

Attachment 1

BLOCK REGIONAL DIALOGUE CONTRACT TEMPLATE

*This template shows the similarities and differences between individual templates. It contains the clauses that are either identical or nearly identical for all templates (Load Following, Block, Slice / Block, RPSA, and NR Block). It does NOT contain clauses that are unique to the following templates: Slice / Block, RPSA, and NR Block. **It does not identify all differences and should be used only as a general guide.***

1. Black non-italicized text indicates draft contract language.
2. ***All text in italics will be deleted*** before the contracts are finalized.
 - (a) ***Pink italicized text*** indicates notes to BPA AEs and contract staff who will tailor the template for each particular customer within the limits stated. *Pink text will be deleted after August 1 when the template is converted to a contract for each particular customer.*
 - (b) ***Blue italicized text*** indicates notes to the reviewers (customers and others.) This blue text will be deleted after the draft template is finalized on August 1.
 - (c) **Red text** indicates where a drafter must 'fill-in-the-blank.' Red text will be converted to black text and will become part of the final contract.
3. **Grey shaded text** is used to help reviewers of the template understand how different versions of a particular clause are either the same or different, and is most often used to help reviewers understand subtle variations between the Load Following, Block and Slice / Block templates. The shading will be deleted when the templates are finalized

POWER SALES AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
«FULL NAME OF CUSTOMER»

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This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and «FULL NAME OF CUSTOMER» («Customer Name»), hereinafter individually referred to as "Party" and collectively referred to as the "Parties". «Customer Name» is a «public utility district, people's utility district, non-profit corporation, municipal corporation, mutual association tribal utility, federal agency», organized and authorized under the laws of the State of «State», to purchase and distribute electric power to serve retail consumers from its distribution system within its service area. *Drafter's Note: modify the previous sentence for tribal utilities and federal agencies to reflect their legal status independent of the state.*

RECITALS(06/05/08 Version)

«Customer Name»'s current power sales agreement (Contract No. «##PB-####») continues through September 30, 2011, and will be replaced by this Agreement on October 1, 2011.

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

BPA is authorized to market federal power to qualified entities that are eligible to purchase such power. Under section 5(b)(1) of the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 of 1980 (Northwest Power Act), BPA is obligated to offer a power sales agreement to eligible customers for the sale and purchase of federal power to serve their retail consumer load in the Region that is not met by the customer's use of its non-federal resources.

BPA has proposed the adoption of a tiered rates pricing methodology for federal power sold to meet BPA's obligations under section 5(b) of the Northwest Power Act to eligible customers, in order to maintain the benefits of the federal system in the future and encourage BPA customers to develop regional power resource infrastructure to meet regional consumer loads under this Agreement.

To effect that purpose, in this Agreement BPA establishes a Contract High Water Mark for «Customer Name» that will define the amounts of power «Customer Name» may purchase from BPA at the Tier 1 rate, as defined in BPA's Tiered Rate Methodology.

The Parties agree:

Option 1: Include the following for customers who do NOT need RUS approval. (See Customer Characteristic Spreadsheet or Janet Rickman)

1. TERM(06/30/08 Version)

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2028. Performance by BPA and «Customer Name» shall commence on October 1, 2011, with the exception of those actions required prior to that date that are included in:

- (1) section 3, Power Purchase Obligation;
- (2) section 9, Elections to Purchase Power Priced at PF Tier 1 Rates;
- (3) section 17, Information Exchange and Confidentiality;
- (4) section 18, Conservation and Renewables;
- (5) section 19, Resource Adequacy;
- (6) section 22, Governing Law and Dispute Resolution;
- (7) section 26, Termination;
- (8) Exhibit A, Net Requirements and Resources;

- (9) Exhibit B, High Water Marks and Contract Demand Quantities; and,
- (10) Exhibit C, Purchase Obligations.

Section 22, Governing Law and Dispute Resolution will only apply to the extent there is a dispute regarding actions required after the Effective Date in the above referenced sections and exhibits.

END Option 1

2. DEFINITIONS (06/05/08 Version)

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section in which the term is used, or if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions (GRSPs).

- 2.1 "Above-RHWM Load" **(06/11/08 Version)** means forecasted annual Total Retail Load that is above «Customer Name»'s RHWM.
- 2.2 "Annexed Load" **(05/15/08 Version)** means existing load and distribution system, and/or service territory «Customer Name» acquires from another utility, by means of annexation, merger, purchase or trade, and authorized by a final state, regulatory or court action, for which «Customer Name» has the right, or has obtained an ownership interest in the facilities necessary, to serve the load.
- 2.3 "Balancing Authority" **(06/10/08 Version)** means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.
- 2.4 "Balancing Authority Area" **(06/10/08 Version)** means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.
- 2.5 "Business Day(s)" **(05/13/08 Version)** means every Monday through Friday except federal holidays.
- 2.6 "Consumer-Owned Resource" **(06/16/08 Version)** means a Generating Resource connected to «Customer Name»'s distribution system that is owned by a retail consumer, has a nameplate capability greater than 200 kilowatts, and is operated or applied to load on a sustained basis rather than operated occasionally or intermittently as a back-up energy source at times of maintenance or forced outage.
- 2.7 "Contract Demand Quantities" or "CDQ" **(06/11/08 Version)** shall have the meaning as defined in section 6.6.1.

- 2.8 “Contract High Water Mark” or “CHWM”**(06/11/08 Version)** shall have the meaning as defined in section 6.6.1.
- 2.9 “Contract High Water Mark Contract” or “CHWM Contract”**(05/15/08 Version)** means a Regional Dialogue Contract that contains a CHWM, allowing the customer to purchase power at tiered rates, or as defined in the TRM.
- 2.10 “Contract Resources”**(07/02/08 Version)** means any sources or amounts of electric power that «Customer Name» acquires from identified or unidentified electricity-producing units by contract purchase from an electricity supplier, and for which the amounts received by «Customer Name» do not depend on the same actual production from an identified Generating Resource.
- 2.11 “Diurnal” **(07/01/08 Version)** means the distribution of hours of months between Heavy Load Hours (HLH) and Light Load Hours (LLH). HLH and LLH are as defined by the North American Electric Reliability Corporation (NERC) and are subject to change by the NERC.
- 2.12 “Dedicated Resource(s)” **(05/28/08 Version)** means those Specified Resources and Unspecified Resource Amounts that «Customer Name» obligates itself to provide or is required by statute to provide under this Agreement for use to serve its Total Retail Load.
- 2.13 “Diurnal Distribution Factors”**(05/27/08 Version)** are as established in section 1.2.2.1 of Exhibit C, Purchase Obligations.
- 2.14 “Diurnal Flattening Service” or “DFS”**(06/16/08 Version)** means the service that converts the hour to hour output from a resource into a shape that is flat within each of the 24 HLH and LLH periods of a year.
- 2.15 “Due Date”**(05/25/08 Version)** shall have the meaning as described in section 16.2 of this Agreement.
- 2.16 “Effective Date”**(06/05/08 Version)** means the date on which this Agreement has been signed by «Customer Name» and BPA.
- 2.17 “Environmental Attribute(s)”**(04/04/08 Version)** shall have the meaning as defined in Exhibit H, Renewable Energy Certificates and Carbon Attributes.
- 2.18 “Environmentally Preferred Power RECS” or “EPP RECs”**(04/01/08 Version)** shall have the meaning as defined in Exhibit H, Renewable Energy Certificates and Carbon Attributes.
- 2.19 “Existing Resources”**(05/27/08 Version)** means those Specified Resources listed in section 2 of Exhibit A that were dedicated to «Customer Name»’s Total Retail Load prior to October 1, 2006.

- 2.20 “Firm Requirements Power” **(06/05/08 Version)** means federal power that BPA sells under this Agreement and makes continuously available to «Customer Name» under this Agreement, except for an Uncontrollable Force, to meet BPA’s obligations to «Customer Name» under section 5(b) of the Northwest Power Act.
- 2.21 “Fiscal Year” or “FY” **(02/28/08 Version)** means the period beginning each October 1 and ending the following September 30.
- 2.22 “Forced Outage Reserve Service” or “FORS” **(06/30/08 Version)** means the service that provides an agreed-to amount of capacity and energy to load during the forced outages of a resource, transmission line, or other asset.
- 2.23 “Forecast Year” **(05/27/08 Version)** means the Fiscal Year ending one full year prior to the commencement of a Rate Period.
- 2.24 “Generating Resources” **(05/28/08 Version)** means any sources or amounts of electric power from identified electricity-producing units, and for which the amounts of power received by «Customer Name» or «Customer Name’s» retail consumer are determined by the actual power production from such identified electricity-producing units. Such units may be owned by «Customer Name» or «Customer Name’s» retail consumer in whole or in part, or the output from such units may be owned for a defined period by contract.
- 2.25 “Integrated Network Segment” **(05/29/08 Version)** shall have the meaning as defined in section 14.1.
- 2.26 “Interchange Points” **(04/01/08 Version)** means the points where Balancing Authority Areas interconnect, and at which the interchange of energy between Balancing Authority Areas is monitored and measured.
- 2.27 “Monthly Distribution Factors” **(05/27/08 Version)** are as established in section 1.2.1.1 of Exhibit C, Purchase Obligations.
- 2.28 “Net Requirement” **(05/15/08 Version)** means the amount of federal power that a customer is entitled to purchase from BPA to serve its Total Retail Load minus its Dedicated Resource amounts as shown in Exhibit A, Net Requirements and Resources, consistent with section 5(b)(1) of the Northwest Power Act.
- 2.29 “Network Integration Transmission Service” **(05/29/08 Version)** shall have the meaning as defined in section 14.1.
- 2.30 “Network Resource” **(05/29/08 Version)** shall have the meaning as defined in section 14.1.

- 2.31 “New Large Single Load” or “NLSL” **(06/05/08 Version)** has the meaning specified in section 3(13) of the Northwest Power Act and in BPA’s NLSL policy.
- 2.32 “New Resources” **(05/27/08 Version)** means those Specified Resources listed in section 2 of Exhibit A that were or are dedicated to «Customer Name»’s Total Retail Load after September 30, 2006, and any Unspecified Resource Amounts listed in section 3.1 of Exhibit A.
- 2.33 “Notice Deadlines” **(05/27/08 Version)** are as established in section 9.1.1 of the body of this Agreement.
- 2.34 “Onsite Consumer Load” **(06/30/08 Version)** means retail consumer electric loads of «Customer Name» that are electrically interconnected directly with a Consumer-Owned Resource, that are entirely within «Customer Name»’s service territory or on an integrated portion of «Customer Name»’s distribution system, that consume energy generated by such Consumer-Owned Resource, and that require no schedule of power from such Consumer-Owned Resource.
- 2.35 “Operating Year” **(03/27/08 Version)** means the period, beginning each August 1 and ending the following July 31, that is designated under the Pacific Northwest Coordination Agreement (PNCA) for resource planning and operational purposes.
- 2.36 “Point of Delivery” or “POD” **(05/15/08 Version)** means the point where power is transferred from a transmission provider to «Customer Name».
- 2.37 “Point of Metering” or “POM” **(05/15/08 Version)** means the point at which power is measured.
- 2.38 “Power Services” **(09/04/07 Version)** means the organization, or its successor organization, within BPA that is responsible for the management and sale of federal power from the Federal Columbia River Power System.
- 2.39 “Primary Points of Receipt” **(05/29/08 Version)** shall have the meaning as defined in section 14.1.
- 2.40 “Purchase Periods” **(05/27/08 Version)** are as established in section 9.1.1 of the body of this Agreement.
- 2.41 “Rate Case Year” **(05/27/08 Version)** means the Fiscal Year ending prior to the commencement of a Rate Period. The Rate Case Year immediately follows the Forecast Year and is the year in which the general rate case is conducted.
- 2.42 “Rate Period” **(05/13/08 Version)** means the effective period of a particular rate schedule, generally two years; the period over which a rate is designed to recover costs allocated to it.

- 2.43 “Rate Period High Water Mark” or “RHWM” **(06/11/08 Version)** shall have the meaning as defined in section 6.6.1.
- 2.44 “Region” **(09/04/07 Version)** means the Pacific Northwest as defined in the Northwest Power Act.
- 2.45 “Renewable Energy Certificates” or “RECs” **(05/29/08 Version)** shall have the meaning as defined in Exhibit H, Renewable Energy Certificates and Carbon Attributes.
- 2.46 “Resource Supports Services” or “RSS” **(06/30/08 Version)** means the Diurnal Flattening Service, Forced Outage Reserve Service, and any other related service BPA provides to support resources that are renewable resources and are dedicated to load after September 30, 2006.
- 2.47 “Scheduling Points of Receipt” **(05/29/08 Version)** shall have the meaning as defined in section 14.1.
- 2.48 “Shaping Capacity” **(05/27/08 Version)** is as established in section 1.4 of Exhibit C, Purchase Obligations.
- 2.49 “Specified Resources” **(06/30/08 Version)** means Generating Resources or Contract Resources that have nameplate capabilities or maximum hourly purchase amounts greater than 200 kilowatts, that «Customer Name» has named and that «Customer Name» is required by statute or agrees to dedicate to serve its Total Retail Load. Such resources are identified as specific non-federal resources or as specific contracts with identified parties.
- 2.50 “Statement of Intent” **(05/27/08 Version)** shall have the meaning as defined in section 2.3 of Exhibit C, Purchase Obligations.
- 2.51 “Surplus Firm Power” **(02/28/08 Version)** means firm power that is in excess of BPA’s obligations under sections 5(b), 5(c), and 5(d) of the Northwest Power Act, as available.
- 2.52 “Third Party Transmission Provider” **(03/17/08 Version)** means a transmission provider other than BPA that delivers power to «Customer Name».
- 2.53 “Tier 1 RECs” **(05/29/08 Version)** shall have the meaning as defined in Exhibit H, Renewable Energy Certificates and Carbon Attributes.
- 2.54 “Tier 2 RECs” **(05/29/08 Version)** shall have the meaning as defined in Exhibit H, Renewable Energy Certificates and Carbon Attributes.
- 2.55 “Tier 2 Cost Pool” **(06/16/08 Version)** shall have the meaning as defined in Exhibit H, Renewable Energy Certificates and Carbon Attributes.

- 2.56 “Total Retail Load” *(06/05/08 Version)* means all retail electric power consumption, including electric system losses, within «Customer Name»’s electrical system excluding:
- (1) nonfirm or interruptible loads agreed to by the Parties,
 - (2) transfer loads of other utilities served by «Customer Name», and
 - (3) any loads not on «Customer Name»’s electrical system that are not specifically agreed to by BPA.
- 2.57 “Transfer Service” *(03/17/08 Version)* means the transmission, distribution and other services provided by a Third Party Transmission Provider to deliver electric energy and capacity over its transmission system.
- 2.58 “Transmission Services” *(09/04/07 Version)* means the organization, or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System.
- 2.59 “Uncontrollable Force” *(05/25/08 Version)* shall have the meaning as defined in section 21.1.
- 2.60 “Unspecified Resource Amounts” *(03/21/08 Version)* means an amount of firm power «Customer Name» has agreed to supply and dedicate to serve its Total Retail Load and which is not attributed to a particular Generating Resource or Contract Resource.

Option 1: Include if customer does not choose Shaping Capacity:

3. BLOCK POWER PURCHASE OBLIGATION WITHOUT SHAPING CAPACITY *(06/30/08 Version)*

3.1 Purchase Obligation

From October 1, 2011, and continuing through September 30, 2028, BPA shall sell and make available, and «Customer Name» shall purchase, Firm Requirements Power each hour in specific amounts to serve «Customer Name»’s forecasted Net Requirements, as listed in Exhibit A, Net Requirements and Resources. «Customer Name» shall serve any portion of its Total Retail Load that is not served with Firm Requirements Power with the Dedicated Resources listed in Exhibit A, Net Requirements and Resources. The annual, monthly, and Diurnal amounts of Firm Requirements Power priced at PF Tier 1 rates and PF Tier 2 rates are listed in Exhibit C, Purchase Obligations.

End Option 1

Option 2: Include if customer chooses Shaping Capacity:

Reviewers Note: Shaded text is identical to Block without Shaping Capacity:

**3. BLOCK POWER PURCHASE OBLIGATION WITH SHAPING CAPACITY
(06/30/08 Version)**

3.1 Purchase Obligation

From October 1, 2011, and continuing through September 30, 2028, BPA shall sell and make available, and «Customer Name» shall purchase, Firm Requirements Power each hour in planned amounts, including Shaping Capacity in accordance with section 1.4 of Exhibit C, Purchase Obligations, to serve «Customer Name»'s forecasted Net Requirements, as listed in Exhibit A, Net Requirements and Resources. «Customer Name» agrees to serve any portion of its Total Retail Load that is not served with Firm Requirements Power with the Dedicated Resources listed in Exhibit A, Net Requirements and Resources. The annual, monthly, and Diurnal amounts of Firm Requirements Power priced at PF Tier 1 rates and PF Tier 2 rates are listed in Exhibit C, Purchase Obligations.

End Option 2

3.2 Take or Pay

«Customer Name» shall pay for the amount of power it has committed to purchase under section 3.1 of this Agreement, at the rates BPA establishes as applicable to such power, whether or not «Customer Name» took actual delivery of such power.

3.3 List and Application of Dedicated Resources

Reviewer's Note: The shaded language below is the same as the Load Following language.

«Customer Name» agrees to dedicate those resources for service to its Total Retail Load that it has listed as Dedicated Resources in Exhibit A as follows:

- (1) Specified Resources that are Generating Resources shall be listed in section 2.1 of Exhibit A,
- (2) Specified Resources that are Contract Resources shall be listed in section 2.2 of Exhibit A, and
- (3) Unspecified Resource Amounts shall be listed in section 3.1 of Exhibit A.

«Customer Name» shall apply such resources to its Total Retail Load as state below for each specific resource and type:

3.3.1 Specified Resources

«Customer Name» shall apply the output from all Specified Resources listed in section 2 of Exhibit A, Net Requirements and Resources, to serve its Total Retail Load. BPA shall use the amounts listed in Exhibit A, Net Requirements and Resources, to determine «Customer Name»'s Net Requirement under this Agreement; the amounts listed are not intended to interfere with «Customer Name»'s decisions on how to operate its Specified Resources.

3.3.2 Unspecified Resource Amounts

In addition to the resource amounts listed in section 2 of Exhibit A, Net Requirements, «Customer Name» shall serve its Total Retail Load with Unspecified Resource Amounts to meet any power supply obligations «Customer Name» made in Exhibit C, Purchase Obligations, to serve its Above-RHWM Load with Dedicated Resource amounts. By September 15, 2011, and by each September 15 thereafter, BPA shall calculate, and fill in the table in section 3.1 of Exhibit A with, «Customer Name»'s Unspecified Resource Amounts for the upcoming Fiscal Year. Upon termination or expiration of this Agreement, «Customer Name» may discontinue serving its Total Retail Load with all Unspecified Resource Amounts.

3.4 Dedicated Resource Amounts for Specified Resources

3.4.1 Specified Resource Energy Amounts

«Customer Name» shall state firm energy amounts for each Specified Resource, listed in section 2 of Exhibit A, Net Requirements and Resources, for each month and Diurnal period beginning with the later of (1) the date the resource was dedicated to load, as shown in section 2 of Exhibit A, Net Requirements and Resources, or (2) October 1, 2011, through the earlier of (1) the date the resource will be permanently removed, as shown in section 2 of Exhibit A, Net Requirements and Resources, or (2) September 30, 2028.

3.4.1 Specified Resource Peak Amounts

Within 180 days after BPA provides notice that it has adopted a new standard for determining «Customer Name»'s firm resource peaking energy amounts, BPA in consultation with «Customer Name» shall calculate peaking amounts for each Specified Resource listed in section 2 of Exhibit A and BPA shall update the tables in Exhibit A with such peaking amounts. BPA's peaking standard shall be developed in a public process occurring after the Effective Date.

3.5 Changes to Dedicated Resources

3.5.1 Resource Additions for a BPA Insufficiency Notice

If BPA provides «Customer Name» a notice of insufficiency in accordance with section 24.2, Insufficiency and Allocations, of the body of this Agreement, «Customer Name» shall add Dedicated Resources to Exhibit A, Net Requirements and Resources, to replace amounts of Firm Requirements Power BPA will not be providing due to insufficiency.

3.5.2 Decrements for 9(c) Export

If BPA determines (in accordance with section 24.7, Use of Regional Resources, of the body of this Agreement) that an export of a Specified Resource listed in section 2 of Exhibit A, Net Requirements and

Resources, requires a reduction in the amount of Firm Requirements Power BPA sells «Customer Name», then BPA shall add Unspecified Resource Amounts to section 3.2 of Exhibit A, Net Requirements and Resources. BPA shall notify «Customer Name» of the amount and duration of the reduction in «Customer Name»'s Firm Requirements Power purchases from BPA.

3.5.3 Temporary Resource Removal

BPA shall remove «Customer Name»'s Dedicated Resource amounts in Exhibit A, Net Requirements and Resources, pursuant to section 10, Order of Tier 2 Remarketing and Resource Removal, of the body of this Agreement. When only a portion of the output of a resource is being removed, BPA shall proportionally remove «Customer Name»'s Dedicated Resource amounts within a Fiscal Year to maintain the same shape the non-federal resource amounts were dedicated in for such Fiscal Year.

3.5.4 Permanent Discontinuance of Resources

The Specified Resources listed in section 2 of Exhibit A, Net Requirements and Resources, may be removed permanently by «Customer Name» consistent with BPA's Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act issued May 23, 2000, as clarified March 21, 2003 (5(b)/9(c) Policy), on statutory discontinuance for permanent removal. If BPA makes a determination that «Customer Name»'s resource has met BPA's standards for a permanent removal, BPA shall revise Exhibit A accordingly. «Customer Name»'s additional power purchases under this Agreement, as a result of such a resource removal, may be subject to additional rates or charges as established in the GRSPs.

3.5.5 Resource Additions for Annexed Loads

To serve amounts of Annexed Loads that are added after the Effective Date, «Customer Name» may add Dedicated Resources to Exhibit A, Net Requirements and Resources, pursuant to «Customer Name»'s elections to purchase Firm Requirements Power from BPA, as stated in Exhibit C, Purchase Obligations. «Customer Name»'s additional power purchases under this Agreement, as a result of such Annexed Loads, may be subject to additional rates or charges as established in the GRSPs.

3.5.6 Resource Additions/Removals for NLSLs

To serve NLSLs (established in Exhibit D, Additional Products and Special Provisions) that are added after the Effective Date, «Customer Name» may add Dedicated Resource amounts, in monthly and Diurnal amounts, to section 4 of Exhibit A, Net Requirements and Resources. «Customer Name» may discontinue serving its NLSL with the Dedicated Resource amounts listed in section 4 of Exhibit A if BPA

determines that «Customer Name»'s NLSL is no longer an NLSL in «Customer Name»'s service territory.

Reviewer's Note: BPA (acting on behalf of the United States Entity) needs the following information to administer the Columbia River Treaty with Canada. BPA also needs the following information for 9(c) determinations.

3.6 Resources Not Dedicated to Total Retail Load

«Customer Name» shall list in section 6 of Exhibit A, Net Requirements and Resources, any non-federal resources «Customer Name» owns that are (1) not Specified Resources listed in section 2 of Exhibit A, and (2) greater than 200 kilowatts of nameplate capability. At BPA's request «Customer Name» shall provide BPA with additional data if needed to verify the information listed in section 6 of Exhibit A.

3.7 Consumer-Owned Resources

Except for any Consumer-Owned Resources serving an NLSL which «Customer Name» shall apply to load consistent with section 24.3.7, Renewable Resource/Cogeneration Exception, «Customer Name» shall apply the output of its Consumer-Owned Resources as follows:

Reviewer's Note: Prior to contract signing all customers will have to designate, in sections 7.1 or 7.2 of Exhibit A, whether their existing Consumer-Owned Resources will or will not be serving Onsite Consumer Load for the term of this Agreement.

3.7.1 Existing Consumer-Owned Resources

«Customer Name» has designated, in sections 7.1 and 7.2 of Exhibit A, whether each of its existing Consumer-Owned Resources will or will not serve Onsite Consumer Load. Such designation(s) shall apply for the term of this Agreement.

3.7.2 New Consumer-Owned Resources

«Customer Name» shall designate whether each of its new Consumer-Owned Resources will or will not serve Onsite Consumer Load. «Customer Name» shall make such designation(s) to BPA, in writing, within 120 days of the first production of energy by such resource. Such designation(s) shall apply for the term of this Agreement.

Consistent with «Customer Name»'s designation(s), BPA shall list Consumer-Owned Resources serving Onsite Consumer Load in section 7.1 of Exhibit A and Consumer-Owned Resources not serving Onsite Consumer Load in section 7.2 of Exhibit A.

3.7.3 Application of Consumer-Owned Resources Serving Onsite Consumer Load

Power generated from Consumer-Owned Resources listed in section 7.1 of Exhibit A shall serve «Customer Name»'s Onsite Consumer Load. If on any hour, power generated from a Consumer-Owned Resource exceeds Onsite Consumer Load, the amount of such

excess power on that hour shall be treated as inadvertent flow for which «Customer Name» shall receive no compensation from BPA.

3.7.4 Application of Consumer-Owned Resources Serving Load Other than Onsite Consumer Load

Power generated from Consumer-Owned Resources listed in section 7.2 of Exhibit A shall be scheduled for delivery and either (1) sold to another utility in the Region for use in its Total Retail Load, (2) purchased by «Customer Name» for use in its Total Retail Load (consistent with section 3.3 of this Agreement), or (3) marketed as an export.

3.7.5 Changes to Consumer-Owned Resources

Prior to each Fiscal Year «Customer Name» shall notify BPA in writing of any changes in ownership, expected resource output, or other characteristic of Consumer-Owned Resources identified in Section 7 of Exhibit A.

Reviewer's Note: These sections are included in Slice customers' contracts; Load Following and Block customers will have blank sections to maintain consistent numbering among the templates.

4. THIS SECTION INTENTIONALLY LEFT BLANK (05/29/08 Version)

5. THIS SECTION INTENTIONALLY LEFT BLANK (05/29/08 Version)

6. TIERED RATE METHODOLOGY (06/13/08 Version)

Reviewer's Note: The following language in this section 6 is a placeholder for now and is in the process of being updated.

6.1 BPA has proposed a Tiered Rate Methodology (TRM) to FERC, for a period up to 20 years (through September 30, 2028), which will establish a rate design for the PF Tier 1 power rate and the PF Tier 2 power rate. The then-effective TRM shall govern all rates for power sold under this Agreement.

6.2 In the event that FERC approves the TRM for a period less than through September 30, 2028, BPA shall, before the approved period of the TRM expires: (1) propose continuation of the TRM in a hearing conducted pursuant to section 7(i) of the Northwest Power Act or its successor: and then (2) resubmit the TRM to FERC for approval through September 30, 2028.

6.3 BPA shall not propose any modification to the TRM, except as provided for and pursuant to the procedures set forth in sections 12 and 13 of the TRM that is current as of the Effective Date.

6.4 The Parties intend that the TRM will be binding on them in accordance with its terms, but references to rates or the TRM in this Agreement do not make the rates or TRM a matter of contract. This Agreement shall not be construed as causing any rate issue or TRM matter to become a contract

issue or matter. Disputes over the meaning and implementation of the TRM shall be resolved exclusively pursuant to the procedures set forth in the TRM.

- 6.5 BPA shall not publish a Federal Register Notice regarding BPA rates or the TRM that prohibits, limits, or restricts «Customer Name»'s right to submit testimony or brief issues on rate matters regarding the implementation of the TRM or establishment of BPA rates pursuant to it, provided however for purposes of this paragraph a "rate matter" shall not be deemed to include budgetary and revenue requirement issues.
- 6.6 The Tiered Rate Methodology (TRM) established by BPA as of the Effective Date includes, among other things, the following:

6.6.1 Definitions (from Definitions section of the TRM):

Contract High Water Mark (CHWM). The amount used to define each customer's access to Tier 1-priced power, expressed in average megawatts. CHWM is equal to the customer's Eligible Load (as defined in the TRM), proportionately scaled to the firm critical output of Tier 1 System Resources (as defined in the TRM), and adjusted for credited conservation. The CHWM is specified in each eligible customer's CHWM Contract. See section 4.2 (of the TRM).

Rate Period High Water Mark (RHWM). The amount used to define each customer's eligibility to purchase power at a Tier 1 price for the relevant Rate Period (as defined in the TRM), subject to the customer's Net Requirement, expressed in average megawatts. RHWM is equal to the customer's CHWM as adjusted for changes in Tier 1 System Resources (as defined in the TRM). The RHWM is determined for each eligible customer in the RHWM Process (as defined in the TRM) preceding each rate case. See section 4.3 (of the TRM).

Contract Demand Quantity (CDQ). The historical quantity of demand that is subtracted from the Customer's System Peak (CSP) (as defined in the TRM) as part of the process of determining the customer's Demand Charge Billing Determinant (as defined in the TRM). See section 5.3.2 (of the TRM).

6.6.2 Rate Period High Water Mark Calculation (from section 4.3.1 of the TRM):

Expressed as a formula, the RHWM will be calculated by BPA for each customer as follows:

$$RHWM = \frac{CHWM}{\sum CHWM} \times TISR$$

where:

RHWM = Rate Period High Water Mark, expressed in average megawatts

CHWM = Contract High Water Mark

$\Sigma CHWM$ = sum of all customers' Contract High Water Marks

TISR = forecast output of Tier 1 System Resources (as defined in the TRM), averaged for the Rate Period

6.6.3 The above-recited, and all other, TRM language may only be changed in accordance with the requirements of the TRM for TRM changes. Reference in this contract to the TRM or recitation in this contract of what the TRM provides with regard to the RHWM or other matters does not make implementation of the TRM, or issues or disputes regarding BPA's implementation of the TRM, matters of contract; rather, they retain their character as administrative matters. However, repudiation by BPA of its obligation here and under the TRM to change the TRM only in accordance with the TRM section 12 and 13 procedures for change would be a matter of contract.

7. HIGH WATER MARKS *(06/13/08 Version)*

7.1 Contract High Water Mark (CHWM)

BPA shall establish «Customer Name»'s CHWM in the process defined in section 4.2 of the TRM that was current as of the Effective Date. «Customer Name»'s CHWM and the circumstances under which it can change are stated in Exhibit B, High Water Marks and Contract Demand Quantities. BPA shall use «Customer Name»'s CHWM to determine «Customer Name»'s RHWM as prescribed in section 4.3 of the TRM.

Reviewer's Note: See "Timeline for HWMs & Above-RHWM Elections"

7.2 Rate Period High Water Mark (RHWM)

«Customer Name»'s CHWM will also be «Customer Name»'s RHWM for FY 2012 and FY 2013. BPA shall establish «Customer Name»'s RHWM for the next Rate Period by September 30, 2012, and for subsequent Rate Periods by September 30 of each Forecast Year thereafter. BPA shall establish «Customer Name»'s RHWM in a process defined in section 4.3 of the TRM that was current as of the Effective Date. BPA shall designate «Customer Name»'s RHWM in the initial proposal for each general rate case.

8. APPLICABLE RATES *(06/13/08 Version)*

Purchases under this Agreement are subject to the following rate schedules, or their successors: Priority Firm Power (PF), New Resource Firm Power (NR), and Firm

Power Products and Services (FPS). Billing determinants for any purchases are included in each rate schedule. Power purchases under this Agreement are subject to BPA's rates, its GRSPs (or their successors), and the TRM.

8.1 **Priority Firm Power Rates**

BPA shall establish its PF power rates that apply to purchases under this Agreement pursuant to section 7 of the Northwest Power Act, and in accordance with the TRM. BPA's PF power rates shall include a rate schedule for purchase amounts at PF Tier 1 rates and purchase amounts at PF Tier 2 rates.

8.1.1 **PF Tier 1 and PF Tier 2 Rates**

«Customer Name»'s purchase of Firm Requirements Power shall be priced as follows:

- (1) Subject to «Customer Name»'s Net Requirement, all amounts of «Customer Name»'s planned annual purchase of Firm Requirements Power that are equal to or less than «Customer Name»'s RHWL shall be priced at PF Tier 1 rates.
- (2) Subject to «Customer Name»'s Net Requirement, all amounts of «Customer Name»'s planned annual purchase of Firm Requirements Power that is above «Customer Name»'s RHWL shall be priced at PF Tier 2 rates elected by «Customer Name» in section 2 of Exhibit C, Purchase Obligations.

8.1.2 **Contract Demand Quantities (CDQs)**

BPA shall establish «Customer Name»'s CDQs pursuant to the TRM. «Customer Name»'s CDQs are listed in Exhibit B, High Water Marks and Contract Demand Quantities.

8.2 **New Resource Firm Power Rate**

Any amounts of power provided to «Customer Name» from BPA for service to an NLSL, listed in Exhibit D, Additional Products and Special Provisions, shall be purchased at the NR Rate.

8.3 **Firm Power Products and Services Rate**

Amounts of power and other services sold to «Customer Name» under the FPS rate, if any, are listed in Exhibit D, Additional Products and Special Provisions.

8.4 **Additional Charges**

«Customer Name» may incur additional charges or penalty charges as established in the GRSPs, including the Unauthorized Increase (UAI) and the Resource Shaping Charge (RSC), or their successors.

**9. ELECTIONS TO PURCHASE POWER PRICED AT PF TIER 2 RATES
(06/13/08 Version)**

Reviewer's Note: See "Timeline for HWMs & Above-RHWM Elections"

9.1 Determination and Notice to Serve Above-RHWM Load

«Customer Name» shall determine and provide notice, as described below, to BPA whether «Customer Name» shall serve its Above-RHWM Load that is greater than 8,760 megawatt-hours and is not an NLSL, with either: (1) Firm Requirements Power purchased from BPA at a PF Tier 2 rate or rates, (2) Dedicated Resources, or (3) a specific combination of both (1) and (2).

«Customer Name» shall make such determination and provide such notice as follows:

9.1.1 Notice Deadlines and Purchase Periods

Notice Deadlines and corresponding Purchase Periods are as follows:

Notice Deadline		Purchase Period	
November 1, 2009	for	FY 2012 – FY 2014	
September 30, 2011	for	FY 2015 – FY 2019	
September 30, 2016	for	FY 2020 – FY 2024	
September 30, 2021	for	FY 2025 – FY 2028	

9.1.2 Elections to Purchase at PF Tier 2 Rates

By each Notice Deadline, «Customer Name» shall elect in writing to purchase, or not to purchase, Firm Requirements Power at PF Tier 2 rates for at least the upcoming Purchase Period. If «Customer Name» elects to purchase Firm Requirements Power at PF Tier 2 rates, «Customer Name» shall make such election pursuant to sections 2.2 through 2.4 of Exhibit C, Purchase Obligations. BPA shall update Exhibit C, Purchase Obligations, to state «Customer Name»'s PF Tier 2 rate purchase elections.

9.1.3 Elections Not to Purchase at PF Tier 2 Rates

If «Customer Name» elects not to purchase Firm Requirements Power at PF Tier 2 rates for a Purchase Period, BPA shall update section 2.1 of Exhibit C, Purchase Obligations, to indicate such election. Such election shall not eliminate any prior obligation to purchase Firm Requirements Power at PF Tier 2 rates for future rate periods.

9.1.4 Failure to Make an Election

If «Customer Name» makes no election by a Notice Deadline in section 9.1.1 above, for the corresponding Purchase Period «Customer Name» shall be deemed to have elected not to purchase Firm Requirements Power at PF Tier 2 rates, except for any previously obligated PF Tier 2 purchase amounts.

Reviewers Note: Shaded text is identical to Load Following text (absent the Load-Growth Rate Alternative):

9.2 Tier 2 Rate Alternatives

Subject to the requirements stated in Exhibit C, Purchase Obligations, «Customer Name» shall have the right to purchase Firm Requirements Power priced at the following PF Tier 2 Rates:

9.2.1 PF Tier 2 Vintage Rate(s)

Subject to eligibility requirements specified in Exhibit C, Purchase Obligations, «Customer Name» may elect to purchase Firm Requirements Power from BPA at a PF Tier 2 Vintage Rate(s) to serve «Customer Name»'s Above-RHWM Load for a specified term. A PF Tier 2 Vintage Rate(s) is based on the costs of specific resources and is set in each general rate case. «Customer Name» shall make such election(s) in accordance with section 2.3 of Exhibit C, Purchase Obligations.

9.2.2 PF Tier 2 Short-Term Rate

«Customer Name» may elect by a Notice Deadline to purchase Firm Requirements Power from BPA at the PF Tier 2 Short-Term Rate to serve «Customer Name»'s Above-RHWM Load for the corresponding Purchase Period. «Customer Name» shall make such election in accordance with section 2.4 of Exhibit C, Purchase Obligations.

9.3 Obligation to Apply Non-Federal Resources

«Customer Name»'s obligation to apply its Dedicated Resources to serve its Above-RHWM Load is stated in section 3 of the body of this Agreement and Exhibit C, Purchase Obligations.

10. ORDER OF TIER 2 REMARKETING AND RESOURCE REMOVAL (05/27/08 Version)

Reviewer's Note: See "Timeline for HWMs & Above-RHWM Elections"

10.1 Order of Removal – First Fiscal Year of Rate Period

By September 15 of each Rate Case Year, BPA shall remarket «Customer Name»'s PF Tier 2 rate purchase amounts and BPA shall remove «Customer Name»'s New Resources for the first Fiscal Year of the upcoming Rate Period if the sum of «Customer Name»'s PF Tier 2 rate purchase amounts, as established in Exhibit C, Purchase Obligations, plus «Customer Name»'s RHWM exceeds «Customer Name»'s annual Net Requirement forecast established in section 1.2 of Exhibit A, Net Requirements and Resources. The amount of such remarketing and resource removal is established in section 10.3 below. BPA shall remarket the PF Tier 2 rate purchase amounts and remove such New Resource amounts for the first Fiscal Year in the following order:

- (1) Amounts of Firm Requirements Power priced at PF Tier 2 rates listed in Exhibit C, Purchase Obligations, then

- (2) «Customer Name»'s Unspecified Resource Amounts listed in section 3.1 of Exhibit A, Net Requirements and Resources, then
- (3) «Customer Name»'s Specified Resources that are New Resources listed in section 2 of Exhibit A, Net Requirements and Resources. If «Customer Name» has multiple Specified Resources that are New Resources, BPA shall remove such resources in a last added, first removed order based on the order in which «Customer Name» made its resource additions.

10.2 **Order of Removal – Second Fiscal Year of Rate Period**

By September 15, 2012, and by September 15 of each Forecast Year thereafter, the process established in section 10.1 above shall also apply for the second Fiscal Year of the effective Rate Period and BPA shall remove «Customer Name»'s Existing Resources in the amount established in section 10.4 below. If «Customer Name» has multiple Existing Resources, BPA shall remove such resources in a last added, first removed order based on the order in which «Customer Name» made its resource additions.

10.3 **Extent of Removal for the First Fiscal Year of Each Rate Period**

For the first Fiscal Year of a Rate Period BPA shall continue to remarket «Customer Name»'s PF Tier 2 rate purchase amounts and BPA shall continue to remove the amounts of «Customer Name»'s New Resources until:

- (1) the amount of PF Tier 2 rate purchase amounts remarketed by BPA plus the amount of New Resource removals equals the amount that «Customer Name»'s PF Tier 2 rate purchase amounts plus its RHWM exceeds its annual Net Requirement forecast, or
- (2) all of «Customer Name»'s PF Tier 2 rate purchase amounts are remarketed and all of its New Resources are removed.

10.4 **Extent of Removal for the Second Fiscal Year of Each Rate Period**

For the second Fiscal Year of a Rate Period BPA shall first apply the process established in section 10.3 above. If «Customer Name»'s annual Net Requirement forecast for the second Fiscal Year of a Rate Period is lower than such forecast for the first Fiscal Year of the same Rate Period, then BPA shall then remove «Customer Name»'s Existing Resources. As long as «Customer Name» has Existing Resources to remove, the amount of such removal shall equal the lesser of: (1) the remaining amount that «Customer Name»'s RHWM exceeds its annual Net Requirement forecast, or (2) the difference between «Customer Name»'s annual Net Requirement forecasts for the first and second Fiscal Years of the Rate Period. If «Customer Name»'s annual Net Requirement forecast for the second Fiscal Year of a Rate Period is greater than or equal to such forecast for the first Fiscal Year of the same Rate Period, BPA shall remove zero amounts of «Customer Name»'s Existing Resources.

10.5 Rounding of PF Tier 2 Rate Purchase Amounts

To the extent remarketing of PF Tier 2 rate purchase amounts results in an amount less than a whole average megawatt, BPA shall round such amount to a whole average megawatt.

10.6 Remarketing of Federal Power Priced at PF Tier 2 Rates

Consistent with rates established under the TRM, «Customer Name» shall be subject to applicable charges or credits associated with BPA's remarketing of amounts of Firm Requirements Power at PF Tier 2 rates. «Customer Name» shall be responsible for remarketing of any amounts of its Dedicated Resources, Specified or Unspecified, that are removed under this section 10, Order of Tier 2 Remarketing and Resource Removal.

11. RIGHT TO CHANGE PURCHASE OBLIGATION(04/04/08 Version)

«Customer Name» shall have a one-time right to change its purchase obligation, identified in section 3 of this Agreement, to another purchase obligation available from BPA, including Load Following or Slice/Block. If «Customer Name» chooses to change its purchase obligation, «Customer Name» shall first provide notice to BPA of its intent and then confirm its decision as established below. Any elections of rate alternatives, resource additions, or other notices given to BPA under this Agreement shall continue to be applicable under the new purchase obligation, provided that BPA may update such terms and conditions consistent with the then current terms of the new purchase obligation, and additional costs may apply for service under the new purchase obligation as described in section 11.2 below.

11.1 Notice to Change

By June 30, 2016, «Customer Name» shall provide written notice to BPA that it is requesting to change its purchase obligation effective October 1, 2019, subject to confirmation described in section 11.3 below. «Customer Name»'s notice shall state the type of service requested, and if requesting a change to the Slice/Block purchase obligation, «Customer Name» shall state a range of Slice amounts between a specified minimum and maximum amount of Slice that «Customer Name» will accept.

11.2 Charge to Change Purchase Obligation

«Customer Name» may be subject to charges as a result of «Customer Name»'s request to change its purchase obligation. By October 31, 2016, BPA shall determine and present «Customer Name» with any such charges. In no event shall BPA make payment to «Customer Name» as a result of «Customer Name» changing its purchase obligation.

11.3 Change Confirmation

Within 30 days of BPA's presentation to «Customer Name» of the charges determined in 11.2 above, «Customer Name» shall provide BPA with written confirmation of its decision to change its purchase obligation. If «Customer Name» is requesting a change to the Slice/Block purchase obligation, such confirmation constitutes agreement that «Customer Name» shall purchase an amount of Slice within «Customer Name»'s specified range of acceptable Slice amounts, if made available by BPA.

11.4 **Slice Amount**

If «Customer Name» requests a change to the Slice/Block purchase obligation, BPA shall determine «Customer Name»'s specific amount of Slice as follows:

- (1) BPA shall determine the total amount of Slice available for purchase by all customers requesting a change to Slice/Block.
- (2) If such amount is sufficient to meet the requested maximum amount of Slice from all customers requesting a change to Slice/Block, BPA shall provide to «Customer Name» its requested maximum amount of Slice as part of the new agreement.
- (3) If such amount is insufficient to meet the requested maximum amount of Slice from all customers requesting a change to Slice/Block, BPA shall reduce individual Slice amounts of customers requesting a change to Slice/Block pro rata based on the requested maximum amount of Slice. If «Customer Name»'s individual Slice amount is below its specified minimum, «Customer Name» shall retain its current purchase obligation.

11.5 **Agreement Amendment**

Following «Customer Name»'s confirmation of its decision to change its purchase obligation, the Parties shall amend this Agreement to replace the terms of «Customer Name»'s current purchase obligation with the terms of the new purchase obligation. The amendment shall be effective no later than October 1, 2019.

12. **BILLING CREDITS AND RESIDENTIAL EXCHANGE (06/10/08 Version)**

12.1 **Billing Credits(02/28/08 Version)**

If «Customer Name» develops a Generating Resource to serve its retail loads above its RHW, «Customer Name» agrees that it shall forego any request for, and BPA is not obligated to include, billing credits, as defined in section 6(h) of the Northwest Power Act, on «Customer Name»'s bills under this Agreement. This section does not apply to any billing credit contracts in effect as of the execution date of this Agreement.

12.2 **Residential Exchange (06/16/08 Version)**

If «Customer Name» elects to seek residential exchange benefits from BPA pursuant to section 5(c) of the Northwest Power Act, «Customer Name» agrees it will not seek and shall not receive exchange benefits: (1) for Total Retail Load in excess of «Customer Name»'s RHW load, or (2) based upon the cost of resources in excess of «Customer's Name»'s resource amounts used in calculating its CHW. The determination of what exchange benefits «Customer Name» shall not receive as a consequence of «Customer Name»'s agreement in the preceding sentence will be made by BPA pursuant to BPA's then-existing ASC Methodology.

The preceding paragraph will also be included in any Residential Purchase and Sale Agreement entered into between «Customer Name» and BPA during the term of this Agreement.

13. SCHEDULING (03/27/08 Version)

«Customer Name» shall schedule power in accordance with Exhibit F, Scheduling.

14. DELIVERY (03/17/08 Version)

14.1 Definitions

14.1.1 “Integrated Network Segment” (03/17/08 Version) means those facilities of the Federal Columbia River Transmission System that are required for the delivery of bulk power supplies, the costs for which are recovered through generally applicable rates, and that are identified as facilities in the Integrated Network Segment, or its successor, in the BPA segmentation study for the applicable transmission Rate Period as determined in a hearing establishing or revising BPA’s transmission rates pursuant to section 7(i) of the Northwest Power Act.

14.1.2 “Primary Points of Receipt” (03/17/08 Version) means the points on the Pacific Northwest transmission system where Firm Requirements Power is forecasted to be made available by Power Services to «Customer Name» for purposes of obtaining a long-term firm transmission contract.

14.1.3 “Scheduling Points of Receipt” (03/17/08 Version) means the points on the Pacific Northwest transmission system where Firm Requirements Power is made available by Power Services to «Customer Name» for purposes of transmission scheduling.

14.2 Transmission Service (03/17/08 Version)

Option 1: Include the following for customers who are NOT served by transfer:

14.2.1 «Customer Name» is responsible for delivery of power from the Scheduling Points of Receipt.

End option 1

14.2.2 «Customer Name» shall provide at least 60 days’ notice to Power Services prior to changing Balancing Authority Areas.

14.2.3 At «Customer Name»’s request, BPA shall provide «Customer Name» with Primary Points of Receipt and other information needed to enable «Customer Name» to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by

Transmission Services for purposes of transmission scheduling, Power Services shall provide «Customer Name» with Scheduling Points of Receipt. Power Services has the right to provide power to «Customer Name» at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to «Customer Name» at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse «Customer Name» for any incremental, direct, non-administrative costs incurred by «Customer Name» to comply with delivering Firm Requirements Power from such a Scheduling Point of Receipt to «Customer Name»'s load if the following conditions, as outlined, have been met:

- (1) «Customer Name» has requested long-term firm transmission service to deliver its Firm Requirements Power using the Primary Points of Receipt and other information provided by Power Services; and,
- (2) This condition only applies if «Customer Name» has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Requirements Power to its load: «Customer Name» has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Requirements Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and
- (3) «Customer Name»'s transmission schedule was curtailed due to non-firm status under PTP transmission service or its secondary service status under Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) and «Customer Name» can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

14.3 **Liability for Delivery (05/25/08 Version)**

«Customer Name» waives any claims against BPA arising under this Agreement for nondelivery of power to any points beyond the applicable Scheduling Points of Receipt, except as described in section 14.2.3 above. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership. These limitations on liability apply regardless of whether or not this Agreement provides for transfer service.

14.4 **Real Power Losses (03/14/08 Version)**

BPA is responsible for the real power losses necessary to deliver Firm Requirements Power to «Customer Name»'s PODs listed in Exhibit E, Metering.

14.5 **Metering Losses (05/14/08 Version)**

BPA shall adjust measured amounts of power to account for losses, if any, that occur between «Customer Name»'s PODs and the respective POMs, as specified in Exhibit E, Metering.

15. **METERING (06/03/08 Version)**

Reviewer's Note: The customer list below is subject to change.

Option 1: Include this subsection for customers that do NOT have meters on all PODs: (See Customer Characteristics Spreadsheet to verify: EWEB, Grant PUD, Okanogan PUD, Seattle, Tacoma, Port of Seattle).

15.1 **Requirements for Meters**

«Customer Name»'s purchase commitment in section 3 of this Agreement does not require load meters for billing and payment. For purposes of forecasting and planning, BPA may require «Customer Name» to provide BPA some or all of «Customer Name»'s load data, as required by section 17.5, Hourly Total Retail Load Data.

If, during the term of this Agreement, BPA determines that the load data BPA has requested and «Customer Name» has provided to BPA is not adequate or verifiable, or if BPA determines that either load or resource meter data is needed to administer this Agreement, «Customer Name» shall allow BPA to install BPA owned meters, at BPA's expense, to collect such data. For all existing meters listed in Exhibit E, Metering used by BPA for forecasting and planning, and for new meters, the following requirements shall apply.

End Option 1

15.1.1 **BPA Owned Meters**

BPA shall operate, maintain, and replace, as necessary all metering equipment owned by BPA that is needed to forecast and plan for «Customer Name»'s power needs under this Agreement. «Customer Name» authorizes BPA to maintain and replace any BPA owned meter on «Customer Name» facilities. With reasonable notice from BPA and for the purpose of implementing this provision, «Customer Name» shall grant BPA physical access to BPA owned meters at BPA's request.

If, at any time, BPA or «Customer Name» determines that a BPA owned meter is defective or inaccurate, BPA shall adjust, repair, or replace the meter to provide accurate metering as soon as practical.

15.1.2 Non-BPA Owned Meters

For all non-BPA owned metering equipment owned by «Customer Name» that is needed by BPA to forecast and plan for «Customer Name»'s power needs under this Agreement «Customer Name» shall give BPA direct, electronic access to meter data from all meters not owned by BPA that are capable of being accessed electronically. For the purpose of inspection, «Customer Name» shall grant BPA reasonable physical access to «Customer Name»'s meters at BPA's request.

This section 15.1.2 shall not apply to non-BPA owned meters that are owned by a Third-Party Transmission Provider with which BPA holds a transmission contract for service to «Customer Name» load. In these cases the metering arrangements shall be between BPA and the Third-Party Transmission Provider.

«Customer Name» shall operate, maintain, and replace, as necessary at «Customer Name» expense, all non-BPA metering equipment owned by «Customer Name». For non-BPA owned meters listed in Exhibit E, Metering that are not owned by «Customer Name» but are needed by BPA to forecast and plan, «Customer Name» shall arrange for such meters to be operated, maintained and replaced, as necessary.

If, at any time, BPA or «Customer Name» determines that a non-BPA owned meter listed in Exhibit E, Metering is defective or inaccurate, «Customer Name» shall adjust, repair, or replace the meter to provide accurate metering as soon as practical. BPA shall have the right to witness any meter tests conducted by «Customer Name» on non-BPA owned meters listed in Exhibit E, Metering and, with reasonable advance notice, BPA may conduct tests on such meters. «Customer Name» shall have the right to witness any meter tests conducted by BPA.

15.1.3 New Meters

The Parties shall enter into a separate agreement, if such an agreement is not already in place, addressing the ownership, location, access, maintenance, replacement, testing, and liability of the Parties with respect to new and replaced meters. All new meters installed by BPA or «Customer Name» shall meet the American National Standard Institute standards, including, but not limited to, C12.20, Electricity Meters—0.2 and 0.5 Accuracy Classes and the Institute of Electrical and Electronics Engineers, Inc. standard C57.13, Requirements for Instrument Transformers, or their successors. Any new and replaced meters shall be able to record meter data hourly, store data for a minimum of 45 days, and be accessed electronically.

- 15.2 **Metering an NLSL (06/13/08 Version)**
«Customer Name» shall meter any loads that are monitored by BPA for an NLSL determination and any NLSLs consistent with section 24.3.4, Metering an NLSL.
- 15.3 **Metering Exhibit**
«Customer Name» shall provide meter data specified in section 17.3, Information Exchange and Confidentiality, and shall notify BPA of any changes to PODs, POMs, Interchange Points and related information for which it is responsible. BPA shall list «Customer Name»'s PODs and meters in Exhibit E, Metering.

16. BILLING AND PAYMENT

- 16.1 **Billing(05/14/08 Version)**
BPA shall bill «Customer Name» monthly for all products and services provided during the preceding month(s). BPA may send «Customer Name» an estimated bill followed by a final bill. BPA shall send all bills on the bill's issue date. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.
- 16.2 **Payment(03/26/08 Version)**
«Customer Name» shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the issue date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, the Due Date is the next Business Day. If «Customer Name» has made payment on an estimated bill then:
- (1) if the amount of the final bill exceeds the amount of the estimated bill, «Customer Name» shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; and
 - (2) if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay «Customer Name» the difference between the estimated bill and final bill by the 20th day after the final bill's issue date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.
- 16.3 **Late Payments(03/26/08 Version)**
After the Due Date, a late payment charge equal to the higher of:
- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
 - (2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

16.4 Termination(05/14/08 Version)

If «Customer Name» has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment. If «Customer Name» is more than 45 days late in paying its bill, BPA may require additional forms of payment assurance acceptable to BPA. If «Customer Name» does not provide such payment assurance within three Business Days after receipt of written notice from BPA, and BPA determines in its sole discretion that «Customer Name» is unable to make the payments owed, BPA may terminate this Agreement. Written notices sent under this section must comply with section 20, Notices and Contact Information.

16.5 Disputed Bills(05/14/08 Version)

16.5.1 If «Customer Name» disputes any portion of a charge or credit on «Customer Name»'s bill, «Customer Name» shall provide notice to BPA with a copy of the bill noting the disputed amounts. If any portion of the bill is in dispute, «Customer Name» shall pay the entire bill by the Due Date. Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

16.5.2 If the Parties agree, or if after dispute resolution «Customer Name» is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

17. INFORMATION EXCHANGE AND CONFIDENTIALITY

17.1 General Requirements (03/30/08 Version)

Each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast «Customer Name»'s Total Retail Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, administer transfer service, and to otherwise implement this Agreement. This obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.).

17.2 Reports (05/14/08 Version)

17.2.1 Within 30 days after final approval by the «Customer Name»'s governing body, «Customer Name» shall e-mail its annual financial report and statements to BPA at kslf@bpa.gov.

17.2.2 Within 30 days after their submittal to the Energy Information Administration (EIA), «Customer Name» shall e-mail a copy of its Annual Form EIA-861 Reports to BPA at kslf@bpa.gov. If «Customer Name» is not otherwise required to submit such reports to the EIA, then this requirement does not apply.

17.3 Meter Data (06/10/08 Version)

17.3.1 In accordance with section 15, Metering, and Exhibit E, Metering, «Customer Name» shall notify BPA of any changes to PODs, POMs, Interchange Points and related information for which it is responsible. «Customer Name» shall ensure BPA has access to all data from load and resource meters that BPA determines is necessary to forecast, plan, schedule, and bill. Access to this data shall be on a schedule determined by BPA. Meter data shall be in hourly increments for all meters that record hourly data. Meter data includes, but is not limited to: «Customer Name»'s actual amounts of energy used or expended for loads and resources, and the physical attributes of «Customer Name»'s meters.

17.3.2 «Customer Name» consents to allow Power Services to receive the following information from Transmission Services or BPA's metering function: (1) «Customer Name»'s meter data, as specified above in section 17.3.1, section 15, Metering, and Exhibit E, Metering, and (2) notification of outages or load shifts.

17.3.3 At least 15 calendar days in advance, «Customer Name» shall e-mail BPA at: (1) mdm@bpa.gov and (2) the contact shown in section 20, Notices and Contact Information, when the following events are planned to occur on «Customer Name»'s system that will affect meters listed in Exhibit E, Metering: (1) installation of a new meter, (2) changes or updates to an existing meter not owned by BPA, (3) any planned line or meter outages, and (4) any planned load shifts.

17.3.4 If an unplanned load shift or outage occurs affecting meters listed in Exhibit E, Metering, «Customer Name» shall e-mail BPA at: (1) mdm@bpa.gov, and (2) the contact shown in section 20, Notices and Contact Information, within 72 hours after the event.

17.4 Data for Determining CHWM and CDQs (03/27/08 Version)

Upon request, «Customer Name» shall provide to BPA any load and resource information that BPA deems necessary to determine «Customer Name»'s CHWM and CDQs. This may include historical load data not otherwise

available to BPA and other data necessary to allow BPA to adjust for weather normalization.

17.5 Hourly Total Retail Load Data (06/10/08 Version)

BPA shall notify «Customer Name» by June 30, 2009, if BPA determines that it does not have adequate hourly meter data to calculate «Customer Name»'s Total Retail Load. If BPA sends such notification, «Customer Name» shall e-mail the following hourly data to BPA at kslf@bpa.gov according to the schedule below. «Customer Name» shall submit such data in a comma-separated-value (csv) format with the time/date stamp in one column and load amounts, with units of measurement specified, in another column.

17.5.1 By December 31, 2009, «Customer Name» shall send to BPA «Customer Name»'s actual hourly Total Retail Load data for Fiscal Year 2002 through Fiscal Year 2009.

17.5.2 By December 31, 2010, «Customer Name» shall send to BPA, «Customer Name»'s actual hourly Total Retail Load data for each for Point of Delivery for Fiscal Year 2010.

17.5.3 By December 31, 2011, and by December 31 of each year thereafter, «Customer Name» shall send BPA «Customer Name»'s actual hourly Total Retail Load data for the immediately preceding Fiscal Year.

17.6 Total Retail Load Forecast (03/28/08 Version)

Reviewer's Note: The data required below will be used by BPA for purposes of calculating Net Requirements and meeting WECC data reporting requirements.

By June 30, 2011, and by June 30 of each year thereafter, «Customer Name» shall provide BPA a forecast of «Customer Name»'s monthly energy and «Customer Name»'s system coincidental peak of «Customer Name»'s Total Retail Load for the upcoming 10 Fiscal Years. «Customer Name» shall e-mail the forecast to BPA at kslf@bpa.gov, in a comma-separated-value (csv) format. «Customer Name» shall send the csv file with the following data elements in separate columns:

- (1) four-digit calendar year,
- (2) three-character month identifier,
- (3) monthly energy forecast,
- (4) unit measurement of monthly energy forecast,
- (5) monthly «Customer Name»-system coincidental peak forecast, and
- (6) unit measurement of monthly «Customer Name»-system coincidental peak forecast.

**17.7 Transparency of Net Requirements and Load Forecast Processes
(05/27/08 Version)**

17.7.1 Transparency for Net Requirements

By July 31, 2011, and by July 31 every year thereafter, BPA shall make the following information publicly available to «Customer Name» and all other BPA regional utility customers with a CHWM:

- (1) «Customer Name»'s measured Total Retail Load data for the previous Fiscal Year in monthly energy amounts and monthly customer-system peak amounts,
- (2) BPA's forecast of «Customer Name»'s Total Retail Load, for the upcoming Fiscal Year, in monthly energy amounts and monthly customer-system peak amounts, and
- (3) «Customer Name»'s total Dedicated Resource monthly energy amounts and peaking amounts for the upcoming Fiscal Year listed in section 5 of Exhibit A, Net Requirements and Resources.

17.7.2 Transparency for Above-RHWM Load Amounts

By July 31 of each Forecast Year, BPA shall publish the draft Above-RHWM Load amounts that BPA intends to use in the upcoming general rate case for each customer with a CHWM

17.7.3 Waiver of Confidentiality and Comment Process

«Customer Name» waives all claims of confidentiality regarding the data described above in sections 17.3.1 and 17.3.2. «Customer Name» may provide comments regarding the published data to BPA within 10 Business Days after notification. After reviewing any comments and no later than 60 days from the date BPA originally releases such data, BPA shall make available a final set of data and an explanation of any changes to «Customer Name» and all other customers with a CHWM.

17.8 Confidentiality (01/17/08 Version)

Before «Customer Name» provides information that is subject to a privilege of confidentiality or nondisclosure to BPA, «Customer Name» shall clearly designate such information as confidential. BPA shall notify «Customer Name» as soon as practicable of any request received under the Freedom of Information Act (FOIA), or under any other federal law or court or administrative order, for any confidential information. BPA shall only release such confidential information to comply with FOIA or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of confidential information within BPA to employees who need it for purposes of administering this Agreement.

18. CONSERVATION AND RENEWABLES *(04/05/08 Version)*

18.1 Conservation *(05/14/08 Version)*

18.1.1 Evaluations

At BPA's expense, BPA may conduct, and «Customer Name» shall cooperate in, conservation impact and project implementation process evaluations to assess the amount, cost-effectiveness, and reliability of conservation in BPA's or «Customer Name»'s service area.

BPA shall select the timing, frequency, and type of such evaluations. BPA shall do so with reasonable consideration of «Customer Name»'s and «Customer Name»'s consumers' needs.

18.1.2 Reporting Requirements

18.1.2.1 Beginning June 1, 2010, and no later than June 1 every two years thereafter, «Customer Name» shall create and submit a 10-year conservation plan stating «Customer Name»'s projection of planned conservation, including biennial conservation targets. If «Customer Name» is required under state law (such as the Washington State Energy Independence Act (RCW 19.285)) to create and submit a conservation plan, «Customer Name» may submit to BPA a copy of such plan to meet the requirements of this section 18.1.2.1 if it includes, or is supplemented by, the information required above. The requirements of this section 18.1.2.1 are waived if «Customer Name» purchases all of its power from BPA to serve its Total Retail Load.

18.1.2.2 «Customer Name» shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by «Customer Name» through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

18.2 Renewable Resources *(04/05/08 Version)*

18.2.1 Renewable Energy Certificates

BPA shall transfer Renewable Energy Certificates (RECs), or their successors, to «Customer Name» in accordance with Exhibit H, Renewable Energy Certificates and Carbon Attributes.

18.2.2 Reporting Requirements (06/04/08 Version)

Beginning September 1, 2012, and by September 1 every year thereafter, «Customer Name» shall provide BPA with the following:

- (1) updated information on power generated by renewable resources greater than 200 kilowatts, including net metered renewable resources operating behind the BPA meter, used by «Customer Name» to serve its Total Retail Load, under Exhibit A, Net Requirements and Resources. Such information shall include: project name, fuel type(s), location, date contract signed, project energization date, capacity, capacity factor, remaining term of purchase (or if direct ownership remaining life of the project), and the percentage of output dedicated to serve «Customer Name»'s Total Retail Load for the forthcoming calendar year.
- (2) all purchases of RECs used to meet requirements under state or federal law for the forthcoming calendar year. Such information shall include: quantity, fuel type(s), location and energization date of the RECs producing resource(s), as well as the calendar quarter and the year in which the RECs will be generated.
- (3) an updated long-term renewable resource plan. This shall include «Customer Name»'s 2-year forecast of expected acquisitions of power generated by renewable resources greater than 200 kilowatts. Such forecast shall disclose the expected amount of such power to be purchased, capacity of expected acquisitions by fuel type, and percentage of output dedicated to serve «Customer Name»'s Total Retail Load.

The three preceding renewable resource requirements are waived if «Customer Name» purchases all of its power for service to its Total Retail Load from BPA.

19. RESOURCE ADEQUACY (02/28/08 Version)

By November 30, 2010, and by November 30 each year thereafter, «Customer Name» shall provide to the Pacific Northwest Utilities Conference Committee (PNUCC), or its successor, forecasted loads and resources data to facilitate a region-wide assessment of loads and resources in a format, length of time, and level of detail specified in PNUCC's Northwest Regional Forecast Data Request.

After consultation with the Regional Resource Adequacy Forum, BPA may require «Customer Name» to submit additional data to the Northwest Power and Conservation Council (Council) that BPA determines is necessary for the Council to perform a regional resource adequacy assessment.

The requirements of this section are waived if «Customer Name» purchases all of its power from BPA to serve its Total Retail Load.

20. NOTICES AND CONTACT INFORMATION (06/13/08 Version)

Any notice required under this Agreement shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or,
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

(Drafter's Note: Check BPA address and phone number prefix to ensure it is applicable.)

If to «Customer Name»:

«Utility Name»
«Street Address»
«P.O. Box »
«City, State, Zip»
Attn: «Contact Name»
«Contact Title»
Phone: «###-###-####»
FAX: «###-###-####»
E-Mail: «E-mail address»

If to BPA:

Bonneville Power Administration
«Street Address»
«P.O. Box»
«City, State, Zip»
Attn: «AE Name - Routing»
«Senior »Account Executive
Phone: «###-###-####»
FAX: «###-###-####»
E-Mail: «E-mail address»

21. UNCONTROLLABLE FORCES (05/14/08 Version)

21.1 The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party's reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (1) any unplanned curtailment or interruption of firm transmission service used to deliver Firm Requirements Power sold under this Agreement to «Customer Name»;
- (2) any planned curtailment or interruption of long-term firm transmission service used to deliver Firm Requirements Power sold under this Agreement to «Customer Name» if such curtailment or interruption occurs on BPA's or a Third Party Transmission Provider's System;
- (3) any failure of «Customer Name»'s distribution or transmission facilities that prevents «Customer Name» from delivering power to end-users;
- (4) strikes or work stoppage;
- (5) floods, earthquakes, other natural disasters, or terrorist acts; and
- (6) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

21.2 Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

21.3 If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall:

- (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable;
- (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable;
- (3) keep the other Party apprised of such efforts on an ongoing basis; and
- (4) provide written notice of the resumption of performance.

Written notices sent under this section must comply with section 20, Notices and Contact Information.

22. GOVERNING LAW AND DISPUTE RESOLUTION (05/16/08 Version)

This Agreement shall be interpreted consistent with and governed by federal law. The Parties shall identify issue(s) in dispute and make a good faith effort to negotiate a resolution of disputes before either Party may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless Parties elect binding arbitration, the Parties reserve their rights to seek judicial resolution of any dispute arising under this Agreement.

22.1 Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Such final actions include, but are not limited to, the establishment and implementation of rates and rate methodologies. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 22, Governing Law and Dispute Resolution, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 22, Governing Law and Dispute Resolution then both Parties shall apply to the federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section 22, Governing Law and Dispute Resolution.

22.2 Arbitration

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 22.1 above, shall be subject to arbitration, as set forth below.

The Parties may agree to use binding arbitration, consistent with BPA's Binding Arbitration Policy or its successor, to resolve disputes that the Parties agree are strictly issues of fact and that fall within BPA's Binding Arbitration Policy or its successor. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy, and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute that is not excluded by 21.1 above, and is not resolved via binding arbitration.

22.3 Arbitration Procedure

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

22.4 Arbitration Remedies

The payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA.

22.5 Finality

22.5.1 In binding arbitration, the arbitration award shall be final and binding on both Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

22.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Subsequent to nonbinding arbitration, if a Party other than BPA rejects the arbitration award or if BPA rejects the arbitration award, the Party may seek judicial resolution of the dispute.

22.6 Arbitration Costs

Each Party shall be responsible for its own costs of arbitration, including legal fees. The arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

23. NO WARRANTY (03/26/08 Version)

Nothing in this Agreement, or any dispute arising out of this Agreement, shall limit the Administrator's responsibility to establish rates to recover costs and timely repay the U.S. Treasury or to take actions that are effectively required by a court order. It is the Parties' intent to structure a durable commercial relationship that is based on existing statutory requirements and to provide «Customer Name» with protection against change to those guiding statutes as is reasonably possible. However, BPA does not warrant or represent that this Agreement is immune from costs imposed by court order or agency regulations of a general and public nature or is immune from subsequently enacted legislation.

24. STATUTORY PROVISIONS

24.1 Retail Rate Schedules (09/04/07 Version)

«Customer Name» shall make its retail rate schedules available to BPA, as required by section 5(a) of the Bonneville Project Act, P.L. 75-329, within 30 days of each of «Customer Name»'s retail rate schedule effective dates.

24.2 Insufficiency and Allocations (04/04/08 Version)

If BPA determines, consistent with section 5(b) of the Northwest Power Act and other applicable statutes, that it will not have sufficient resources on a planning basis to serve its loads after taking all actions required by applicable laws then BPA shall give «Customer Name» a written notice that BPA may restrict service to «Customer Name». Such notice shall be consistent with BPA's insufficiency and allocations methodology, published in the Federal Register on March 20, 1996, and shall state the effective date of the restriction, the amount of «Customer Name's» load to be restricted and the expected duration of the restriction. BPA shall not change that methodology without the written agreement of all public body, cooperative, federal agency and investor-owned utility customers in the Region purchasing federal power from BPA under section 5(b) of the Northwest Power Act. Such restriction shall take effect no sooner than five years after BPA provides notice to «Customer Name». If BPA imposes a restriction under this provision then the amount of Firm Requirements Power that «Customer Name» is obligated to purchase pursuant to section 3 and Exhibit C of this Agreement shall be reduced to the amounts available under such allocation methodology for restricted service.

24.3 New Large Single Loads and CF/CTs

24.3.1 Determination of an NLSL (05/15/08 Version)

In accordance with BPA's NLSL Policy, BPA may determine that a load is an NLSL as follows:

24.3.1.1 BPA shall determine an increase in production load to be an NLSL if any load associated with a new facility, an existing facility, or an expansion of an existing facility, which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or federal agency customer prior to September 1, 1979, and which will result in an increase in power requirements of such customer of ten average megawatts (87,600,000 kilowatt hours) or more in any consecutive twelve-month period..

24.3.1.2 For the sole purpose of computing the increase in energy consumption between any two consecutive 12-month periods of comparison under this section 24.3.1, reductions in the end-use consumer's load associated with a facility during the first twelve-month period of comparison due to unusual events reasonably beyond the control of the end-use consumer shall be determined by BPA, and the energy consumption shall be computed as if such reductions had not occurred.

24.3.1.3 The Parties may agree that the installed production equipment at a facility will exceed 10 average megawatts

consumption over any 12 consecutive months and such agreement shall constitute a binding NLSL determination.

24.3.2 Determination of a Facility (09/04/07 Version)

BPA shall make a written determination as to what constitutes a single facility, for the purpose of identifying an NLSL, based on the following criteria:

- (1) whether the load is operated by a single end-use consumer;
- (2) whether the load is in a single location;
- (3) whether the load serves a manufacturing process which produces a single product or type of product;
- (4) whether separable portions of the load are interdependent;
- (5) whether the load is contracted for, served or billed as a single load under «Customer Name»'s customary billing and service policy;
- (6) consideration of the facts from previous similar situations; and
- (7) any other factors the Parties determine to be relevant.

24.3.3 Administrative Obligations and Rights (4/06/08 Version)

24.3.3.1 «Customer Name»'s CF/CT loads and NLSLs are listed in Exhibit D, Additional Products and Special Provisions.

24.3.3.2 «Customer Name» shall provide reasonable notice to BPA of any expected increase in a single load that may qualify as an NLSL. The Parties shall list any such potential NLSLs in Exhibit D, Additional Products and Special Provisions. If BPA determines that any load associated with a single facility that is capable of growing 10 average megawatts or more in a consecutive 12-month period, then such load shall be subject to monitoring by BPA.

24.3.3.3 When BPA makes a request, «Customer Name» shall provide physical access to its substations and other service locations where BPA needs to perform inspections or gather information for purposes of implementing section 3(13) of the Northwest Power Act, including but not limited to making a final NLSL, facility, or CF/CT determination. «Customer Name» shall also require the end-use consumer to provide BPA physical access to inspect any facility for these purposes.

24.3.3.4 Unless the Parties agree pursuant to section 24.3.1.3 above, BPA shall unilaterally determine whether a new load or an increase in existing load at a facility is an NLSL. If BPA determines that the load is an NLSL, BPA shall notify «Customer Name» and the Parties shall add the NLSL to Exhibit D, Additional Products and Special Provisions.

24.3.4 Metering an NLSL (03/30/08 Version)

For any loads that are monitored by BPA for an NLSL determination, and at any facility that is determined by BPA to be an NLSL, «Customer Name» agrees to either consent to BPA installing BPA owned meters or «Customer Name» shall install meters meeting the exact specification BPA provides to «Customer Name». «Customer Name» and BPA shall enter into a separate agreement for the location, ownership, cost responsibility, access, maintenance, testing, replacement and liability of the Parties with respect to such meters. «Customer Name» shall arrange for metering locations that allow accurate measurement of the facility's load. «Customer Name» shall arrange for BPA to have physical access to such meters and «Customer Name» shall ensure BPA has access to all NLSL meter data that BPA determines is necessary to forecast, plan, schedule, and bill for power.

24.3.5 Undetermined NLSLs(04/06/08 Version)

If BPA does not determine at the outset that an increase in load is an NLSL, then the Parties shall install metering equipment as required by section 24.3.4, above, and BPA shall bill «Customer Name» for the increase in load at the applicable PF Rate during any consecutive twelve-month monitoring period. If BPA later determines that the increase in load is an NLSL, then BPA shall revise «Customer Name»'s bill to reflect the difference between the applicable PF rate and the applicable NR rate in effect for the monitoring period in which the increase takes place. «Customer Name» shall pay that bill with simple interest computed from the start of the monitoring period to the date the payment is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which the monitoring period began) divided by 365.

If BPA concludes in its sole judgment that «Customer Name» has not fulfilled its obligations under sections 24.3.3 and 24.3.4, BPA may determine any load subject to NLSL monitoring to be an NLSL. Such NLSL determination shall be final unless «Customer Name» proves to BPA's satisfaction that the applicable load did not exceed 10 aMW in any 12-month monitoring period.

24.3.6 Service Elections for an NLSL (02/28/08 Version)

«Customer Name» shall serve all NLSLs with non-federal firm resources that are not Dedicated Resources in Exhibit A, Net

Requirements and Resource, Exhibit D, Additional Products and Special Provisions, to serve «Customer Name»'s Total Retail Load in the region. «Customer Name» agrees to provide such Dedicated Resources on a continuous basis as identified in Exhibit A, Net Requirements and Resources. Under no circumstances shall BPA be required to acquire firm power for service to such NLSLs.

24.3.7 Renewable Resource/Cogeneration Exception (04/06/08 Version)

An end-use consumer served by «Customer Name», with a facility whose load is, in whole or in part, an NLSL, may reduce its NLSL to less than 10 average megawatts by applying an onsite renewable resource or onsite cogeneration behind «Customer Name»'s meter to its facility load. «Customer Name» shall ensure that such resource is continuously applied to serve the NLSL, consistent with BPA's "Renewables and On-Site Cogeneration Option under the NLSL Policy" portion of its Policy for Power Supply Role for Fiscal Years 2007-2011, adopted February 4, 2005, and the NLSL policy included in BPA's Long Term Regional Dialogue Final Policy, July 2007, as amended or replaced. If the NLSL end-use consumer meets the qualification for the exception, the Parties shall: (1) list the Consumer-Owned Resource(s) serving the NLSL in section 7.3 of Exhibit A, Net Requirements and Resources and (2) amend Exhibit D, Additional Products and Special Provisions to add the onsite renewable resource or cogeneration facility and the requirements for such service.

If «Customer Name» serves an NLSL with a Consumer-Owned Resource that does not qualify for the renewable resource or cogeneration exception, the Parties shall list such Consumer-Owned Resource serving the NLSL in section 7.3 of Exhibit A, Net Requirements and Resources.

24.4 Priority of Pacific Northwest Customers (09/04/07 Version)

The provisions of sections 9(c) and 9(d) of the Northwest Power Act and the provisions of P.L. 88-552 as amended by the Northwest Power Act are incorporated into this Agreement by reference. «Customer Name», together with other customers in the Region, shall have priority to BPA power consistent with such provisions.

24.5 Prohibition on Resale (09/04/07 Version)

«Customer Name» shall not resell Firm Requirements Power except to serve «Customer Name»'s Total Retail Load or as otherwise permitted by federal law.

24.6 Use of Regional Resources (05/15/08 Version)

24.6.1 Within 60 days prior to the start of each Fiscal Year, «Customer Name» shall provide notice to BPA of any Firm Power from a Generating Resource, or a Contract Resource during its term, that has been used to serve firm consumer load in the Region and that «Customer Name» plans to export for sale outside the Region in the next Fiscal Year. For purposes of this section 24.6, “Firm Power” means electric power which is continuously made available from «Customer Name»’s operation of generation or from its purchased power, which is able to meet its Total Retail Load, except when such generation or power is curtailed or restricted due to an Uncontrollable Force. Firm Power includes firm energy and firm peaking energy or both.

BPA may request additional information on «Customer Name»’s sales and dispositions of non-federal resources if BPA has information that «Customer Name» may have made such an export and not notified BPA. BPA may request and «Customer Name» shall provide within 30 days of such request, information on the planned use of any or all of «Customer Name» Generating and Contract Resources.

24.6.2 «Customer Name» shall be responsible for monitoring any Firm Power from Generating Resources and Contract Resources it sells in the Region to ensure such Firm Power is planned to be used to serve firm consumer load in the Region.

24.6.3 If «Customer Name» fails to report to BPA in accordance with section 24.6.1, above, any of its planned exports for sale outside the Region of Firm Power from a Generating Resource or a Contract Resource that has been used to serve firm consumer load in the Region, and BPA makes a finding that an export which was not reported was made, BPA shall decrement the amount of its Firm Requirements Power sold under this Agreement by the amount of the export that was not reported, for the duration of the export. When applicable such decrements shall be identified in section 3.2 of Exhibit A, Net Requirements and Resources.

24.6.4 For purposes of this section, an export for sale outside the Region means a contract for the sale or disposition of Firm Power from a Generating Resource, or a Contract Resource during its term, that has been used to serve firm consumer load in the Region in a manner that such output is no longer used or not planned to be used solely to serve firm consumer load in the Region. Delivery of Firm Power outside the Region under a seasonal exchange agreement that is made consistent with BPA’s section 9(c) policy will not be considered an export. Firm Power from a Generating Resource or a Contract Resource used to serve firm consumer load in the Region means the firm generating or load carrying capability of a Generating Resource or a Contract

Resource as established under Pacific Northwest Coordination Agreement resource planning criteria, or other resource planning criteria generally used for such purposes within the Region.

24.7 BPA Appropriations Refinancing (05/14/08 Version)

The Parties agree that the Bonneville Power Administration Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, as stated in the United States Code on the date this Agreement is signed by the Parties, is incorporated by reference and is a material term of this Agreement.

25. STANDARD PROVISIONS

25.1 Amendments (09/04/07 Version)

Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or exhibit, no amendment of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

25.2 Entire Agreement and Order of Precedence (09/26/07 Version)

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

25.3 Assignment (03/28/08 Version)

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld. Without limiting the foregoing, BPA's refusal to consent to assignment shall not be considered unreasonable if, in BPA's sole discretion: (1) the sale of power by BPA to the assignee would violate any applicable statute, or (2) such sale might adversely affect the tax-exempt status of bonds issued as part of an issue that finances or refinances the Columbia Generating Station or that such sale might limit the ability to issue future tax-exempt bonds to finance or refinance the Columbia Generating Station. «Customer Name» may not transfer or assign this Agreement to any of its retail consumers.

25.4 No Third-Party Beneficiaries (10/01/07 Version)

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

25.5 Waivers (10/01/07 Version)

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

25.6 BPA Policies (09/04/07 Version)

Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of «Customer Name» to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of «Customer Name» to seek judicial review of any such policy.

25.7 Rate Covenant and Payment Assurance (03/28/08 Version)

«Customer Name» agrees that it shall establish, maintain and collect rates or charges for power and energy and other services, facilities and commodities sold, furnished or supplied by it through any of its electric utility properties. BPA may require additional forms of payment assurance if: (1) BPA determines that such rates and charges may not be adequate to provide revenues sufficient to enable «Customer Name» to make the payments required under this Agreement, or (2) BPA identifies in a letter to «Customer Name» that BPA has other reasonable grounds to conclude that «Customer Name» may not be able to make the payments required under this Agreement. If «Customer Name» does not provide payment assurance satisfactory to BPA, BPA may terminate this Agreement.

26. TERMINATION (07/02/08 Version)

26.1 BPA's Right to Terminate

BPA may terminate this Agreement if:

- (1) «Customer Name» fails to make payment as required by section 16.4, Billing and Payment, or
- (2) «Customer Name» fails to provide payment assurance satisfactory to BPA as required by section 25.7, Rate Covenant and Payment Assurance.

26.2 Customer's Right to Terminate(07/2/08 Version)

«Customer Name» may provide written notice to terminate this Agreement not later than 60 days after a Final FERC Order is issued declining to approve the Tiered Rates Methodology if such approval is required, or a Final FERC Order disapproves rates established consistent with the TRM. The notice shall include a date of termination not later than 90 days after the date of such notice. For purposes of this section 26.3, "Final FERC Order" means a dispositive order by FERC on the merits, and does not include any interim order. A dispositive order on the merits is, for purposes of this section, final when issued and there is no need to await a FERC order on rehearing before the decision is considered final.

27. SIGNATURES (10/01/07 Version)

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Title _____

Date _____

Date _____

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *(Drafter's Note: Insert date of finalized contract here)*