) Use of Proceeds. The proceeds of any Loan shall be used solely to satisfy any Third Party Liquidation Payments and any Third Party Novation Payments, each in accordance with Part 10.
- (x) Title and ISDA Security Documents.
- (A) Such party owns and has good, legal and marketable title to the Collateral purported to be owned by it and covered by the ISDA Security Documents, free and clear of all Liens other than Permitted Liens.
- (B) Upon the filing of the UCC-1 Financing Statements and the UCC-3 Financing Statement Amendments delivered pursuant to this Agreement, upon the execution of the required control agreements and upon any necessary filings with the United States Patent and Trademark Office, the provisions of the ISDA Security Documents are effective to create, in favor of Party A, a legal, valid and enforceable Lien on all of the Collateral purported to be covered thereby, and all necessary and appropriate recordings and filings have been made in all necessary and appropriate public offices, and all other necessary and appropriate action (including payment of all filing, recording or other fees required in

connection with the creation or perfection of such Lien) has been taken, so that each such ISDA Security Document creates a perfected Lien on all right, title, estate and interest of such party in the Collateral purported to be covered thereby, prior and superior to all other Liens other than Permitted Liens.

- (xi) Actions, Suits and Proceedings. There is no action, suit or proceeding at law or in equity or by, or before, any Governmental Authority or arbitral tribunal now pending or, to such party's best knowledge, after due inquiry, threatened against or affecting Party B or any Specified Entity of Party B or any of their respective Property which could reasonably be expected to result in a Material Adverse Effect.
- (xii) Environmental Matters.
 - (A) Such party is not in violation of any Environmental Law except where such violation could not reasonably be expected to result in a Material Adverse Effect.
 - (B) No Hazardous Material has been Used or Released by any Person, at, on, under, or from any part of the properties owned or leased by such party other than in compliance with all applicable Environmental Laws except where such noncompliance could not reasonably be expected to result in a Material Adverse Effect.
 - (C) There are no Environmental Claims pending or threatened in respect of such party, except where such Environmental Claim could not reasonably be expected to result in a Material Adverse Effect.
 - (D) All environmental investigations, studies, audits, tests, reviews or other analysis conducted by or that are in the possession of such party in relation to facts, circumstances or conditions at or affecting Party B or any Specified Entity of Party B have been provided to Party A.
 - (E) No Liens have arisen under or pursuant to any Environmental Laws on any property of such party, and, to such party's best knowledge, after due inquiry, no government action has been taken or is in process that could subject any such property to such Liens, and such party will not be required to place any notice or restriction relating to the presence of Hazardous Materials at such property in any deed to the real property.
- (xiii) Compliance with Applicable Laws. Such party is in compliance with all Applicable Laws except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.
- (xiv) Taxes. Such party has timely filed or caused to be filed all tax returns, information statements and reports required to have been filed by it and has paid or caused to be paid all Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such party has set aside or accrued for on its books adequate reserves in accordance with GAAP.
- (xv) Investment Company Status. Such party is not an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.
- (xvi) Federal Reserve Regulations. No part of the proceeds of any Transaction under this Agreement have been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

- (xvii) **Nature of Business.** Party B is engaged solely in the purchase and sale of Energy to Customers and other activities necessary in connection therewith. MX Energy and MX Canada are engaged solely in the purchase and sale of Gas to residential or small commercial end-users of Gas and other activities necessary in connection therewith. Infometer.com Inc. is engaged in providing consultations and audits with respect to energy supply procurement and improving energy efficiency. Online Choice is engaged in the commissioned sale of consumer products such as telecom services and satellite TV for homeowners and small businesses (provided that such products may not be sold door-to-door). The Specified Entities of Party B (other than MX Energy, MX Canada, Infometer.com and Online Choice) are engaged solely in holding Equity Interests in the MX Holdcos, Party B, MX Energy and MX Canada and the performance of their duties and obligations under this Agreement, the other ISDA Documents, the Old Notes Indenture, the Indenture and each other document related thereto.
- (xviii) **Disclosure.** Such party has disclosed to Party A all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Offering Memorandum nor any of the other reports, financial statements, certificates, data or other written information furnished by or on behalf of such party to Party A in connection with the negotiation of this Agreement or delivered hereunder, taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances in which they were made, not misleading; provided that, with respect to projected financial information, such party represents only that such information was prepared in good faith based on assumptions believed to be reasonable at the time, it being recognized by Party A that projections are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ from the projected results and such difference may be material.
- (xix) **Securities Accounts.** Such party does not hold any Investments in any securities accounts.
- (xx) **ERISA.** No ERISA Event has occurred, and no ERISA Event with respect to any Plan is reasonably expected to occur, that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.
- (xxi) **No Defaults.** No event of default or potential event of default or, to its knowledge, termination event or potential termination event or any event of similar import (in each case as defined in the applicable agreement) 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 or any Specified Agreement to which it is a party.
- (xxii) **Solvency.** Such party is, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith will be, Solvent.
- (xxiii) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to Party A and is identified for the purpose of this Part 5(j)(xxiii) in the Schedule is, as of the date of the information, true, accurate and complete in all material respects.
- (xxiv) **Payer Tax Representation.** Each representation specified in this Schedule as being made by it for the purpose of this Part 5(j)(xxiv) is accurate and true.
- (xxv) **Payee Tax Representations.** Each representation specified in this Schedule as being made by it for the purpose of this Part 5(j)(xxv) is accurate and true.
- (xxvi) **Real Property.** Such party does not own any real property.

- (k) **Further Representations of the Parties.** Party A, Party B and each Specified Entity of Party B represents to the other party (which representations will be deemed to be represented by each party and each such Specified Entity on each date on which a Transaction is entered into and at all times until this Agreement is terminated) that:
- (i) **Non-Reliance.** In connection with this Agreement, any Specified Agreement to which it is a party, each Transaction, and any other documentation relating to this Agreement to which it is a party or that it is required by this Agreement to deliver:
 - (A) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement, such Specified Agreement and in any Confirmation;
 - (B) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging and trading decisions (including decisions regarding the suitability of any Transaction pursuant to this Agreement) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party;
 - (C) it has a full understanding of all the terms, conditions and risks (economic and otherwise) of the Agreement and each Transaction and is capable of assuming and willing to assume (financially and otherwise) those risks;
 - (D) it is entering into this Agreement, such Specified Agreements, each Transaction and such other documentation as principal, and not as agent or in any other capacity, fiduciary or otherwise; and
 - (E) the other party is not acting as a fiduciary or financial, investment or commodity trading advisor for it, it being understood that it is not relying on any unique or special expertise of the other party and it is not in any special relationship of trust or confidence with respect to the other party.
 - (ii) **Eligible Commercial Entity and Eligible Contract Participant.** It is an “eligible commercial entity” as defined in Section 1a(11) of the Commodity Exchange Act, and it is an “eligible contract participant” within the meaning of Section 1a (12) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000.
 - (iii) **Bankruptcy Code.** Without limiting the applicability of any other provision of the U.S. Bankruptcy Code, as amended (the “Bankruptcy Code”), the parties acknowledge and agree that: (a) all Transactions, with the exception of the Loans, entered into hereunder will constitute “forward contracts” or “swap agreements” and this Agreement constitutes a “master netting agreement” as defined in the Bankruptcy Code; (b) each party is a “master netting agreement participant,” a “forward contract merchant” and a “swap participant” as defined in the Bankruptcy Code; (c) the rights of the parties under Sections 5 and 6 of this Agreement will constitute “contractual rights” to liquidate Transactions; (d) any margin or collateral provided under any margin, collateral, security, or similar agreement related hereto, including but not limited to the ISDA Security Documents and any Credit Support Annex, will constitute a “margin payment” or a “settlement payment” as defined in the Bankruptcy Code.
 - (l) **Certain Understandings.** Each party to this Agreement acknowledges that Party A and its Affiliates (collectively, “SET”) will engage in transactions with Party B and certain of Party B’s Affiliates pursuant to this Agreement and the other Specified Agreements. Neither this Agreement nor the other Specified Agreements shall preclude SET from engaging in transactions of a nature like the transactions contemplated by the Specified Agreements with any other Person. Without limiting the foregoing, each

party acknowledges that SET is engaged in, among other things, dealing in fuel, and power and related commodities for its own account in the U.S. wholesale fuel and power markets, and manages positions in fuel and power and related commodities for others. SET may (i) take actions under this Agreement and the other Specified Agreements which may be different than the actions SET takes for its own account or for the account of others, even though the circumstances may be the same or similar and (ii) effect transactions with counterparties that are also counterparties to other transactions in fuel and/or power or related commodities with SET or for which SET is acting in an agency capacity. SET may from time to time take proprietary positions and/or make a market in commodities and/or instruments identical or economically related to the transactions contemplated by the ISDA Documents, or may have an investment banking or other commercial relationship with and access to information from the issuer(s) of financial instruments or other interests underlying such transactions during the term of the ISDA Documents. SET may also undertake lawful proprietary activities, including hedging transactions related to the initiation or termination of a transaction, that may adversely affect the market price, rate, index or other market factor(s) underlying the transactions contemplated by the ISDA Documents and consequently the value of the transactions contemplated by the ISDA Documents. Neither this Agreement nor the other Specified Agreements shall limit in any manner the ability of SET to enter into any transaction of any nature with any other Person. The parties acknowledge that the relationship between SET and Party B and its Affiliates is a commercial and not a fiduciary relationship and that SET is free to pursue its own business interests.

- (m) **Existing ISDA.** The parties hereby agree that, on and with effect from the date of this Agreement, the ISDA Master Agreement, dated as of July 28, 2006 (as amended, supplemented, or otherwise modified prior to the date hereof) between Party A and Party B (the "Existing ISDA Master Agreement") shall be terminated in all respects, and all Transactions (as defined in the Existing ISDA Master Agreement) which remain in effect as of the date hereof shall, from and after the date hereof, be (and shall be deemed to be) Transactions under this Agreement in all respects and for all purposes. In the event of any conflict between the provisions of this Agreement and any Confirmation evidencing an outstanding Transaction originally entered into under the Existing ISDA Master Agreement, the Confirmation will prevail for purposes of such Transaction.
- (n) **Payments.** Except as otherwise expressly provided herein:
- (i) all payments shall be made by Party B to Party A without setoff, recoupment or counterclaim and in immediately available funds at the office specified by Party A not later than 12:00 p.m. New York time on the date due, and funds received after that hour shall be deemed to have been received by Party A on the following Business Day.
 - (ii) if any payment under this Agreement falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day and additional interest, Financing Fees and Credit Support Fees shall accrue and be payable for the period of any such extension.
- (o) **Termination of Specified Transactions.** Party B shall demonstrate to Party A that all Specified Transactions (and any related master agreements) between Party B or any Specified Entity of Party B and any third party, as set forth on Exhibit 5(o), shall be terminated or novated to Party A within 30 days after the Closing Date. Party B represents to Party A that no other Specified Transactions will be outstanding as of the Closing Date except those set forth on Exhibit 5(o).
- (p) **Sub Accounts.** Party B acknowledges and agrees that all funds held in the Party A Sub Account and the Swap Note Sub Account may be commingled with Party A's funds and Party A shall be entitled to sell, pledge, invest or use the funds held in such accounts, free from claim or right of any nature whatsoever of Party B. Party A agrees to credit (i) the Party A Sub Account with interest on funds held in such account from time to time at the rate of Overnight LIBOR (calculated on a daily basis) and (ii) the Swap Note Sub Account with interest on funds held in such account from time to time at the Base Rate plus 3% (calculated on a daily basis). Any such interest payable by Party A to Party B shall be paid monthly on the 10th day of the month occurring after the month in which any such interest accrued and is subject to setoff as otherwise provided herein.

(q) **Facility Agent; Holders of ISDA Obligations.** The parties acknowledge that Party A is acting as the Facility Agent (as defined in the Intercreditor Agreement) hereunder. All references herein to “Party A” shall also be a reference to the Facility Agent. On the date hereof, Party A is the sole holder of ISDA Obligations (as defined in the Intercreditor Agreement). The parties acknowledge that from time to time there may be more than one holder of ISDA Obligations. All actions by Party A hereunder and unless otherwise notified to Party B shall be an action by the Facility Agent and the required holders of ISDA Obligations.

(r) **Indemnification.** Except as otherwise expressly provided herein, Party B shall indemnify Party A, its Affiliates, and their respective officers, directors, shareholders and employees (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses, or disbursements (including all reasonably incurred fees, expenses and disbursements of any law firm or other external counsel) of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against any Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of this Agreement, any other Specified Agreement, or any other agreement, letter or instrument delivered in connection with the transactions contemplated hereby and thereby or the consummation of the transactions contemplated hereby and thereby, (b) any action taken or omitted by Party A under this Agreement or any other Specified Agreement (including Party A’s own negligence), or (c) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “Indemnified Liabilities”); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(s) **Increased Costs.**

(i) If any Change in Law shall:

(A) impose, modify or deem applicable any reserve, special deposit, compulsory transaction, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Party A with respect to this Agreement; or

(B) impose on the power market or other relevant market any other condition, cost or expense affecting this Agreement or any Transactions which Party A is obligated to enter into hereunder;

and the result of any of the foregoing shall be to materially increase the cost to Party A of entering into or maintaining any Transaction with Party B or to materially reduce the amount of any sum received or receivable by Party A hereunder or under any other Specified Agreement then, upon request of Party A, Party B will pay to Party A such additional amount or amounts as will compensate Party A for such additional costs incurred or reduction suffered.

(ii) Party A shall provide to Party B reasonable evidence of any Change in Law forming the basis of a claim for payment under Part 5(s)(i) within one year from the effectiveness of such Change in Law; provided, however, that the calculation by Party A of the amount or amounts to compensate Party A as contemplated by Part 5(s)(i), which shall be final and conclusive, absent manifest error, may be provided by Party A to Party B thereafter, and from time to time, based on the nature of such Change in Law; provided, further, that Party B shall not be required to compensate Party A pursuant to this Part 5(s) for any increased costs incurred or reductions suffered more than 12 months prior to the date that Party A notifies Party B of the Change in Law giving rise to such increased costs or reductions and of Party A’s intention to claim compensation therefor.

- (t) **Survival of Obligations.** Section 9(c) is deleted in its entirety and replaced with the following new Section:

Without prejudice to Sections 2(a)(iii) and 6(c)(ii), any obligations to make payment hereunder, any obligation of either party to indemnify the other pursuant hereto and any obligations under Sections 5 and 6 shall survive the termination of this Agreement or any Transaction.

- (u) **MX Canada.** Any covenants or representations and warranties undertaken or made by or on behalf of MX Canada under this Agreement shall apply only to MX Canada.

Part 6. Physical Power Transactions.

Sub-Annex F to the 2005 ISDA Commodity Definitions (Physically-settled North American Power Transactions) (the "Power Annex") in effect as of the date hereof is incorporated by reference into the Master Agreement and in the relevant Confirmations with respect to Power Transactions. All terms in this Part 6 that are not otherwise defined shall have the meaning given to them in the Power Annex.

Elective Provisions for the Power Annex (Clause (j) of the Power Annex):

1. Section (a)(i): Applicability to Outstanding Power Transactions. The Power Annex shall apply to all Outstanding Power Transactions as of the date the Power Annex becomes effective.

2. Section (a)(ii): Credit Support Documents. Outstanding Credit Support held by a party in connection with Outstanding Power Transactions shall be deemed to have been delivered under and in connection with this Agreement pursuant to clause (a)(iii) of the Power Annex.

3. Section (c): Remedies for Failure to deliver or Receive; Limitation on Condition Precedent. Accelerated Payment of Damages shall apply.

4. Section (d)(ii): Timeliness of Payment. Option B shall apply.

5. Section (h)(i): Wholesale Power Tariffs:

- (a) Party A Electric Tariff: Fifth Revised Rate Schedule FERC No. 1 (Superseding Fourth Revised Rate Schedule FERC No. 1), dated July 30, 2008, effective July 31, 2008 (Docket No. ER08-100-004).

Party B Electric Tariff: FERC Market-Based Rate (Schedule No. 1), dated March 1, 2002 (Docket No. ER01-04-0170-000).

6. Section (h)(ii): Severability. Section (h)(ii) shall apply.

7. Section (h)(iii): FERC Standard of Review and Certain Covenants and Waivers. Section (h)(iii) shall apply.

8. Section (k): Other Provisions/Modifications to the Power Annex.

- (i) **Events of Default.** Clause (i)(ii)(B) of the Power Annex is amended to delete the words "Section [5(a)(ii)][5(a)(ii)(1)]" and replace them with the words "Section 5(a)(ii)".
- (ii) The definition of "Replacement Price" shall be amended by deleting the phrase "at Buyer's Option" in the 5th line and replacing it with "absent a purchase".
- (iii) The definition of "Sales Price" shall be amended by deleting the phrase "at Seller's Option" in the 5th line and replacing it with "absent a sale".
- (iv) Section (i)(iv) shall be amended by adding the following definition in appropriate alphabetical order:

“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.

- (v) The following is added to the end of clause (a)(iii):

(C) The parties acknowledge that all representations made in the Schedule, including those pertaining to non-reliance, shall be part of this Power Annex. In addition, the parties acknowledge that this Power Annex is subject to the confirmation process specified in the Schedule, as well as amendments to the Events of Default, including, but not limited to, the additional Events of Default specified in Part 1(i)(xi), and the reduction of any grace period for involuntary bankruptcies.

- (vi) For purposes of this Agreement, the definition of “Power Transaction” as used in this Agreement (except as used in this Part 6) shall not include Energy Options to purchase, sell or transfer Energy or any Product; provided, however, for purposes of this Part 6 and the Power Annex, Power Transactions shall include Energy Options to purchase, sell or transfer Energy or any Product.

- (vii) Clause (d)(iii) is deleted in its entirety.

- (viii) The definition of “Capacity” is deleted and replaced with the following:

“Capacity” means, for purposes of this Agreement, UCAP and other capacity and reliability products that Party B is required to purchase in connection with the service of its load pursuant to Applicable Law, applicable ISO, EDC and Transmission Provider rules, and the terms hereof.

9. Section (l) Notices for Power Transactions. As set forth in the schedule to the ISDA Master Agreement.

Part 7. Energy Purchases and Sales

(a) Energy Purchases and Purchases of Other Products.

- (i) Party B hereby agrees that Party A shall be its exclusive supplier of (A) Energy with respect to Party B’s sale of Energy to Customers (other than balancing purchases and sales with ISOs under Part 13(b)(iii)), (B) physically or financially settled Hedging Transactions in respect of Energy to hedge the risks associated with Party B’s sales to Customers and (C) such other Products (including Capacity, Ancillary Services and financially settled Products) as required to enable Party B to manage its requirements associated with the Party B Customer Load in accordance with Applicable Law, applicable ISO, EDC and other Transmission Provider rules, and the terms hereof. Party B shall not (except to the extent permitted by Part 13(b)(iii) and Part 5(h)) purchase Energy or other Products from, or enter into any Energy Swap, Energy Option or any other Hedging Transaction with, any other party during the term of this Agreement. Party B will only purchase Energy for sale to Customers, hedge locational basis risk and price risk relating to such sales and purchase other Products to the extent required to enable Party B to manage its requirements associated with the Party B Customer Load with Applicable Law, applicable ISO, EDC and Transmission Provider rules, and the terms hereof.
- (ii) Party B shall purchase Capacity (including UCAP) from or through Party A in an amount equal to the minimum amount necessary to satisfy all requirements imposed by Applicable Law, applicable ISO, EDC and Transmission Provider rules, and the terms hereof, associated with the Party B Customer Load during the term of this Agreement. Party B shall provide Party A with such forecast and other information as Party A may require in a timely manner to ensure that Party A

will be able to supply such Products to Party B. The cost of all such Capacity (including UCAP) shall be for the account of Party B.

- (iii) Party B hereby agrees that it will purchase sufficient UCAP from or through Party A to satisfy the obligations associated with the Party B Customer Load in NYISO for each month during the term of this Agreement. Party B agrees that it will provide Party A with its UCAP requirements in writing by 3:00 pm EPT at least one Business Day prior to the day of the applicable bidding deadline for each NYISO Prompt Month, multi-month and deficiency UCAP auction during the term of this Agreement. Party A agrees that it will then bid Party B's UCAP obligations into the NYISO Prompt Month, multi-month and deficiency UCAP auctions, as required to satisfy Party B's Prompt Month UCAP requirement and to purchase UCAP in such other months as Party B shall direct; provided, that Party A does not guaranty that it will be able to purchase all or any portion of Party B's UCAP obligations at any time and Party A shall have no liability if it fails to purchase all or any portion of Party B's UCAP obligations. Party B also agrees that Party A is hereby authorized on Party B's behalf to (A) bid any forecasted short UCAP position for any month at the maximum rate (unless an alternative rate is agreed to by the parties) for the Prompt Month into the Prompt Month UCAP auction and (B) sell any forecasted long UCAP position for any month bilaterally or through offer into the monthly UCAP auction at the minimum allowable rate as set by the NYISO.
- (iv) All costs and charges for Ancillary Services incurred by Party A in connection with the performance of its obligations hereunder shall be for the account of Party B on a "pass through" basis.
- (v) During the term of this Agreement, Party B shall purchase from Party A a minimum of 1,850,000 Mwhs of Energy for physical delivery in accordance with the following schedule:
 - (A) during the first Contract Year, Party B shall purchase a minimum of 500,000 Mwhs in the aggregate, excluding any volumes of Energy delivered prior to October 1, 2009;
 - (B) during the second Contract Year, Party B shall purchase a minimum of 650,000 Mwhs in the aggregate; and
 - (C) during the third Contract Year, Party B shall purchase a minimum of 700,000 Mwhs in the aggregate (with respect to each such Contract Year, the "Minimum Energy Quantity").

If Party A has exercised its right to extend the term of this Agreement, Party B shall purchase a Minimum Energy Quantity of 700,000 Mwhs in the aggregate during the fourth Contract Year. Party A and Party B hereby acknowledge and agree that, for purposes of determining whether Party B has satisfied the Minimum Energy Quantity requirement for any Contract Year, (i) the aggregate notional amount of Energy Swaps between Party A and Party B for which Party B has paid the applicable Energy Adder in such Contract Year, net of the aggregate notional amount of any Energy Swaps with respect to which Party B has received a price credit pursuant to Part 7(c) in such Contract Year, shall be counted towards such Minimum Energy Quantity as if such net notional quantity had been physically delivered, and (ii) any quantity of Energy delivered pursuant to a Power Transaction for which no Energy Adder was paid shall not be counted towards such Minimum Energy Quantity.

In the event Party B fails to purchase the applicable Minimum Energy Quantity during any Contract Year (including due to the occurrence of an Early Termination Date), Party B shall pay to Party A, on the first Business Day immediately following the last day of such period or (if such failure is due to the occurrence of an Early Termination Date) on the date specified in Section 6 after the occurrence of such Early Termination Date (as the case may be), an amount equal to the then-current Energy Adder multiplied by the positive difference between the Minimum Energy Quantity for such period and the number of Mwhs of Energy actually purchased by Party B during

such period; provided, however, that, for the avoidance of doubt, upon the occurrence of an Early Termination Date, Party B shall pay to Party A such an amount in respect of each such period or partial period that has not yet occurred, including the Extended Term to the extent Party A has not declined its option to extend the term of this Agreement. Notwithstanding the foregoing and not in limitation of any other amounts that would be payable by Party B hereunder, the parties agree that, if an Early Termination Date occurs as the result of the occurrence of an Additional Termination Event with respect to Party A, Party B shall not be liable for (A) the Energy Adder with respect to any portion of the Minimum Energy Quantity that Party B had not purchased for the Contract Year in which such Early Termination Date occurred and (B) the Energy Adder with respect to the Minimum Energy Quantity in any subsequent Contract Years. If, in any Contract Year, Party B exceeds the Minimum Energy Quantity for such Contract Year, the Minimum Energy Quantity for the next Contract Year shall be reduced by the amount of any such excess.

- (vi) Party A will enter into Power Transactions with Party B to supply Energy at fixed and floating prices to Party B, and Party A will enter into Energy Swaps (including basis swaps) with Party B to enable Party B to (A) hedge the market risk associated with its sales of Energy to its Customers, and (B) to satisfy Party B's obligations under Part 12(a)(xiv). The parties shall enter into all such Transactions on the terms set forth herein or as otherwise agreed.
- (vii) Party A will enter into Energy Options with Party B on the terms set forth herein or as otherwise mutually agreed by the parties to offset the market risk associated with fixed-price sales of Energy by Party B to its Customers.
- (viii) Party B shall purchase the Product known in the energy industry as "renewable energy credits" ("RECs") solely to satisfy the requirements of Applicable Law; provided, that, notwithstanding the foregoing, Party B shall be permitted to purchase RECs in an amount greater than required by Applicable Law ("Additional RECs") and the Product known in the energy industry as "carbon offsets" where, and to the extent that, Party B has committed in an agreement with a Customer to purchase Additional RECs and carbon offsets to offset such Customer's energy usage; provided, that, Party B shall not commit to purchase, or purchase, an aggregate amount of Additional RECs and carbon offsets in any Contract Year for an aggregate amount in excess of \$500,000.

(b) Contract Price for Energy, Energy Swaps and Energy Options.

- (i) Except with respect to Sleeve Transactions (which shall be priced in accordance with Part 7(e)(iii)) and except as specified in Part 7(b)(ii) with respect to locational basis swaps, the Contract Price for Energy purchased by Party B from Party A pursuant to any Transaction shall be the sum of (A) the Quoted Price, plus (B) the applicable Energy Adder. The fixed and floating prices for any Energy Swaps shall be the applicable Quoted Prices, plus an Energy Adder, if applicable. Party A hereby agrees that it will provide Quoted Prices for Energy at various Delivery Points to Party B, upon Party B's reasonable request. Once Party A has provided Party B with a Quoted Price with respect to a Transaction and Party B has not objected to such Quoted Price when such quote is given, the Quoted Price for such Transaction shall be final and binding.
- (ii) For the avoidance of doubt, the Contract Price for any locational basis swap, as determined by Party A, shall be the price quoted by Party A and shall not include an Energy Adder. Purchases of Energy to hedge locational basis risk shall not be credited toward the Minimum Energy Quantity for any Contract Year.
- (iii) For the avoidance of doubt, Party A and Party B acknowledge and agree that an Energy Adder shall not be added to amounts payable by Party A under any Transaction.

- (c) Price Credits. For all sales of Energy by Party B to Party A and for all Energy Swaps that Party A agrees unwind existing positions, Party A will credit to Party B an amount equal to \$0.625/Mwh in addition to the Quoted Purchase Price(s) for such Transactions; provided, however, that such credit shall not apply to (i) Prompt Month and intra-month Transactions and (ii) locational basis swaps. Once Party A has provided

Party B with a Quoted Purchase Price with respect to a Transaction and Party B has not objected to such Quoted Purchase Price when such quote is given, the Quoted Purchase Price for such Transaction shall be final and binding. The quantity of Energy purchased by Party A from Party B shall be subtracted from the aggregate volume of Energy purchased hereunder during the relevant Contract Year for purposes of determining whether the applicable Minimum Energy Quantity has been purchased by Party B.

(d) Applicability of Energy Adder. If the fixed price for any Energy Swap includes an Energy Adder, Party B shall not be obligated to pay an Energy Adder with respect to that portion of any Power Transaction which at the time of determination is hedged by such Energy Swap.

(e) Sleeve Transactions.

(i) Party B shall have the right to obtain price quotes from third parties for physically settled Energy purchase transactions where Party B would be the buyer of Energy, Energy Swaps where Party B would be the fixed price payer and basis swaps. Party B may request that Party A enter into any such purchase transaction or Energy Swap with any such third party on the price and, with respect to physical purchase transactions, delivery terms negotiated by Party B; provided, however, that Party A shall be under no obligation to enter into any such transaction with a third party unless Party A is satisfied with such transaction and such third party, in each case as determined by Party A in its sole discretion; and, provided, further, that (A) Party A shall not be obligated in any case to enter into any such third party transactions if the aggregate actual and notional quantities of Energy to be delivered under all such outstanding third party transactions exceed (x) 200,000 Mwhs in the initial Contract Year, and (y) for each subsequent Contract Year, 40% of the aggregate quantity of Energy delivered to Party B in the prior Contract Year pursuant to the terms of this Agreement, as determined by Party A, and (B) no such third party transaction may have a delivery period, calculation period or settlement date that occurs after the date that is 12 months prior to the maturity date of the Notes. Notwithstanding the foregoing, Party B will not request that Party A enter into any transaction with a third party in respect of any financially settled Option Transaction.

(ii) Upon Party A's execution of a transaction with a third party pursuant to Part 7(e)(i) above, Party A and Party B shall be deemed automatically and immediately to have entered into a Sleeve Transaction (as defined below) hereunder.

(iii) Contract Price for Sleeve Transactions. With respect to each Transaction entered into by Party A with Party B that serves as a back-to-back offsetting hedge of a physically settled Energy transaction or an Energy Swap entered into between Party A and a third party pursuant to Part 7(e)(i) (each such transaction between Party A and Party B, a "Sleeve Transaction"), the per Mwh Contract Price payable to Party B in respect of such Transaction shall be equal to the sum of the following amounts:

(A) The relevant per Mwh contract price or fixed price to be paid by Party A to such third party pursuant to the transaction that corresponds to such Sleeve Transaction (the "Base Price") plus the applicable Energy Adder; plus

(B) The total amount of the following costs and expenses to the extent incurred by Party A in respect of the third party transaction and/or in respect of the related Sleeve Transaction divided by the contract quantity associated with each such transaction: brokerage commissions, interest costs for required cash margin, costs associated with other forms of posted collateral and similar costs and expenses incurred by Party A with respect to the third party transaction and/or the related Sleeve Transaction mutually agreed by the parties.

(f) [Intentionally Omitted.]

- (g) Firm Basis. Unless otherwise specified in a Transaction, all purchases and sales of Energy made under this Agreement shall be made on a Firm (LD) basis.
- (h) Credit Support To EDCs and ISO. Party A will act as the load-serving entity, financially-responsible party or qualified scheduling entity, as the case may be, in respect of the Party B Customer Load in each relevant ISO through which Party B serves Customers and Party B shall take all actions reasonably requested by Party A, including to execute and deliver any required agreements, to enable Party A to so act. In connection therewith, Party A agrees to provide Credit Support on behalf of Party B to meet EDC and ISO credit requirements on terms reasonably acceptable to Party A and relating to the Transactions entered into under this Agreement; provided, however, that Party A shall not be obligated to provide or maintain any such Credit Support on terms and in amounts that are unsatisfactory to Party A, as determined by Party A in its reasonable discretion. In the event that Party A determines that any ISO's or EDC's credit support requirements are, or have become, unreasonable, Party A will cooperate with Party B in an attempt to amend the credit requirements of the applicable EDC or ISO. To the extent that Party A provides Credit Support to any EDC or ISO, Party B shall (i) reimburse Party A for any Credit Support Amounts actually paid by Party A in accordance with Part 12(a)(xviii), and (ii) pay the applicable Credit Support Fees with respect to the Credit Support Amount in accordance with Part 9(f).
- (i) ISO and Related Charges. Notwithstanding anything to the contrary and without limitation to Part 5(r) hereof, Party B shall reimburse Party A for, and shall indemnify Party A against and hold Party A harmless from, charges, costs and penalties assessed by any EDC or ISO relating to the performance by Party A of its obligations under this Agreement; provided, however, that Party B shall have no obligation to reimburse or indemnify Party A with respect to any other charges, costs or penalties that are assessed as the direct result of Party A's error, negligence or willful misconduct, and Party A shall be solely responsible for any such charges, costs or penalties.
- (j) Designated Jurisdictions.
- (i) The parties acknowledge and agree that Party A shall have no obligation to supply any Energy or any other Product (A) to Party B in any jurisdiction not listed on Exhibit 7(j), or (B) with respect to potential Customers served by any EDC and/or ISO that is not listed as an approved EDC and/or ISO on Exhibit 7(j), in each case unless and until Party A (x) has completed a market, regulatory and utility rules review for the applicable jurisdiction and the applicable EDC and/or ISO within such jurisdiction and (y) has provided written notice to Party B that based upon the results of such review Party A is prepared to commence supply of Energy and any other Product in such jurisdiction and with respect to such EDC and/or ISO. Party A shall use commercially reasonable efforts to complete a review with respect to any jurisdiction and/or any such EDC and/or ISO in a timely fashion following a written request. Unless approved by Party A in accordance with this Part 7(j), Party B agrees that it shall be prohibited from entering into transactions with Customers for the supply of Energy or any other Product in any jurisdiction not listed on Exhibit 7(j), or with respect to any potential Customer served by an EDC and/or ISO that is not listed on Exhibit 7(j) with respect to the jurisdiction in which such potential Customer is located. Exhibit 7(j) shall be amended from time to time to include any jurisdictions or EDCs and/or ISOs approved by Party A pursuant to this Part 7(j).
- (ii) If there is a change in Applicable Law in any Designated Jurisdiction or if a proceeding is initiated against Party A, Party B and/or any EDC or ISO, which Party A reasonably determines could have an adverse effect on the results of any market, regulatory or utility rules review performed by Party A with respect to a Designated Jurisdiction or an approved EDC or ISO, then Party A shall have the right to initiate an additional market, regulations and/or utility rules review with respect to such Designated Jurisdiction, approved EDC or ISO (such review, a "Bring Down Review"). Based on the results of any such Bring Down Review, Party A may amend Exhibit 7(j) to remove any affected EDC or ISO or Designated Jurisdiction.

Part 8. Forecasting and Scheduling

(a) Forecasting.

- (i) Party B hereby agrees that it shall be solely responsible for its own load forecasting with respect to purchases of Energy, Capacity, Ancillary Services and related Products. Party B also agrees that it will cooperate with Party A to modify or improve Party B's forecasting performance if requested by Party A. For the avoidance of doubt, Party A will not be responsible for any aspect of Party B's load forecasting responsibility and Party B shall be responsible for any costs or penalties incurred as a result of any forecasting error. Party B shall provide Party A with load forecasts in a timely manner and, from time to time, upon the request of Party A. With respect to Party B's obligations to provide forecasts, UCAP requirements and other information to Party A with respect to purchases of UCAP set forth in Part 7(a)(ii) and 7(a)(iii), Party A will either (i) provide Party B with direct access to the relevant NYISO data to allow Party B to prepare and provide such forecasts, UCAP requirements and other information, or (ii) provide Party B with the UCAP requirements specified for Party B by the NYISO in a timely manner such that Party B can provide such forecasts, UCAP requirements and other information at the time specified in Parts 7(a)(ii) and 7(a)(iii). In the event that Party B fails to deliver a load forecast in respect of any Day during the term, Party A shall use the forecast provided by Party B for the previous Day. Party B hereby further agrees that it will, unless it has received prior written approval to do otherwise from Party B, at all relevant times, (i) purchase between 85% and 115% of its daily forecasted load, in New York, in the NYISO Day-Ahead Market ("DAM"), and in the geographic area served by NEPOOL, in the NEPOOL DAM, and (ii) purchase physical Energy to cover between 85% and 115% of its average daily forecast non-MPCE indexed Party B Customer Load in ERCOT, with respect to both clause (i) and (ii), for the on-peak (HE 0800 to HE 2300 EPT) portions of daily schedules.
- (ii) Party B shall provide Party A with Party B's projected Energy needs for daily, monthly, and seasonal periods. Subject to Part 8(b), Party B shall provide such projections at such times and in such format as may be reasonably requested by Party A.

(b) Energy Scheduling.

- (i) Party B hereby further agrees that it shall take all actions reasonably requested by Party A, including to execute and deliver any required agreements, to enable Party A to act as Party B's agent to schedule with all approved ISOs, on Party B's behalf, receipt of all Energy purchased by Party B from Party A to serve the Party B Customer Load in the Designated Jurisdictions. Party A hereby agrees that it will act as Party B's agent to schedule with such ISOs, on Party B's behalf, delivery of all Energy purchased by Party B from Party A to serve the Party B Customer Load in such jurisdictions.
- (ii) With respect to the NYISO and NEPOOL Party B hereby agrees that it will, based on its own load forecast, deliver to Party A (i) with respect to the NYISO, by 4:00 p.m. EPT on the second Business Day prior to the relevant date of delivery, and (ii) with respect to NEPOOL, by 9:30 a.m. EPT on the first Business Day prior to the relevant date of delivery, its requested Schedules in writing for delivery of Energy in the DAM of such ISO, by transmission zone, in respect of each day of the term of this Agreement. Such Schedules shall be in an electronic format satisfactory to Party A, and shall be compliant, in form and substance, with the requirements of the relevant ISO. Party A agrees that it will then bid the corresponding Schedules provided by Party B into the DAM for all transmission zones, as required and that it will make commercially reasonable efforts to accommodate any changes to such schedules that are submitted to it by Party B in writing more than one hour before the applicable ISO scheduling deadline for such day.
- (iii) With respect to ERCOT, Party A will schedule the delivery and receipt of all Energy purchased by Party B from Party A as required by ERCOT. Party A will make commercially reasonable efforts to accommodate Party B's changes to any such schedules if such changes are submitted to Party A

in writing more than one hour before the applicable ERCOT scheduling deadline. Party A will schedule all Ancillary Services specified and required by ERCOT with respect to Energy purchased by Party B pursuant to this Agreement.

- (iv) The submission by Party B to Party A of a Schedule shall constitute an agreement by Party B to purchase the quantity of Energy indicated on such Schedule, as balanced by the relevant ISO to satisfy the requirements of the Party B Customer Load served by such ISO on such day, at the Delivery Points reflected on such Schedule. In the event that Party B fails to deliver to Party A a Schedule for the delivery of Energy in respect of any day by the applicable scheduling deadline, the last Schedule submitted by Party B to Party A for the delivery of Electric Energy shall be deemed to be the applicable Schedule for such day.

Part 9. Payment Terms; Financing Fees; Third Party Credit Support Fees

- (a) Energy Payments. Notwithstanding any provision herein to the contrary, including clause (d) of the Power Annex, Party A shall deliver an invoice to Party B for Energy on or about the 10th calendar day of each month beginning in the month immediately succeeding the month of commencement of the term of this Agreement. Each such invoice shall itemize all amounts owed by Party B for Energy delivered and received during the previous month and all other amounts due to Party A under this Agreement that have accrued in the previous month, including, but not limited to, for Capacity and Ancillary Services and all other amounts due Party A under the Agreement; provided, however, that any failure by Party A to deliver an invoice to Party B shall not in any way affect Party B's obligation to pay such amounts or the Due Date for the payment of such amounts. If the actual quantity of a Product delivered is not known by the invoice date, the invoice will be prepared based on the quantity of such Product that was scheduled for delivery in such month. The invoiced quantity will then be adjusted to reflect the actual delivered quantity of such Product on the following month's invoice or as soon thereafter as actual delivery information is available. Except as otherwise provided in Parts 9(c), (e) and (f), Party B will pay each invoice on or before the 20th day of the month such invoice is received (the "Energy Settlement Date"); provided, however, that such amounts shall not be considered past due if such amounts are paid to Party A on or before the 10th day of the third month following the month of delivery or accrual, as applicable (each such date, an "Energy Due Date").
- (b) [Intentionally Omitted.]
- (c) Swap Payments. Promptly after the end of each Calculation Period for each outstanding Energy Swap, Party A shall deliver to Party B invoices in respect of Energy Swap settlement payments that are due with respect to such Transactions. Energy Swap settlement payments shall be due on the fifth Business Day after the end of each relevant Calculation Period (the "Energy Swap Settlement Date"); provided, however, that Energy Swap settlement payments due from Party B shall not be deemed past due so long as such payments are made by the Energy Due Date that occurs in the third month following the end of the applicable Calculation Period.
- (d) Option Payments. Unless otherwise required by Party A, the premium payment for Option Transactions will be due on the next Energy Settlement Date after the Option Transaction is entered into; provided, however, that any such premium payment shall not include the Energy Adder or other fees and shall not be deemed past due so long as such payment is made by the Energy Due Date that applies to such Energy Settlement Date. Settlement payments for exercised Option Transactions shall be subject to the payment terms applicable to the underlying transaction. For the avoidance of doubt, the Contract Price for Energy delivered pursuant to the exercise of any physically settled Option Transactions and Option Transactions on Energy Swaps will include the relevant Energy Adder.
- (e) Financing Fees. Party B shall pay Financing Fees with respect to all Outstanding Amounts. Financing Fees shall accrue on each Outstanding Amount from and excluding the Settlement Date or other date on which such Outstanding Amount was originally due for payment and through and including the date such amount is paid. Financing Fees shall be payable monthly in arrears on the 10th day of each month (the "Financing Fee Settlement Date"); provided, however, that Financing Fees shall not be deemed past due so

long as such payments are made by the Energy Due Date that occurs in the third month following the applicable Financing Fee Settlement Date.

- (f) Credit Support Fees. With respect to any outstanding Credit Support Amount, Party B shall pay to Party A a Credit Support Fee. The Credit Support Fee shall be calculated daily and shall be paid monthly in arrears on each Energy Settlement Date; provided, however, that the Credit Support Fee shall not be deemed past due so long as payment is made on or prior to the next occurring Energy Due Date.

Part 10. Third Party Close-Outs and Novations; Financing

(a) [Intentionally Omitted]

(b) Third Party Transactions.

- (i) Within 30 days of the Closing Date, Party B shall either (A) terminate and liquidate or (B) novate to Party A, as the case may be, all of the outstanding Hedging Transactions with third parties that are listed on Exhibit 10(b)(i). With respect to such transactions on Exhibit 10(b)(i) that Party B elects to terminate and liquidate (such transactions, the "Third Party Transactions"), such terminations and liquidations may result in termination payments to be made by Party B to one or more third-parties at the relevant time of such terminations and liquidations in amounts to be negotiated between each such third party and Party A (such payments, the "Third Party Liquidation Payments").
- (ii) Concurrently with the termination and liquidation of each Third Party Transaction, Party A shall enter into a Hedging Transaction with Party B that corresponds with such terminated Third Party Transaction (each such corresponding transaction, a "Corresponding Third Party Transaction") having the same notional quantity, floating price and remaining tenor; provided, however, that the fixed price applicable to each such Hedging Transaction shall be the fixed price used to calculate the Third Party Liquidation Payment for the corresponding terminated Third Party Transaction.
- (iii) With respect to such transactions on Exhibit 10(b)(i) that Party B elects to novate to Party A (the "Third Party Novation Transactions"), concurrently with the novation of such transactions, Party A and each relevant third party shall enter into back-to-back offsetting Hedging Transactions having the same notional quantities, floating prices and remaining tenors with respect to each Third Party Novation Transaction and otherwise on terms satisfactory to Party A in its sole discretion. If a third party requires a payment in exchange for, or as a condition to, executing any novation, Party B shall make such payment to the relevant third party (such payments, the "Third Party Novation Payments").
- (iv) On the Closing Date, Party A shall inform Party B of the then-current aggregate mark-to-market exposure associated with each transaction listed on Exhibit 10(b)(i) (each, a "Third Party Notional Amount"). In addition to any other payments required to be made by Party B in connection herewith, Party B shall pay to Party A, from and including the Closing Date, to and excluding the latest settlement date scheduled to occur with respect to each such transaction, a monthly fee (the "Third Party Exposure Fees") on the relevant Third Party Notional Amount associated with each such transaction; provided, however, that, once a transaction listed on Exhibit 10(b)(i) becomes a Third Party Transaction (i.e., is terminated and liquidated), Third Party Exposure Fees shall cease to accrue on the Third Party Notional Amount attributable to such transaction. The formula used to calculate all Third Party Exposure Fees shall be set forth on Exhibit 10(b)(iv). All Third Party Exposure Fees shall be payable monthly in arrears on the 10th day of each month (each, an "Exposure Fee Due Date"); provided, however, that each such payment shall not be considered past due if such payment is paid to Party A on or before the 10th day of the third month following the applicable Exposure Fee Due Date.

- (v) On and subject to the terms and conditions of this Agreement and to enable Party B to pay any Third Party Liquidation Payments and any Third Party Novation Payments, Party A shall make one or more loans to Party B (each such loan, a "Loan") on and after the Closing Date and in amounts equal to any Third Party Novation Payments and/or Third Party Liquidation Payments; provided, that, the commitment of Party A to make any such Loans shall expire on the 30th day following the Closing Date.
 - (vi) Party B agrees that, to secure its obligations and potential obligations under the Third Party Novated Transactions and under the Loans relating to any Third Party Liquidation Payments, it shall deliver to Party A on the Closing Date cash in an amount equal to that portion of the Third Party Notional Amount that Party A attributes to the mark-to-market exposure for calculation periods under the transactions listed on Exhibit 10(b)(i) that commence more than one calendar year from the Closing Date (each, a "Third Party Future Calculation Period"). All such cash shall be held by Party A in the Swap Note Sub Account; provided, however, that, on each Energy Swap Settlement Date following October 31, 2009 and as long as no Default or Potential Termination Event has occurred and is continuing with respect to Party B, Party A shall transfer from the Swap Note Sub Account to the Party A Sub Account an amount equal to that portion of the Third Party Notional Amount of each such transaction attributed to the Third Party Future Calculation Period occurring eleven months following such Energy Swap Settlement Date.
 - (vii) If Party A and Party B do not agree on a flat fee to be paid by Party B to Party A for entering into the Corresponding Third Party Transactions and the Third Party Novation Transactions, Party B shall pay to Party A the applicable Energy Adder in respect of the notional amounts relating to each such Corresponding Third Party Transaction and each such Third Party Novation Transaction. The parties further agree that the aggregate notional amounts of the Corresponding Third Party Transactions and the Third Party Novation Transactions shall be counted toward the Minimum Energy Quantity for the initial Contract Year.
- (c) Loan Accounting.
- (i) Party A shall record in its records the date and amount of each of the Loans and each repayment thereof. The aggregate unpaid principal amount so recorded shall be rebuttably presumptive evidence of the principal amount of the Loans owing and unpaid. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the obligations of Party B hereunder or under any Promissory Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.
 - (ii) At the request of Party A, the Loans shall be evidenced by Promissory Notes, substantially in the form of Exhibit 10(c)(ii), with appropriate insertions, payable to the order of Party A in a face principal amount equal to the principal amount of the applicable Loan.
- (d) Interest.
- (i) Party B promises to pay interest on the unpaid principal amount of each Loan for the period commencing on the date of such Loan until such Loan is paid in full at the applicable rate per annum set forth on Exhibit 10(d)(i) hereto with respect to such Loan; provided, that (A) at any time an Event of Default exists, the applicable rate of interest corresponding to the Loan shall be the Default Rate and (B) any such increase may thereafter be rescinded by Party A. In no event shall charges constituting interest payable by Party B to Party A exceed the maximum amount or the rate permitted under any Applicable Law, and if any such part or provision of this Agreement is in contravention of any such Applicable Law, such part or provision shall be deemed amended to conform thereto. Amounts payable as the Third Party Exposure Fees shall, for the purposes of this clause (i), be considered interest payable on the Third Party Notional Amount. Accordingly, the proviso set forth above shall apply, and shall be calculated on the Third Party Notional Amount.