

- (ii) Accrued interest on each Loan shall be payable in arrears on the 10th day of each month during the term of this Agreement; provided, however, that each such payment shall not be considered past due if such payment is paid to Party A on or before the Energy Due Date that relates to the Energy Settlement Date that occurs during the month such payment was originally due. After maturity and at any time an Event of Default exists, all accrued interest on all Loans shall be payable in cash and on demand at the rates specified in Part 10(d)(i).
- (e) Loan Prepayments. Party B may not make any prepayment on any Loan hereunder.
- (f) Loan Repayments. The Loans shall be paid at the times and in the amounts set forth on Exhibit 10(d)(i) attached hereto. Notwithstanding the foregoing, the outstanding principal balance of the Loans shall be paid in full on their respective Maturity Dates; provided, however, that each such payment shall not be considered past due if such payment is paid to Party A on or before the Energy Due Date that relates to the Energy Settlement Date that occurs during the month such payment was originally due.
- (g) Manner of Funding; Alternate Funding Offices. Notwithstanding any provision of this Agreement to the contrary, Party A shall be entitled to fund and maintain its funding of all or any part of the Loans at its sole discretion. Party A may, if it so elects, fulfill its commitment to make any Loan by causing any Affiliate of Party A to make such Loan; provided, that in such event for the purposes of this Agreement such Loan shall be deemed to have been made by Party A and the obligation of Party B to repay such Loan shall nevertheless be to Party A and shall be deemed held by it, to the extent of such Loan, for the account of such Affiliate.
- (h) Loans Generally. The parties agree that all Loans by Party A to Party B hereunder shall be deemed Transactions entered into under this Agreement.
- (i) Security Interests and Collateral. Simultaneously with the novation or liquidation of transactions under Part 10(b), Party B shall cause the applicable third party to such transaction to (A) assign to Party A any security interest held by such third party (in any capacity) in any assets owned by Party B or any Specified Entity of Party B, including any transactions or agreements between Party B and any Customer of Party B; and (B) transfer any existing collateral securing such transactions held by such third party (to the extent such collateral was not liquidated in connection with the close-out and liquidation of such transactions).

Part 11. Collateral Accounts; Payments

- (a) General. Party B as to itself as set forth below, each Specified Entity of Party B and Party B in respect of each of its Specified Entities, agrees with Party A that, until the Discharge of ISDA Obligations, Party B shall establish and maintain only the accounts described in this Part 11 and shall release funds or request release of funds from such accounts only as permitted by this Part 11 (except for the Escrow Account, which shall not be subject to the limitations set forth herein).
- (b) Lockbox Accounts.
 - (i) Party B represents and warrants that the following bank accounts are the sole bank accounts utilized by Party B to receive funds from EDCs and other payers (each a "Lockbox Account"):
 - (A) Account Number: 2000008695525 in the name of: Party B; Institution: Wachovia
 - (B) Account Number: 20000030372683 in the name of: Party B; Institution: Wachovia
 - (C) Account Number: 01892476728 in the name of: Party B; Institution: Huntington

Each Lockbox Account shall be in the name of Party B and shall each, at all times, be under the control of Party A. In order to give effect to the foregoing, Party A, Party B and each Institution

set forth above shall enter into an Account Control Agreement substantially in the form of Exhibit 11(b)(i)(A) and Exhibit 11(b)(ii), as the case may be, on the Closing Date.

- (ii) Party B and each Specified Entity of Party B shall cause all payments due to it of any nature to be paid directly into one or more Lockbox Accounts. If Party B or any Specified Entity of Party B receives any funds directly in contravention of the preceding sentence, it shall immediately deposit such funds in a Lockbox Account.
 - (iii) As of the close of business on each Business Day, all funds in each Lockbox Account shall be transferred in accordance with the applicable Account Control Agreement to the Party A Sub Account.
 - (iv) Account number 51044923 at Amegy shall be closed within five Business Days of the Closing Date and shall have no funds in such account on, or after, the Closing Date.
- (c) Operating Account.
- (i) Party B shall identify to Party A or establish the Operating Account on or before the Closing Date at Wachovia. The Operating Account shall be in the name of Party B and shall, at all times, be under the control of Party A. In order to give effect to the foregoing, Party A, Party B and Wachovia shall enter into the Wachovia Control Agreement substantially in the form of Exhibit 11(b)(i)(B) on the Closing Date.
 - (ii) Only amounts transferred from the Party A Sub Account may be deposited in the Operating Account.
 - (iii) Funds in the Operating Account shall be released solely for the following purposes and in the following order of priority:
 - (A) first, for the payment of Taxes, provided that, no less than two Business Days prior to the proposed release of funds, Party A shall have received a certificate of a Responsible Officer stating the amount of such Taxes and the jurisdiction to which such Taxes are owed; and
 - (B) second, for working capital expenses (other than amounts payable to Party A) required for the next week, provided that, not less than two Business Days prior to the proposed release of funds, Party A shall have received a certificate of a Responsible Officer, acceptable to Party A in its sole discretion, stating the amount to be made available to Party B and that such amount shall be used solely to pay working capital expenses contemplated by the then current Budget (as amended from time to time in accordance with Part 12(a)(xiii)) and that, after giving effect to the expenditure of the funds released, Party B's forecasted aggregate expenditures for the then current month and any subsequent month shall not exceed 110% of the forecasted aggregate expenditures for the then current month and any subsequent month covered by the then current Budget determined on a month to month basis.
 - (iv) Not later than the fifth Business Day of each month, a Responsible Officer shall deliver a certificate to Party A (which certificate shall be acceptable to Party A in its sole discretion) stating the balance of the Operating Account as of the first Business Day and as of the last Business Day of the immediately preceding month and confirming that all payments from the Operating Account during such month were in accordance with the then current Budget.
- (d) Party A Sub Account. The Party A Sub Account shall be in the name of Party A. Funds in the Party A Sub Account shall be released in the following order of priority:

- (A) first, to the payment of all amounts payable under this Agreement on account of Party A's fees and any legal fees, costs, and expenses or other liabilities of any kind incurred by Party A in connection with this Agreement (including the Reimbursement Obligation);
- (B) second, to any amount payable to Party A that is at such time overdue and for which Party B is incurring a default rate of interest (including all payments for which the Due Date has occurred without payment in full);
- (C) third, to the payment of any amount due (whether for principal or interest) on the Loans and any Third Party Exposure Fees, in each case, where the related Energy Swap Settlement Date has occurred;
- (D) fourth, to the payment of any other amount due where the related Settlement Date has occurred;
- (E) fifth, to fund the dividend or distribution of amounts necessary to make intercompany loans to MX Energy or MX Canada permitted hereunder;
- (F) sixth, to the Operating Account, in the amounts determined in accordance with clause (c)(iii) of this Part 11;
- (G) seventh, to pay any other amount required for the Discharge of ISDA Obligations;
- (H) eighth, if funds are to be used for any other purpose, such funds shall be released only upon the approval of Party A; and
- (I) ninth, after the Discharge of ISDA Obligations, to Party B.

Party A shall apply any and all amounts due to Party A from funds in the Party A Sub Account from time to time and in the order of priorities set forth above.

- (e) Swap Note Sub Account. The Swap Note Sub Account shall be in the name of Party A. Funds in the Swap Note Sub Account shall be transferred to the Party A Sub Account as provided in Part 10(b)(vi).
- (f) Replacement Custodial Account. If at any time The Royal Bank of Scotland plc's Credit Rating falls below BBB- from S&P or Baa3 from Moody's, then Party B may require that Party A transfer the Party A Sub Account and the Swap Note Sub Account to a Qualified Custodian pursuant to a custodial agreement in form and substance acceptable to Party A. For the avoidance of doubt, following any such transfer of the Party A Sub Account and the Swap Note Sub Account, the terms of such custodial agreement governing the disbursement of funds from such transferred accounts shall be consistent with Part 11(d) and Part 11(e), respectively.
- (g) Other Accounts.
 - (i) Party B and each Specified Entity of Party B (other than MX Energy (as permitted pursuant to the terms of the other Master ISDAs)) shall have no accounts other than the Lockbox Accounts, the Operating Account, the accounts described in this Part 11(g) and the Escrow Account, and shall not release funds or request release of funds from such accounts other than as permitted by this Part 11 (except for the Escrow Account, which shall not be subject to the limitations set forth herein).
 - (ii) MX Canada maintains an account at Royal Bank of Canada, Toronto (Account Number: 1329788). Within 30 days of the Closing Date, Party B, MX Canada and Royal Bank of Canada, Toronto shall have entered into an agreement, in form and substance satisfactory to Party A,

permitting Party A to direct the disposition of such account upon notice to Royal Bank of Canada, Toronto.

- (iii) MX Holdings maintains brokerage accounts at Morgan Stanley, New York (Account Number 796011175002) and Deutsche Bank Securities, Inc., New York (Account Number: 61619603). The only assets in such accounts are Old Notes held by MX Holdings that shall be canceled on the Closing Date. MX Holdings shall not hold any other assets in such accounts. Promptly following the Closing Date, such accounts will be closed.
- (iv) With respect to the account of Bill Matrix, Inc. ("Bill Matrix") at The Bancorp Bank, Delaware (Account Number 2421002170) maintained for the benefit of Party B, Party B will (A) deliver to Bill Matrix, on or before the Closing Date, a payment direction letter acceptable to Party A instructing Bill Matrix to continue making all payments directly to a Lockbox Account, (B) deliver to Bill Matrix, as soon as practicable after the Closing Date, but in no event more than 30 days thereafter, a payment direction letter acceptable to Party A giving Bill Matrix irrevocable instructions to continue making payments directly to a Lockbox Account and directing Bill Matrix to only accept changes to such payment instructions from Party A (and will use commercially reasonable efforts to obtain Bill Matrix's signed agreement to obey such instructions) and (C) use commercially reasonable efforts to enter into arrangements satisfactory to Party A with respect to such account that will have the effect of protecting Party B's assets in such account from credit exposure to Bill Matrix, which arrangements may include an agreement among Party B, Bill Matrix and The Bancorp Bank, Delaware granting Party B control over such account and converting such account to a segregated account.
- (h) Documentation. Party B shall provide such documents in respect of the accounts described in this Part 11 (other than the Escrow Account) and their establishment and maintenance as Party A shall from time to time reasonably request.
- (i) Certificates. Each certificate to be delivered by a Responsible Officer pursuant to this Part 11 shall include a statement that no Default or Potential Termination Event shall have occurred and is continuing both before and after giving effect to the release of funds contemplated by such certificate. Funds shall not be released unless such statement is included in the applicable certificate.
- (j) Investments. Amounts in the Operating Account may be invested by Party B in Permitted Investments described in clauses (i) through (iii) of the definition thereof. Any losses attributable to the investment of amounts in such accounts shall not limit or modify the obligation of Party B to make any payments required to be made to Party A under this Agreement.

Part 12. Affirmative Covenants

- (a) Each Specified Entity of Party B, Party B in respect of each of its Specified Entities and Party B with respect to itself agrees with Party A that, at all times prior to the Discharge of ISDA Obligations:
 - (i) Existence; Conduct of Business. Such party shall preserve and maintain (A) its legal existence as a corporation, limited liability company, partnership or other similar entity, as applicable, in good standing under the laws of the jurisdiction of organization, (B) its qualification to do business in each other jurisdiction where such qualification is required, except to the extent that failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect and (C) all of its licenses, rights, privileges and franchises necessary for the maintenance of its existence and its qualification to do business, except to the extent that could not reasonably be expected to result in a Material Adverse Effect.
 - (ii) Payment of Obligations and Tax Filings. Such party shall:

- (A) file all Tax returns that are required to be filed and pay all of its obligations, including liabilities for Taxes, except where (i) (x) the validity or amount of such payment is being contested in good faith by appropriate proceedings and (y) such party has accrued for or set aside on its books adequate reserves with respect to such payment in accordance with GAAP and (ii) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.
 - (B) deliver to Party A all tax forms and other documents necessary to permit Party A to both receive payment made by such party, and confirm that all payments made by such party shall be received free of withholding tax or deduction or stamp, registration or similar tax.
- (iii) Insurance. Such party shall maintain the types of insurance set forth on Exhibit 12(a)(iii) and, upon request by Party A, such other insurance as is customary for entities in the same industry, and with reputable and financially sound carriers. The policies for each type of insurance will be issued by insurers, and have such terms and conditions, as are and remain satisfactory to Party A. Such party shall cause all such insurance to name Party A as an additional insured and/or loss payee, as appropriate, and to provide that no cancellation, change in amount or change in coverage shall be effective without 30 days' prior written notice thereof to Party A.
- (iv) Books and Records; Inspection Rights; Accounting and Accounting Matters.
- (A) Such party will keep proper books and records in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities in accordance with GAAP. Such party will permit Party A or any representative thereof, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested, provided that in the case of any visit by Party A other than when Default or Potential Termination Event has occurred and is continuing, Party A shall be required to provide not less than three Business Days notice of its intent to inspect and such inspections shall occur during normal business hours.
 - (B) Such party shall authorize the Auditor (whose fees and expenses shall be for the account such party) to communicate with the officers and designated representatives of Party A from time to time upon reasonable prior notice to such party, as applicable.
- (v) Notices of Material Events; Environmental Matters. Such party will furnish written notice of each of the following events, occurrence and conditions to Party A:
- (A) the occurrence of any Default or Potential Termination Event, promptly following the occurrence thereof;
 - (B) (1) the filing or commencement of any action, suit or proceeding or the assertion of any Environmental Claim by or before any arbitrator or other Governmental Authority against or affecting such party, and the occurrence of any material adverse event in the course of any such action, suit or proceeding, or (2) any other circumstance, act, or condition with respect to the adoption, material amendment, interpretation, or repeal of any Applicable Law relevant in any material respect to the transactions contemplated by this Agreement or the Impairment of any Governmental Approval or notice (whether formal or informal, written or oral) or the failure of such party to comply with the terms and conditions of any Governmental Approval related to the transactions contemplated by this Agreement, promptly following the occurrence thereof, in each case, except to the extent that could not reasonably be expected to result in a Material Adverse Effect; and

- (C) as promptly as possible and in any event within three Business Days after a Responsible Officer of such party has knowledge of any development or circumstance that results in, or could reasonably be expected to result in, a Material Adverse Effect, an event of force majeure or action by a Governmental Authority adverse to such party.

Each notice delivered under this Part 12(a)(v) shall be accompanied by a statement of a Responsible Officer of such party setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. In addition, such party shall, promptly upon request therefor, furnish such other environmental reports as Party A may reasonably request.

- (vi) Financial Statements and Related Information. Party B will furnish to Party A (with one hard copy and, if reasonably available, a copy in electronic format), in respect of itself, MX Holdings and MX Energy (each a "Reporting Company") (on a consolidated basis):

- (A) (1) with respect to MX Holdings, audited annual financial statements within 90 days after the end of each fiscal year and setting forth, in comparative form, the corresponding figures for the preceding fiscal year, accompanied by (x) an opinion thereon of the Auditor (without a "going concern" or like qualification or exception as to the scope of such audit) and (y) a certificate of a Responsible Officer of such Reporting Company, in each case, to the effect that said financial statements present fairly in all material respects the financial position and results of operations as at the end of, and for, such fiscal year in accordance with GAAP, and (2) with respect to itself and MX Energy, unaudited annual financial statements in a form and format agreed to by the parties, but in any event including gross revenues, gross profits, margin contributions (including allocation of sales and marketing expense) and a balance sheet presented in a manner consistent with prior practice, within 90 days after the end of each fiscal year and setting forth, in comparative form, the corresponding figures for the preceding fiscal year, accompanied by a certificate of a Responsible Officer of such Reporting Company to the effect that said financial statements present fairly in all material respects the financial position and results of operations as at the end of, and for, such fiscal year;

- (B) (1) with respect to MX Holdings, unaudited quarterly financial statements within 45 days after the end of each of the first three fiscal quarters and within 60 days after the end of the fourth fiscal quarter, for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related balance sheet as at the end of such period, setting forth in each case, in comparative form, the corresponding figures for the corresponding period of (or in the case of the balance sheet, as of the end of) the preceding fiscal year, accompanied by a certificate of a Responsible Officer of such Reporting Company, which certificate shall state that said financial statements present fairly in all material respects the financial position and results of operations of such Reporting Company in accordance with GAAP, as at the end of, and for, such period (subject to normal year-end audit adjustments), said quarterly financial statements for the fourth fiscal quarter to be accompanied by the unaudited annual financial statements for the fiscal year without the notes thereto, and (2) with respect to itself and MX Energy, unaudited quarterly financial statements in a form and format agreed to by the parties, but in any event including gross revenues, gross profits, margin contributions (including allocation of sales and marketing expense), within 45 days after the end of each of the first three fiscal quarters and within 60 days after the end of the fourth fiscal quarter, for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related balance sheet as at the end of such period presented in a manner consistent with prior practice, setting forth in each case, in comparative form, the corresponding figures for the corresponding period of (or in the case of the balance sheet, as of the end of) the preceding fiscal year, accompanied by a certificate of a Responsible Officer of such Reporting Company, which certificate shall state that said financial statements present fairly in all material respects the financial position and results of

operations of such Reporting Company, as at the end of, and for, such period (subject to normal year-end audit adjustments);

- (C) concurrently with any delivery of financial statements under clause (A) or (B) of this Part 12(a)(vi), a certificate of a Responsible Officer of each Reporting Company (1) certifying as to whether a Default or Potential Termination Event has occurred and, if a Default or Potential Termination Event has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (2) setting forth in reasonable detail the calculation of Adjusted Consolidated Tangible Net Worth as of the end of the immediately preceding fiscal quarter and (3) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements of such Reporting Company for the immediately prior fiscal year and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;
 - (D) concurrently with the delivery of the financial statements under clause (A) of this Part 12(a)(vi), a discussion and analysis by the management of Party B of the business and operations through the end of the fiscal year covered by such financial statements, including a discussion and analysis with respect to (1) compliance with Environmental Law, (2) a statement of all transactions in such period between Party B and any of its Interested Persons or stockholders (other than transactions between Party B or any of its Subsidiaries), including a certification by a Responsible Officer of Party B that such transactions were on ordinary commercial terms negotiated on an arm's length basis and that each such transaction was at least as favorable to such Party B as the terms available from independent third parties, and (3) a comparison of the results of operations of Party B for the relevant period to the operating Budget for the same period, together with an explanation of any material variation therefrom; and
 - (E) as soon as available and in any event within forty (40) days after the end of each month (including the last month of Party B's fiscal year), Party B will deliver the consolidated balance sheet of Party B, as at the end of such month, and the related consolidated statements of income, stockholders' equity and cash flow for such month and for the period from the beginning of the then current fiscal year of Party B to the end of such month.
- (vii) Miscellaneous Notices and Reports. Party B will furnish to Party A with respect to Party B and each Specified Entity of Party B:
- (A) promptly, notice of any change in the Responsible Officers of Party B or any such Specified Entity, including certified specimen signatures of any new officer so appointed and, if requested by Party A, satisfactory evidence of the authority of each such new officer;
 - (B) promptly after Party B's or any Specified Entity of Party B's receipt thereof, a copy of any management letter received by Party B or any such Specified Entity from the Auditor in relation to its financial, accounting and other systems, management or accounts;
 - (C) promptly after Party B's or any such Specified Entity's receipt thereof, a summary including all relevant information of any material notices and material documents or information received by Party B or any such Specified Entity with respect to any Material Contract (including any notice or other document relating to a failure by Party B or any such Specified Entity to perform any of its covenants or obligations under such Material Contract);
 - (D) not later than the fifth Business Day following the end of each month, an updated monthly (i) accounts receivable aging report for each month during the term of this

Agreement (with an estimate of associated taxes due), (ii) churn report, (iii) statement of accrued unbilled accounts receivable, (iv) estimated amount of imbalances with EDCs and ISOs, and (v) an information matrix for each Designated Jurisdiction in which Party B or such Specified Entity is marketing, which matrix will show the number of Customers, monthly throughput, pricing structure, margin per unit per pricing structure and average sales;

- (E) upon Party A's request and in a manner and format determined by Party A in its sole discretion, the individual Customer detail transaction history of charges and payments to support the general ledger and aged receivables information contained in any financial statements and reports furnished by Party B or any such Specified Entity to Party A;
 - (F) upon Party A's request, any information required to calculate the Collateral Coverage Ratio;
 - (G) upon Party A's request, any information required to calculate the weighted average tenor of all of Party B's and each such Specified Entity's commodity obligations;
 - (H) not later than the fifth Business Day following the end of each month, a monthly compliance certificate in substantially the form of Exhibit 12(a)(vii)(H) hereto, or as otherwise agreed by Party A and Party B;
 - (I) not later than the fifth Business Day following the end of each month, a monthly data file download showing the name of each EDC that has delivered Energy to Party B or its Customers and a list of Customers (if any) that are billed directly by or on behalf of Party B; and
 - (J) promptly following any request therefor, such other information regarding the material operations, business affairs and financial condition of Party B or any Specified Entity of Party B as Party A may reasonably request.
- (viii) Accounts Receivable.
- (A) Party B shall provide or cause to be provided written instructions to all ISOs and EDCs and other payers of accounts receivable, which instructions may not be revoked without the written consent of Party A, directing all such payers to cause any and all amounts payable to Party B to be paid directly into a Lockbox Account.
 - (B) Party B shall take any actions as may be reasonably requested by Party A in order to ensure that Party A is satisfied with Party B's accounts receivable and arrangements with Customers and EDCs including payment directions.
- (ix) Compliance with Laws. Party B and each Specified Entity of Party B shall comply with all Applicable Laws, including Environmental Laws, and shall from time to time obtain and renew, and shall comply with, all Governmental Approvals as shall now or hereafter be necessary for Party B and each Specified Entity of Party B to comply with such Applicable Laws, except any such Applicable Laws or Governmental Approvals, the failure to obtain, renew or comply with, could not reasonably be expected to result in a Material Adverse Effect.
- (x) Maintenance of Lien. Party B and each Specified Entity of Party B shall take, or cause to be taken, all action required or desirable to maintain and preserve the Liens created by the ISDA Security Documents and the priority thereof. Party B and each Specified Entity of Party B shall from time to time execute or cause to be executed further instruments (including financing statements, continuation statements and similar statements with respect to any ISDA Security Document) reasonably requested by Party A for such purposes. Party B and each Specified Entity

of Party B shall promptly discharge, at Party B's and each such Specified Entity's cost and expense, any Lien (other than Permitted Liens) on the Collateral.

- (xi) Hedging. Party B and each Specified Entity of Party B shall not enter into or maintain any Hedging Transactions, other than the Hedging Transactions with Party A contemplated by the terms of the Master ISDAs.
- (xii) Exposures to EDCs and ISOs. If Party A has notified Party B that Party B's exposure to one or more EDCs or ISO(s) exceeds Party A's then current individual or aggregate exposure limit for such EDCs or ISO(s) (as determined by Party A from time to time in its sole discretion), Party B and any such Specified Entity shall (A) within five (5) Business Days, provide Party A with a written plan to reduce Party B's credit exposure to such entity to the extent required by Party A within nine months, (B) reduce or mitigate Party B's exposure to the relevant entity to the extent required by Party A within nine months and (C) immediately cease any activity that would have the effect of increasing (or potentially increasing) Party B's credit exposure to such entity.
- (xiii) Budgets.
 - (A) On an annual basis, but no later than 30 days prior to the end of each fiscal year, Party B will deliver to Party A a reasonably detailed proposed budget for the following fiscal year, which shall include projected consolidated statements of cash flows and projected statements of income and expense on a monthly basis. Within 30 days of receipt of the proposed budget, Party A shall either approve the proposed budget, in which case the proposed budget shall be the budget for the following fiscal year, or deliver to Party B a statement setting forth objections to the proposed budget. In the event that Party A objects to the proposed budget, Party B shall, to the extent it accepts the objections, revise the proposed budget to the extent necessary to satisfy the objections and, to the extent it does not accept the objections, prepare a written statement of the reasons why it does not accept some or all of the objections. Party B shall deliver to Party A, to the extent applicable, the revised proposed budget and the written statement concerning the objections. Party B shall also make such further submissions relating to the proposed budget to Party A as may be requested by Party A. The revised budget shall become the budget for the following fiscal year at such time as it is approved by Party A. Pending such acceptance, the budget for the following fiscal year shall be the budget that was applicable for the prior fiscal year.
 - (B) On a monthly basis, but not later than 10 days prior to the end of each month, Party B will deliver to Party A an updated monthly budget for the next succeeding month, accompanied by updated projected budgets for the immediately following two months. Each such budget shall (1) be prepared in good faith and based on reasonable assumptions, (2) be prepared on a basis consistent with the operating budget delivered for such calendar year and the budget delivered in respect of the preceding month, and shall reconcile any material differences from such budgets, (3) provide for the timely payment of all obligations to Party A under this Agreement, (4) not project any expenditures greater than projected cash flows, (5) provide for the timely payment of all Taxes, including all federal, provincial and local withholding taxes, all sales and use taxes and all gross receipts taxes and (6) be satisfactory to Party A in its reasonable discretion as a creditor of such Specified Entity.
- (xiv) Matched Trading Book. Except to the extent set forth on Exhibit 12(a)(xiv) hereto, Party B shall maintain a matched trading book such that at all times (1) each sale by Party B of a quantity of Energy at a fixed forward price is hedged by an Energy Swap or Power Transaction maintained by Party B with Party A pursuant to this Agreement in respect of an equal notional quantity of Energy (unless Party A determines that a lower notional quantity is appropriate to take into account such factors as Party A's forecast of Party B's Customer attrition/churn or forecast modifications), with a lower fixed forward price and (with respect to Energy Swaps) with a floating price index that

reasonably hedges the market price of Energy at the relevant Delivery Point of such sale, all as reasonably satisfactory to Party A and (2) for any floating price purchase by Party B of a quantity of Energy, there is a floating price sale of an equal quantity of Energy by Party B at the same Delivery Point and with a higher floating sale price based on the same pricing index used in the corresponding floating price purchase.

- (xv) Adjusted Consolidated Tangible Net Worth. MX Holdings shall at all times maintain an Adjusted Consolidated Tangible Net Worth of at least \$60,000,000 (calculated in accordance with GAAP).
- (xvi) Access to Records and Billing Systems. Such party will provide Party A with access (remote or otherwise) to such party's records and billing systems as part of ongoing review and audit procedures of Party A. Within six months of the Closing Date (and from time to time, as requested by Party A), such party shall provide Party A with copies of all of such party's information technology infrastructure systems (including, without limitation, billing systems) required to realize the value of all customer contracts and required associated licenses (at no cost to Party A and updated as necessary from time to time) so that Party A can operate such party's business in the event of a foreclosure by Party A pursuant to the terms of this Agreement and the other ISDA Documents. As an alternative to the foregoing, Party A may agree in writing to an arrangement where such party provides Party A and its personnel with control of such party's operations through access to, and control of, such party's disaster recovery facilities in the event of a Default or Potential Termination Event hereunder or under the other Master ISDAs. Party A acknowledges the confidential nature of such information technology infrastructure and in no event shall Party A disclose to or share with any third parties any of such information technology infrastructure without the express written consent of Party B.
- (xvii) Novation or Termination of Certain Transactions. Party B and MX Energy shall use commercially reasonable efforts to novate or terminate all transactions underlying the Indebtedness permitted by clause (iii) of the definition of "Permitted Indebtedness" set forth in Part 14 as promptly as practicable, but in any event within 30 days of the Closing Date.
- (xviii) Reimbursement Obligation.
 - (A) In the event (a) that Party A or any other Person on behalf of Party A performs any obligation of Party B to a EDC, ISO or any other third party (it being understood that nothing in this clause (a) shall be construed to require any such performance by Party A) or (b) that any payment, disbursement or performance under any Credit Support has been made to any EDC, ISO or any other third party, in either case (whether or not the obligations secured thereby are now or hereafter existing), Party B shall, within one Business Day of a written demand therefor made by Party A, (i) in the case of clause (a), pay to Party A an amount, as reasonably calculated by Party A, equal to the total amount it will cost Party A or such other Person on behalf of Party A to perform such obligation; (ii) in the case of clause (b), pay to Party A all amounts paid or disbursed under any Credit Support and (iii) pay to Party A any other cost or expense of any nature reasonably incurred by Party A (including any taxes and reasonable attorneys' fees and expenses) in connection with the foregoing (including any such taxes, costs and expenses incurred by Party A to third parties that issue Credit Support) (collectively, the "Reimbursement Obligation"). Interest shall be payable on the Reimbursement Obligation from the date of payment by Party A or such other issuer of Credit Support to the beneficiary until payment by Party B in full at the applicable rate which would be payable on any Outstanding Amounts which were then overdue. The Reimbursement Obligation hereunder is unqualified, unconditional and absolute and is irrespective of whether Party A is the issuer of Credit Support and, in the case of clause (a), upon any such performance by Party A.
 - (B) In addition to, and without in any way limiting the foregoing:

- (1) Party B's obligations under this clause (xviii) shall be absolute and unconditional under any and all circumstances and irrespective of any set-off, counterclaim or defense to payment which Party B or any Specified Entity of Party B may have or have had against Party A, any issuer of Credit Support, any beneficiary of a Credit Support or any other Person.
 - (2) Party B agrees that Party A and any other issuer of Credit Support shall not be responsible for, and the Reimbursement Obligation under this clause shall not be affected by, among other things: (a) the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, (b) any dispute between or among Party B or any Specified Entity of Party B and any beneficiary of any Credit Support or any other party to which such Credit Support may be transferred, (c) any claims whatsoever of Party B or any Specified Entity of Party B against any beneficiary of such Credit Support or any transferee thereof, (d) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of Party B or any Specified Entity of Party B in respect of any Credit Support or any other amendment or waiver of or any consent to departure from the terms of any Credit Support or any document executed or delivered in connection with the issuance or payment thereof, (e) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Party B or any of the Specified Entities of Party B (individually or taken as a whole), (f) any breach hereof or of any other ISDA Document by any party thereto, (g) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, (h) the fact that a potential event of default, event of default, potential termination event or termination event (each, however defined) shall have occurred and be continuing, or (i) any payment by Party A or any other issuer of Credit Support against presentation of any document or certificate that does not strictly comply with the terms of such Credit Support, or any payment made by Party A or any other issuer of Credit Support under any Credit Support to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of any Credit Support, including arising in connection with any proceeding of the type described in Section 5(a)(vii).
 - (3) No issuer of Credit Support shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any such Credit Support, except that Party A shall be liable for errors and omissions directly caused primarily by its own (and not any other Person's) gross negligence or willful misconduct.
- (C) In addition to, and without in any way limiting the foregoing:
- (1) The role of any issuer of Credit Support in connection with any draft presented for payment under any Credit Support which is a letter of credit issued to secure Party B's obligations to third parties shall, in addition to any payment obligation thereunder, be limited to determining that the documents (including each draft) delivered under such letter of credit in connection with such presentment are in conformity with such letter of credit. In addition, Party B agrees that, in paying any drawing or demand for payment under any Credit Support, neither Party A nor any other issuer of any Credit Support shall not have any responsibility to inquire as to the validity or accuracy of any document presented in connection with such drawing or demand for payment or the authority of the Person executing or delivering the same.

- (2) No issuer of Credit Support nor any of the respective correspondents, participants or assignees of such issuer shall be liable for the due execution, effectiveness, validity or enforceability of any document delivered in connection with the issuance or payment of such Credit Support.
- (3) Party B hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Credit Support; provided, however, that this assumption is not intended to, and shall not, preclude Party B from pursuing such rights and remedies as it may have against such beneficiary or transferee at law or under any other agreement. No issuer of Credit Support, nor any of the respective correspondents, participants or assignees of such issuer shall be liable or responsible for any of the matters described in the preceding clause (xviii)(B). In furtherance and not in limitation of the foregoing: (a) any issuer of Credit Support may accept documents that appear on their face to be in order and substantially comply with the terms of the Credit Support, without responsibility for further investigation, regardless of any notice or information to the contrary; and (b) no issuer of Credit Support shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Credit Support instrument or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Without duplication of any obligation of Party B hereunder, in addition to amounts payable as provided herein, Party B hereby agrees to protect, indemnify, pay and hold harmless Party A from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including all reasonably incurred fees, expenses and disbursements of any law firm or other external counsel) which Party A may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Credit Support by it or any other Person, or (ii) the failure to honor a drawing or demand for payment under any Credit Support as a result of any act of any Governmental Authority.

(xix) Interest Rate Swaps.

- (A) Within 30 days following the Closing Date, Party B shall cause MX Holdings to cause its counterparties under those certain interest rate swaps set forth on Exhibit 12(a)(xix) (the “RBS Novated Transactions”) to novate their positions under such transactions to The Royal Bank of Scotland plc. Concurrently with each such novation, The Royal Bank of Scotland plc and each such third party shall enter into back-to-back offsetting interest rate swaps having the same notional quantities, fixed and floating prices, and remain tenors with respect to each RBS Novated Transaction and otherwise on terms satisfactory to The Royal Bank of Scotland plc in its sole discretion (each such back-to-back hedge, an “RBS Sleeve Transaction”). The parties agree that, prior to the novation of the RBS Novated Transactions pursuant to this Part 12(a)(xix) and notwithstanding any provision herein to the contrary, MX Holdings shall have the right to reduce the aggregate notional amount of the RBS Novated Transactions by liquidating a portion of such RBS Novated Transactions or by entering into off-setting interest rate swaps with the counterparties to such transactions; provided, however, that in no event shall MX Holdings reduce the aggregate notional amount of such RBS Novated Transactions to an amount less than \$60,000,000 without Party A’s prior written approval. To the extent that Party B enters into off-setting interest rate swaps with third parties pursuant to this Part 12(a)(xix), Exhibit 12(a)(xix) shall be amended to include such off-setting swaps.
- (B) Concurrently with the novations of the RBS Novated Transactions and only to the extent the aggregate notional amount of the RBS Novated Transactions exceeds \$60,000,000, Party B shall reduce the notional amount of the RBS Novated Transactions to

\$60,000,000 by liquidating a portion of such RBS Novated Transactions or by entering into off-setting interest rate swaps with The Royal Bank of Scotland plc.

- (C) If, at any time following the novation of the RBS Novated Transactions, the outstanding amount of the obligations hedged by the RBS Novated Transactions (the "Hedged Obligations") is reduced, Party B shall promptly reduce the notional amount of the RBS Novated Transactions to an amount equal to the then outstanding amount of Hedged Obligations, through a transaction with The Royal Bank of Scotland plc, and shall provide Party A with prompt notice of such reduction.

(xx) Further Assurances.

- (A) Subject to the terms and conditions of this Agreement, Party B and each such Specified Entity agrees to use all commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under Applicable Laws to consummate and make effective the transactions contemplated by this Agreement and the other Specified Agreements. In case at any time any further action or the performance of any function is necessary or desirable to carry out the purposes of the Specified Agreements or to allow Party A or its Affiliates to enter into any Transaction or take any other action specified therein, the proper officers and directors of Party B and each such Specified Entity shall take all such necessary action and shall cause any such functions to be performed.
- (B) Without limiting the generality of Part 12(a)(xx)(A), upon the approval by Party A of any ISO or EDC not listed on Exhibit 7(j) with respect to any Designated Jurisdiction, and prior to the execution of any Energy purchase and sale agreement with a Customer served by such ISO or EDC, Party B shall cause such ISO or EDC to irrevocably agree to make all payments owing to Party B or to any Specified Entity of Party B directly to a Lockbox Account covered by the Wachovia Control Agreement.

Part 13. Negative Covenants

- (a) *General Covenants.* Each Specified Entity of Party B, Party B in respect of each Specified Entity of Party B and Party B as to itself as set forth below, agrees with Party A that, at all times prior to the Discharge of ISDA Obligations:
- (i) Indebtedness. Party B and each such Specified Entity will not, at any time directly or indirectly create, incur, assume, guarantee or otherwise be or become liable for any Indebtedness, except Permitted Indebtedness.
- (ii) Liens. Party B and each such Specified Entity will not create, assume, incur or suffer to exist any Lien upon or with respect to any Property now owned or hereafter acquired by it (including the Collateral), or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except for Permitted Liens.
- (iii) Merger and Consolidation; Disposition of Assets; New Subsidiaries.
- (A) Except as otherwise permitted by this Agreement, Party B and each such Specified Entity shall not be a party to any merger or consolidation or, except in the ordinary course of business, transfer, sell, assign (except as contemplated by the ISDA Security Documents), convey, lease, sublease or otherwise dispose of any of its Property or business (whether now owned or hereafter acquired) or otherwise effect an Asset Sale, except that Party B and each such Specified Entity may (i) dispose of any obsolete or worn-out Property no longer required in connection with the operation of its business and (ii) dispose of Property that is replaced by other Property of like utility in its business.

- (B) Party B and each such Specified Entity shall not create or cause to be created any Subsidiary other than those listed on Exhibit 5(j)(iv) without (i) the consent of Party A and (ii) any such Subsidiary executing and delivering to Party A a Guarantee and Collateral Agreement Joinder (as such term is defined in the Guarantee and Collateral Agreement).
- (iv) Organizational Documents; Capitalization; Fiscal Year; Legal Form. Party B and each such Specified Entity will not amend or modify its constitutional documents (including the Certificate of Incorporation and the Bylaws), alter its authorized capitalization, change its legal form or change its fiscal year without the consent of Party A.
- (v) No Other Business. Party B and each such Specified Entity will not engage in, or permit any of its Affiliates to engage in, (A) with respect to Party B, any business other than the purchase and sale of Energy to Customers and other activities necessary in connection therewith, (B) with respect to MX Energy and MX Canada, any business other than the purchase and sale of Gas to residential or small commercial end-users of Gas and other activities necessary in connection therewith, (C) with respect to Infometer.com, any business other than providing consultations and audits with respect to energy supply procurement and improving energy efficiency and other activities in connection therewith, (D) with respect to Online Choice, any business other than 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) and other activities in connection therewith and (E) with respect to MX Holdings and the MX Holdcos (other than Infometer.com), any other business other than owning equity interests in Party B, MX Canada, MX Energy or another MX Holdco.
- (vi) Permitted Investments. Party B and each such Specified Entity will not make, or permit to remain outstanding, any Investments except Permitted Investments.
- (vii) Leases and Sale-Leasebacks. Party B and each such Specified Entity will not become or remain liable as lessee, as guarantor or as other surety with respect to any lease, whether an operating lease or a capital lease, of any Property (whether real, personal or mixed), whether now owned or hereafter acquired (A) that Party B or such Specified Entity has sold or transferred, or is to sell or transfer, to any other Person or (B) that Party B or such Specified Entity intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by it to any Person in connection with such lease.
- (viii) Capital Expenditures. Party B and each such Specified Entity shall not make or incur any Capital Expenditures (including obligations under Capital Lease Obligations) other than in a Budget approved by Party A in accordance with Part 12(a)(xiii).
- (ix) Acquisitions. Without the prior consent of Party A, Party B and each such Specified Entity will not make any Acquisition.
- (x) Restricted Payments. Party B and each such Specified Entity may not, directly or indirectly, declare or make Restricted Payments; provided, however, that the following Restricted Payments may be made:
- (A) scheduled payments of principal and interest on the Old Notes when due and payable;
 - (B) purchase of Old Notes, provided that no Default or Potential Termination Event exists prior to or immediately following any such purchase, and provided further that the following conditions are met:
 - (1) the Collateral Coverage Ratio is at least 1.50:1.00, immediately prior to and after giving effect to such purchase;

- (2) the purchase price represents at least a 10% discount from the face amount of the Old Notes purchased; and
 - (3) the aggregate cash amount of purchases of Old Notes pursuant to this Part 13(a)(x)(B) shall not exceed \$2,000,000;
- (C) scheduled payments of interest and any related Tax Gross-Up Amounts on the Notes when due and payable;
 - (D) prepayment of the Old Notes and/or the Notes pursuant to a Qualified Initial Public Offering;
 - (E) prepayment of the Notes in accordance with Section 3.10 of the Intercreditor Agreement (including Replacement Debt incurred by MX Holdings that complies with such Section 3.10);
 - (F) prepayment of the Notes in accordance with Section 3.11 of the Intercreditor Agreement, provided that:
 - (1) Party A is satisfied that, immediately prior to and after giving effect to the transaction contemplated by such Section 3.11, no Default or Potential Termination Event has occurred or is continuing under any ISDA Document; and
 - (2) Party B ensures that Party A receives (at the time of the closing thereof) from the proceeds of such transaction original margin in the form of cash, to be deposited to the Swap Note Sub Account pursuant to the MX Energy Agreement in an amount equal to: (x) if the Collateral Coverage Ratio at such time is less than 2.00 to 1.00, the greater of (i) 10% of the proceeds of such transaction and (ii) such amount as is necessary to cause the Collateral Coverage Ratio to be 1.80 to 1.00, except that (y) where the Collateral Coverage Ratio at such time is greater than 1.80 to 1.00 but less than or equal to 2.00 to 1.00, 10% of the proceeds of such transaction. If the Collateral Coverage Ratio at such time exceeds 2.00 to 1.00, there shall be no requirement to provide original margin in the form of cash pursuant to this clause;

provided, that any proceeds of such transaction that exceed the payment contemplated by Section 3.11 of the Intercreditor Agreement plus what is required to be deposited to the Swap Note Sub Account pursuant to clause (2) above shall be immediately deposited to the Party A Sub Account for the MX Energy Agreement.

The foregoing does not constitute a waiver or limitation of any right of Party A or obligation of Party B or the Specified Entities of Party B hereunder or under any other Specified Agreement.
 - (G) payments necessary to make Restricted Payments permitted by this Part 13(a)(x);
 - (H) payments necessary to fund the Escrow Account in accordance with the Indenture;
 - (I) payments to fund loans permitted by clause (iv) of the definition of "Permitted Indebtedness";

- (J) dividend payments or other distributions made by MX Holdings to the holders of its Equity Interests solely in the Common Stock or other common equity interests of such Person on a pro rata basis; and
 - (K) payments by MX Holdings to (i) purchase, redeem or otherwise acquire shares of its common stock or other common equity interests or warrants or options to acquire any such shares held by any current or former officer, director or employee of MX Holdings (or their assigns, heirs or estates); provided that the aggregate price paid for all such purchases, redemptions or acquisitions by MX Holdings shall not exceed \$1,000,000 in any twelve month period and (ii) repurchase Equity Interests deemed to occur upon the exercise of stock options or warrants to the extent such Equity Interests represent a portion of the exercise price of those options or warrants or corresponding statutory withholding taxes due in connection with such exercise.
- (xi) Material Contracts; Etc.
- (A) Except as permitted by this Agreement, Party B and each such Specified Entity shall not without the prior written consent of Party A (i) cancel or terminate any Material Contracts to which it is a party or consent to or accept any cancellation or termination thereof prior to the scheduled expiration thereof, (ii) sell, assign (other than pursuant to the ISDA Security Documents) or otherwise dispose of (by operation of law or otherwise) any part of its interest in any Material Contract, (iii) waive any default under or breach of any material provision of any Material Contract or waive, fail to enforce, forgive, compromise, settle, adjust or release any material right, interest or entitlement, howsoever arising, under, or in respect of any Material Contract, or (iv) amend, supplement, modify or in any way vary or agree to any variation of any material provisions of any Material Contract or of the performance of any material covenant or obligation by any other Person under any Material Contract (in each case as in effect on the date of this Agreement and as thereafter amended, supplemented or modified in accordance with this clause (A)).
 - (B) Except as permitted by this Agreement, Party B and each such Specified Entity shall not enter into any Material Contract not in effect on the date of this Agreement without the prior written consent of Party A other than (i) renewal of existing agreements on substantially consistent terms, (ii) as may be required by Applicable Law or (iii) to refinance the Notes to the extent permitted by the Intercreditor Agreement. .
 - (C) Party B and each such Specified Entity shall not enter into any contract or agreement, other than the Specified Agreements, which restricts the ability of Party B or such Specified Entity to: (i) enter into amendments, modifications, supplements or waivers of the Material Contracts, (ii) sell, transfer or otherwise dispose of its property, (iii) create, incur, assume or suffer to exist any Lien upon any of its Property other than Permitted Liens, or (iv) create, incur, assume, suffer to exist or otherwise become liable with respect to any Indebtedness other than Permitted Indebtedness; provided, however, that the preceding restrictions shall not apply to: (A) agreements or instruments governing Permitted Indebtedness and any amendments or other modifications thereto (including any refinancing thereof); provided that such amendments or modifications are no more restrictive, when taken as a whole, when compared to those contained in those agreements as in effect on the Closing Date, or (B) customary non-assignment provisions in contracts, leases, intellectual property licenses entered into in the ordinary course of business.
 - (D) Party B and each such Specified Entity shall not enter into any contract or agreement interfering in any way with Party A's ability to have a first-priority perfected Lien on the Collateral, subject to Permitted Liens.

- (xii) **Transactions with Interested Persons and Non Arms'-Length Dealing.** All transactions that Party B or any Specified Entity of Party B enters into will be on an arm's length basis and, if the transaction is with an Interested Person or a Person holding, directly or indirectly, more than 1% of the equity or voting shares of Party B or any Specified Entity of Party B, then the transaction will be on terms that are at least as favorable to Party B or such Specified Entity as those available from an independent third party; provided, however, that the foregoing limitation shall not apply to (a) transactions between Party B or any Specified Entity of Party B and Party A, (b) employment agreements entered into in the ordinary course of business that are consistent with current practices and at compensation levels that are consistent with compensation levels for similar positions in comparable companies (1) in similar industries, (2) of the same size and (3) in the same geographic area, (c) the issuance of equity securities permitted hereby, (d) Director's fees as permitted by the Certificate of Incorporation, (e) payments or transactions with respect to the Notes as permitted under the Intercreditor Agreement and (f) Restricted Payments permitted hereby.
- (b) **Transactional Negative Covenants.** Party B as to itself as set forth below, agrees with Party A that, at all times prior to the Discharge of ISDA Obligations:
- (i) **Long Term Transactions.** Party B shall not enter into any (A) physically settled transactions in respect of Energy for a fixed forward price with a supply term (measured from the first day of Energy delivery) of greater than 24 months, (B) any Swap Transaction with a term greater than 24 months (measured from the commencement of the first calculation period thereof), or (C) any transaction that has a term that expires on a date that is 27 or more months from the date such transaction was entered into, in each case without the prior written consent of Party A.
- (ii) **Volumetric Tenor.** Party B shall not directly or indirectly sell any commodity at a fixed price, or enter into a Swap Transaction or an Option Transaction, which when combined with all transactions entered into between Party B and its Customers, would cause the average tenor weighted by notional and actual volume of all physically and financially settled Energy transactions entered into by Party B to exceed 14 months in duration.
- (iii) **Counterparty Limitations.** Party B shall not directly or indirectly purchase any commodity from, or enter into any financially settled Swap Transaction, Option Transaction or other derivative transaction with, any Person other than Party A; provided, however, that Party B may purchase Energy (a) from EDCs, ISOs or other third parties approved by Party A, in its sole discretion, solely for balancing purposes or in connection with the purchase of bundled services and (b) upon the failure of Party A to satisfy an obligation to schedule a delivery of Energy to Party B on any Day, in accordance with clause (c)(i) of the Power Annex.
- (iv) **Required Hedges.**
- (A) Except to the extent expressly permitted by Part 12(a)(xiv), Party B shall not directly or indirectly enter into any transaction for the sale of Energy with any Customer involving a fixed forward price unless prior to, or contemporaneously with, entering into any such sale transaction, Party B shall have entered into a Swap Transaction, Option Transaction or physical forward transaction with Party A in respect of an equal notional or actual quantity of Energy (unless Party A determines that a lower quantity is appropriate to take into account such factors as Party A determines reasonable, including Party A's forecast of Party B's Customer attrition/churn or forecast modifications), with a lower fixed forward price with respect to physically settled transactions or with a floating price index with respect to a Swap Transaction that hedges the market price of Energy at the relevant Delivery Point of such sale transaction, all in form and substance reasonably satisfactory to Party A;
- (B) Notwithstanding anything herein to the contrary, Party B shall not (1) incur any obligation to sell Energy to a Customer with a term of greater than 365 days, or (2) take a

long fixed forward price position in Energy pursuant to the exception to Part 12(a)(xiv) unless prior to, or contemporaneously with, the incurrence of any such obligation, Party B shall have offset the exposure associated with the portion of the term of such obligation in excess of 365 days (the "Excess Term") with Party A (x) by having Party A purchase one or more Put Options for Energy with respect to the Excess Term with a notional amount to be determined by Party A, or (y) provided that such obligation has not already been hedged pursuant to Part 12(a)(xiv) by purchasing Call Options from Party A for the Excess Term with a notional amount to be determined by Party A, or (z) in some other manner acceptable to Party A. Party B acknowledges and agrees that in the event that Party A purchases Put Options pursuant to this Part 13(b)(iv)(B), Party B shall pay to Party A a fee equal to the amount of the premium paid by Party A for such Put Options which fee shall be paid on the next Energy Settlement Date following the date such Put Option was entered into by Party A. Party B further acknowledges and agrees that Party A shall have no obligation to purchase any Put Options or enter into any Call Option with Party B pursuant to this Part 13(b)(iv)(B) and that any such transactions shall be entered into by Party A in its sole discretion.

- (v) **Fixed Price Contract Mix.** Party B shall not, during any twelve month period, enter into any new fixed price contracts where the Residential Customer- Equivalents of such contracts are greater than 75% of all the Residential Customer- Equivalents of all new contracts entered into in a Contract Year.
- (vi) **Limit on Transaction Size.** Without the prior written consent of Party A, Party B shall not directly or indirectly sell Energy to any Person if the reasonably forecasted purchases of such Person indicate purchases from Party B of more than (A) 160 Mwths on average per day, (B) \$440,000 in actual billed amounts for any 30-day period at the time of such sale, or (C) if MX Energy is concurrently selling Gas to such Person, 9 Mwths on average per day.
- (vii) **Limit on Customer Demand.** Party B shall not enter into any fixed priced forward transaction for the sale of Energy with a Customer if the forecasted annual quantity of Energy consumed by such Customer for Energy, as determined by Party B and approved by Party A, is greater than 3% of the Party B Customer Load for Energy.
- (viii) **Limit on Notional Exposure.** Party B shall not enter into any transaction for the sale of Energy with a Customer involving a fixed forward price if, after giving effect to the Transaction that would be required under Part 12(a)(xiv) hereof in order to hedge the price risk associated with such sale transaction, the amount determined in accordance with the following formula would equal or exceed \$260,000,000:
 - (A) **First,** for each Swap Transaction entered into (i) by Party B with Party A with respect to Energy and (ii) by MX Energy with Party A with respect to Gas, determine the product of:
 - (1) the remaining notional quantity in respect of such Transaction as at the time of the determination thereof (in MMBtu or Mwh, as the case may be); multiplied by
 - (2) the fixed forward price payable by Party B or MX Energy, as applicable, with respect to that Transaction;
 - (B) **Second,** determine the sum of the amounts calculated in accordance with Part 13(b)(viii)(A) above for all Swap Transactions with respect to Gas and Energy between (i) Party B and Party A and (ii) MX Energy and Party A (the "Swap Exposure");

- (C) Third, for each physically settled Transaction for the purchase of Energy entered into by Party B with Party A and for each physically settled Transaction for the purchase of Gas entered into by MX Energy with Party A, in each case where the relevant commodity is being purchased by Party B for a forward fixed price (each, a “Fixed-Price Physical Transaction”), determine the product of:
- (1) the remaining quantity of Gas or Energy to be delivered in respect of such Fixed Price Physical Transaction as at the time of the determination thereof (in MMBtu or MWh, as the case may be); multiplied by
 - (2) the fixed forward price payable by Party B or MX Energy, as applicable, with respect to that Fixed-Price Physical Transaction;
- (D) Fourth, determine the sum of the amounts calculated in accordance with Part 13(b)(viii)(C) above for all Fixed-Price Physical Transactions with respect to Gas and Energy between (i) Party B and Party A and (ii) MX Energy and Party A (the “Fixed Physical Exposure”); and
- (E) Fifth, determine the sum of the Swap Exposures and the Fixed Physical Exposures.
- (ix) Designated Jurisdictions. Party B shall not market or enter into financially or physically settled transactions in respect of Energy in any jurisdiction, other than a Designated Jurisdiction for such commodity, without the prior written consent of Party A.
- (x) Fixed Price Limit. Party B shall not enter into financially or physically settled transactions in respect of Energy as purchaser for a fixed forward price of greater than \$100/Mwh (except with respect to Zone J in New York for which the fixed forward price shall not exceed \$125/Mwh) (based on either the relevant strip prices or average price per trade), without the prior written consent of Party A; provided, however, that Party A, in its sole discretion and with two Business Days notice to Party B, may increase or decrease such fixed price limit and, provided further, that Party B may request a waiver of the fixed price limit on a per trade basis and Party A shall use commercially reasonable efforts to respond to such request within trading hours on the date of such request.
- (xi) RCE Limits. Party B shall not enter into new contracts with Customers in any Contract Year if the sum of (A) the number of Residential Customer-Equivalents associated with all new contracts for Energy entered into with Customers by Party B or MX Canada, as applicable, during such Contract Year and (B) the number of Residential Customer-Equivalents associated with all new contracts for Gas entered into with Customers (as defined in the MX Energy Agreement) by MX Energy, during such Contract Year, would exceed 235,000 Residential Customer-Equivalents during such Contract Year; provided, however, that, notwithstanding the foregoing, Party B, without the prior written consent of Party A, shall not enter into any contract for the sale of Energy with any Customer if, as the result of entering into such contract, the aggregate number of Fixed Price Customer-Equivalents served by Party B and MX Energy would exceed 325,000 in the aggregate.
- (xii) Customer Load. Party B shall not purchase Energy or any related Product hereunder or otherwise for any reason other than to serve Party B’s actual or forecasted aggregate Energy Customer Load.
- (xiii) Limitation on Sales. Party B shall not directly or indirectly sell Energy to any Person except for, and limited to the extent of, (A) Energy sold to an EDC or other approved third-party for balancing purposes, and (B) Energy sold to a Customer of Party B in the ordinary course of its business.

Part 14. Additional Definitions

(a) Section 14 is hereby amended to add the following additional definitions:

“AAA” has the meaning specified in Part 5(c)(vii).

“Account Control Agreement” means, as applicable, the Huntington Control Agreement or the Wachovia Control Agreement.

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which Party B, any Specified Entity of Party B (a) acquires any going business or all or substantially all of the assets of any firm, corporation or limited liability company, or division thereof, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.

“Additional RECs” has the meaning specified in Part 7(a)(viii).

“Adjusted Consolidated Tangible Net Worth” means, as of any date of determination with respect to MX Holdings, all items which in accordance with GAAP would be included under shareholders', partners' or members' equity on a consolidated balance sheet of MX Holdings less intangible assets (which shall not include any and all amounts associated with the capitalized acquisition cost of Customers of Party B, MX Energy and MX Canada) adjusted for (i) non-cash impact on earnings on Storage Gas due to lower of cost or market valuation, (ii) non-cash impact on earnings on Storage Gas due to variance from weighted average cost method of inventory calculation, (iii) non-cash assets from FAS133 Gains (derivatives), (iv) non cash liabilities from FAS133 Losses (derivatives), (v) non-cash impact on earnings of compensation expense from FAS 123R application and (vi) settled financial hedges since the beginning of the latest storage injection season (i.e. April 1st), but in no case longer than 365 days, for inventory before the inventory is sold to customers.

“Aggregate Credit Support Amount” means, on any date of determination, the aggregate face amount of all Credit Support provided under all Master ISDAs.

“Aggregate Unpaid Value” means the aggregate value of (i) all amounts owed for commodities delivered under all Master ISDAs for which the applicable Settlement Date has not occurred, (ii) all amounts owed under Swap Transactions with respect to calculation periods that have expired but for which the applicable Settlement Date has not occurred, (iii) all Outstanding Amounts under all Master ISDAs (as defined in each such Master ISDA), (iv) all accrued and unpaid Financing Fees and Credit Support Fees under all Master ISDAs, and (v) the amount of any Credit Support posted by Party A that was applied to satisfy in whole or in part any obligation of Party B or any Specified Entity of Party B to a third party and which amount has not been repaid to Party A.

“Aggregated Collateral Accounts” means all Collateral Accounts established under all Master ISDAs.

“Amegy” means Amegy Bank National Association, a national banking association.

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as specified in the relevant transaction.

“Applicable Law” means any constitution, statute, law, rule, regulation, ordinance, judgment, order, decree, permit, or any published directive, guideline, Governmental Approval, requirement or other governmental restriction which has the force of law, or any published determination by, or interpretation of any of the foregoing by, any judicial authority or Governmental Authority binding on a given Person whether in effect as of the date of this Agreement or

thereafter and in each case as amended (including all Environmental Laws and any of the foregoing pertaining to land use or zoning restrictions).

“Asset Sale” means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by Party B or any of the Specified Entities of Party B (including any Sale and Leaseback Transaction) to any Person other than Party B or a Specified Entity of Party B of: (1) any Capital Stock of Party B or a Specified Entity of Party B; or (2) any other property or assets of Party B or any Specified Entity of Party B other than in the ordinary course of business other than (a) any sale or issuance of Equity Interests of MX Holdings, (b) dispositions of assets that are not critical to the operation of the business of Party B or any Specified Entity of Party B having a fair market value (as to Party B and all Specified Entities of Party B, collectively) of \$500,000 or less for any one such disposition or \$1,000,000 or less for all such dispositions in any fiscal year of MX Holdings and (c) dispositions of accounts to LDCs or EDCs under guaranteed receivables agreements entered into in the ordinary course of business in accordance with the terms hereof.

“Auditor” means such firm or firms of independent public accountants of recognized international standing as any party or any Specified Entity may, from time to time, appoint as auditors of such party or Specified Entity with the prior written consent of Party A.

“Bankruptcy Code” has the meaning specified in Part 5(k)(iii).

“Base Price” has the meaning specified in Part 7(e).

“Base Rate” means the rate of interest per annum (rounded upwards if necessary to the nearest 1/100 of 1%) appearing on Reuters Screen LIBO Page or <http://www.bba.org.uk/bba/> (or any successor page) as the British Bankers Association London Interbank offered rate for two-month deposits in U.S. Dollars at approximately 11 a.m. London time two Business Days prior to the date of determination.

“Bill Matrix” has the meaning specified in Part 11(g).

“Board of Directors” means, as to any Person, the board of directors (or similar governing body) of such Person or any duly authorized committee thereof.

“Bring Down Review” has the meaning specified in Part 7(j).

“Budget” means any budget prepared in accordance with Part 12(a)(xiii).

“Business Day” means any day that is not a Saturday or Sunday in the United States or a day on which banking institutions chartered by the State of New York or the United States are required or authorized to be closed.

“Bylaws” means the Third Amended and Restated Bylaws of MX Holdings.

“Call Option” means an Option Transaction, which may be physically or financially settled, that gives the holder the right to buy a certain quantity of an underlying commodity from the seller of such Option Transaction, at a specified price on or up to a specified expiration date or during a specified exercise period.

“Capacity” shall have the meaning specified in Part 6.

“Capital Expenditures” means, for any period, the aggregate of amounts that would be reflected as additions to property, plant or equipment on a balance sheet prepared in accordance with GAAP.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person

under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Capital Stock” means:

- (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person, and all options, warrants or other rights to purchase or acquire any of the foregoing; and
- (ii) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person, and all options, warrants or other rights to purchase or acquire any of the foregoing.

“Certificate of Incorporation” means the Second Amended and Restated Certificate of Incorporation of MX Holdings.

“Change of Control” means the occurrence of one or more of the following events with respect to Party B or any Specified Entity of Party B (each, a “Subject Person”):

- (i) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of a Subject Person to any Person or group of related Persons for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (a “Group”), together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of the Indenture) other than, with respect to MX Holdings, to the Permitted Holders;
- (ii) the approval by the holders of Capital Stock of any Subject Person of any plan or proposal for the liquidation or dissolution of such Subject Person (whether or not otherwise in compliance with the provisions of the Indenture);
- (iii) any Person or Group (other than the Permitted Holders and any entity formed by the Permitted Holders for the purpose of owning Capital Stock of MX Holdings) shall become the owner, directly or indirectly, beneficially or of record, of shares representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of any Subject Person; or
- (iv) any Person (or related group of Persons) that is not a holder of Equity Interests in any Subject Person on the date hereof should hereafter acquire, directly or indirectly, the beneficial ownership of (a) Equity Interests having the power to elect a majority of the Board of Directors of such Subject Person or (b) any other ownership interest enabling it to exercise control of any Subject Person;

provided, however, that no holders of shares of Class A Exchange Common Stock, Class C Common Stock or Common Stock shall be deemed to constitute a Group for the purpose of determining whether a Change of Control has occurred solely by virtue of being a party to the Class A Voting Agreement, the Class C Voting Agreement and/or the Stockholders Agreement, respectively.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority (other than any request, guideline or directive that provides that compliance is optional and that there is no penalty or charge of any kind for failure to comply).

“Class A Exchange Common Stock” means the shares of newly created Class A Common Stock of MX Holdings, par value \$0.01 per share.

“Class A Voting Agreement” means that certain agreement, dated as of September 22, 2009, among the holders of the Class A Exchange Common Stock.

“Class B Common Stock” means the shares of newly created Class B Common Stock of MX Holdings, par value \$0.01 per share.

“Class C Common Stock” means the shares of newly created Class C Common Stock of MX Holdings, par value \$0.01 per share.

“Class C Voting Agreement” means that certain agreement, dated as of September 22, 2009, among the holders of the Class C Common Stock.

“Closing Date” means the date of execution of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means all collateral of whatsoever nature purported to be subject to the Lien of any ISDA Security Document.

“Collateral Accounts” means the Lockbox Accounts, the Party A Sub Account and the Swap Note Sub Account.

“Collateral Coverage Ratio” means the ratio, on any date of determination, as determined by Party A in a commercially reasonable manner of (A) (i) the aggregate amount of Party B’s and MX Energy’s accounts receivable due from any LDC or EDC or from a customer (whether billed or unbilled) when the accounts receivable due from such customer are not purchased by a LDC or EDC, in each case, less than 90 days past due at such time net of any estimated net Taxes due in respect thereof and net of any LDC/EDC Delivery Charges (except to the extent Party B has provided cash margin to such LDC or EDC for such charges plus (ii) the aggregate amount of cash held in the Collateral Accounts minus (iii) \$2,000,000 plus (iv) the value of any positive Gas or Energy imbalances for the account of Party B at any LDCs or EDCs minus (v) the value of any negative Gas or Energy imbalances for the account of Party B at any LDCs or EDCs, plus (vi) the aggregate amount of any mark-to-market gain for Party B’s and each Specified Entity of Party B’s account on any forward position held by Party B or any such Specified Entity with Party A or any customers of Party B or any such Specified Entity (excluding Prompt Month mark-to-market Gas position gains up to \$10,000,000 in the aggregate) minus (vii) the aggregate amount of any mark-to-market loss for Party B’s and each Specified Entity of Party B’s account on any forward position held by Party B or any such Specified Entity with Party A or any customers of Party B or any such Specified Entity (excluding Prompt Month mark-to-market Gas position losses up to \$10,000,000 in the aggregate), plus (viii) the value of Initial Storage Gas and the value of any Storage Gas to which Party B has title and with respect to which Party A has a perfected Lien (determined by Party A based on the lower of Party B’s cost of such Storage Gas or the market value of such Storage Gas with such market value determined by Party A on a quarterly (or, if Party A deems it appropriate in its sole discretion, on a more frequent) basis based on the relevant LDC cash out/liquidation value of such Storage Gas in the event of Party B’s default under such LDC’s retail program), to (B) (i) the aggregate value of Energy, Gas (including Storage Gas), Capacity (including UCAP) and Ancillary Services delivered to, but not yet paid for by, Party B and each Specified Entity of Party B plus (ii) any accrued but unpaid Financing Fees due hereunder or under the MX Energy Agreement minus (iii) with respect to any Storage Gas to which Party A has title other than Initial Storage Gas, the difference between (1) the value of such Storage Gas based on the lower of Party A’s weighted average cost of such Storage Gas or the market value of such Storage Gas with such market value determined by Party A on a quarterly (or, if Party A deems it appropriate in its sole discretion, on a more frequent) basis based on the relevant LDC cash out/liquidation value of such Storage Gas in the event of Party B’s default under such LDC’s retail program and (2) Party A’s weighted average cost of such Storage Gas, as determined by Party A plus (iv) all other amounts owed by Party B and each Specified Entity of Party B to Party A under or in connection with this Agreement not covered by any other sub-clause of this definition.

“Common Stock” of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person’s common stock, whether outstanding on the

Closing Date or issued after the Closing Date, and includes, without limitation, all series and classes of such common stock.

“Consolidated Net Worth” means, as of any date of determination with respect to MX Holdings, all items which in accordance with GAAP, would be included under shareholders’, partners’ or members’ equity on a consolidated balance sheet of MX Holdings.

“Contract Price” has the meaning specified in Part 7(b).

“Contract Year” means (i) for the first Contract Year, the period from the Closing Date through September 30, 2010, and (ii) for each subsequent Contract Year, each successive twelve month period; provided, that the final Contract Year shall end on August 31, 2012.

“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 ability to exercise voting power, by contract or otherwise. “controlling” and “controlled” have the meanings correlative thereto.

“Corresponding Third Party Transaction” has the meaning specified in Part 10(b)(ii).

“Credit Support” means all letters of credit, letters of indemnity, guarantees and any other credit support issued, provided or arranged for by Party A in accordance with the terms hereof to any EDC, ISO or any other third party to cover such third party’s exposure to Party B, or as posted by Party A in connection with its capacity as a load-serving entity, financially responsible party or qualified scheduling entity.

“Credit Support Amount” means, on any date of determination, the aggregate face amount of all Credit Support that Party B would be required to post to EDCs and ISOs if such Credit Support were not being provided by Party A pursuant to this Agreement, as reasonably determined by Party A.

“Credit Support Fee” means, for any day, an amount calculated as follows:

(i) If on such day, the Aggregated Collateral Accounts are not in Surplus, then the Credit Support Fee for such day shall be the product of the Aggregate Credit Support Amount multiplied by the Primary Rate.

(ii) If on such day, the Aggregated Collateral Accounts are in Surplus and the Aggregate Credit Support Amount is less than \$27,000,000, then the Credit Support Fee for such day shall be the product of the Aggregate Credit Support Amount multiplied the Primary Rate.

(iii) If on such day, the Aggregated Collateral Accounts are in Surplus and the Aggregate Credit Support Amount exceeds \$27,000,000, then for such day, the Credit Support Fee for such day shall be the sum of (A) \$27,000,000 multiplied by the Primary Rate, and (B) the Aggregate Credit Support Amount (less \$27,000,000) multiplied by the Secondary Rate; provided, however, that if, on such day, a Termination Event or Event of Default has occurred and is continuing, with immediate effect (and without regard to whether there is a Surplus), the Credit Support Fee for such day shall be the product of the Aggregate Credit Support Amount multiplied by the Primary Rate.

“Customer” means any residential or small commercial end-user of Energy that is served by Party B and by an approved EDC in any Designated Jurisdiction.

“DAM” has the meaning specified in Part 8(a).

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Definitions” has the meaning specified in Part 5(a).

“Delivery Period” means the period during which deliveries are to be made as agreed to by Party A and Party B in a Power Transaction.

“Delivery Point” has the meaning specified in the Power Annex.

“Designated Jurisdictions” means the jurisdictions listed on Exhibit 7(j).

“Discharge of ISDA Obligations” means the occurrence of all of the following:

- (i) infeasible payment in full in cash of settlement amounts, termination payments, the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding) and premium (if any) on all amounts outstanding under or that would be due upon the termination of the Master ISDAs and constituting ISDA Obligations, including reimbursement obligations;
- (ii) infeasible payment in full in cash of all other ISDA Obligations that are outstanding and unpaid at the time such settlement amounts, termination payments, principal, interest and premium (if any) on all amounts outstanding under the Master ISDAs are paid in full in cash (other than any obligations for taxes, indemnifications, damages and other contingent liabilities in respect of which no claim or demand for payment has been made at such time);
- (iii) irrevocable termination or expiration of all commitments, if any, of Party A to extend credit or undertake transactions that would constitute, or give rise to, ISDA Obligations; and
- (iv) irrevocable termination or cash collateralization (in an amount and manner reasonably satisfactory to Party A, but in no event greater than 105% of the aggregate undrawn face amount) of all Credit Support issued under or pursuant to the terms of the Master ISDAs and constituting ISDA Obligations.

“Disqualified Capital Stock” means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change of Control or an Asset Sale), matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change of Control or an Asset Sale) on or prior to the final maturity date of the Notes.

“Dollar” or “\$” means the lawful currency of the United States of America.

“Due Date” shall mean the Energy Due Date or the Exposure Fee Due Date, as the context requires.

“EDC” means the local distribution company responsible for delivering Energy to Party B’s Customers in a particular geographic area.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Energy Adder” has the meaning specified in Exhibit 14(a)(i).

“Energy Customer Load” means the aggregate annual Energy load requirements of all Customers of Party B, as reasonably determined by Party A.

“Energy Due Date” has the meaning specified in Part 9.

“Energy Option” means a physically or financially settled option transaction that provides the buyer the right, but not the obligation, to enter into a transaction where the underlying price is based upon the price of Energy.

“Energy Settlement Date” has the meaning specified in Part 9.

“Energy Swap” means any swap transaction where the floating or fixed price is based upon the price of Energy or any related index for the price of Energy.

“Energy Swap Settlement Date” has the meaning specified in Part 9.

“Environmental Claim” means, with respect to any Person, any written notice, claim, administrative, regulatory or judicial action, suit, judgment or demand by any other Person alleging or asserting such first Person’s liability for investigator costs, cleanup costs, government response costs, damages to natural resources or other Property of such first Person, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, Use, threatened Release or Release into the environment of any Hazardous Material at any location, whether or not owned by such first Person or (ii) any fact, circumstance, condition or occurrence forming the basis of any violation, or alleged violation, of any Environmental Law. The term Environmental Claim shall include any claim by any Governmental Authority for enforcement, delineation, investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and any claim by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence of Hazardous Materials or arising from alleged injury or threat of injury to the environment.

“Environmental Laws” means all laws, rules, regulations, treaties, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment (including its effect on human health and safety), preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material, waste disposal arrangements or to health and safety matters.

“EPT” means Eastern Prevailing Time.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest; provided, however, that any instruments evidencing Indebtedness convertible into or exchangeable for common stock of Party B or a Specified Entity of Party B will be deemed Indebtedness and not Equity Interests, unless any such instruments would be accounted for in accordance with GAAP as shareholders’ equity.

“ERCOT” means the Electric Reliability Council of Texas.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with Party B, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by Party B or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by Party B or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by Party B or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of Party B or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by Party B or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from Party B or any ERISA Affiliate of any notice, concerning the imposition upon Party B or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Escrow Account” means the segregated escrow account established pursuant to the Escrow Agreement.

“Escrow Agreement” means that certain Escrow and Security Agreement dated as of September 22, 2009, among the Trustee, MX Holdings and Law Debenture Trust Company of New York, as escrow agent.

“Excess Term” has the meaning specified in Part 13(b)(iv)(B).

“Existing ISDA Master Agreement” has the meaning specified in Part 5(m).

“Exposure Fee Due Date” has the meaning specified in Part 10(b)(iv).

“Extended Term” has the meaning specified in Part 5(h).

“FERC” means the United States Federal Energy Regulatory Commission.

“Financing Fee” means interest on the Outstanding Amounts, calculated on a daily basis, at (a) the Base Rate plus 5% per annum, or (b) Party A’s relevant business unit’s actual cost of funds plus 5% per annum, whichever is greater; provided, however, that with respect to any past due Outstanding Amount the Financing Fee shall be calculated at the Default Rate.

“Financing Fee Settlement Date” has the meaning specified in Part 9(e).

“Fixed-Price Physical Transaction” has the meaning specified in Part 13(b).

“Fixed Physical Exposure” has the meaning specified in Part 13(b).

“fuel” means natural gas, coal, oil and the products and by-products thereof.

“GAAP” means generally accepted accounting principles in the United States consistently applied.

“Gas” means any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

“Gas Annex” means the Sub-Annex E to the 2005 ISDA Commodity Definitions (Physically-settled North American Gas Transactions).

“Governmental Approval” means (i) any authorization, consent, approval, license, lease, ruling, permit, tariff, certification, exemption, filing, variance, claim, order, judgment, decree, by or with, (ii) any declaration of or with or (iii) any registration by or with, any Governmental Authority, in each case relating to (a) the due execution and delivery of, or the performance by each intended party of, any Material Contract of its obligations or the exercise of its rights under, each Material Contract to which it is (or is intended to be) a party or (b) with respect to Party B, any Specified Entity of Party B or any Affiliate of such Specified Entity, the grant by Party B, such Specified Entity or such Affiliate of the Liens created pursuant to the ISDA Security Documents to which Party B, such Specified Entity or such Affiliate of such Specified Entity is a party, the validity, enforceability and perfection of such Liens and the exercise by Party A of its rights and remedies under such ISDA Security Documents.

“Governmental Authority” means the government of any jurisdiction, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, board, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Group” has the meaning specified in clause (i) of the definition of “Change of Control”.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person

(the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement to be entered into among Party A, Party B and the Specified Entities, as may be amended, modified, restated or supplemented.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedged Obligations” has the meaning specified in Part 12(a)(xix)(C).

“Hedging Transaction” means any Specified Transaction or any other transaction that would be a Specified Transaction if it were entered into by Party A and Party B.

“Holder” means a beneficial owner of the Notes.

“Huntington” means The Huntington National Bank, a national banking association.

“Huntington Control Agreement” means the Deposit Account Control Agreement among Party B, Huntington and Party A, in the form of Exhibit 11(b)(ii).

“Imaged Agreement” has the meaning specified in Part 5(e).

“Impairment” means, with respect to any Governmental Approval, the rescission, termination, cancellation, repeal, invalidity, suspension (other than by reason of an event of force majeure to the extent suspension by reason of an event of force majeure is expressly permitted by such Governmental Approval or results from Applicable Law), injunction, inability to satisfy stated conditions to effectiveness or amendment, modification or supplementation. The verb “Impair” shall have a correlative meaning.

“including” and “include” are not limiting and are deemed followed by the words “without limitation”.

“Indebtedness” means with respect to any Person, without duplication:

- (i) all obligations of such Person for borrowed money;
- (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (iii) all Capitalized Lease Obligations of such Person;
- (iv) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business that are not overdue by 120 days or more or are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted);

(v) all obligations for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction;

(vi) guarantees and other contingent obligations in respect of Indebtedness referred to in clauses (i) through (v) above and clause (viii) below;

(vii) all obligations of any other Person of the type referred to in clauses (i) through (vi) above and clause (viii) below which are secured by any Lien on any property or asset of such Person; and

(viii) all obligations under currency agreements and interest swap agreements of such Person.

"Indemnified Liabilities" has the meaning specified in Part 5(r).

"Indemnitee" has the meaning specified in Part 5(r).

"Indenture" means the indenture, dated as of September 22, 2009, among MX Holdings, the Guarantors and the Trustee, under which the Notes were issued.

"Infometer.com" means Infometer.com Inc., a Delaware corporation.

"Insolvency or Liquidation Proceeding" means:

(i) any case commenced by or against Party B or any Specified Entity of Party B under Title 11, U.S. Code or any similar federal or state law for the relief of debtors, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of Party B or any Specified Entity of Party B, any receivership or assignment for the benefit of creditors relating to Party B or any Specified Entity of Party B or any similar case or proceeding relative to Party B or any Specified Entity of Party B or its creditors, as such, in each case whether or not voluntary;

(ii) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of Party B or any Specified Entity of Party B, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency, other than a liquidation or dissolution of Party B or a Specified Entity of Party B in connection with (a) a merger or consolidation of such Person with or into a Specified Entity of Party B or Party B, as the case may be, or (b) a transfer of substantially all assets of Party B or a Specified Entity of Party B to a Specified Entity of Party B or Party B, as the case may be, in the case of each of the preceding clauses (a) and (b), in a transaction that is permitted under the Master ISDAs; or

(iii) any other proceeding of any type or nature in which substantially all claims of creditors of Party B or any Specified Entity of Party B are determined and any payment or distribution is or may be made on account of such claims.

"Intercreditor Agreement" means the Intercreditor and Subordination Agreement, dated as of September 22, 2009, by and among MX Holdings, the pledgors from time to time party thereto, Sempra Energy Trading LLC, in its capacity as facility agent, and Law Debenture Trust Company of New York, in its capacity as indenture trustee, as it may be amended from time to time.

"Interested Person" means, in respect of Party B or any Specified Entity of Party B, (a) any Person which has a Ten Percent Interest in Party B or any such Specified Entity, (b) any Person in which Party B or any such Specified Entity has a Ten Percent Interest, or (c) if a Person has a Ten Percent Interest in Party B or any such Specified Entity and in other Persons, such other Persons.

"Investment" means, for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale), (ii) the making of any

deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business, (iii) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person or (iv) any capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) any other Person.

“investment company” has the meaning specified in Part 5(j)(xv).

“ISDA Documents” means the Master ISDAs, trade confirmations under the Master ISDAs or otherwise, Credit Support issued in connection with Master ISDAs, the ISDA Security Documents and each of the other agreements, schedules, annexes, confirmations, documents and instruments providing for, relating to or evidencing any other ISDA Obligations, and any other document or instrument executed or delivered at any time in connection with, or giving rise to, any ISDA Obligations, to the extent such are effective at the relevant time, as each may be amended, amended and restated, supplemented, modified, renewed, replaced, refinanced or extended, restructured or otherwise modified, in whole or in part, from time to time in accordance with its terms and with the provisions of this Agreement.

“ISDA Obligations” means any settlement amount, termination payment, principal (including reimbursement obligations with respect to Credit Support whether or not drawn), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any Insolvency or Liquidation Proceeding at the rate, including any applicable post-default rate, specified in the ISDA Documents, even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses and other liabilities to be paid or performed under the ISDA Documents.

“ISDA Security Documents” means, collectively, the Guarantee and Collateral Agreement and any and all guarantees, security agreements, pledge agreements, collateral assignments, mortgages, collateral agency agreements, control agreements, deeds of trust or other grants or transfers for security executed and delivered by Party B or any Specified Entity of Party B creating (or purporting to create) a Lien securing ISDA Obligations in favor of Party A, in each case, as amended, amended and restated, supplemented, modified, renewed, restated, replaced, refinanced or extended, restructured or otherwise modified, in whole or in part, from time to time, in accordance with its terms and with the provisions of this Agreement.

“ISO” means any independent electric system operator, regional transmission operator or similar entity including the NYISO, ERCOT, PJM, NEPOOL and any other independent electric system operator, regional transmission operator or similar entity added to the list set forth on Exhibit 7(j) from time to time.

“LDC” means the local distribution company responsible for delivering Gas to MX Energy’s Customers in a particular geographic area.

“LDC/EDC Delivery Charges” means, with respect to any billed and unbilled accounts receivable outstanding as at any time of the determination thereof, the portion of such accounts receivable that constitutes amounts owed by Party B’s Customers for services provided by an LDC or EDC with respect to which Party B has an equal account payable obligation to such LDC or EDC.

“Lien” means (i) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest of any kind in, on or of such Property, (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Property, (iii) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities, (iv) any right of set off, recoupment, combination of accounts or similar rights; and in each case whether by contract, operation of law or otherwise and (v) any agreement to give any interest described in clauses (i) through (iv).

“Loan” has the meaning specified in Part 10(b)(v).

“Lockbox Account” has the meaning specified in Part 11(b)(i).

“Management Incentive Plan” has the meaning specified in the Stockholders Agreement.

“Margin” means all cash held in the Party A Sub Account under all Master ISDAs.

“Master ISDAs” shall mean this Agreement, the MX Energy Agreement and any additional ISDA Master Agreement entered into between Party A and any Specified Entity of Party B (other than MX Energy).

“Material Adverse Effect” means (a) a material adverse effect on (i) Party B or Party B and Party B’s Specified Entities taken as a whole, (ii) the ability of Party B or any Specified Entity of Party B to perform any of its material obligations under any Material Contracts to which it is a party or (iii) the aggregate value of the Collateral or the validity or priority of the security interests in such Collateral, or (b) a material adverse change (as reasonably determined by Party A in its sole discretion) in (i) the financial condition, the results of operations, business, prospects or results of operations of Party B or Party B and Party B’s Specified Entities taken as a whole, or (ii) the collection rate or accounts receivable for Party B or any Specified Entity of Party B;

“Material Contracts” means the Notes, the Indenture, the Old Notes, the Old Notes Indenture, any Replacement Debt (and, if applicable, any indenture related thereto), any contract or agreement to which Party B or any Specified Entity of Party B is a party under which Party B or such Specified Entity, as applicable, shall have obligations (or a right to receive revenues) over the term of such contract or agreement in excess of \$3,500,000, or the then equivalent of such amount in another currency or currencies (or such other amount as approved by the Party A) or which is otherwise material to the business or operation of Party B or such Specified Entity, as applicable and any other contract or agreement that is necessary or advisable for the conduct of the business of Party B or any Specified Entity of Party B as contemplated by this Agreement.

“Maturity Date” means, with respect to a Loan, the maturity date for such Loan specified on Exhibit 10(d)(i).

“Minimum Energy Quantity” has the meaning specified in Part 7(a).

“Missing Day” has the meaning specified in Part 5(f)(2).

“Moody’s” means Moody’s Investors Service, Inc., or any successor thereof.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA with respect to which Party B or any of its ERISA Affiliates may have any liability, contingent or otherwise.

“MX Canada” means MxEnergy (Canada) Ltd., a Nova Scotia corporation.

“MX Energy” means MxEnergy Inc., a Delaware corporation.

“MX Energy Agreement” means that certain ISDA Master Agreement, of even date herewith, entered into between Party A and MX Energy.

“MX Holdco” means any Specified Entity of Party B other than MX Holdings, Party B, MX Canada and MX Electric.

“MX Holdings” means MxEnergy Holdings Inc., a Delaware corporation.

“NEPOOL” means ISO New England.

“Notes Escrow Account” means the segregated escrow account established pursuant to the Escrow Agreement.

“Notes” means the 13.25% Senior Subordinated Secured Notes due 2014 of MX Holdings.

“NYMEX” means The New York Mercantile Exchange, or any successor thereof.

“Offering Memorandum” means that certain Second Amended and Restated Confidential Offering Memorandum and Consent Solicitation Statement of MX Holdings, dated as of August 27, 2009, as amended through the Closing Date.

“Officers’ Certificate” means a certificate signed by two officers of MX Holdings, at least one of whom shall be the principal executive officer or principal financial officer of MX Holdings, and delivered to the Trustee.

“Old Notes” means the Floating Rate Senior Notes Due 2011 of MX Holdings.

“Old Notes Indenture” means the indenture, dated as of August 4, 2006, among MX Holdings, Law Debenture Trust Company of New York, as trustee, and Deutsche Bank Trust Company Americas, as registrar and paying agent, as amended through the Closing Date.

“Online Choice” means OnlineChoice Inc., a Delaware corporation.

“Operating Account” means account number 2079961065281 at Wachovia.

“Option Transaction” means a transaction that provides the buyer the right, but not the obligation, to purchase or sell a commodity specified in such transaction.

“Outstanding Amount” means at any time, all amounts (including Credit Support Fees and Financing Fees and amounts payable on the Energy Settlement Dates set out in Part 10(b)) not paid on the applicable Settlement Date and any other amount owed to Party A.

“Outstanding Power Transaction” has the meaning specified in the Power Annex.

“Overnight LIBOR” means for any Business Day the rate of interest per annum (rounded upwards if necessary to the nearest 1/100 of 1%) appearing on Reuters Screen LIBO Page or <http://bba.org.uk/bba/> (or any successor page) as the British Bankers Association London Interbank offered rate for overnight deposits in U.S. Dollars at approximately 11 a.m. London time two Business Days prior to the date of determination.

“Part” means, unless otherwise specified, a Part of the Schedule to the Master Agreement.

“Party A Sub Account” means a sub account of Party A’s general working capital account which shall be identified as relating to this Agreement, or any replacement custodial account established in accordance with Part 11(f).

“Party B Customer Load” means the full Energy load requirements of Party B’s Customers.

“PBGCC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Holders” means Jeffrey A. Mayer, Denham Commodity Partners LP, Charter Mx LLC and Camulos Capital LP, and their respective Affiliates.

“Permitted Indebtedness” means the following Indebtedness:

- (i) Indebtedness incurred under the ISDA Documents;
- (ii) Indebtedness incurred with respect to any LDC, EDC or ISO in connection with Party B’s balancing obligations;

- (iii) for a period of 90 days following the Closing Date, letters of credit issued by SocGen for the account of Party B that are outstanding on the Closing Date and that are secured by Credit Support arranged for by Party A;
- (iv) loans from MX Holdings or a MX Holdco, subordinated to the ISDA Obligations on terms satisfactory to Party A in its sole discretion, to MX Energy or MX Canada necessary to pay ISDA Obligations of MX Energy or MX Canada then due and payable;
- (v) the Notes in a principal amount not to exceed \$75,000,000 (and Replacement Debt that is incurred pursuant to, and compliant with, Section 3.10 of the Intercreditor Agreement);
- (vi) the Old Notes in a principal amount not to exceed \$10,000,000;
- (vii) Guarantees of MX Holdings or any Wholly-Owned Subsidiary of MX Holdings in respect of Permitted Indebtedness;
- (viii) (a) Indebtedness incurred to finance the acquisition, construction or improvement of any fixed or capital assets and (b) Indebtedness in respect of Capital Leases and synthetic lease obligations and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that (x) in the case of Indebtedness to finance the acquisition, construction or improvements of fixed or capital assets, such Indebtedness is incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement and (y) the aggregate principal amount of Indebtedness permitted by this paragraph shall not exceed \$250,000 at any time outstanding;
- (ix) unsecured Indebtedness in an aggregate principal amount not to exceed \$500,000 at any time outstanding;
- (x) Indebtedness required to satisfy regulatorily-required credit requirements not satisfied by Party A on behalf of Party B;
- (xi) Indebtedness consisting of obligations relating to surety bonds outstanding as of the Closing Date, as set forth on Exhibit 14(a)(ii);
- (xii) for a period of 30 days following the Closing Date, Indebtedness consisting of the RBS Novated Transactions (to the extent such transactions have not been novated to The Royal Bank of Scotland plc) set forth on Exhibit 12(a)(xix); and
- (xiii) following the novation of such transactions to The Royal Bank of Scotland plc, Indebtedness consisting of RBS Novated Transactions.

“Permitted Investments” means, as of the date of this Agreement, any of the following owned by Party B or any Specified Entity of Party B: (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than six months from the date of acquisition; (ii) time deposits and certificates of deposit, with maturities of not more than six months from the date of acquisition, of any domestic or international commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 (or whose holding company meets such standard) and having a rating on its commercial paper of at least “A-1” or the equivalent thereof by S&P or at least “P-1” or the equivalent by Moody’s; (iii) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (i) and (ii) above; (iv) investments in the Subsidiaries listed on Exhibit 5(j)(iv) which subsist as of the date of this Agreement; (v) Indebtedness between Party B and any of the Specified Entities of Party B or between any of the Specified Entities of Party B incurred solely for the purposes of facilitating the payment of any amounts due to Party A under any Master ISDA, so long as such Indebtedness is subordinated to all ISDA Obligations on terms satisfactory to Party A in its sole discretion; (vi) Equity Interests in a Wholly-Owned Subsidiary of Party B or a Wholly-Owned Subsidiary

of a Specified Entity of Party B; (vii) any other investment which Party A agrees in writing shall constitute a "Permitted Investment"; (viii) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and (ix) Guarantees constituting Permitted Indebtedness.

"Permitted Liens" means:

- (i) Liens in favor of Party A created under the ISDA Security Documents;
- (ii) Liens to secure the Notes (and Replacement Debt that is incurred pursuant to, and compliant with, Section 3.10 of the Intercreditor Agreement); provided that such Liens (other than with respect to the Notes Escrow Account) shall be subordinate to the Liens securing the ISDA Obligations of Party B and the Specified Entities of Party B under the ISDA Documents in accordance with the Intercreditor Agreement.
- (iii) Liens in connection with workmen's compensation; unemployment insurance or other social security or pension obligations;
- (iv) mechanics', workmen's, materialmen's, suppliers', construction or like liens, in each case (A) for amounts not yet due and payable or (B) for amounts due and payable with respect to ordinary course claims being contested in good faith and for which adequate reserves (in accordance with GAAP) have been established or bond is posted;
- (v) Liens for taxes, assessments or governmental charges or levies on Party B's or any Specified Entity of Party B's Property not yet delinquent or, if delinquent, which are being contested in good faith and for which adequate reserves (in accordance with GAAP) have been established;
- (vi) Liens (including first-priority Liens if required) in connection with any account receivables purchase program entered into between Party B or any Specified Entity of Party B and any EDC listed on Exhibit 7(j);
- (vii) attachment or judgment liens to the extent not constituting an Event of Default; provided that (A) the existence of such liens could not reasonably be expected to result in a Material Adverse Effect and (B) such liens are discharged within 60 days of the creation thereof;
- (viii) Liens in favor of third parties in any Collateral having in the aggregate a fair market value not to exceed \$500,000 for Party B and all Specified Entities of Party B taken as a whole;
- (ix) Liens arising out of judgments or awards in respect of which MX Holdings or any its Subsidiaries shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings; provided that the aggregate amount of all such judgments or awards (and any cash and the fair market value of any property subject to such Liens) does not exceed \$500,000 for Party B and all Specified Entities of Party B taken as a whole, at any time outstanding;
- (x) rights of set-off of banks, EDCs and ISOs in the ordinary course of banking and trading arrangements;
- (xi) Liens securing Permitted Indebtedness under Subparagraph (viii) of the definition of "Permitted Indebtedness" in any fixed or capital assets and improvements thereto or equipment hereafter acquired (or, in the case of improvements, constructed) by MX Holdings or any of its Subsidiaries; provided that (a) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and the proceeds thereof, (b) the Indebtedness secured thereby does not exceed the lesser of the cost or fair market value of the property being acquired or financed on the date of acquisition or financing, and (c) in

the case of purchase money security interests, such security interests are created within 120 days after such acquisition (or completion of such improvements); and

(xii) Liens on cash margin delivered to The Royal Bank of Scotland plc or a third party securing Indebtedness permitted by Subparagraphs (xii) and (xiii) of the definition of "Permitted Indebtedness".

"Person" means an individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a Governmental Authority or political subdivision thereof.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Party B or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Potential Termination Event" means an event or condition which constitutes a Termination Event or which, upon notice, lapse of time or both, would, unless cured or waived, become a Termination Event.

"Power Annex" has the meaning specified in Part 6.

"Power Transaction" has the meaning specified in the Power Annex.

"Preferred Stock" of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

"Primary Rate" means (i) the greater of 4% per annum and (ii) the Base Rate (matching the term of the applicable Credit Support document or instrument) plus 3.00% per annum; provided that a Credit Support instrument with no termination, expiration or maturity date shall be presumed to have a duration of two years.

"Private Equity" has the meaning specified in the Intercreditor Agreement.

"Product" has the meaning specified in the Power Annex.

"Promissory Note" means a promissory note substantially in the form of Exhibit 10(c)(ii).

"Prompt Month" means the nearest month of delivery for which NYMEX futures prices are published during the applicable trading month.

"Property" means any right or interest in or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, cash, securities, accounts and contract rights.

"Put Option" means an Option Transaction, which may be physically or financially settled, that gives the holder the right to sell a certain quantity of an underlying commodity to the seller of such Option Transaction, at a specified price on or up to a specified expiration date or during a specified exercise period.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"Qualified Custodian" means a domestic office of a commercial bank, trust company or financial institution organized under the laws of the United States (or any state or a political subdivision thereof) having assets of at least \$10 billion and a long term debt or deposit rating of at least (i) A3 by Moody's or (ii) A- by S&P.

"Qualified Initial Public Offering" has the meaning specified in the Intercreditor Agreement.

"Quantity" has the meaning specified in the Power Annex.

“Quoted Price” means any price, discount or premium to a Commodity Reference Price (for purposes of determining a floating price) or Option Transaction premium quoted by Party A (before adding any relevant Energy Adder) for (i) any Power Transaction where Party B is the buyer, (ii) any fixed-for-floating Energy Swap where Party B is the fixed price payer, (iii) any Energy Swap that is a locational basis swap, or (iv) any Energy Option; such prices, discounts or premiums, as the case may be, shall be reflective of market offers or offer-side discounts and premiums, as the case may be, adjusted for market conditions for similar quantities of Energy, similar periods and tenors, at like Delivery Points, and with counterparties whose credit quality is satisfactory to Party A.

“Quoted Purchase Price” means any price, discount or premium to a Commodity Reference Price (for purposes of determining a floating price) or Option Transaction premium quoted by Party A (before adding any applicable credit) for (i) any Power Transaction where Party B is the seller, (ii) any fixed-for-floating Energy Swap where Party B is the floating price payer, (iii) any Energy Swap that is a locational basis swap or (iv) any Energy Option; such prices, discounts or premiums, as the case may be, shall be reflective of market bids or bid-side index prices, discounts and premiums, as the case may be, adjusted for market conditions for similar quantities of Energy, similar periods and tenors, at like Delivery Points, and with counterparties whose credit quality is satisfactory to Party A.

“Rating” means, with respect to any entity, the ratings assigned to such entity by each of the Rating Agencies.

“Rating Agencies” means Moody’s and/or S&P, as applicable, and any successor thereto.

“RBS Novated Transaction” has the meaning specified in Part 12(a)(xix)(A).

“RBS Sleeve Transaction” has the meaning specified in Part 12(a)(xix)(A).

“RECs” has the meaning specified in Part 7(a)(viii).

“Registration Rights Agreement” means the Registration Rights Agreement, dated as of September 22, 2009, among MX Holdings and certain of the Stockholders party thereto, as the same may be amended from time to time.

“Reimbursement Obligation” has the meaning specified in Part 12(a)(xviii).

“Related Agreements” means, collectively, the ISDA Documents, the Intercreditor Agreement, the Stockholders Agreement and the Registration Rights Agreement.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

“Replacement Debt” has the meaning specified in the Intercreditor Agreement.

“Reporting Company” has the meaning specified in Part 12(a)(vi).

“Residential Customer- Equivalent” means each 100 MMBtus, with respect to Gas, and each 10Mws, with respect to Energy, of Party B Customer Load.

“Responsible Officer” means, with respect to Party B and any Specified Entity of Party B, a director, the president, chief executive officer, general counsel, chief operating officer, chief financial officer, principal accounting officer, treasurer or any vice president of Party B or such Specified Entity as the case may be.

“Restricted Payment” means any instance where Party B and the Specified Entities of Party B will, directly or indirectly:

- (i) declare or pay any dividend or make any distribution, whether in cash, securities or other property (other than dividends or distributions payable in Qualified Capital Stock), on or in respect of any Equity Interests to the holders thereof;

(ii) make any payment (whether in cash, securities or other property), including any sinking fund or similar fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in Party B or any Specified Entity of Party B or any option, warrant or other right to acquire any such Equity Interests in Party B or any Specified Entity of Party B;

(iii) make any interest or principal payment on, purchase, defease, redeem, repay, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, the Old Notes or any Indebtedness of Party B or any Specified Entity of Party B that is subordinated or junior in right of payment to the ISDA Obligations, other than payments to the Notes Escrow Account in accordance with the terms of the Intercreditor Agreement; and

(iv) make any Investment (other than Permitted Investments).

“Sale and Leaseback Transaction” means any direct or indirect arrangement with any Person or to which any such Person is a party, providing for the leasing to Party B or a Specified Entity of Party B of any property, whether owned by Party B or any Specified Entity of Party B at the Closing Date or later acquired, which has been or is to be sold or transferred by Party B or such Specified Entity to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such Property.

“Schedule” means the act of Party A, Party B, any EDC, any ISO or any relevant Transmission Provider notifying, requesting, and confirming to each other relevant party the quantity of Energy to be delivered on any Day, as the case may be, or the quantity of UCAP to be delivered in respect of any month.

“Secondary Rate” means 1.00% per annum.

“SET” has the meaning specified in Part 5(l).

“Settlement Date” shall mean the Energy Settlement Date, the Financing Fee Settlement Date or the Energy Swap Settlement Date, as the context requires.

“Sleeve Transaction” has the meaning specified in Part 7(e).

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereof.

“SocGen” means Société Générale, a French bank.

“Solvent” when used with respect to any Person, means that, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws (or, with respect to MX Canada, applicable Canadian federal or provincial laws) governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Specified Agreements” means, collectively, the ISDA Documents, the Intercreditor Agreement, the Stockholders Agreement and the Registration Rights Agreement.

“Stockholders” means the holders of Capital Stock in MX Holdings.

“Stockholders Agreement” means the Stockholders Agreement dated the date hereof among MX Holdings and the Stockholders party thereto.

“Storage Gas” has the meaning specified in the MX Energy Agreement.

“Subject Person” has the meaning specified in the definition of “Change of Control”.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (ii) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Surplus” means that the amount held in the Aggregated Collateral Accounts at the time of determination exceeds the aggregate amount of all outstanding settlement payments under all Transactions (as such term is defined in the applicable Master ISDA) under all Master ISDAs (whether or not the applicable Settlement Dates have occurred).

“Swap Exposure” has the meaning specified in Part 13(b).

“Swap Note Collateral” means the funds deposited in the Swap Note Sub Account pursuant to Part 10(b)(vi).

“Swap Note Sub Account” means a sub account of Party A’s general working capital account which shall be identified as relating to this Agreement and holding Swap Note Collateral, or any replacement custodial account established in accordance with Part 11(f).

“Swap Transaction” means any swap, contract for differences, or other financially settled derivative transaction (other than an Option Transaction), including any such transaction entered into under this Agreement.

“Tax” has the meaning specified in the Master Agreement except that, for purposes of the provisions of this Agreement (whether or not incorporated by reference into the Master Agreement), that definition shall be amended by deleting the phrase “in respect of any payment under this Agreement other than a” and inserting in its place “including any income, value added, sales”.

“Tax Gross-Up Amounts” has the meaning specified in the Intercreditor Agreement.

“Ten Percent Interest” means, in respect of any Person, 10% of any class of securities in the aggregate, whether held directly or indirectly.

“Terminate” means terminate and/or liquidate, and any right granted in this Agreement to terminate Transactions is a right to terminate and/or liquidate. “Termination” shall be similarly construed.

“Termination Currency” has the meaning specified in Part 1(g).

“Termination Date” has the meaning specified in Part 5(h).

“Third Party Exposure Fees” has the meaning specified in Part 10(b)(iv).

“Third Party Future Calculation Period” has the meaning specified in Part 10(b)(vi).

“Third Party Liquidation Payments” has the meaning specified in Part 10(b)(i).

“Third Party Notional Amount” has the meaning specified in Part 10(b)(iv)

“Third Party Novation Payments” has the meaning specified in Part 10(b)(iii).

“Third Party Novation Transactions” has the meaning specified in Part 10(b)(iii).

“Third Party Transactions” has the meaning specified in Part 10(b)(i).

“Threshold Amount” has the meaning specified in Part 1(c).

“Transmission Provider” has the meaning specified in the Power Annex

“Transporter” has the meaning specified in the Gas Annex.

“Trustee” means Law Debenture Trust Company of New York, as trustee under the Indenture, and its successors and assigns.

“UCAP” means the electricity product that is required to be purchased by load-serving entities in the NYISO control area.

“Use” means, with respect to any Hazardous Material and with respect to any Person, the generation, manufacture, processing, distribution, handling, use, treatment, recycling or storage of such Hazardous Material or transportation to or from the property of such Person of such Hazardous Material.

“Wachovia” means Wachovia Bank National Association, a national banking association.

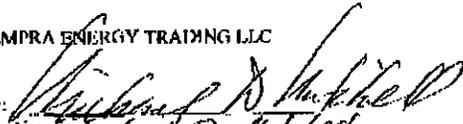
“Wachovia Control Agreements” means the Account Control Agreements among Party A, Party B, the other parties thereto and Wachovia, in the forms of Exhibit 11(b)(i)(A) and Exhibit 11(b)(i)(B).

“Wholesale Transfer” has the meaning specified in the Certificate of Incorporation.

“Wholly-Owned Subsidiary” of any Person means any Subsidiary of such Person of which all the outstanding Equity Interests (other than in the case of a foreign Subsidiary, directors’ qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to Applicable Law) is owned by such Person or any Wholly-Owned Subsidiary of such Person.

IN WITNESS WHEREOF, the parties have executed this Schedule as of the date specified on the first page hereof.

SEMPRA ENERGY TRAINING LLC

By: 
Name: MICHAEL D. 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:

ONLINECHOICE, INC.

By: _____
Name:
Title:

[Signature Page to Power ISDA Schedule]

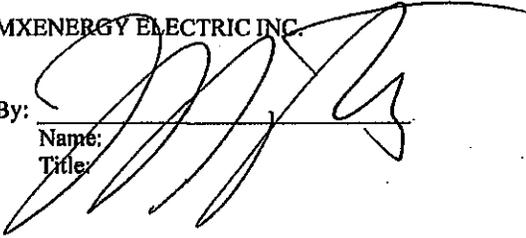
IN WITNESS WHEREOF, the parties have executed this Schedule as of the date specified on the first page hereof.

SEMPRA ENERGY TRADING LLC

By: _____
Name:
Title:

MXENERGY ELECTRIC INC.

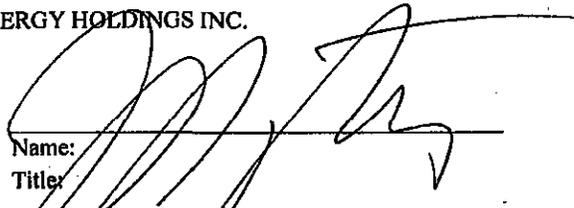
By: _____
Name:
Title:



Acknowledged and Agreed:

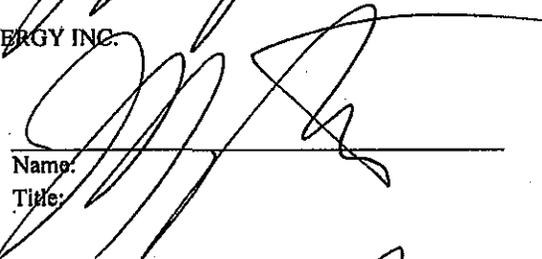
MXENERGY HOLDINGS INC.

By: _____
Name:
Title:



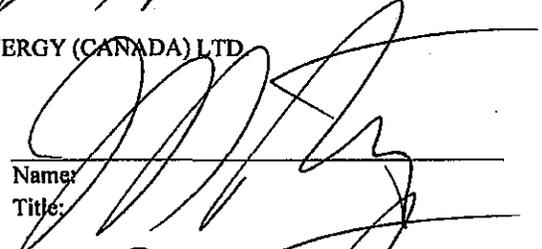
MXENERGY INC.

By: _____
Name:
Title:



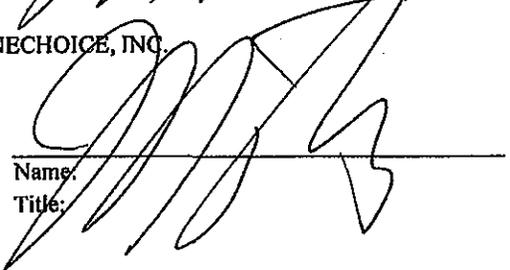
MXENERGY (CANADA) LTD.

By: _____
Name:
Title:



ONLINECHOICE, INC.

By: _____
Name:
Title:



[Signature Page to Power ISDA Schedule]

~~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:

~~MXENERGY CAPITAL HOLDINGS CORP.~~

By:

Name:
Title:

~~INFOMETER.COM INC.~~

By:

Name:
Title:

[Signature Page to Power ISDA Schedule]