

POWER SALES AGREEMENT

BY AND BETWEEN

PUBLIC UTILITY DISTRICT NO. 1

OF

CHELAN COUNTY, WASHINGTON,

ALCOA POWER GENERATING INC.

AND

ALCOA INC.

DATED AS OF

_____, 2008

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POWER SALES AGREEMENT

This Agreement is dated this ____ day of _____, 2008 by and between Public Utility District No. 1 of Chelan County, Washington (hereinafter referred to as the "District"), Alcoa Power Generating Inc. ("APGI") and Alcoa Inc. ("Alcoa") (APGI and Alcoa being hereinafter jointly and severally referred to as the "Purchaser," and collectively with the District, the "Parties" or individually, a "Party").

RECITALS

The District is the owner and operator of the Rock Island and Rocky Reach Projects (as hereinafter defined, the "Projects"), located in or adjacent to Chelan County, Washington. The District, Alcoa and APGI have heretofore entered into a Restated and Amended Power Sales Agreement dated as of October 1, 2004, as amended (the "Prior Agreement") which expires on October 31, 2011, pursuant to which the District has supplied energy for Purchaser's aluminum plant in Chelan County known as Wenatchee Works ("Wenatchee Works"). The Purchaser wishes to continue purchasing Output as defined herein from the District using a methodology as set forth herein, and the District is willing to sell such Output, all on the terms and conditions set forth herein.

For and in consideration of the promises, representations and undertakings of the Parties, they covenant and agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. **Definitions.** The following definitions shall apply throughout this Agreement and its Appendices whenever the term is capitalized. Other terms with special meaning within this Agreement are defined in the text or in the Appendices.

"*Adequate Assurance*" means Performance Assurance or other assurances of continued performance by the Purchaser of its obligations hereunder, in each case reasonably acceptable to the District. Performance Assurance may not necessarily constitute Adequate Assurance in all circumstances.

"*Affiliate*" means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"*Agreement*" means this Agreement, including the schedules and appendices hereto, all as may be amended from time to time pursuant to the terms hereof.

"*Appendix*" means an Appendix attached to this Agreement.

"*Approval Date*" means the date FERC approves this Agreement.

“*Assumed Debt Service*” has the meaning set forth in Section 1 of Appendix A.

“*Average Service Life*” has the meaning set forth in Section 1 of Appendix A.

“*Bankruptcy*” means, with respect to a Party, (i) an adjudication of bankruptcy or insolvency, or the entry of an order for relief, under any Bankruptcy Law with respect to such Party; (ii) the making by such Party of an assignment for the benefit of its creditors; (iii) the filing by such Party of a petition in bankruptcy or for relief under any Bankruptcy Law; (iv) the filing by such Party of an answer or pleading admitting or failing to contest the material allegations of any such petition; (v) the general inability of such Party to pay its debts as they fall due; (vi) the filing against such Party of any petition in bankruptcy or for relief under any Bankruptcy Law (unless such petition is dismissed within ninety (90) days from the date of filing thereof); (vii) the appointment of a liquidator, administrator, trustee, conservator or receiver for such Party or for all or any substantial portion of its assets (unless such appointment is vacated or stayed within ninety (90) days of such appointment); or (viii) the taking by such Party of any action for its winding up or liquidation, or the consent by such Party to any of the actions described in clauses (i) through (vii) being taken against it.

“*Bankruptcy Law*” means any applicable state or federal bankruptcy or insolvency statute.

“*Business Day*” means any day other than a Saturday or Sunday or a day on which banks located in the State of Washington are authorized or required by law to close. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m., Pacific prevailing time (PPT).

“*Capacity*” means the instantaneous generation potential of the Chelan Power System as adjusted for limitations and obligations in accordance with Section 1 of Appendix B.

“*Capital Improvements*” means such capital repairs, renewals, additions, improvements and replacements of the Projects, together with preliminary surveys, investigations, architectural, engineering, design, consulting, legal, financial and other services and items properly chargeable thereto, as the District may reasonably determine consistent with GAAP, FERC regulations (including FERC’s Uniform System of Accounts) and District accounting policies, practices and procedures.

“*Change in Control*” shall be deemed to have occurred if an event or series of events shall have occurred as a result of which any “person” or “group” (within the meaning of Sections 13(d) and 14(d)(2) of the Exchange Act) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under said Act), directly or indirectly, of more than fifty percent (50%) of the combined voting power of or economic interests in the outstanding Equity Interests in Alcoa.

“*Change of Law*” means any change in federal or state statutes or regulations or any judicial or regulatory interpretations.

“*Chelan Power System*” means, collectively, Rocky Reach and Rock Island, in each case as each such Project exists as of its respective Project Availability Date. The Chelan Power System shall also include an amount of Output equal to any expansion of the Output

determined in relation to the existing Projects after their respective Project Availability Dates, but shall not include any other power generation, transmission or distribution assets or rights, now owned or hereafter acquired by the District.

“Claims” means all claims (including counterclaims), demands, actions or proceedings, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity or limitation of liability, and the resulting costs, judgments, liabilities, losses, damages, penalties, interest, expenses, attorneys fees, court costs and costs of investigation, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Commercially Reasonable” or *“Commercially Reasonable Efforts”* means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs and the risk to the Party required to take such action. A *“Commercially Reasonable”* standard is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of commonly used efforts, methods or acts.

“Contract Year” means the period commencing on the first Project Availability Date and ending on the next succeeding December 31, and each 12-month period thereafter, except for the 12-month period during which the expiration or termination date of this Agreement occurs, in which case the Contract Year means the period commencing on January 1 of such year and ending on such expiration or termination date.

“Coverage Amount” means the sum, as of the date of calculation, of (i) with respect to Debt Obligations outstanding as of January 31, 2006 and identified in Schedule A-1, an amount equal to fifteen percent (15%) of the maximum estimated aggregate amount of the Financing Costs described in Section 2(b)(i) of Appendix A that will be payable in any Contract Year during the Term, as determined by the District as of January 31, 2006 for all Debt Obligations outstanding as of January 31, 2006, and (ii) with respect to all Debt Obligations issued after January 31, 2006, an amount equal to fifteen percent (15%) of the maximum estimated aggregate amount (each amount included in such aggregate amount to be as determined by the District as of the date of issuance or incurrence of the applicable Debt Obligation) of Financing Costs with respect to such Debt Obligations as described in Section 2(b)(ii) of Appendix A, that will be payable in any Contract Year during the Term.

“Cross Default Amount” means, with respect to the Purchaser, two and one-half percent (2 1/2%) of the Purchaser’s then current market capitalization (based on its share prices as quoted in the Wall Street Journal the Business Day prior to the date of calculation) and, with respect to the District, \$50,000,000, as adjusted in accordance with the Escalation Factor.

“Debt Obligation” has the meaning set forth in Section 1 of Appendix A.

“*Deemed Maturity*” has the meaning set forth in Section 1 of Appendix A.

“*District Enterprise Units*” means and shall include each utility, enterprise or operating system or unit of the District, exclusive of Rocky Reach and Rock Island, as the District may designate from time to time, that may make advances or inter-fund loans to the Chelan Power System as contemplated within the definition of Debt Obligations in Appendix A hereto.

“*District System Emergency*” means a condition or situation that, in the judgment of the District and in conformance with guidelines of FERC, NERC, the WECC or other entities with regulatory jurisdiction (whether by contract or operation of Law) over the District concerning system emergencies, adversely affects or is likely to adversely affect: (i) public health, life or property; (ii) District’s employees, agents or property; or (iii) District’s ability to maintain safe, adequate and reliable electric service to its respective customers.

“*Downgrade Event*” means the Purchaser’s long-term senior unsecured debt rating (a) from S&P is withdrawn (other than at the request of Purchaser), suspended or reduced below “BBB-” (or corresponding successor rating); or (b) from Moody’s is withdrawn (other than at the request of Purchaser), suspended or reduced below “Baa3” (or corresponding successor rating); or (c) from Fitch is withdrawn (other than at the request of Purchaser), suspended or reduced below “BBB-” (or corresponding successor rating). If any Rating Agency has not assigned a rating to Purchaser as of the Signing Date, a Downgrade Event shall not occur as to that Rating Agency until such a rating has been assigned and such rating is either at or below the respective level set forth above, or the initial higher rating is thereafter withdrawn (other than at the request of Purchaser), suspended or reduced below the respective level set forth above. Commencing on the Signing Date, Purchaser shall maintain ratings from at least two of the three named credit rating agencies.

“*Dryden Facilities*” means the District’s dam, spillway, irrigation flume and related facilities located on the Wenatchee River near Dryden in Chelan County, Washington.

“*Effective Date*” of this Agreement means the Signing Date.

“*Energy*” means the energy production, expressed in megawatt hours, as determined in relation to the Output of the Chelan Power System as measured in megawatts integrated over an hour and adjusted for limitations and obligations in accordance with Appendix B. Energy may be supplied by the District from any source and the District is not obligated to supply Energy from any particular source.

“*Entiat Facilities*” means the District's diversion and irrigation facilities located in and adjacent to the Entiat River in Chelan County.

“*Equity Interests*” means, with respect to Alcoa, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interest in (however designated) Alcoa’s corporate stock.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder.

“*FERC*” means the Federal Energy Regulatory Commission or its successor.

“*Financing Costs*” has the meaning set forth in Section 2(b) of Appendix A hereof.

“*Fiscal Year*” means the twelve-month period selected by the District from time to time as its fiscal year for accounting and other purposes, which currently is the twelve-month period commencing on January 1 and ending on the next succeeding December 31.

“*Fitch*” means Fitch Ratings, or any successor thereto and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated in writing by the District.

“*GAAP*” means, as of any applicable date of determination, generally accepted accounting principles in effect in the United States, as applicable to each respective Party.

“*Government Authority*” means any federal, state, local, territorial or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof.

“*Independent Investment Banker*” has the meaning set forth in Section 1 of Appendix A.

“*Index Rate*” has the meaning set forth in Section 1 of Appendix A.

“*In Service Date*” has the meaning set forth in Section 1 of Appendix A.

“*Intentional Breach*” means, with respect to the District, the sale by the District of Purchaser’s Share of Output to third parties, with full knowledge and intent that such action is in breach of this Agreement and in blatant disregard for its express obligations hereunder. Such term shall only relate to the failure to deliver Purchaser’s Share of Output to the extent required hereunder, and shall not apply to any other obligations of the District including, without limitation, any operational aspect of the System (including curtailments and shutdowns) or transmission facilities, or any other covenant, duty or obligation that may arise under this Agreement.

“*Interconnection Agreement*” has the meaning ascribed to that term in Appendix B hereto.

“*Law*” means any statute, law, order, rule or regulation imposed by a Regulatory Authority.

“*Letter(s) of Credit*” means one or more clean, irrevocable, transferable direct pay or standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating at all times of at least A- from S&P or A3 from Moody’s, in a form acceptable to the District. Costs of a Letter of Credit shall be borne by the Purchaser.

“*MW*” means a megawatt, or one thousand (1,000) kilowatts.

“*MWH*” means a megawatt hour or one thousand (1,000) kilowatt hours.

“*Month*” means a calendar month.

“*Moody’s*” means Moody’s Investors Service, Inc., or any successor thereto and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “*Moody’s*” shall be deemed to refer to any other nationally recognized securities rating agency designated in writing by the District.

“*NERC*” means the North American Electric Reliability Council or its successor responsible for insuring a reliable, adequate and secure bulk electric system.

“*Net Costs*” has the meaning set forth in Section 2 of Appendix A hereof.

“*Operating Costs*” has the meaning set forth in Section 2(a) of Appendix A hereof.

“*Output*” means an amount of Energy determined in relation to the energy production of the Chelan Power System and other products and services, to the extent described in and determined pursuant to Appendix B hereof, subject to the limitations set forth in this Agreement and Appendix B.

“*Performance Assurance*” means collateral in the form of either cash, Letters(s) of Credit or Qualified Investments, deposited with the District, or an escrow agent selected by the District and reasonably satisfactory to the Purchaser, and held pursuant to a collateral deposit agreement in form and substance reasonably satisfactory to the District, in an amount equal to the sum of (a) *the greater of* (i) the highest three (3) months of Periodic Payments due hereunder in the twelve (12) months preceding the date of calculation, *or* (ii) the amount that the District estimates will be the sum of the highest three (3) months of Periodic Payments that will become due hereunder in the twelve (12) month period immediately following the month in which such calculation is made and (b) an amount equal to the Shutdown Settlement Amount for the applicable fiscal year in which the calculation is made (to be adjusted each fiscal year thereafter during which collateralization is required, based on the amounts shown in Column B of Appendix E). The initial payments required to be made by the Purchaser on or before the initial Effective Date under Sections 7.01(A) and (B) shall not be included as part of the Periodic Payments for purposes of the calculations made pursuant to this definition.

“*Periodic Payments*” means the sum of the payments, costs and charges described or referred to in Section 7.01 of this Agreement and payments in respect to Supplemental Power Purchases as referenced in Article V..

“*Permanently Retired*” means with respect to a Project, that such Project or specified Units of such Project, have been shut down and notice of permanent cessation of operations with respect thereto has been given by the District to the Purchaser and as such submittal to FERC may be required by the license for such Project.

“*Person*” means any individual, limited liability company, sole proprietorship, corporation, partnership, joint venture, trust, unincorporated organization or Government Authority.

“*Potential Event of Default*” means an event which, with notice or passage of time or both, would constitute an Event of Default.

“*Prior Agreement*” shall have the meaning set forth in the Recitals to this Agreement.

“*Project*” means each of Rock Island and Rocky Reach.

“*Project Availability Date*” means for Rocky Reach, 00:00 hours on November 1, 2011, and for Rock Island, 00:00 hours on July 1, 2012.

“*Prudent Utility Practice*” means any of the practices, methods and acts engaged in, or approved by, a significant portion of the electric utility industry in the Western Interconnection for operating facilities of a size and technology similar to the Project during the relevant time period or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known, at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with applicable Laws, longevity, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of commonly used practices, methods and acts.

“*Purchaser’s Percentage*” means the percentage set forth in Section 5.01(A) hereof, as such amount may be adjusted from time to time pursuant to the terms of this Agreement.

“*Purchaser’s Percentage of Output*” means an amount for any period equal to the product of (i) the Purchaser’s Percentage, and (ii) the Output.

“*Qualified Investments*” means all securities and other instruments in which the District is authorized to invest under applicable law.

“*Rating Agencies*” means, collectively, Fitch, Moody’s and S&P.

“*Rating Agency*” means any one of the Rating Agencies.

“*RCW*” means the Revised Codes of Washington.

“*Refinance,*” or “*Refinancing*” when used with respect to an outstanding Debt Obligation or portion thereof, means to refund, refinance or remarket such Debt Obligation.

“*Refunding Obligations*” means a bond, note (including a commercial paper note or bond anticipation note), installment purchase agreement, financing lease, inter-fund loan or any other obligation for borrowed money, or any portion thereof, issued or incurred by or on

behalf of the District, for purposes of Refinancing a Debt Obligation or a Refunding Obligation. The term “Refunding Obligations” shall not be included in the calculation of Debt Obligations.

“*Regulatory Authority*” means any Government Authority other than the District itself.

“*Related Power Sales Agreement*” means a power sales agreement between a Share Participant and the District for the purchase and sale of a percentage of Energy production of the Chelan Power System or Output as determined in relation to the Chelan Power System as so designated by the District and containing terms and conditions similar to the terms and conditions set forth herein. This term will specifically include that certain Power Sales Agreement between the District and Puget Sound Energy, Inc. dated as of February 1, 2006.

“*Reserve and Contingency Fund*” means the fund or funds created under the Project bond resolutions including the Rocky Reach Resolutions 1860 and 4198, and the Rock Island Resolutions 1137, 3443, 4950 and 97-10671, 97-10672 and any successor resolutions adopted. As long as bonds remain outstanding under such resolutions, deposit requirements into the appropriate Reserve and Contingency Fund may be made from the Capital Recovery Fund and/or the Debt Reduction Fund and from Purchaser’s payments made in respect of Financing Costs allocated to that purpose under Schedule A-1. Required and authorized uses of the Reserve and Contingency Funds shall be made in accordance with the appropriate Project bond resolution or, after the retirement of such bonds, for any other lawful Project purpose not inconsistent with the provisions of this Agreement.

“*Rock Island*” means (i) the District’s Rock Island Hydroelectric Project as currently licensed by FERC under license number 943, and any successor license, including any efficiency improvements and upgrades that increase generating capacity and any decommissioning of Units as contemplated in Section 6.03, in each case made by the District from time to time during the Term, together with (ii) the Dryden Facilities, the Entiat Facilities and the Tumwater Facilities.

“*Rocky Reach*” means the District’s Rocky Reach Hydroelectric Project as currently licensed by FERC under license number 2145, and any successor license, including any efficiency improvements and upgrades that increase generating capacity and any decommissioning of Units as contemplated in Section 6.03, in each case, made by the District from time to time during the Term.

“*Sales and Administrative Charges*” means the sum of (i) the amount of the District’s 1.5% administrative fee with respect to such Excess Energy sales and (ii) an amount equal to \$0.50 times the sum of the Excess Energy sales in MWhs during each Qualifying Day, where a “*Qualifying Day*” means any day during which Purchaser has placed daily sales of greater than 50aMW of the Excess Energy Allocation for such day.

“*Schedule*” or “*Scheduling*” means the actions or product of the District, Purchaser and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and

type of Output to be delivered on any given day or days at a specified Transmission Point of Receipt and/or Transmission Point of Delivery.

“S&P” means Standard and Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc., or any successor thereto and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated in writing by the District.

“Share Participant” means a third party purchaser, unrelated to the District, who signs a Related Power Sales Agreement with the District for a share of Output of, or determined in relation to, the Chelan Power System.

“Signing Date” means the date the Parties sign this Agreement, which shall be deemed to be the date recited in the first paragraph of this Agreement.

“Term” means the period during which Output will be made available to Purchaser pursuant to the terms hereof, as set forth in Article III.

“Transmission Agreement” has the meaning ascribed to that term in Section 9 of Appendix B hereto.

“Transmission Point(s) of Delivery” has the meaning ascribed to that term in Section 9 of Appendix B hereto.

“Transmission Point(s) of Receipt” has the meaning ascribed to that term in Section 9 of Appendix B hereto.

“Transmission Provider” means any entity or entities transmitting or transporting the Output on behalf of Purchaser to or from the Transmission Point(s) of Delivery; or, with respect to the District when acting as a Transmission Provider, from the Transmission Point(s) of Receipt to the Transmission Point(s) of Delivery.

“Tumwater Facilities” means the dam, spillway and related facilities owned and operated by the District, located on the Wenatchee River in Tumwater Canyon.

“Uniform System of Accounts” means the system of accounts for Public Utilities and Licensees as prescribed by FERC, constituting Part 101 of Title 18 of the Code of Federal Regulations, as supplemented and amended (the “Uniform System of Accounts”), used to account for the costs of generating projects, and any successor thereto and to the account designations thereunder.

“WECC” means the Western Electricity Coordinating Council or its successor, or such other entity or entities responsible for regional reliability as determined by the District.

“Wenatchee Works” shall have the meaning set forth in the Recitals to this Agreement.

Section 1.02. ***Other Defined Terms.*** Certain words and terms, both capitalized and not capitalized, other than those defined in Section 1.01 are defined in other Sections of this Agreement and shall have their respective defined meanings throughout this Agreement. Such defined words and terms and the Sections in this Agreement in which they are defined are as follows:

<u>Defined Term</u>	<u>Section</u>
Annual Cumulative Surplus Proceeds	5.08(C)
Annual True-Up	8.01(D)
Breaching Party	19.01
Capacity Reservation Charge	7.01(A)
Capital Recovery Charge	7.01(G)
Capital Recovery Charge Account	7.01(G)
Capital Recovery Charge Base	7.01(G)(ii)
Capital Recovery Charge Percentage	7.01(G)(i)
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Credit Rating Premium	7.01(E)
Credit Spread Condition	7.01(E)
Debt Reduction Charge	7.01(F)
Debt Reduction Charge Account	7.01(F)
Debt Reduction Charge Percentage	7.01(F)(i)
Debt Reduction Charge Obligations	7.01(F)(ii)
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Defaulting Party	15.01
Disclosing Party	19.01
Dispute	16.02
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District's Credit Rating	7.01(E)
Due Date	8.01(A)
Equivalent Energy	Appendix B
Escalation Factor	7.01(G)(iii)
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Excess Energy	5.07
Funding Agreements	15.01(H)
Initial Operating Year	5.06
Initial Shutdown Amount	7.01(A)
Meters	23.10
Non-Defaulting Party	15.02
Operating Level	5.06
Operating Year	5.06
Party or Parties	Preamble
Purchaser	Preamble
Purchaser's Credit Rating	7.01(E)
Purchaser's Current Year's Credit Pool	5.08(B)

Purchaser’s Long Term Credit Pool	5.08(C)
Purchaser’s Step Up Percentage	5.14
Purchaser’s Credit Rating	7.01(E)
Rocky Reach Initial Period	5.01(A)
Section 7.01(A) Escalation Factor	7.01(A)
Shutdown	7.01(A)
Shutdown Date.....	7.01(A)
Shutdown Payment Date	7.01(A)(i)
Shutdown Period.....	7.01(A)
Shutdown Settlement Amount	7.01(A)
Startup Condition	7.01(A)
Step-Up Effective Date	5.14
Supplemental Power Purchases	5.07
Surplus Proceeds.....	5.08(A)
Term.....	3.01
Uncontrollable Circumstances	5.10
Working Capital Charge	7.01(B)

Section 1.03. **Interpretation.** Unless the context otherwise requires:

(i) Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

(ii) Any reference in this Agreement to any Person includes its successors and permitted assigns and, in the case of any Government Authority, any Person succeeding to its functions and capacities.

(iii) Any reference in this Agreement to any Section or Appendix means and refers to the Section contained in, or Appendix attached to, this Agreement, unless otherwise specified.

(iv) Any reference in this Agreement to a certain time of day shall be based on the then Pacific prevailing time (PPT).

(v) If any payment, act, matter or thing hereunder (other than the delivery of Output), required to be done under this Agreement on a date certain, would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next following Business Day.

(vi) A reference to the words “hereof,” “herein,” and “hereunder” refer to this Agreement as a whole and not to any particular provision of this Agreement.

(vii) All uses of “include” or “including” shall be deemed to be followed by “without limitation.”

(viii) The phrases “as determined by the District,” “in the discretion of the District,” “the District considers necessary,” “the District deems necessary” or similar phrases, exclusive of phrases such as “in the District’s sole discretion” or other phrases using “solely,” or “sole,” unless the context otherwise indicates, refers to a determination made by the District in its reasonable discretion.

(ix) All references to a law, rule, regulation, contract, agreement, or other document mean that law, rule, regulation, contract, agreement, or document as amended, modified, supplemented or restated, from time to time.

(x) Any definition of one part of speech of a word, such as definition of the noun form of that word, shall have a comparable meaning when used as a different part of speech, such as the verb form of that word and other grammatical forms of defined words or phrases, if initially capitalized, have corresponding meanings.

Section 1.04. ***Technical Meanings.*** Words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

Section 1.05. ***Conflicts.*** In the event of a conflict or inconsistency between this Agreement and any Appendix, attachment or the Transmission Agreement or Interconnection Agreement, the provisions of this Agreement shall take precedence. In the event of a conflict or inconsistency between any Appendix or attachment and the Transmission Agreement or Interconnection Agreement, the provisions of such Appendix or attachment shall take precedence, in that order.

ARTICLE II APPENDICES

Section 2.01. ***Appendices.*** The terms and provisions of the following Appendices constitute a part of and are hereby incorporated by this reference in this Agreement:

Appendix A: Determination of Chelan Power System Net Costs

Appendix B: Output, Scheduling, Planning and Transmission

Appendix C: Project Transmission Facilities

Appendix D: Excess Energy Sales and Supplemental Power Purchases

Appendix E: Initial Shutdown Amount and Shutdown Settlement Amount

ARTICLE III TERM AND TERMINATION

Section 3.01. **Term.** This Agreement shall become effective as of the Signing Date. The Term, however, shall commence as of the first Project Availability Date and shall terminate as of the expiration or termination of this Agreement pursuant to its terms. Unless terminated or extended as provided herein, this Agreement shall remain in effect until midnight on October 31, 2028. All obligations accruing or arising prior to the termination or expiration of this Agreement shall survive the termination or expiration hereof until satisfied in full.

Section 3.02. **Condition Precedent to Effectiveness.** The Parties agree and acknowledge that the respective rights and obligations of the Parties under this Agreement with respect to the Output (including the District's obligation to deliver Output determined in relation to such Projects and the Purchaser's obligation to pay any Periodic Payments (other than the Capacity Reservation Charge referred to in Section 7.01(A)) attributable to or arising out of such Projects) are contingent, in the District's sole discretion, upon the satisfaction as of each respective Project Availability Date for each such Project (00:00 Hours on November 1, 2011 for Rocky Reach and 00:00 Hours on July 1, 2012 for Rock Island) of the following conditions precedent: (1) no material default shall have occurred and be continuing, as of each respective Project Availability Date, under the Prior Agreement or other current contract(s) between the Parties; (2) no Event of Default or Potential Event of Default exists under this Agreement; (3) the representations contained in Article IV continue to be true; (4) no Downgrade Event with respect to the Purchaser has occurred and Purchaser's credit quality has not been placed on negative watch indicating a view to lowering the Purchaser's credit rating to below investment grade by any of the Rating Agencies; (5) any required Performance Assurance, in form acceptable to the District, has been posted by the Purchaser; (6) the Prior Agreement shall not have terminated prior to the Rocky Reach Project Availability Date; (7) no termination described in Section 3.03 has occurred; (8) the Parties have entered into a Transmission Agreement and an Interconnection Agreement, in form and substance reasonably satisfactory to the District and the Purchaser; and (9) Wenatchee Works has been operating at or above Level 3 (as defined in Section 5.06 below) for the twelve (12) calendar months prior to each Project Availability Date, taking into consideration adjustments to operating criteria arising from an Uncontrollable Circumstances (as contemplated in Section 5.10 below).

If the conditions precedent set forth above are not satisfied or waived by the District on or within 90 days following each respective Project Availability Date, the District may terminate this Agreement in accordance with Section 3.03. Any such termination shall apply to this Agreement as a whole, and not severally as to the Output determined in relation to Rocky Reach or Rock Island.

Section 3.03. **Termination.** This Agreement may only be terminated (i) by mutual agreement of the Parties; (ii) by either Party if the Approval Date has not occurred by the first Project Availability Date, provided that the Party wishing to terminate this Agreement pursuant to this clause (ii) shall give the other Party written notice of such termination on or within ninety (90) days prior to the first Project Availability Date; (iii) by the District pursuant to the provisions of Section 15.02, so long as any Event of Default is continuing and has not been cured within the applicable cure period (which termination event, at the District's discretion,

may supersede a termination under Section 3.02(2)); (iv) by the District pursuant to Section 5.13; (v) by the District pursuant to Section 3.02; or (vi) pursuant to Section 23.09. In the event this Agreement is terminated pursuant to subsections (i), (ii) or (v), neither Party shall be liable to the other Party for damages due to such termination. Any termination of this Agreement by a Party pursuant to the terms hereof shall be effected by and effective only upon receipt of written notice of such termination by the other Party.

Section 3.04. ***Continued Effectiveness after Termination.*** After termination or expiration of the Term, any provisions that may be reasonably interpreted or construed as being intended to survive the termination or expiration of the Term or this Agreement, including, without limitation, Article XXI (Limitation of Liability), and all unsatisfied billing, payment and damage obligations that arose during the Term, shall survive such termination or expiration.

ARTICLE IV REPRESENTATIONS

Section 4.01. ***Representations.*** As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents to the other Party, as of the date of execution hereof, as follows:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct its business in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to qualify would reasonably be expected to have a material adverse effect upon its financial condition, operations, prospects or business, which would taken as a whole, impair its ability to perform its obligations under this Agreement;

(ii) the execution, delivery and performance of this Agreement are within its statutory and corporate powers;

(iii) it has full legal right, power and authority to execute, deliver and perform its obligations under this Agreement; it has taken all appropriate and necessary action to authorize the execution, delivery and performance of this Agreement; and this Agreement, including, without limitation, the approval by its Board of Commissioners or Board of Directors, as the case may be; has been duly and validly executed and delivered by it; and this Agreement does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it;

(iv) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency reorganization and other laws affecting creditor's rights generally, with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, and to limitations on remedies against Government Authorities under the laws of the State of Washington;

(v) except for the FERC approval of this Agreement as referred to herein, no authorization, approval, exemption or consent by any governmental or public body or authority is required in connection with the authorization, execution, delivery and carrying out of the terms of this Agreement, which has not yet been obtained or which is not presently undergoing the necessary processes to be obtained;

(vi) there are no bankruptcy, insolvency, reorganization, receivership or other arrangement or proceedings pending or being contemplated by it, or to its knowledge threatened against it;

(vii) there are no actions, suits, proceedings or investigations pending or, to the Party's knowledge, threatened against such Party or any of its Affiliates, at law or in equity before any Government Authority, having jurisdiction over such Party which, if adversely determined, would individually or in the aggregate have a material adverse effect on the business, properties or assets or the condition, financial or otherwise, of such Party, or result in any impairment of such Party's ability to perform its obligations under this Agreement;

(viii) it has no knowledge of any violation or default by such Party or its Affiliates, or any condition or circumstance that, with the passage of time or the giving of notice or both would constitute a violation or default, under this Agreement or the Prior Agreement, or any violation or default by such Party or its Affiliates with respect to any order, writ, injunction or decree of any court or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality which is reasonably likely to have a material adverse effect or to result in such impairment; and

(ix) it is not subject to any material outstanding judgment, order, writ, injunction or decree of any Government Authority having jurisdiction over such Party which would materially and adversely affect its ability to enter into and perform its obligations under this Agreement.

(B) In addition to the foregoing, Alcoa and APGI, jointly and severally, represent, warrant and covenant, and shall provide sufficient evidence of representations and warranties to the District, that throughout the term of this Agreement:

(i) Purchaser has all regulatory authorizations necessary to operate Wenatchee Works, that such regulatory authority is not subject to appeal or intervention, that Purchaser is in material compliance with all permits, licenses and other provisions of law required in such operations and that Purchaser will continue to fully materially comply with the same during the term of this Agreement;

(ii) they each have consulted with accountants, lawyers and outside consultants concerning the federal, state and local Tax consequences of entering into this Contact; they have made an independent evaluation and assessment of the risks associated therewith without reliance on any representation made by the District or any of its agents or consultants; and they have entered into this transaction with the full understanding of the consequences thereof; and

Section 4.02. **Compliance Covenant.** The Purchaser covenants and agrees to take whatever action it, in good faith, deems reasonably necessary and within its reasonable control to ensure that the representations related to it under clauses (i) through (v) of Section 4.01(A) and clauses (i) and (ii) of Section 4.01(B) will not be violated in any material respect during the Term.

Section 4.03. **Independent Decision.** Each Party is acting for its own account, and has made its own independent decision to enter this Agreement and this Agreement is appropriate or proper for it based upon its own judgment. Neither Party is relying upon the advice or recommendations of the other Party in so doing, and each Party is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

Section 4.04. **Ability to Perform.** Each Party has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Output referred to in this Agreement.

Section 4.05. **Forward Contract Merchant.** Each Party acknowledges and agrees that this Agreement is a “forward contract” and that each Party is either a “forward contract merchant” or “financial participant,” in each case as those terms are used in the United States Bankruptcy Code.

ARTICLE V OUTPUT; SURPLUS ENERGY SALES; CREDITS

Section 5.01. **Output To Be Made Available.**

(A) Beginning on the respective Project Availability Date for each Project and continuing until midnight on the date on which this Agreement is terminated or expires, the District shall during each hour sell and make available for scheduling by and delivery (or cause to be delivered) to Purchaser, at the Transmission Point(s) of Receipt, Purchaser’s Percentage of Output determined in relation to such Project, and Purchaser shall during each hour purchase and receive (or cause to be received), at the Transmission Point(s) of Receipt, the amount of Purchaser’s Percentage of Output scheduled by Purchaser for every such hour. Subject to the applicable provisions of this Agreement, including Section 5.01(B) below, (i) for the period from the Project Availability Date for Rocky Reach through and including June 30, 2012 (the “Rocky Reach Initial Period”), Purchaser’s Percentage shall be the equivalent of 27.5% of the Output, determined in relation to Rocky Reach only; and (ii) from and after the Project Availability Date for Rock Island, Purchaser’s Percentage, during the Term of this Agreement, shall be the equivalent of 26% of the Output, determined in relation to Chelan Power System, in each case as the same may be modified from time to time pursuant to Subsection (B) below and Section 5.14.

(B) It is expressly acknowledged and agreed by the Parties that Output is dynamic and variable and is dependent upon a variety of factors including, without limitation, availability of water and operable generation Units of the Projects, electric system reliability requirements, federal and state laws, rules, regulations and orders affecting river flows and operation of the Projects regarding endangered species and other environmental matters, matters

giving rise to curtailment described in Article VI and other restrictions on Output described in Appendix B, the terms of which Appendix are incorporated by reference. Output can and will vary substantially from hour-to-hour, season-to-season and year-to-year. Appendix B, in conjunction with the Transmission Agreement, shall also govern the delivery of the Output to the Transmission Point(s) of Receipt, shall define the scheduling procedures and scheduling requirements of the Output, shall provide for the transmission of Output from the Transmission Point(s) of Receipt to the Transmission Point(s) of Delivery, shall provide for management of the Purchaser's Percentage of Output, shall define the services included in Output, and shall describe certain services and products offered by the District.

(C) PURCHASER ACKNOWLEDGES THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE DISTRICT'S OBLIGATION TO SELL AND DELIVER OUTPUT IS EXPRESSLY LIMITED TO PURCHASER'S PERCENTAGE OF ANY OUTPUT MEASURED IN RELATION TO THE ENERGY ACTUALLY PRODUCED BY THE CHELAN POWER SYSTEM AND AVAILABLE FOR DELIVERY. THE DISTRICT WILL NOT BE LIABLE TO THE PURCHASER FOR THE FAILURE TO DELIVER ANY ENERGY GREATER THAN PURCHASER'S PERCENTAGE OF THE OUTPUT, IF ANY, AS MEASURED IN RELATION TO THE ENERGY ACTUALLY PRODUCED BY THE CHELAN POWER SYSTEM, REGARDLESS OF THE REASON FOR LACK OF PRODUCTION OR DIMINISHED AVAILABILITY OF SUCH OUTPUT.

(D) Output shall be made available to the Purchaser by the District in accordance with the provisions and limitations in Appendix B hereof, on and after each respective Project Availability Date, but with respect to each Project only from and after the respective Project Availability Date for each Project.

(E) The District shall not be liable to Purchaser for any damage, loss or liability associated with any remarketing of Excess Energy or Supplemental Power Purchases under this Agreement, whether or not the Excess Energy could be sold at higher prices, on better terms or to more creditworthy purchasers or the Supplemental Power could be purchased at lower prices, on better terms or to more reliable, creditworthy sellers.

Section 5.02. ***Delivery and Scheduling.*** The District shall arrange and be responsible for delivering Output to the Transmission Point(s) of Receipt. The Purchaser shall (i) make arrangements with the District, pursuant to the Transmission Agreement, to deliver the Output from the Transmission Point(s) of Receipt to the Transmission Point(s) of Delivery; and (ii) Schedule or arrange for Scheduling services with its Transmission Providers to receive the Output from the District at the Transmission Point(s) of Delivery. Exchanges of Output shall be subject to the protocols established in the Interconnection Agreement, and transmission charges will be specified in the Transmission Agreement. The parties have agreed to negotiate and execute an Interconnection Agreement subsequent to the Signing Date and prior to January 1, 2010 or a later date as agreed upon by the Parties.

Section 5.03. **Share Limitation, Operating Criteria and Resell Rights.**

(A) General Principles. The Parties recognize that the following principles support the concepts in this Article V:

(1) Purchaser should make its own economic operating decisions knowing the consequences of those decisions in terms of the credit and operational issues.

(2) The District is most interested in Purchaser operating at a full three (3) pot line operation (due to the jobs and other economic value provided by such operation to the community) which has been the basis for negotiation of the provisions in this Article V. Thus the District is interested in providing contractual incentives for Purchaser to run at that level. Purchaser has its own reasons for running at the highest level possible to reduce the “per unit” costs of energy for its production.

(B) Limitation on Availability and Use of Output. The Output provided pursuant to this Agreement shall be used by Purchaser solely at Wenatchee Works. Except as specifically provided in this Agreement, Purchaser will not be entitled to receive or resell any portion of Purchaser’s Percentage of Output that is not needed in connection with the Wenatchee Works for primary aluminum reduction operations. Any Output in excess of those needs will be retained by the District and sold in a manner that the District in good faith determines to be commercially reasonable. Proceeds received from the sale of such Excess Energy will be applied as set forth herein. The operational criteria for accumulating and using credits that may become available from the sale of such Excess Energy are set forth below. The operational criteria and credit allocations set forth in this Article will not in any way affect Purchaser’s unconditional obligations to pay Net Costs or other amounts due under this Agreement.

(C) No Guaranteed Output. The District does not guarantee any amount of Output to Purchaser. It is the intent of the parties that Purchaser fully utilize power available hereunder to produce aluminum to the extent reasonably possible given smelter operational issues. The parties recognize that there will be variability in the amount of Output that may be available at any given time and that, consequently (i) there will be times that the Output will be insufficient to run Wenatchee Works at any given operating level, during which Supplemental Power Purchases will be necessary to meet operational criteria and (ii) there will also be times that there is Excess Energy available based on Purchaser’s selected operating levels which will be sold by the District on the market pursuant to the terms hereof.

Section 5.04. **Excess Energy Sales and Supplemental Power Purchases.**

(A) Purchaser shall not have the right to remarket any Excess Energy or use Output other than as set forth herein to meet the energy needs of the Wenatchee Works primary aluminum reduction operations.

(B) Excess Energy not needed in the operation of Wenatchee Works will be sold by the District on a daily basis, or on a forward basis at the written request of Purchaser. The District will remarket such Excess Energy in accordance with certain criteria and limitations

set forth in Appendix D and with the District's policies and procedures for marketing power, as in effect from time to time.

(C) It may be necessary to make Excess Energy sales on a preschedule and/or real time basis. The sales shall be subject to certain of the terms set forth in Appendix D. The sales prices for these sales shall be determined as follows:

(i) The price for daily sales shall be the Mid-Columbia Firm Peak and Off-Peak prices, for the respective hours covered by the indices for Monday through Saturday, and for the 'Sunday and NERC Holiday' index for all hours on Sunday.

(ii) In the event that the Mid-Columbia Firm Peak index differs by more than 10% from the Mid-Columbia Non-Firm Peak index or the Mid-Columbia Firm Off-Peak index differs from the Non-Firm Off-Peak index by more than 10% evidencing highly volatile markets, the daily price for sales shall be the actual weighted average of all sales, completed during the preschedule and the real-time trading at Mid-Columbia marketing hub, by the District for that day in the respective Peak and Off-Peak periods. Other mutually agreeable triggers may be used if the Non-Firm index does not have sufficient volume to make it relative of the actual real-time market.

(D) At Purchaser's written request, the District will enter into third party contracts under which the District will make on Purchaser's behalf, Supplemental Power Purchases for the operation of the Wenatchee Works. Purchaser shall notify the District in writing of the identity of all persons authorized to request such contracts on behalf of Purchaser. Purchaser shall be strictly liable for all payments, costs and expenses arising under any such contracts and shall hold the District free and harmless therefrom. Other terms and conditions and applicable Supplemental Power Purchases are set forth in Appendix D.

(E) It may be necessary to make Supplemental Power Purchases on a preschedule and/or real time basis. The purchases shall be subject to certain of the terms set forth in Appendix D. The purchase prices for these purchases shall be determined as follows:

(i) The price for daily purchases shall be the Mid-Columbia firm On-Peak and Off-Peak prices, for the respective hours covered by the indices for Monday through Saturday, and for the "Sunday and NERC Holiday" index for all hours on Sunday.

(ii) In the event that the Mid-Columbia Firm Peak index differs by more than 10% from the Mid-Columbia Non-Firm Peak index or the Mid-Columbia Firm Off-Peak index differs from the Non-Firm Off-Peak index by more than 10% evidencing highly volatile markets, the daily price for purchases shall be the actual weighted average of all purchases, completed during the preschedule and the real-time trading at Mid-Columbia marketing hub, by the District for that day in the respective Peak and Off-Peak periods. Other mutually agreeable triggers may be used if the Non-Firm index does not have sufficient volume to make it relative of the actual real-time market.

(F) The District shall not be liable to Purchaser for any damage, loss or liability associated with any remarketing of Excess Energy or Supplemental Power Purchases

under this Agreement, whether or not the Excess Energy could be sold at higher prices, on better terms or to more creditworthy purchasers or the supplemental power could be purchased at lower prices, on better terms or to more reliable, creditworthy sellers.

Section 5.05. **No Reliance Upon District Information.** The District will periodically make available to Purchaser at its request, existing data readily available to the District regarding water, weather and generation forecasting as well as known System outages, scheduled maintenance and other operational information. The District shall not be liable for any inaccuracies in the information or forecasting information. Purchaser shall be solely responsible for determining the Output available to it and the amount of third party power purchases that may be required for its operation of the Wenatchee Works.

Section 5.06. **Post-Operation review.** On or about November 15th of each year, beginning November 15, 2012, the District will generate a report setting forth the average monthly MW energy consumption of Wenatchee Works for the 12 month period ending the preceding October 31st (each such period being referred to herein as a “Operating Year”) or, in the case of the period ending October 31, 2012, the four month period commencing July 1, 2012 (such four month period being referred to as the “Initial Operating Year”). The parties will then determine the operating level of Wenatchee Works for such Operating Year or Initial Operating Year, as the case may be (the respective “Operating Level”), based on the lowest three consecutive months of average MW usage at Wenatchee Works, using the table below.

Operating Level of Wenatchee Works

250 aMW plus	Level 1
215 to less than 250 aMW	Level 2
175 to less than 215 aMW	Level 3
less than 175 aMW but not Shutdown	Level 4

Special Rules for Initial Operating Year Operating Level of Wenatchee Works

215 aMW plus	Level 1
less than 215 aMW but not Shutdown	Level 4

Section 5.07. **Use of Revenues from Power Sales within a Month to Offset the Cost of Supplemental Power Purchases Within the Same Month.** If, within any one calendar month and at certain times, the District sells energy from Purchaser’s Percentage of Output that is not needed in the operation of Wenatchee Works (“Excess Energy”), and, at other times, Purchaser makes arms length on-market third party power purchases (from the District or from third parties) to maintain the operating level at Wenatchee Works within such month (“Supplemental Power Purchases”), the District will reimburse Purchaser for its documented costs (documentation shall include original confirmations and other documentation satisfactory to the District) of such Supplemental Power Purchases related to such month not otherwise netted out from Excess Energy within such month, such reimbursement to be made solely from,

and only to the extent of, the proceeds actually received by the District from the sale of such Excess Energy related to that month, less the District's Sales and Administrative Charges with respect thereto.

Section 5.08. *Accumulation of Surplus Proceeds.*

(A) Within each month during an Operating Year, the District will sell Excess Energy not needed for the operation of Wenatchee Works. On or about the 25th of the following Month, the District shall determine the proceeds actually received from the sale of such Excess Energy properly allocable to such month, and shall deduct therefrom: (i) all costs, obligations and expenses to third parties associated with such sales including, without limitation, all broker fees, transmission costs, line loss charges, scheduling fees, rebates, losses (including losses arising from payment defaults), damages, liabilities and related expenses (including collection costs) and all other costs related thereto, whether or not expressly set forth herein, (ii) the amounts distributed or otherwise made available to Purchaser pursuant to Section 5.07, and (iii) the amount of the District's Sales and Administrative Charges with respect to such Excess Energy sales not paid to the District pursuant to Section 5.07 (such net amounts being referred to herein as "*Surplus Proceeds*").

(B) The District will maintain records of such Surplus Proceeds received within a Operating Year and disbursements made by the District to Purchaser within such Operating Year to reimburse it for Supplemental Power Purchases to determine the net amounts available within an Operating Year from which Purchaser can be reimbursed for further Supplemental Power Purchases. ("*Purchaser's Current Year's Credit Pool*"). Within each such Operating Year upon proper documentation, the District will reimburse Purchaser for its substantiated arms-length costs of Supplemental Power Purchases occurring within such Operating Year (documentation shall include original confirmations or other documentation satisfactory to the District), to the extent not reimbursed pursuant to Section 5.08(A), without regard to the Operating Level of Wenatchee Works, from and only to the extent of the net accumulated amounts then remaining available in Purchaser's Current Year's Credit Pool.

(C) On or about November 15th of each year, the District will determine the applicable Operating Level of Wenatchee Works for the preceding Operating Year pursuant to the criteria set forth in Section 5.06. The District will also compute the cumulative amount, if any, of Surplus Proceeds in Purchaser's Current Year's Credit Pool, if any, which were not distributed to Purchaser during such Operating Year. The cumulative Surplus Proceeds, if any, for such Operating Year remaining in Purchaser's Current Year's Credit Pool (the "*Annual Cumulative Surplus Proceeds*"), shall be allocated for future credit to Purchaser ("*Purchaser's Long Term Credit Pool*"), or shall be retained by the District, or both, in accordance with the following criteria:

(i) If Wenatchee Works operated at Operating Level 1 for such Operating Year, all Annual Cumulative Surplus Proceeds for such Operating Year shall be allocated to Purchaser's Long Term Credit Pool.

(ii) If Wenatchee Works operated at Operating Level 2 for such Operating Year, fifty percent (50%) of the Annual Cumulative Surplus Proceeds for such

Operating Year will be allocated to Purchaser's Long Term Credit Pool and the remaining 50% shall be retained by the District.

(iii) If Wenatchee Works operated at Operating Level 3 for such Operating Year, thirty percent (30%) of the Annual Cumulative Surplus Proceeds for such Operating Year will be allocated to Purchaser's Long Term Credit Pool and the remaining seventy (70%) shall be retained by the District.

(iv) If Wenatchee Works operated at Operating Level 4 but is not Shutdown for such Operating Year, all of the Annual Cumulative Surplus Proceeds for such Operating Year will be retained by the District.

Section 5.09. Use of Surplus Proceeds by the Parties; No Segregation; No Interest; and Forfeiture.

(A) If during any calendar month the Purchaser makes Supplemental Power Purchases for which Purchaser has not been reimbursed pursuant to Sections 5.07 or 5.08, it shall be entitled to reimbursement from the District of its substantiated costs thereof, from and to the extent of amounts available in Purchaser's Long Term Credit Pool. Purchaser shall also be entitled to reimbursement from Purchaser's Long Term Credit Pool for substantiated costs incurred in connection with Supplemental Power Purchases that occurred within a period of two (2) years preceding the date reimbursement is requested. All such reimbursements shall be subject to the submission by Purchaser, no more frequently than monthly, of such reasonable and appropriate documentation as the District may request to substantiate the required payment criteria, including confirmations, invoices and evidence of payment. Reimbursements will be made by the District within thirty (30) days of receipt of all required documentation in form reasonably satisfactory to the District, and the District will be liable to the Purchaser for interest thereon (calculated pursuant to Section 8.01(B)) if payment has not been made by the due date.

(B) The District shall not be obligated to segregate or separately manage or account for any Surplus Proceeds as and when received or at any time thereafter, no interest shall accrue or be deemed to accrue thereon, and any amounts allocated to the District pursuant to Article V may be used for any purpose, without restriction.

(C) Any Surplus Proceeds to which Purchaser would otherwise be entitled hereunder will be subject to set off and counterclaims for any payments due from Purchaser hereunder, and for any damages arising upon a default by Purchaser or other liabilities arising in the performance of any of Purchaser's obligations to the District.

(D) Surplus Proceeds and all Purchaser credits remaining at the expiration or termination of this Agreement shall be forfeited by the Purchaser pursuant to Section 7.06 below.

Section 5.10. Adjustments to Operating Performance. Notwithstanding the foregoing, if the operation of Wenatchee Works is adversely affected by an Uncontrollable Circumstance, Purchaser will notify the District of the occurrence thereof as set forth in this Agreement and the Parties will agree on the extent to which such event adversely affected plant operating performance and energy usage. To the extent the Uncontrollable Circumstance occurs within any of the months used to calculate Wenatchee Works Operating Level for a Contract

Year, the District, upon consultation with Purchaser, shall determine the operating level Wenatchee Works would have achieved had such event not occurred for purposes of the calculations contemplated in this Article V.

As used herein, the term “*Uncontrollable Circumstance*” means the occurrence of one or more of the following causes beyond the reasonable control of Purchaser, provided that, as the result thereof, at least one-half pot line is rendered inoperable:

- (a) Earthquake, storm, lightning, fire, explosion, or act of God; or
- (b) war (regardless of whether declared), act of public enemy, act of civil or military authority, civil disturbance, riot, sabotage or terrorism; or
- (c) expropriation, requisition confiscation, export or import restrictions, closing of ports, roadways, waterways, or rail lines imposed by Government Authorities; or
- (d) catastrophic or major equipment failure at Wenatchee Works due to causes beyond Purchaser’s control and not due to the negligence or lack of diligence by Purchaser or its employees; or
- (e) sudden unforeseen interruptions in power flows affecting Output in relation to the Chelan Power System for which third party power purchases and/or transmission are not immediately available.

Uncontrollable Circumstance shall not include changes in law, Taxes, costs, regulatory requirements or market conditions, including, but not limited to, changes that affect the cost, transportation or availability or quality of raw materials or supplies, economic hardship, strikes, lockouts and other labor difficulties, economic factors, including prices of alumina, aluminum, labor, regulatory compliance, energy or other utilities, or any other event or circumstance not expressly listed above.

If Purchaser claims the existence of an Uncontrollable Circumstance, it shall promptly and diligently make such Commercially Reasonable efforts as may be necessary and practical under the then-existing circumstances to remove the cause of failure and resume full operations at Wenatchee Works as soon as possible. Purchaser shall not be entitled to assert an Uncontrollable Circumstance to the extent it has failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch, or failed to prevent or mitigate the effects of an Uncontrollable Circumstance by following Commercially Reasonable procedures.

Purchaser may not assert the existence of an Uncontrollable Circumstance hereunder unless it notifies the District orally or in writing or by facsimile of the existence of such condition as soon as reasonably possible; however, any oral notification shall be followed by a written notice or facsimile within a reasonable time. The notice shall specify the nature of the Uncontrollable Circumstance, the date of its commencement, the measures to be taken to alleviate such Uncontrollable Circumstance and the estimated time such corrective action is

expected to take. The notice shall include a full explanation of the events or circumstances giving rise to the Uncontrollable Circumstance.

Notwithstanding anything to the contrary contained herein, any Uncontrollable Circumstance described in (d) of the definition of that term affecting the operation of Wenatchee Works shall be deemed to terminate within one hundred eighty (180) days after the initiation of the Uncontrollable Circumstance unless the District, in its sole discretion, agrees in writing to a specific extension.

The District shall have the right to inspect Wenatchee Works and related properties, along with books, records and other data in the possession of Purchaser, to make inquiries of its officers, consultants, agents and employees, and to conduct tests and analysis on or off the premises in a reasonable and not materially disruptive manner, all as necessary in the District's reasonable judgment to verify the existence of the Uncontrollable Circumstance, the remedial steps Purchaser intends to take and is taking with respect thereto, and the potential duration thereof.

Section 5.11. **Net Costs.** Purchaser will remain responsible for the payment of all Net Costs associated with the Purchaser's Percentage of Output, regardless of power availability or usage of the surplus funds generated by surplus power sales.

Any Surplus Proceeds to which Purchaser would otherwise be entitled hereunder will be subject to set off and counterclaims arising from a default by Purchaser in the performance of its obligations hereunder.

Surplus Proceeds and all Purchaser credits at the expiration or termination of this Agreement shall be subject to forfeiture pursuant to Section 7.06 below.

Section 5.12. **Special Rules During Shutdown Period.** The parties recognize that the Capacity Reservation Charge contemplated in Section 7.01(A) is substantially below that paid by other slice power purchasers of the System and the District has agreed to this reduced amount in consideration of the jobs the full operation of Wenatchee Works would mean to the community, along with other factors. If Wenatchee Works becomes idle, particularly in connection with an extended plant shutdown, the benefits anticipated by the District will be lost. Consequently, the parties have agreed to certain procedures, accumulation and use of surplus proceeds, payments and other results in the event of a Shutdown of Wenatchee Works as set forth in Section 7.01(A).

Section 5.13. **District's Right to Terminate.** The District may, in its sole discretion, terminate this Agreement, if (i) Purchaser's operations at Wenatchee Works consumes less than 175 aMW for 18 consecutive months regardless of the cause or circumstance and without any adjustment of any type including any adjustment for Uncontrollable Circumstances; or (ii) Purchaser formally announces that it has elected to abandon Wenatchee Works or to permanently shutdown its Wenatchee Works operations, or (iii) Purchaser announces that Wenatchee Works operations have been sold to a third party operator (unless the District has agreed in writing and in its sole discretion to the assignment in conformance with

Section 13.01 of this Agreement). The District's termination of this Agreement pursuant to this Section 5.13 shall not be deemed to be a default by either Party.

Section 5.14. **Mandatory Step-up.** If a Share Participant (a "Defaulting Participant") defaults under a Related Power Sales Agreement and the District elects to terminate that Defaulting Participant's entitlement to Output, the Purchaser will purchase from the District, commencing on a date fifteen (15) days following written notice from the District (such date, the "Step-Up Effective Date"), Purchaser's pro rata share of the Output to which the Defaulting Participant was entitled from and after the Step-Up Effective Date, on the terms and conditions set forth in this Agreement (other than Section 7.01(A)), for a term equal to the lesser of the Defaulting Participant's remaining contract term or the remaining term of this Agreement.

For purposes of this Section 5.14, the Purchaser's pro rata share of a Defaulted Participant's Output entitlement (referred to herein as the "Purchaser's Step-up Percentage") shall be determined based on the Purchaser's Percentage divided by the sum of Purchaser's Percentage, the percentage of Output shares held by other Share Participants excluding the Defaulting Participant, and the Output share retained by the District. For example, if the Purchaser's Percentage is 26%, the Defaulting Participant's share is 10%, the District's share is 39% and the other Share Participants' shares are 25%, the Purchaser's Step-Up Percentage under this section would be:

$$10\% \times [(26\% \div (26\% + 39\% + 25\%))] = 2.89\%, \text{ to be added to Purchaser's Percentage}$$

For the avoidance of doubt, Purchaser shall not be liable for any amounts owed by the Defaulting Participant to the District prior to the Step-Up Effective Date (and Purchaser shall have no obligation or liability to perform any of the obligations under the Related Power Sales Agreement and no liability for any default or breach thereunder), and any amounts for which the Purchaser shall become liable under this Section 5.13 shall be determined under this Agreement and not under the Related Power Sales Agreement.

If as a result of a Share Participant's default under a Related Power Sales Agreement, the District imposes the mandatory step-up requirement pursuant to the terms of this Section 5.14, a portion of the damages recovered by the District that were awarded to compensate the District for prospective losses, if any, directly attributable to the early termination of such Related Power Sales Agreement (net of costs and expenses), adjusted for the number of years remaining under this Agreement (if less than the period for which such damages were measured), shall be allocated to the Purchaser based on the Purchaser's Step-up Percentage and shall be credited against all future payments due from Purchaser hereunder that are attributable to Purchaser's Step-Up Percentage of such Output until such allocated recoveries have been exhausted. If the Purchaser contests its obligation to purchase the Purchaser's Step-up Percentage of the Defaulting Purchaser's share of Output, Purchaser's share of such recoveries shall be held by the District until Purchaser assumes (by instrument in form and substance satisfactory to the District) its Step-Up Percentage, and shall then be applied to future payment obligations in accordance with the preceding sentence.

If Purchaser is required to purchase increased Output pursuant to this Section 5.14, Purchaser may direct the District to sell such increased Output to third parties pursuant to

the sales methodology set forth in Sections 5.04 and Appendix D and the District's policies and procedures for marketing power, as in effect from time to time. Net proceeds from the sale of such increased Output shall not be included in the calculations under, nor subject to limitations or restrictions or allocation of Surplus Proceeds as set forth in Sections 5.06 through 5.10 and shall be made available to Purchaser monthly following receipt, as soon as the applicable calculations are reasonably made and the proceeds are collected. With regard to this subsection, the District agrees not to initiate any material changes to its policies and procedures, other than those required by any accounting, regulatory or legal requirements, unless (i) such changes are not projected by the District, in its reasonable judgment, to material adversely affect the net sales proceeds that otherwise could be realized by Purchaser without such changes, or (ii) Purchaser consents to such changes, which consent shall not be unreasonably withheld, conditioned or delayed, or (iii) the District compensates Purchaser for any loss resulting from and directly attributable to such change, as determined by the District in its reasonable judgment.

Section 5.15. **Environmental Attributes Not Included.** Although the amount of Output to which Purchaser is entitled hereunder, and the cost thereof, will be determined in reference to the Chelan Power System, the District may source the Output from any source. The District retains for its own use and benefit any environmental attributes (as those terms may be defined from time to time under any applicable federal or state law, rule or regulation or by any market or otherwise) generated as part of the Output of the Chelan Power System or any other source used by the District to supply Energy to the Purchaser. It is the Parties' intent that the definition of environmental attributes as used in this section, and the District's retention of those rights, shall be liberally applied and construed to be most inclusive in favor of the District.

Section 5.16. **Renewable Resources and Purchaser's Obligations.** The Energy Independence Act, RCW 19.285, referenced herein as Initiative 937, was recently enacted into law by the voters in Washington State. Initiative 937 requires utilities to meet a certain percentage of its load to retail customers through acquisition of renewable resources or renewable energy credits. The parties agree that under RCW 19.285, or any other federal or state law, this Agreement and the sale of Output to Purchaser shall be considered a wholesale arrangement and that Purchaser is not a "retail customer" nor a "retail load" of the District. The Parties agree to cooperate to ensure that this interpretation is upheld in the context of any applicable legislation, rules or regulations and that it is clearly communicated in political and legal forums as the District may direct. However, if that interpretation fails for any reason or a Change in Law occurs requiring the acquisition of renewable resources or renewable energy credits associated with Purchaser's energy usage, Purchaser will take all steps necessary to put the District in the same economic and operational condition as it would have been in had the Change of Law or interpretation not occurred. Without limiting the foregoing, Purchaser shall fund the District's acquisition of appropriate resources or credits and pay any costs of integrating such resources into the District's system necessary for the District to comply with RCW 19.285 or any other law with respect to the sales of Output to Purchaser. Prior to taking any such action, the District and Purchaser will discuss the potentials options and solutions for compliance. Purchaser shall have the right to acquire a resource or credits as defined in the law to ensure the District's compliance in lieu of the District acquiring the same. If Purchaser acquires the resource, the parties shall agree upon the terms for integration of the resources, including the costs to be paid to the District for such integration and on-going maintenance/operation, and

Purchaser shall assign its rights to the resource to the District to the extent necessary for the District to comply with the applicable law during the term of this Agreement.

ARTICLE VI CURTAILMENT AND DECOMMISSIONING

Section 6.01. **Curtailment.** The District shall have the right, in its sole discretion, to temporarily interrupt, reduce or suspend delivery (through manual operation, automatic operation or otherwise) of Output from the Projects during any one or more of the following circumstances: (i) to prevent damage to the District's system or to maintain the reliable and safe operation of the District's system; (ii) a District System Emergency; (iii) if suspension is required for relocation, repair or maintenance of facilities or to facilitate restoration of line outages; (iv) a force majeure event; (v) any Operational Constraints as described in Appendix B; (vi) negligent acts or intentional misconduct of Purchaser which are reasonably expected to present imminent threat of damage to property or personal injury; (vii) an event of Default by the Purchaser, as provided in Section 15.01; (viii) to comply with any directive or requirement of a Governmental Authority, including but not limited to FERC, NERC or WECC, or (ix) any other reason consistent with Prudent Utility Practice. Any energy production (or in the case of Purchaser, Output) during each such interruption, reduction or suspension shall be allocated pro rata among the District, the Purchaser and the other Share Participants, except and to the extent the District determines (or had determined at any time prior to such interruption, reduction or suspension) in its sole discretion that due to a District System Emergency such pro-rata allocation of remaining energy production (or in the case of Purchaser, Output) due to such interruption, reduction or suspension is impracticable or infeasible. The District shall give advance notice, as circumstances permit, as determined by the District, of the need for such suspension, reduction or interruption to employees of the Purchaser designated from time to time by the Purchaser to receive such notice. The District shall not be responsible for payment of any penalty or cost incurred by the Purchaser during or as a result of such interruption, reduction or suspension. The provisions contained in this Section 6.01 shall not limit or modify the scope of and limitations on the District's obligations hereunder as otherwise set forth in Sections 5.01(C), Article XII and Section 21.01.

Section 6.02. **Restoration of Service.** Purchaser and District shall endeavor to restore deliveries of Output as promptly as is reasonably possible in the event of an interruption, reduction or suspension under Section 6.01.

Section 6.03. **Decommissioning.** Over the term of this Agreement, the District may, in its sole discretion, cause components of the Project responsible for not more than 20% of the Output in the aggregate to be Permanently Retired. The District may also cause the Projects, or any components thereof, to be Permanently Retired if, as a result of the adoption or implementation of, or a change in, any Law, rule or regulation, or any policy, guideline or directive of, or any change in the interpretation or administration thereof by, any Regulatory Authority (in each case, having the force of Law) (collectively a "Change in Law"), the District would be required to make material modifications to such Projects or components in order to continue their operation, and the District determines in good faith that, absent such components being Permanently Retired, it would not be Commercially Reasonable, as otherwise herein defined, to comply with such statutory or regulatory requirements. In each case, the District

shall give Purchaser as much advance written notice of its determination to Permanently Retire Projects or components as reasonably practicable, as determined by the District. Decommissioning shall not reduce Purchaser's payment obligations hereunder; provided however, that to the extent that components are Permanently Retired and such action results in a material reduction of the amount of the Output available to the Purchaser, the Parties will negotiate in good faith a proportionate and commensurate reduction in the aMW Operating Levels set forth in Section 5.06.

Section 6.04. **Load Shedding.** In addition to the foregoing and other rights of curtailment set forth in this Agreement, the District may curtail deliveries of Output to Purchaser when needed to meet the System's power load requirements, as determined by the District, provided that such curtailment under this Section shall be limited to durations of not more than 1 hour in any 24 hour period, not more than twice in any rolling twelve (12) month period and for not more than 40 MW per hour. The Parties may also negotiate and agree upon other opportunities for curtailment during the term of this Agreement.

ARTICLE VII PAYMENT

Section 7.01. **Payments and Charges.** In consideration of the District's agreement to provide Purchaser with Purchaser's Percentage of Output, the Purchaser agrees to pay the District the following charges at the times and in the amounts specified below:

(A) **Capacity Reservation Charges.** Within 30 days following the Signing Date, Purchaser shall pay the District by wire transfer in immediately available funds, a non-refundable capacity reservation charge of \$21,000,000 (stated in January, 2006 Dollars) (the "Capacity Reservation Charge") as adjusted in accordance with the Section 7.01(A) Escalation Factor. These amounts shall not reduce amounts that may become due in the event of a Shutdown.

The parties recognize that the District has agreed to defer a significant portion of the Capacity Reservation Charge based on the expectation of continuous operation of Wenatchee Works after the Effective Date. If Shutdowns (as defined below) occur during the Term, additional Capacity Reservation Charges would become due, as follows:

(i) Upon the occurrence of an initial Shutdown during the Term, Purchaser would pay the District, as part of the Deferred Capacity Reservation Charge, the Initial Shutdown Amount. Such payment would be due in immediately available funds on the first anniversary of the Shutdown Date (the "Shutdown Payment Date").

(ii) Once the occurrence of a Shutdown has been determined, and during the remaining Shutdown Period, in lieu of the application of Surplus Proceeds described in Section 5.08(C), the District shall reduce Purchaser's monthly Net Costs by the amount of Surplus Proceeds actually received from the sale of Surplus Power for that month during the Shutdown Period. The District would be entitled to retain all Surplus Proceeds above such monthly Net Costs, and Purchaser shall remain liable for all Net Costs that exceed such collected Surplus Proceeds.

(iii) If the initial Shutdown Period extends for more than eighteen (18) months or if a Shutdown occurs after the first Shutdown Period, the Shutdown Settlement Amount would become due and payable by Purchaser. Such payment would be made in immediately available funds on and as of (i) the first day of the nineteenth (19th) month of the initial Shutdown Period, or (ii) on the day following the determination that a second Shutdown has occurred, whichever shall first occur, in each case without any annual deferral and regardless of any subsequent startup of Wenatchee Works. The payment of the Initial Shutdown Amount shall not reduce any Shutdown Settlement Amount that may become due.

(iv) Once the Shutdown Settlement Amount has been paid in full, no further Deferred Capacity Reservation Charges shall be due under this Section 7.01(A) and during the remainder of the then existing Shutdown Period and for each subsequent Shutdown Period during the Term, the District will reduce Purchaser's Net Costs by the Surplus Proceeds actually received from the sale of Surplus Power during each respective Shutdown Period, and the rules described in Section 5.08(C) during each respective Shutdown Period shall not apply. District shall retain the remainder of such Surplus Proceeds during such Shutdown Period. Purchaser shall remain liable for all Net Costs that exceed such collected Surplus Proceeds.

(v) For purposes of this Section 7.01(A), the rules of Section 5.10 will apply, meaning that a Shutdown caused by an Uncontrollable Circumstance will not, in and of itself, trigger a Shutdown for purposes of these provisions. In addition, solely for the purposes of the application of this Section 7.01(A), a labor dispute arising in connection with the good faith negotiation of Purchaser's collective bargaining agreement at Wenatchee Works (and arising from factors or circumstances unrelated to, and made without regard to, the effect of this provision) which results in a strike or lockout determined by the National Labor Relations Board and/or court of competent jurisdiction to have been reasonable, in good faith and in compliance with applicable laws, that causes Shutdown of the Wenatchee Works, will also be considered an "Uncontrollable Circumstance."

If a Shutdown has not occurred during the Term, no Deferred Capacity Reservation Charges will become due.

For purposes of this Section 7.01(A):

"Section 7.01(A) Escalation Factor" means the percentage change in relative value of the Consumer Price Index using the non-seasonally adjusted US City Average Index for All Urban Consumers (All Items, Base Period 1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics, computed in accordance with the following formula:

$$EF = CPI \div CPI-b$$

Where: EF = the Escalation Factor,

CPI = the most recently published consumer price index identified above, in effect as of the date of signing of the Power Sales Agreement

CPI-b = 198.3, the consumer price index identified above for the base month of January 2006, (<http://data.bls.gov/gov/cgi-bin/surveymost?bls>) as shown in Attachment 1

“Shutdown” means the consumption of Output by Wenatchee Works of not more than 60 aMW for 90 consecutive days, as determined by the District that is not directly attributable to either a material reduction in the amount of Output available to Purchaser pursuant to Section 6.03 or an Intentional Breach of this Agreement by the District.

“Initial Shutdown Amount” means the amount shown in column A on Appendix E hereto for the respective Fiscal Year in which a Shutdown has occurred, multiplied by a fraction, the numerator of which is the number of whole and partial months from the beginning of the Shutdown Period to the date that startup has occurred (but not to exceed eighteen (18) months) and the denominator of which is twelve (12).

“Shutdown Date” means the first day of the ninety (90) day period giving rise to a determination that a Shutdown has occurred.

“Shutdown Period” means the period commencing on the Shutdown Date and ending on the date the Startup Conditions have been satisfied.

“Shutdown Settlement Amount” means (i) if the initial Shutdown Period extends at least eighteen (18) months, the amount shown in column B on Appendix E hereto for the Fiscal Year in which the first day following the end of such eighteenth (18th) month falls, and (ii) for any subsequent Shutdown, the amount shown in column B on Appendix E hereto for the respective Fiscal Year in which the first day of such Shutdown Period falls.

“Startup Conditions” means the use of more than 60aMW for more than 30 consecutive days and a plan for ramping up potline operation that can be verified by the District.

(B) Working Capital Charges. The Purchaser will pay Working Capital Charges as follows:

(i) On the Project Availability Date of Rocky Reach, Purchaser shall pay the District, by wire transfer in immediately available funds, an initial Working Capital Charge of \$2,600,000 (stated in December, 2004 Dollars), as adjusted in accordance with the Escalation Factor set forth in Section 7.01(G)(iii) to such Project Availability Date. Within fifteen (15) days following the commencement of each Contract Year thereafter, Purchaser shall pay the District, by wire transfer in immediately available funds, an additional Working Capital Charge equal to the amount, if any, by which \$2,600,000 (stated in December, 2004 Dollars), as adjusted in accordance with the Escalation Factor set forth in Section 7.01(G)(iii) to the beginning of such Contract Year, exceeds the sum of the Working Capital Charges previously paid pursuant to this subsection (i).

(ii) On the Project Availability Date of Rock Island, Purchaser shall pay the District, by wire transfer in immediately available funds, a second Working Capital Charge of \$2,600,000 (stated in December, 2004 Dollars), as adjusted in

accordance with the Escalation Factor set forth in Section 7.01(G)(iii) to such Project Availability Date. Within fifteen (15) days following the commencement of each Contract Year thereafter, Purchaser shall pay the District, by wire transfer in immediately available funds, an additional Working Capital Charge equal to the amount, if any, by which \$2,600,000 (stated in December, 2004 Dollars), as adjusted in accordance with the Escalation Factor set forth in Section 7.01(G)(iii) to the beginning of such Contract Year, exceeds the sum of the Working Capital Charges previously paid pursuant to this subsection (ii).

(iii) Each initial Working Capital Charge payment pursuant to subsections (i) and (ii) above constitutes the Purchaser's Percentage of the amount the District deems necessary as of the Signing Date to provide an adequate working capital balance for each respective Project.

(iv) From time to time during any Contract Year, Purchaser shall pay to the District, by wire transfer in immediately available funds, upon demand by the District, an amount equal to the Purchaser's Percentage of any additional Working Capital Charge that is necessary to provide an adequate level of working capital for the Chelan Power System as determined by the District in accordance with Prudent Utility Practice.

(v) The payments described in this Section are sometimes referred to in this Agreement as a "Working Capital Charge" or collectively as "Working Capital Charges."

(C) Net Costs. Purchaser shall pay monthly to the District during each Contract Year, an amount equal to the Purchaser's Percentage of Net Costs determined in accordance with Appendix A hereto.

(D) Coverage Fund Charge. The District shall continue, or establish, and maintain, one or more coverage funds or their equivalents into which shall be deposited the Coverage Amount with respect to the Debt Obligations (collectively, the "Coverage Fund"). The Purchaser will pay the Purchaser's Percentage of the Coverage Amount as follows:

(i) On the Project Availability Date for Rocky Reach, Purchaser shall pay the District, by wire transfer in immediately available funds, the Purchaser's Percentage of the Coverage Amount (calculated as of such Project Availability Date) attributable to Debt Obligations for Rocky Reach. On the Project Availability Date for Rock Island, Purchaser shall pay the District, by wire transfer in immediately available funds, the Purchaser's Percentage of the Coverage Amount (calculated as of such Project Availability Date) attributable to Debt Obligations for Rock Island. The District shall notify the Purchaser of such required amounts at least 30 days prior to each such Project Availability Date.

(ii) In addition, upon the issuance or incurrence during any Contract Year of any additional Debt Obligations attributable to Rocky Reach by the District after the Project Availability Date for Rocky Reach and of any additional Debt Obligations

attributable to Rock Island by the District after the Project Availability Date for Rock Island, Purchaser shall pay to the District, by wire transfer in immediately available funds, within 30 days of demand by the District, an amount equal to the positive difference, if any, between (1) the product of (a) the Purchaser's Percentage, times (b) the Coverage Amount (calculated as of the issuance or incurrence of such additional Debt Obligations), minus (2) the amounts previously paid by the Purchaser pursuant to this Subsection 7.01(D).

(iii) All amounts paid by the Purchaser to the District pursuant to this Subsection 7.01(D) shall be used for any lawful purpose as determined by the District in its sole discretion.

(E) Credit Rating Premium. The Purchaser shall supply the District, on the first Effective Date, and during the first week of January of each year, with its current long term senior unsecured credit rating(s) by each of the Rating Agencies (each, the "Purchaser's Credit Rating") and shall notify the District as soon as practicable during such year of any changes to such credit ratings or credit outlook. The District shall compare Purchaser's Credit Rating by each such Rating Agency to the District's corresponding long-term senior underlying rating of the District from each respective Rating Agency then assigning a rating as of such date (the "District's Credit Rating"). If the lowest District's Credit Rating from any Rating Agency is greater than one rating category (including for this purpose, all sub-rating categories of each such Rating Agency) above the Purchaser's Credit Rating (or equivalent rating) from any Rating Agency (a "Credit Spread Condition"), the Purchaser will pay the District a Credit Rating Premium calculated using the methodology set forth below.

If the Purchaser's Credit Rating is suspended or has been withdrawn as of the date of calculation, its Credit Rating for purposes of the calculations hereunder shall be assumed to be "junk bond" status until a rating is restored. If the Purchaser has been rated by fewer than all three Rating Agencies, only the Rating Agencies actually providing a rating on the Purchaser will be used in the calculations contemplated under this Section. If the Purchaser has never been rated by any of the Rating Agencies, the District, in consultation with the Independent Investment Banker, will utilize its best efforts to establish the Purchaser's Credit Rating using, to the extent possible, an industry standard methodology, and the District's determination of the Purchaser's Credit Rating shall be binding on both Parties until an official Credit Rating from at least one of the Rating Agencies has been obtained.

If a Credit Spread Condition exists on January 1, of any year, or arises as a result of a Downgrade Event during the year, the District, in consultation with the Independent Investment Banker, will determine a current market interest rate for long term 30 year fixed rate obligations of the Purchaser and the District, as the case may be, using the District's and the Purchaser's respective Credit Ratings as determined pursuant to the foregoing criteria. The Purchaser's applicable interest rate shall be calculated based on a hypothetical 30 year fixed rate obligation using comparable taxable rates, based on its then applicable Credit Rating. The District's applicable interest rate shall be calculated based on a hypothetical 30 year fixed rate, taxable municipal bond obligation, based on its then applicable Credit Rating. The two interest rates shall be netted, and the resulting difference in rates shall be multiplied by the Purchaser's Percentage of the outstanding principal amount of the District's Debt Obligations as of

December 31st of the year preceding the date of calculation. The resulting product is referred to herein as the “Credit Rating Premium.” The Purchaser shall pay, as part of its monthly Periodic Payments, one twelfth (1/12th) of the Credit Rating Premium as calculated pursuant to the foregoing, until a different calculation is made pursuant to this Section.

(F) Debt Reduction Charge. The Purchaser shall pay to the District each month of each Contract Year as part of its Periodic Payments one twelfth (1/12th) of the Purchaser’s Percentage of an annual debt reduction charge (the “Debt Reduction Charge”), which Debt Reduction Charge shall be computed by multiplying the Debt Reduction Charge Percentage for the Contract Year in which such month occurs by the Debt Reduction Charge Obligations for such Contract Year. The Debt Reduction Charge collected by the District pursuant to this Section shall be held by the District in a separate fund or account to be known as the “Debt Reduction Charge Account” and used only to purchase, redeem or defease debt of the Chelan Power System, to fund (after the Project Availability Date for Rocky Reach) required deposits to Reserve and Contingency Funds for Rocky Reach bonds, to fund (after the Project Availability Date for Rock Island) required deposits to Reserve and Contingency Funds for Rock Island bonds, or to fund Capital Improvements related to the Chelan Power System, in each case as determined by the District.

For purposes of this Section:

(i) “Debt Reduction Charge Percentage” means that percentage, designated by the District for a Contract Year not less than twelve (12) months prior to the commencement of such Contract Year, which percentage shall be set between a minimum of 0% and a maximum of 3%. Each such designation shall be effective for the Contract Year for which such designation is made. If the District fails to make a designation for any Contract Year by the date required above, the Debt Reduction Charge Percentage for such Contract Year shall be the greater of 2-1/2% or the last effective Debt Reduction Charge Percentage designated by the District;

(ii) “Debt Reduction Charge Obligations” means, for any Contract Year, the aggregate principal amount of all Debt Obligations assumed to be outstanding as of the first day of such Contract Year, determined in accordance with Sections 2(b)(i) and (ii) of Appendix A, as such principal amount may have theretofore been reduced in accordance with Section 2(c) of Appendix A. Prior to the Project Availability Date for Rock Island, the Debt Reduction Charge Obligations for purposes of this Section 7.01(F) shall be computed only with reference to those Debt Obligations attributable to Rocky Reach.

(G) Capital Recovery Charge. The Purchaser shall pay to the District each month of each Contract Year as part of its Periodic Payments one twelfth (1/12th) of the Purchaser’s Percentage of an annual capital recovery charge (the “Capital Recovery Charge”), which Capital Recovery Charge shall be computed by multiplying the Capital Recovery Charge Percentage for the Contract Year in which such month occurs by the Capital Recovery Charge Base for such Contract Year. The Capital Recovery Charge shall be held by the District in a separate fund or account to be known as the “Capital Recovery Charge Account” and used only

to purchase, redeem or defease debt of the Chelan Power System, to fund (after the Project Availability Date for Rocky Reach) required deposits to Reserve and Contingency Funds for Rocky Reach bonds, to fund (after the Project Availability Date for Rock Island) required deposits to Reserve and Contingency Funds for Rock Island bonds, or to fund Capital Improvements related to the Chelan Power System, in each case as determined by the District.

For purposes of this Section:

(i) **“Capital Recovery Charge Percentage”** means that percentage, designated by the District for a Contract Year not less than twelve (12) months prior to the commencement of such Contract Year, which percentage shall be set between a minimum of 0% and a maximum of 50%. Each such designation shall be effective for the Contract Year for which such designation is made. If the District fails to make a designation for any Contract Year by the date required above, the Capital Recovery Charge Percentage for such Contract Year shall be the greater of 25% or the last effective Capital Recovery Charge Percentage designated by the District.

(ii) **“Capital Recovery Charge Base”** means a base amount equal to \$25,000,000 in 2004 dollars. The Capital Recovery Charge Base, as the same may be adjusted from time to time pursuant to the methodology specified in the following paragraph, shall be adjusted annually as of the first day of each Contract Year by the Escalation Factor.

In addition to adjustments resulting from the Escalation Factor, the District may adjust the Capital Recovery Charge Base for a Contract Year by giving written notice to the Purchaser at least 180 days prior to the commencement of such Contract Year. Any such adjustment shall not increase the Capital Recovery Charge Base to an amount greater than the District’s estimate, made in good faith, of its average annual Capital Improvement requirements over the next ensuing thirty (30) Fiscal Years. Such estimate shall be as computed in real dollars adjusted to be effective as of the first day of such Contract Year. The Capital Recovery Charge Base, as so adjusted, shall remain in effect thereafter unless and until subsequently adjusted pursuant to this paragraph or the immediately preceding paragraph. Adjustments for future annual Capital Improvements shall not result in the duplication of payments for such future Capital Improvements.

(iii) **“Escalation Factor”** means the percentage change in relative value of the Consumer Price Index using the non-seasonally adjusted US City Average Index for All Urban Consumers (All Items, Base Period 1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics, computed annually in accordance with the following formula:

$$EF = CPI \div CPI-b$$

Where: EF = the Escalation Factor,

- CPI = the most recently published consumer price index identified above, in effect as of the date of annual computation
- CPI-b = 190.3, the consumer price index identified above for the base month of December, 2004 (<http://data.bls.gov/cgi-bin/surveymost?bls>) as shown in Attachment 1.

Should the index referred to above be discontinued or be substantially modified, then an alternate index shall be chosen by the District in its discretion that reasonably tracks the methodology used to track the consumer price index identified above prior to such modification or discontinuance to maintain the purchasing power of one dollar at a constant level, considering the nature of expenses incurred in the acquisition, construction and installation of Capital Improvements of the Chelan Power System.

If the Capital Recovery Charge Base is recalculated pursuant to the second paragraph of clause (ii) above, CPI-b for the calculation of the Escalation Factor for the then current and each succeeding Contract Year (until further changed in accordance with this provision) for purposes of determining the Capital Recovery Charge Base shall be changed to the CPI Index number for the December immediately preceding the commencement of the Contract Year in which such recalculation occurs.

(H) **Limit on Capital Recovery Charge and Debt Reduction Charge.**

Notwithstanding the provisions of Section 7.01(F) and (G) to the contrary, the Purchaser shall not be obligated to pay the Purchaser's Percentage of the Debt Reduction Charge and the Capital Recovery Charge in any month if, and only to the extent that, the aggregate value of unspent cash and investments on deposit in the Debt Reduction Charge Fund and the Capital Recovery Charge Fund as of the 15th day of the immediately preceding month exceeds:

- (i) five (5) times the Capital Recovery Charge Base for the monthly periods during the Term ending prior to November 1, 2027; and
- (ii) four (4) times the Capital Recovery Charge Base for the monthly periods beginning November 1, 2027 and ending prior to November 1, 2028.

For purposes of the foregoing, funds shall be deemed "spent" when (i) costs are paid or incurred for Capital Improvements, or (ii) costs are committed to be expended for qualified costs pursuant to contracts for design, engineering, acquisition and/or construction of such Capital Improvements, but only to the extent that such costs are expected by the District to be paid or incurred prior to the expiration of the Term, or (iii) funds are applied to the purchase, redemption or defeasance of Debt Obligations.

Section 7.02. **Unconditional Obligations.** All Periodic Payments due hereunder shall be payable by Purchaser, on an "assured payment basis," and are payable whether or not the

Purchaser can receive, accept, take delivery of or use all or any portion of such Output, regardless of curtailments, shutdowns, force majeure events or other operational, regulatory or financial circumstances that may affect the Purchaser, and whether or not any of the Projects are operable or operating or the operation thereof is interrupted, suspended, interfered with, reduced or curtailed, in whole or in part, at any time for any reason during the term of this Agreement (including, without limitation, events of force majeure); provided, however, that the foregoing shall not affect the rights of Purchaser to pursue its remedies as and to the extent provided in Section 15.02. The Periodic Payments payable by Purchaser pursuant to this Agreement for any month, shall be independent of and not related to the amount of Output, if any, delivered to Purchaser hereunder during such month.

Section 7.03. **Final Payment.** Within ninety (90) days following the expiration or earlier termination of this Agreement, Purchaser shall pay to the District any and all Periodic Payments accrued but unpaid, net of any credits due to Purchaser as of the date of such expiration or termination. The District shall provide Purchaser with a special invoice identifying any such costs and credits within sixty (60) days following the expiration or termination date.

Section 7.04. **Post Adjusting Invoices/Credits.** The District reserves the right to provide Purchaser post adjusting invoices/credits derived from financial, statutory or other required audits performed for the Fiscal Years in which the expiration of this Agreement or the earlier termination of this Agreement occurred. If such post adjusting invoices/credits show a payment due to the District from the Purchaser or a credit due to the Purchaser from the District, the payment or credit shall be due and payable within thirty (30) days of Purchaser's receipt of such invoice/credit.

Section 7.05. **Use of Funds by District.** Except as otherwise provided in this Section 7 and in Appendix A, the District may use the Periodic Payments paid to the District hereunder in any manner that the District, in its sole discretion, shall determine.

Section 7.06. **Disposition of Fund Balances Upon Expiration or Termination of Agreement.** Upon the expiration or prior termination of this Agreement at any time for any reason, all amounts collected pursuant to this Agreement, including but not limited to, amounts deposited and on hand in or credited to any debt service, reserve, capital, coverage, working capital, credit pool or other fund or account maintained by or on behalf of the District, shall be retained by the District. Purchaser shall have no right, interest or claim in or to any such amounts or any interest or earnings thereon, except as set forth in this Agreement.

Section 7.07. **Investment of Certain Funds.** The District agrees, to the extent consistent with applicable Law, to invest and keep invested in a manner consistent with the District's investment policies in effect from time to time, any unexpended amounts of the Debt Reduction Charges and Capital Recovery Charges during any Contract Year.

ARTICLE VIII BILLING AND PAYMENT

Section 8.01. **Billing of Periodic Payments.** Periodic Payments shall be billed as follows:

(A) Monthly Invoices; Periodic Payments. On or prior to the tenth (10th) day of each Month, the District shall submit to the Purchaser, by electronic or facsimile transmission, a monthly invoice setting forth the Periodic Payments incurred by the District in the current Contract Year, and stating the sum of the Periodic Payments actually received to date from the Purchaser with respect to such Contract Year. Costs incurred but not actually known by the date of the invoice may be estimated, subject to reconciliation the following month or months, as actual costs become known by the District.

The Purchaser shall pay each month the Periodic Payments then due as shown on the District's invoice, by electronic funds transfer to the District's account as the District's Treasurer may instruct. Periodic Payments shall be due and payable to the District by 5:00 p.m. (Pacific prevailing time (PPT)) on the twentieth (20th) day of each Month in which the District's monthly invoice is received, or if such day is not a Business Day, on the next succeeding Business Day (the "Due Date"). Failure of the District to submit an invoice as scheduled shall not release the Purchaser from liability for payment upon future delivery of the invoice.

(B) Late Charges and Interest. If payment in full is not made on or before the District's close of business on a Due Date, a delayed payment charge of two percent (2%) of the unpaid amount of the invoice shall be assessed to the Purchaser. Interest shall accrue on all past due statements at a rate equal to the lesser of 1.5% per month or the maximum rate allowed by law. Should Purchaser fail to pay any invoice within two (2) Business Days after its Due Date as provided in Section 8.01(A), the District shall send a notice of such failure to pay to the Purchaser. A monthly payment remaining unpaid three (3) Business Days after the receipt by the Purchaser of such notice of failure to pay shall constitute a breach of this Agreement for purposes of Section 15.01(A), and the District may, in addition to its other remedies, suspend delivery of the Purchaser's Percentage of Output until all amounts due hereunder (including late charges and interest) are received by the District.

(C) Payments Unconditional. The Periodic Payments shall accrue, and the Purchaser shall be obligated to make such payments through the date of termination of this Agreement, irrespective of the condition of the Projects and whether or not they are capable of producing any Output for any reason. This provision shall not constitute a waiver of the Purchaser's right to seek damages for a breach by the District of its obligations hereunder.

(D) True-Up. Within thirty (30) days after the finalization of financial, statutory or other required audits for each Fiscal Year, the District shall compute any amounts that should have been included as charges or credits in the monthly invoices to Purchaser during such Fiscal Year and prepare and submit to Purchaser a final true-up invoice containing any such expenses and credits (the "Annual True-Up"). If such Annual True-Up invoice shows a payment due to the District from the Purchaser, the final Annual True-Up invoice shall be due and payable in the same manner as the monthly payments for Periodic Payments; provided that if this Agreement has then expired, the Purchaser shall make a payment by electronic funds transfer of such amount to the District within thirty (30) days of the date of such calculation and Purchaser's receipt of such final Annual True-Up invoice. If such Annual True-Up invoice shows a credit due to the Purchaser from the District, such credit shall be reflected as a deduction to the Periodic Payment due the month(s) after the final Annual True-Up invoice is issued until such credit is exhausted; provided that if this Agreement has then expired or expires prior to such

credit being exhausted, the District shall make a refund by electronic funds transfer of such amount to the Purchaser within thirty (30) days of the date of such calculation.

(E) Corrections. The District shall make material corrections for expenses and credits discovered by either Party in invoices or Annual True-Up reports in each of the prior three (3) Fiscal Years. No adjustments for or with respect to expenses, credits or energy exchanges will be made with respect to any Fiscal Year ending earlier than the third Fiscal Year preceding the Fiscal Year to which the current audit pertains.

Section 8.02. Accounting. The District shall cause proper books and records of account to be kept for each of the Projects by the District. Such books and records of account shall be kept in accordance with the rules and regulations established by any Government Authority authorized to prescribe such rules including, but not limited to, the Division of Municipal Corporations of the State Auditor's Office of the State of Washington or such other Washington State department or agency succeeding to such duties of the State Auditor's Office. The District shall also maintain books and records in conformity with GAAP and in accordance with the Uniform System of Accounts prescribed by FERC or such other federal agency having jurisdiction over electric utilities owning and operating properties similar to the District's electric properties. The District shall cause such books and records of account to be audited by independent certified public accountants, experienced in electric utility accounting, to be retained by the District. The audits to be made by such certified public accountants, as above mentioned, shall be made annually and shall cover each Fiscal Year during the term of this Agreement. At the Purchaser's written request, the District shall deliver a copy of each such annual audit, including any recommendations of the auditors with respect to the Project to Purchaser promptly after it is received by the District.

Section 8.03. Audits by Purchaser. District shall provide or cause to be provided all information that Purchaser may reasonably request to substantiate all invoices, adjustments and claims under this Agreement related to the Projects. Purchaser shall, upon notice, have the right to audit, at its sole cost and expense, upon reasonable notice and during normal business hours following the receipt of an Annual True-Up, and District shall make or cause to be made available any and all books and records related to the Projects which directly relate to the determination of Net Costs as set forth in Appendix A and are reasonably necessary for verification of charges and costs included in invoices or amended invoices rendered under this Agreement or verification of Purchaser's or the District's compliance with this Agreement; provided, however, that Purchaser shall coordinate its rights under this section with the other Share Participants in order to conduct joint, rather than individual, audits pursuant to this provision. The District shall also cooperate with Purchaser in its efforts to verify the charges imposed pursuant to Section 7.01 of this Agreement. Any Annual True-Up not challenged within three (3) years following its date shall be considered final. Any audit shall, at the option of Purchaser and at Purchaser's expense, be performed by designated employees, consultants or agents of Purchaser that Purchaser determines in its discretion are experienced in utility practices. Upon request, District will be entitled to review the complete audit report and any supporting materials.

Section 8.04. **No Interest In System.** This Agreement is for a sale of Output as described in Article V. Nothing in this Agreement is intended to grant to Purchaser any rights to or interest in any specific District project, facility or resource.

Nothing in this Agreement shall be construed to create a partnership, association or joint venture with Purchaser, or any ownership interest or other legal right in Purchaser with respect to any existing District facility, project or resource, including but not limited to, the Chelan Power System or the Projects.

ARTICLE IX INTERCONNECTION AND TRANSMISSION

Section 9.01. **Interconnection and Transmission Agreements.** Output will be made available to Purchaser at Transmission Points of Receipt as specified in Appendix B. The Parties will concurrently herewith or prior to the Effective Date, enter into the Transmission Agreement. The Parties will also enter into an Interconnection Agreement, to be negotiated and executed by the parties following the Signing Date and prior to January 1, 2010 (or such later date as may be agreed to by the Parties), that provides for transmission of Output from such Points of Integration, across the Chelan Power System, to specified Transmission Points of Delivery and that addresses interconnection facilities necessary to interconnect the Chelan transmission system with Purchaser's system or with a third party transmission provider, and clarifies related issues with respect to such interconnection, points of delivery, types of service, scheduling of energy deliveries and fees associated with such services. Purchaser would be responsible for Output transmission from the Transmission Points of Delivery to its own electric system or other designated electric system. Transmission charges shall be based upon the District's entire transmission system and reflect the same charges as contained in the Transmission Agreement with Puget Sound Energy.

Section 9.02. **Type of Service; Scheduling.** Types of service and Scheduling of Energy deliveries shall be made in accordance with the provisions of Appendix B hereof.

ARTICLE X EXCLUSIVE CONTROL OF THE SYSTEM

Section 10.01. **Exclusive Control.** The District, and not the Purchaser, will have exclusive control over the operation and maintenance of the Chelan Power System and all repairs, renewals, additions, improvements, retirements, decommissions of and replacements to either of the Projects, and all of the District's generation, transmission or distribution facilities, all units and components thereof, and the financing related to such activities. All deliveries shall be subject to the District's curtailment rights set forth in Article VI.

Following the first Project Availability Date, at the request of Purchaser, the District shall meet with representatives of Purchaser on a semi-annual basis. All such meetings shall be held at the District's headquarters office, or such other location, and at a date and time as the Parties may mutually agree. The District may elect to schedule such meetings with other Share Participants, but it shall not be obligated to do so. The District's representatives shall attend and provide information concerning past and future expenditures, budgets, operations,

maintenance, capital projects and other matters related to the Chelan Power System, as reasonably requested by Purchaser. Meetings initiated pursuant to this paragraph shall not exceed eight (8) hours duration without the District's consent. At such meetings, Purchaser may make recommendations to the District concerning the operation and maintenance of, and repairs, renewals, additions, improvements and replacements to, the Chelan Power System. Nothing herein shall be construed to create any implied obligations by the District with respect to the Purchaser's recommendations.

Nothing contained in this Agreement shall entitle the Purchaser to make any claim for damages arising from the failure to deliver power or from the disruption of service from or in relation to the Chelan Power System. Except as provided in Section 15.02 of this Agreement, for an Intentional Breach by the District, the Purchaser's sole remedy for the District's breach of its undertaking hereunder shall be to bring an action for mandamus to specifically enforce the District's covenants under this Agreement.

ARTICLE XI RELICENSING SUPPORT

Section 11.01. ***Relicensing Support.*** The District's current FERC license for Rocky Reach expired on June 30, 2006 (annual licenses will be renewed until a new license is issued); and its current FERC license for Rock Island expires on December 31, 2028. The District is currently pursuing a new license for Rocky Reach and intends to seek a new license for Rock Island. In light of the fact that the Output determined in relation to each of the Projects is material to this Agreement, Purchaser covenants and agrees to use Commercially Reasonable Efforts, at its cost and expense, to support the District's efforts to obtain a new license for each of the Projects, at such times during the Term and in such manner as the District shall reasonably request in writing. Such support may include, but shall not be limited to, providing letters or other written statements of support and written or oral testimony before FERC or in other administrative or legal proceedings, and participation in and statements of support at public meetings.

ARTICLE XII RISK OF LOSS AND DISCLAIMER OF WARRANTIES

Section 12.01. ***Risk of Loss.*** The District represents and warrants that it will deliver the Output sold hereunder to Purchaser free and clear of all liens, claims and encumbrances arising prior to the delivery of such Output at the Transmission Point(s) of Receipt. Purchaser shall bear all risk of all occurrences of any nature affecting any interconnection facilities, substations, transmission lines and other facilities serving Purchaser. For the avoidance of doubt, the risk of loss pursuant to the foregoing shall not reduce or otherwise affect the Purchaser's Periodic Payments as described in this Agreement.

The District shall not be liable to Purchaser for any damages or losses sustained by Purchaser (except as provided in Section 15.02 for an Intentional Breach by the District) or its customers or third parties as a result of the curtailment, reduction or interruption of Output or the transmission of Output to Purchaser's Transmission Point(s) of Receipt.

Section 12.02. ***Disclaimer of Warranties.*** Except as otherwise expressly set forth herein, the District disclaims any and all warranties beyond the express terms hereof, including any implied warranties of merchantability or fitness for a particular purpose, and all other warranties with regard to Output made available to Purchaser pursuant to this Agreement are hereby expressly disclaimed.

The Parties confirm that the express remedies and measures of damages provided in this Agreement against the Purchaser, and the express limitations as to remedies and damages provided in this Agreement with respect to the District, in each case satisfy the essential purposes hereof. For breach of any provision hereof for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all remedies or damages at law or in equity are waived. Except as otherwise expressly provided herein, the obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IN FACT OR BY LAW WITH RESPECT TO THE OUTPUT PROVIDED HEREUNDER. DISTRICT HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES WHATSOEVER.

The limitations contained in this Section 12.02 shall be in addition to, and not in lieu of, the provisions of Section 5.01, Article VI and Article XXI.

ARTICLE XIII ASSIGNMENT

Section 13.01. ***Assignment.*** Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, that:

(A) The District may, without the consent of the Purchaser (and without relieving itself from liability hereunder), pledge or encumber this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and

(B) If more than one Party has signed this Agreement as Purchaser hereunder, this provision shall apply to each entity collectively as a unit. No assignment made under this Clause (B) shall release the assigning Party from its obligations hereunder unless the non-assigning Party expressly consents to such release, which consent may be withheld at the non-assigning Party's sole discretion.

(C) Nothing contained herein shall preclude the District, without notice to or the consent of the Purchaser, from entering into lease/leaseback, sale/leaseback with an option to purchase, or other similar arrangements with respect to the Projects, or either of them, the economic effect of which is to transfer tax ownership of the Project or Projects for a stated period to a third party, provided that the District retains control of the management and operation

of the Projects and related Energy and Capacity, equivalent to that of a legal owner, as determined by the District, for the Term, and provided, that any such assignment or transfer by the District would not impair this Agreement or the sale of Output to Purchaser.

ARTICLE XIV TAXES AND INSURANCE

Section 14.01. **Taxes.** Except as expressly set forth in Section 2 of Appendix A, each Party shall be responsible for payment of and bear any federal, state and local taxes that it shall accrue or incur as a result of the purchase and sale of Output under this Agreement.

Section 14.02. **Insurance Required.**

(A) Purchaser shall acquire and maintain during the Term in full force and effect, at its sole cost and expense, comprehensive general liability insurance that includes operations, products and contractual liability, explosion, collapse, and underground hazards, broad form property damage, sudden and accidental pollution and personal liability, with a minimum combined single limit of \$10,000,000 per occurrence and not less than \$20,000,000 in the aggregate. Each such policy shall be primary to and shall not contribute to any insurance that may otherwise be maintained by, or on behalf of, the District. All insurance required hereunder shall contain provisions waiving the insured's and the insurer's rights of subrogation or recovery of any kind against the District, its Affiliates and their respective directors, trustees, agents, employees, officers, successors and assigns. Self insurance may be substituted for all or any part of the insurance requirements under this Section 14.02(A) consistent with any generally applied self insurance program of Purchaser. Purchaser will provide the District with a summary of insurance coverages in force on an annual basis. The District acknowledges and agrees that the Purchaser's current program of insurance and self-insurance, as of the Signing Date, is consistent with and satisfies the foregoing provisions of this Section 14.02(A).

(B) The District shall maintain an insurance and/or self-insurance program with respect to the Chelan Power System for property damage, general liability, and other risks as, consistent with Prudent Utility Practice, the District may determine and the District's Commissioners may approve. The Purchaser acknowledges and agrees that the District's current program of insurance and self-insurance meets requirements of this Agreement.

Section 14.03. **Certificates of Insurance.** On or prior to the first Project Availability Date, each Party will provide to the other Party certificates of insurance evidencing the required coverage set forth above. Each Party shall endeavor to ensure that its certificates of insurance shall provide for a minimum of thirty (30) days advance notice to such other Party of cancellation or material change in coverage. Failure by either Party to obtain the insurance coverage or certificates of insurance required by this Article XIV shall not relieve such Party of the insurance requirements set forth herein or therein or in any way relieve or limit such Party's obligations and liabilities under any other provision of this Agreement.

**ARTICLE XV
DEFAULT AND TERMINATION**

Section 15.01. Events of Default. An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(A) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after receipt of written notice, as required in Section 8.01(B);

(B) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(C) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within 30 days after receipt of written notice;

(D) the Bankruptcy of such Party;

(E) the failure of such Party to provide Performance Assurance within the time requirements set forth in Section 20.02;

(F) the failure of such Purchaser to provide Adequate Assurances to the District within fifteen (15) days following receipt of written notice that the District in good faith has reasonable grounds for insecurity (determined using commercially reasonable standards embodied in Section 2-609(2) of the Washington State Uniform Commercial Code) in the Purchaser’s ability to perform its obligations under this Agreement;

(G) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and/or assigns to another entity without the express written consent of the other party pursuant to Section 13.01 or, in the case of Purchaser, Purchaser suffers a Change in Control with respect to which the District has not expressly consented within 30 days following the occurrence thereof;

(H) the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money ("Funding Agreements") in an aggregate amount of not less than the applicable Cross Default Amount which results in such indebtedness becoming immediately due and payable or (ii) a default by such Party in making on the due date therefor one or more payments, individually or collectively, under any judgment, or under any contract or other obligation not included within the definition of "Funding Agreement" above, in an aggregate amount of not less than the applicable Cross Default Amount; provided, however that such Party shall not be deemed in default under this clause (ii) so long as it diligently contests such payments in good faith by appropriate proceedings and pays any amount ultimately determined to be due within 30 days of such determination.

The decommissioning of one or both Projects pursuant to Section 6.03 shall not constitute a breach of this Agreement. Termination of this Agreement by the District pursuant to Section 5.13 shall not constitute a breach of this Agreement.

Section 15.02. **Remedies upon Default.** The Party as to which an Event of Default has not occurred (each a “Non-Defaulting Party”) shall have the right, so long as any Event of Default is continuing and has not been cured within the applicable cure periods, if any, to take any one or more of the following actions:

(A) suspend its performance under this Agreement, other than any payment obligations that may be due or become due hereunder, until such Event of Default is cured or formally waived in writing by the Non-Defaulting Party;

(B) in the case of the District only, terminate this Agreement and sue for damages as contemplated in Section 15.03 below;

(C) maintain successive proceedings against the Defaulting Party for recovery of damages (to the extent permitted hereunder) or for a sum equal to any and all payments required to be made pursuant to this Agreement; or

(D) take whatever action at law or in equity as may be necessary or desirable to collect the amounts payable by the Defaulting Party under this Agreement, as then due or to become due thereafter, or to enforce performance and observation of any obligation, agreement or covenant of the Defaulting Party under this Agreement.

If, during the continuation of a default by Purchaser, Wenatchee Works is operating at or above Level 3, payments or distributions from Purchaser’s Current Year’s Credit Pool and Purchaser’s Long Term Credit Pool to which Purchaser would otherwise be entitled under Section 5.08 shall be suspended until the default has been cured. If, during such default, Wenatchee Works is operating at Level 4, or is Shutdown, all Annual Cumulative Surplus Proceeds shall be retained by the District. In either case, Purchaser shall remain liable for and shall pay Net Costs and any Initial Shutdown Amount and Shutdown Settlement Amounts that may become due.

If the District suspends performance pursuant to clause (A) above, the District shall act in a Commercially Reasonable manner to mitigate damages, including but not limited to using Commercially Reasonable efforts to sell the Purchaser’s Percentage of Output to third parties on a short term basis. In such case, Purchaser shall pay for the full amount of the monthly Periodic Payments, and any proceeds the District receives from the sale of such Output, net of Sales and Administrative Charges, fees, costs and expenses, as determined by the District to be due, shall first be applied against amounts owed by the Purchaser hereunder with respect to such Output, with the balance, if any, being retained by the District.

Notwithstanding any other provision contained herein, the Purchaser hereby waives any right it may have to terminate this Agreement as a result of a default by the District. Except as set forth in the following sentence, Purchaser specifically agrees to limit its remedies related to any default by the District to claims for specific performance or injunctive or equitable relief. In the event of an Intentional Breach by the District, as defined herein, the Purchaser’s

sole remedy shall be the recovery from the District of an amount equal to the gross proceeds received by the District from the sale of Purchaser's Share of Output that was the subject of the breach.

Except as otherwise expressly provided herein, no right or remedy conferred upon or reserved to a Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of any Event of Default. Failure of either Party to insist at any time on the strict observance or performance by the other Party of any of the provisions of this Agreement, or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by the District of any payment required to be made hereunder with knowledge of the breach of any provisions of this Agreement, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Agreement, each Party shall be entitled, to the extent permitted by applicable Law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this Agreement, or to a decree requiring performance of any of the provisions of this Agreement or to any other remedy legally allowed to such Party.

Section 15.03. *Calculation of District's Loss upon Termination.*

(A) If the District terminates this Agreement pursuant to Section 15.02 (B), the District shall be entitled to recover from the Purchaser the full amount of its loss resulting from the early termination of this Agreement. The Parties recognize that it will be difficult to calculate those losses with absolute precision and agree that the District's good faith determination of such losses, based on the methodology set forth in this Section 15.03, shall be conclusive and binding on the Parties, absent manifest error.

(B) The District's losses and costs upon such termination shall be determined based on its assessment of the cost of replacing the defaulting Purchaser with a new creditworthy participant who is willing to assume the obligations of the defaulting Purchaser under this Agreement. Such costs shall include, among other items, upfront incentive payments the District reasonably believes it will be required to pay to entice a substitute Purchaser to assume the defaulting Purchaser's obligations hereunder, the present value (calculated at the District's tax exempt borrowing rate, or if the District no longer has tax exempt debt outstanding, at its applicable taxable borrowing rate) of pricing discounts and other concessions that the District reasonably believes will be required to entice a substitute Purchaser to assume such obligations, the legal fees and expenses anticipated to be incurred by the District in effectuating such substitution, and all other losses, costs and expenses that have been, and that the District reasonably believes will be, incurred in connection with such default, termination and substitution.

(C) All such losses and costs will be determined by the District in good faith, using Commercially Reasonable procedures, in order to arrive at a Commercially Reasonable result.

(D) Amounts due and owing by the defaulting Purchaser as of the date of termination, together with all legal fees, costs and expenses incurred by the District, arising out of or as a result of such default in connection with the enforcement of this Agreement and the protection of its rights hereunder (including all costs of collection) shall be in addition to the losses calculated in accordance with Clause (B) above.

(E) In determining its losses, the District may consider any relevant information, including, without limitation, one or more of the following types of information:

(i) quotations (either firm or indicative) for assumption of the Purchaser's obligations hereunder, supplied by one or more third parties that take into account the status of the Chelan Power System, the District's existing and anticipated Net Costs, the creditworthiness of the District at the time the quotation is provided and any other factors then existing or anticipated that are relevant to the third party providing such quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties, including, without limitation, relevant existing and projected rates, prices, yields, yield curves, volatilities, spreads, correlations and other relevant market data, and the current and anticipated future regulatory environment; or

(iii) information of the types described in the clauses (i) or (ii) above from internal sources if that information is of the same type used by the District in the regular course of its business for evaluating power sales contracts.

(F) The District will consider, taking into account the standards and procedures described above, quotations pursuant to Clause (E)(i) above or relevant market data pursuant to Clause (E)(ii) above, unless the District reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in Clause (E)(i), (ii) or (iii) above, the District may include costs of funding, to the extent it would not be a component of the other information utilized. Third parties supplying quotations pursuant to Clause (E)(i) above or market data pursuant to Clause (E)(ii) above may include, without limitation, wholesale purchasers in relevant markets, end-users of electric energy, information vendors, brokers, and other sources of market information.

(G) In making the calculations under this Section 15.03, the mandatory step-up provisions of Section 5.12 shall be ignored.

(H) If the District determines that its losses, as determined using the foregoing methodology, are negative (meaning that the District will benefit economically from such termination), no amounts will be due by either Party with respect to such losses, and the Purchaser's liability shall be limited to (i) amounts due and owing and accrued as of the date of termination, plus (ii) attorneys fees and expenses and other collection costs, plus (iii) the District's reasonable costs of calculating such losses.

(I) The District shall notify the Purchaser of its calculation of losses as soon as possible after termination and shall supply the Purchaser with a summary analysis of the methodology used in such calculations. The Parties recognize that it will be extremely difficult to precisely determine the amount of actual damages and loss that would be suffered by the District if the Purchaser's default gives rise to a termination of this Agreement as contemplated in this Article XV, and agree that the District's reasonable determination of such losses, using the methodology pursuant to this Section, is a fair and reasonable method of determining of the amount of actual damages that would be suffered by the District in such event. The loss methodology is intended to measure the anticipated damages actually suffered from a termination and is not intended to constitute a penalty or forfeiture.

(J) Any amounts payable by Purchaser under this Section 15.03 shall be in addition to, and not in lieu of, any amounts accrued but unpaid as of the date of Termination including, without limitation, any Initial Shutdown Amount or Shutdown Settlement Amount that may become due under Section 7.01(A).

(K) The calculation of losses for a default by Purchaser does not apply to a termination of this Agreement as a result of the District's failure to consent to a Change in Control pursuant to Section 15.01(G).

ARTICLE XVI DISPUTE RESOLUTION

Section 16.01. ***General.*** Any dispute arising out of, or relating to, this Agreement, with the exception of those specifically excluded under this Agreement, shall be subject to the dispute resolution procedures specified in this Article XVI. Each Party retains the right, after making a good faith effort at resolving the dispute pursuant to the terms of this Article XVI, to pursue such other actions and remedies otherwise permitted or authorized by law or equity.

Section 16.02. ***Good-Faith Negotiations.*** The Parties shall first negotiate in good faith to attempt to resolve any dispute, controversy or claim arising out of, under, or relating to this Agreement (a "Dispute"), unless otherwise mutually agreed to by the Parties. In the event that the Parties are unsuccessful in resolving a Dispute through such negotiations, either Party may proceed immediately to litigation concerning the Dispute.

The process of "good-faith negotiations" requires that each Party set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The Parties shall attempt to agree on a mutually agreeable resolution of the Dispute. A Party shall not be required as part of these negotiations to provide any information which is confidential or proprietary in nature unless it is satisfied in its discretion that the other Party will maintain the confidentiality of and will not misuse such information or any information subject to attorney-client or other privilege under applicable Law regarding discovery and production of documents.

The negotiation process shall include at least two (2) meetings to discuss any Dispute. Unless otherwise mutually agreed, the first meeting shall take place within ten days after either Party has received written notice from the other of the desire to commence formal negotiations concerning the Dispute. Unless otherwise mutually agreed, the second meeting shall take place no more than ten days later. In the event a Party refuses to attend a negotiation meeting, either Party may proceed immediately to litigation concerning the Dispute.

Section 16.03. **Confidentiality and Non-Admissibility of Statements Made in, and Evidence Specifically Prepared for, Good Faith Negotiations.** Each Party hereby agrees that, to the full extent permitted by law, all statements made in the course of good faith negotiations, as contemplated in Section 16.02, shall not be disclosed, except as provided in Section 19.01 and except that such statements may be disclosed to or shared with any third person whose presence is necessary to facilitate the negotiation process). Each Party agrees and acknowledges that no statements made in or evidence specifically prepared for good faith negotiations under Section 16.02 shall be admissible for any purpose in any subsequent litigation.

Section 16.04. **Other Recourse.** Notwithstanding any other provision of this Agreement, either Party may, without prejudice to any negotiation or mediation, proceed in the courts of the State of Washington to obtain provisional judicial relief if, in such Party's sole discretion, such action is necessary to protect public safety, avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of any dispute resolution procedures employed by the Parties or pendency of any action at law or in equity. Except for temporary injunctive relief under this section, neither Party shall bring any action at law or in equity to enforce, interpret, or remedy any breach or default of this Agreement without first complying with the provisions of this Article.

Section 16.05. **Commitments.** Unless otherwise agreed to in writing (including any express provision of this Agreement) or prohibited by applicable Law, the Parties shall continue to honor all commitments under this Agreement during the course of any dispute resolution under this Article and during the pendency of any action at law or in equity.

ARTICLE XVII NO DEDICATION OF FACILITIES

Section 17.01. **No Dedication of Facilities.** No undertaking under any provision of this Agreement shall constitute a dedication of any portion of the District's electric system or the Chelan Power System to the public or to Purchaser.

ARTICLE XVIII LICENSES AND OWNERSHIP AND CONTROL

Section 18.01. **FERC Licenses and Bond Resolutions.** Purchaser hereby acknowledges and agrees that the District must comply with the terms and provisions of the (i) FERC licenses for the respective Projects and (ii) the respective Debt Obligations and the resolutions and documents authorizing or providing for the issuance or incurrence and/or the terms thereof. This Agreement is made subject to the terms and provisions of such FERC

licenses and such licenses shall govern to the extent of any conflict with the terms and provisions of this Agreement.

ARTICLE XIX INFORMATION AND CONFIDENTIALITY

Section 19.01. **Confidential Information; Disclosure.** Where a Party makes any calculation of costs or damages under this Agreement, such Party shall provide, upon the reasonable request of the other Party, documentation supporting such calculation. Neither Party shall disclose or otherwise make available to any other person or third party any information of a technical, commercial or business nature regarding the Projects or this Agreement that has been marked or identified (as of the time of such disclosure or availability) as confidential or proprietary (“Confidential Information”) by the Party making such disclosure (the “Disclosing Party”) without the prior written consent of the Disclosing Party, except that (a) either Party or its Affiliate may provide Confidential Information to such Party’s or such Affiliate’s existing or prospective lenders, underwriters, investors, affiliates, advisors, employees, officers and directors to the extent reasonably required in connection with the administration of this Agreement, the issuance or incurrence of debt or equity or other financing activities of such Party or such Affiliate, or the performance of any duties relating to this Agreement; (b) either Party may provide Confidential Information to any Government Authority in connection with the exercise by such Government Authority of its jurisdiction with respect to such Party; (c) any Party may disclose any such Confidential Information in any litigation or proceeding to enforce or recover damages under this Agreement; (d) any Party (or its Affiliate) may disclose any such Confidential Information as may be required (i) by any applicable Law, regulation or governmental order, or (ii) in connection with any regulatory or governmental proceeding or inquiry, or (iii) in connection with any reporting requirements under agreements (such as MCHC) to which both the District and the Purchaser are parties; and (e) any Party (or its Affiliate) may disclose such Confidential Information to any person or entity succeeding to all or substantially all the assets of such Party (or its Affiliate) or all or a substantial portion of its interest in the Projects; provided, that in the case of (e), any such successor shall agree to be bound by the provisions of this Section 19.01. Confidential Information shall not include information that: (i) the receiving Party can demonstrate was known to it prior to its disclosure by the other Party; (ii) is, or later becomes, public knowledge without breach of this Agreement by the receiving Party; (iii) was received by the receiving Party from a third party without obligation of confidentiality; or (iv) is developed by the receiving Party independently from Confidential Information received from the other Party, as evidenced by appropriate documentation. In the event that disclosure is required by applicable public disclosure laws, as determined by the District, or by a valid order of a court or Government Authority, the Party subject to such requirement may disclose Confidential Information to the extent so required, but shall promptly notify the other Party and shall cooperate with the other Party’s efforts to obtain protective orders or similar restraints with respect to such disclosure. The provisions of this Article XIX shall continue in effect until three (3) years after the end of the Term.

Because of the unique nature of the information to be provided, the Parties understand and agree that irreparable harm will be suffered in the event that one Party (the “*Breaching Party*”) fails to comply with its obligations contained in this Section 19.01 and that monetary damages will be inadequate to compensate for such breach. Accordingly, any Breaching Party

agrees that the non-breaching party will, in addition to any other remedies available to it under this Agreement, be entitled to specific performance or injunctive relief to enforce the provisions of this Section.

ARTICLE XX CREDIT AND COLLATERAL REQUIREMENTS

Section 20.01. **Financial Information.** The Purchaser shall deliver to the District (i) within 120 days following the end of each fiscal year of Purchaser, a copy of the Purchaser's annual report containing audited consolidated financial statements for such fiscal year, (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of the Purchaser's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, (iii) all public announcements made by the Purchaser of a financial nature promptly following their release to the public, (iv) any notice of any Downgrade Event, including a change in rating outlook, promptly upon the occurrence thereof and (v) a written report concerning any material changes in Purchaser's ability to perform its obligations under this Agreement, immediately upon the occurrence thereof. In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or in the delivery of audited financial statements or certificates with respect thereto, such delay shall not be an Event of Default so long as the Purchaser provides notice to the District and diligently pursues the preparation and delivery of the statements and required certificates. Notwithstanding the foregoing, the reports, announcements, notices and statements to be delivered hereunder shall be deemed to be delivered on the date the same shall be posted on the Securities and Exchange Commission website (www.sec.gov). Upon the District's written request, Purchaser shall deliver to the District hard copies of the documents contemplated hereunder.

Section 20.02. **Credit Assurances.** Upon the occurrence of a Downgrade Event, or if the District otherwise has reasonable grounds to believe that the Purchaser's creditworthiness or performance under this Agreement has become unsatisfactory, the District may provide the Purchaser with written notice requesting Performance Assurance. Upon receipt of such notice, the Purchaser shall have five (5) Business Days to remedy the situation by providing such Performance Assurance to the District. In the event that the Purchaser fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to the District within five (5) Business Days of receipt of notice, then an Event of Default under Article XV will be deemed to have occurred and the District will be entitled to the remedies set forth in Article XV of this Agreement.

ARTICLE XXI LIMITATION OF LIABILITY

Section 21.01. **Limitation of Liability.** Except as provided in Article XV, and then only to the extent provided therein, neither Party (including each Party's officers, trustees, directors, agents, employees, direct and indirect parents, subsidiaries or Affiliates, and such parents', subsidiaries' or Affiliates' officers, trustees, directors, agents or employees) shall be liable or responsible to the other Party (or its direct and indirect parents, subsidiaries, Affiliates,

officers, trustees, directors, agents, employees, successors or assigns) or their respective insurers, for any direct, special, incidental, indirect, exemplary, punitive or consequential damages connected with or resulting from the performance or non-performance of this Agreement, or anything done in connection therewith including, without limitation, Claims in the nature of business interruption, lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), or loss of business, reputation or opportunity, or cost of capital, and irrespective of whether such Claims are based upon downtime costs or Claims of customers, and irrespective of the basis of such Claims.

Section 21.02. **Survival.** The protections afforded by Section 21.01 above shall survive the termination, expiration or cancellation of this Agreement, and shall apply to the fullest extent permitted by law.

Section 21.03. **No Personal Liability.** Neither any partner, shareholder, member, parent company or other Affiliate of either Party (or any officer or director or any employee thereof), nor any partner, shareholder, member, parent company or other Affiliate or successor-in-interest of such partner, shareholder, member, parent company or other Affiliate (or any officer or director of any employee thereof), shall have any personal liability or responsibility for, relating to or in connection with said Party's failure to properly perform any term, covenant, condition or provision of this Agreement.

ARTICLE XXII NOTICES

Section 22.01. **Notification.** All notices to be given pursuant to this Agreement by Purchaser to the District shall be in writing and addressed to the General Manager of Public Utility District No. 1 of Chelan County, 327 N. Wenatchee Avenue, Wenatchee, WA 98801, with a copy to General Counsel of Public District No. 1 of Chelan County, 327 N. Wenatchee Avenue, Wenatchee, WA 98801. Notices to be given to Purchaser hereunder shall be in writing and addressed to the General Manager, Alcoa Inc., 6200 Malaga-Alcoa Highway, Malaga, Washington 98828. Notice shall be deemed to have been given when enclosed in a properly sealed envelope, addressed as aforesaid, and deposited first class postage prepaid in a post office or branch post office of the United States Postal Service or by electronic mail, facsimile or other documentary form mutually agreed upon means of communication. Notice by electronic mail, facsimile or hand delivery shall be deemed to have been received by the close of business on the Business Day on which it was delivered or transmitted (provided a confirmation of such transmission has been received). Notice by overnight courier shall be deemed to have been received one Business Day after it was sent. Any change in the identity of the contact person or the address for notice to either Party shall not be binding until delivered in writing to the other Party pursuant to this Section 22.01.

ARTICLE XXIII MISCELLANEOUS

Section 23.01. **Binding Effect.** This Agreement shall be binding upon the Parties and their successors and permitted assigns.

Section 23.02. **Applicable Law; Venue.** The Parties hereto agree that the laws of the State of Washington shall govern this Agreement. Venue for any legal action arising from this Agreement shall be in the Federal District Court for Eastern Washington.

Section 23.03. **Entire Agreement; Modifications.** Except as may be expressly provided herein, all previous communications between the Parties hereto, either verbal or written, with reference to the subject matter of this Agreement are hereby abrogated. The Purchaser's entitlement to Output hereunder shall only become effective on the expiration of the Prior Agreement, and nothing herein shall be deemed to supersede or supplement that agreement. Upon each respective Effective Date, this Agreement will constitute the entire agreement between the Parties hereto with respect to the applicable Project. No modifications of or amendments to this Agreement shall be binding upon the Parties or either of them unless such a modification shall be in writing, duly executed by an authorized officer or employee of each Party.

Unless the Parties mutually agree, neither Party nor any Affiliate thereof may make application to FERC, or any other Government Authority having jurisdiction over this Agreement, seeking any change in this Agreement pursuant to the provisions of Sections 205 or 206 of the Federal Power Act or under any other statute, regulation or other provision promulgated by a Government Authority, nor support any such application by a third party. Absent the agreement of the Parties to any proposed change, the standard of review for changes to any Section of this Agreement specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein whether proposed by a Party, a non-Party or FERC actions sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine). The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

Section 23.04. **Headings.** Section and subsection headings are included solely for the convenience of the Parties and do not constitute a part of this Agreement. No meaning shall be imputed to such headings nor shall they be relied upon to interpret this Agreement.

Section 23.05. **Third Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement.

Section 23.06. **Non-waiver.** Failure by either Party at any time to require performance of any provision of this Agreement shall not adversely affect either Party's rights hereunder to enforce the same. No waiver by either Party of any breach of this Agreement shall be held to be a waiver of any subsequent or different breach hereof.

Section 23.07. **Attorney Fees.** The substantially prevailing Party in a dispute related to this Agreement shall be entitled to recover all of its costs, including reasonable attorney fees.

Section 23.08. **Execution.** This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 23.09. **Whole Agreement; No Severability.** The parties agree that this Agreement is intended to be read as a whole and that the component parts hereof are not intended to be severable. Consequently, if any material term or provision of this Agreement or the application thereof to any Party shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, shall be deemed to have been terminated on the date of such determination and all rights and obligations of the Parties, from and after such determination, shall cease and become void. The Parties agree that any rights or obligations arising or accruing hereunder prior to the date of such termination shall continue to apply and be enforceable in accordance with the terms of this Agreement and that, upon such termination, the provisions of Section 7.06 shall apply. In addition, if a Shutdown has occurred prior to the date such termination and remains in effect on the termination date, Purchaser shall pay the District, in addition to the amounts contemplated above, the Initial Shutdown Amount calculated pursuant to Section 7.01(A).

In furtherance of the foregoing, each Party agrees that it will not, directly or indirectly, challenge any material term or provision of this Agreement (whether by way of validity or enforceability, in whole or in part, or otherwise) and will not join with, aid or assist any third party, directly or indirectly, in initiating any such challenge, in any forum or jurisdiction whatsoever. Any violation of this covenant by either Party shall be considered a material breach for which there shall be no right to notice or cure period.

Section 23.10. **Metering.**

(A) **Metering Installation.** The District has installed metering devices at each Point of Receipt to record the energy, real and reactive power, and instantaneous flow of power. The District may from time to time install additional or replacement metering devices to measure energy, real and reactive power and instantaneous flows from the Units. All such metering devices, as so designated by the District from time to time ("Meters"), shall be used to measure Energy for all purposes of this Power Sales Agreement and for purposes of any other agreement between the Parties related to the delivery of Output.

(B) **Measurements.** Except as may otherwise be provided in a contract between the Parties governing a specific transaction between them, all power flow and reactive power flow measurements shall be based on the measurement automatically recorded by the Meters. Measurements shall be adjusted for transmission and transformation losses as may be specified in the Transmission Agreement.

(C) **Meter Testing.** The District shall inspect, test and adjust the Meters at least once every two years. The District shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness and verify, such inspections, tests and adjustments.

(D) Supplemental Testing Requested by Purchaser. In addition to the other inspections and tests required under Section 23.10(C), upon two (2) weeks' prior written notice by Purchaser, and not more often than once every 3 months, the District shall perform additional inspections or tests of any of the District's Meters. The District and Purchaser shall agree on a mutually convenient time for such inspections or tests, and the District shall permit a qualified representative of Purchaser to inspect or witness such testing of any of the District's Meters. The actual expense of any such requested additional inspection or testing shall be borne by Purchaser unless, upon such inspection or testing, the District's metering devices are found to register inaccurately by more than +/- 0.5%, in which event the expense of the requested additional inspection or testing shall be included in Net Costs.

(E) Recalculations. If any of the District's metering devices are found to be defective or inaccurate by more than +/- 0.2%, it shall be adjusted, repaired, replaced and/or recalibrated to bring the metering device to within the specifications provided for herein. If any of the District's metering devices are not found to be defective or inaccurate by more than the variances stated herein, then such Meters shall not be re-calibrated unless the Parties otherwise agree.

(F) Adjustment for Inaccurate Metering. If any Meter fails to register, or if the measurement made by such Meter during a test conducted pursuant to Section 23.10(C) or (D) varies by more than +/- 0.2% from the measurement made by the standard meter used in such test, or if an error in meter reading occurs, adjustment shall be made to correct all measurements for the period during which such inaccurate measurements were made, if such period can be determined. If such period cannot be determined, the adjustment shall be made for the period immediately preceding the test of such Meter which is equal to the lesser of (a) one-half the time from the date of the last preceding test of such Meter, or (b) six months. Such corrected measurements shall be used to recompute the amounts of Energy delivered by the District to Purchaser during the period of adjustment. Such adjustment shall not include or give rise to any monetary compensation or other adjustments to the Periodic Payments.

The Parties have executed this Agreement on the dates noted below.

“District”

**Public Utility District No. 1
of Chelan County, Washington**

By: _____
General Manager

Date: _____

“Purchaser”

Alcoa Power Generating Inc.

By: _____
Title: _____

Date: _____

Alcoa Inc.

By: _____
Title: _____

Date: _____

ATTACHMENT 1

Series													Id: CUUR0000SA		
Not Seasonally													Adjuste		
Area: U.S.													averag		
Item: All													item		
Base Period: 1982-84=100															
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1998	161.6	161.9	162.2	162.5	162.8	163.0	163.2	163.4	163.6	164.0	164.0	163.9	163.0	162.3	163.7
1999	164.3	164.5	165.0	166.2	166.2	166.2	166.7	167.1	167.9	168.2	168.3	168.3	166.6	165.4	167.8
2000	168.8	169.8	171.2	171.3	171.5	172.4	172.8	172.8	173.7	174.0	174.1	174.0	172.2	170.8	173.6
2001	175.1	175.8	176.2	176.9	177.7	178.0	177.5	177.5	178.3	177.7	177.4	176.7	177.1	176.6	177.5
2002	177.1	177.8	178.8	179.8	179.8	179.9	180.1	180.7	181.0	181.3	181.3	180.9	179.9	178.9	180.9
2003	181.7	183.1	184.2	183.8	183.5	183.7	183.9	184.6	185.2	185.0	184.5	184.3	184.0	183.3	184.6
2004	185.2	186.2	187.4	188.0	189.1	189.7	189.4	189.5	189.9	190.9	191.0	190.3	188.9	187.6	190.2
2005	190.7	191.8	193.3	194.6	194.4	194.5	195.4	196.4	198.8	199.2	197.6	196.8	195.3	193.2	197.4
2006	198.3	198.7	199.8	201.5	202.5	202.9	203.5	203.9	202.9	201.8	201.5	201.8	201.6	200.6	202.6
2007	202.416	203.499	205.352	206.686	207.949	208.352	208.299	207.917	208.490	208.936	210.177	210.036	207.342	205.709	208.97
2008	211.080	211.693	213.528	214.823											

Source: U.S. Department of Labor, Bureau of Labor Statistics

<http://data.bls.gov/cgi-bin/surveymost?bls>

APPENDIX A

DETERMINATION OF CHELAN POWER SYSTEM NET COSTS

1. **Definitions.** The following definitions shall apply throughout the Agreement and this Appendix A whenever the term is capitalized.

“*Assumed Debt Service*” means:

(i) with respect to any Debt Obligation issued after January 31, 2006 and before the first Project Availability Date, the amount for each applicable Contract Year calculated as of the date of issuance or incurrence thereof, that would be sufficient to fully amortize the original stated principal amount thereof, together with interest thereon at the Index Rate (using semi-annual compounding and a year of 360 days), for such Debt Obligation, on an annual level debt service basis over an amortization period commencing on the In Service Date of the Capital Improvements expected to be financed from the proceeds of such Debt Obligation and ending on the last day of such Capital Improvements’ Average Service Life.

(ii) with respect to any Debt Obligation issued on or after the first Project Availability Date, the amount for each applicable Contract Year calculated as of the issuance or incurrence thereof, that would be sufficient to fully amortize the original stated principal amount thereof, together with interest thereon at the Index Rate (using semi-annual compounding and a year of 360 days) for such Debt Obligation on an annual level debt service basis over an amortization period commencing on the date of issuance or incurrence of such Debt Obligation and ending on the Deemed Maturity thereof.

“*Average Service Life*” means, with respect to any Debt Obligation issued after January 31, 2006, the estimated weighted average economic service life of the Capital Improvements that the District expects to finance from proceeds of such Debt Obligations issued or incurred after January 31, 2006, as determined by the District on or as of the date of the issuance or incurrence thereof. For purposes of the foregoing, land shall be deemed to have a weighted average economic service life of 25 years.

“*Debt Obligation*” means a bond, note (including a commercial paper note or bond anticipation note), installment purchase agreement, financing lease, inter-fund loan or any other obligation for borrowed money, or portion thereof, issued or incurred by or on behalf of the District for either or both Projects, the proceeds of which were or will be applied to finance Capital Improvements with respect to such Project or Projects and which has been or is designated by the District in its discretion as a Debt Obligation with respect to such Project or Projects. For the avoidance of doubt, the obligations listed or referred to in Schedule A-1 shall constitute Debt Obligations for purposes of this Agreement. Debt Obligations shall not include any Refunding Obligations, or the principal portion of any obligations issued after January 31, 2006 that otherwise would fall within the definition of Debt Obligations, to the extent such principal portion is or was used to pay costs of issuance or to fund debt service reserves with respect to Debt Obligations, all as determined by the District in its discretion. To avoid double counting, if the District designates inter-fund loans from the District Enterprise Units of the District to the Chelan Power System as Debt Obligations, the corresponding third party

obligations of the District shall not be included as Debt Obligations for purposes of this Agreement. For purposes of this Appendix A, “Debt Obligations” will include inter-fund loans from the District Enterprise Units that otherwise qualify as Debt Obligations; however, transfers from the District to the Chelan Power System derived from payments made by the Purchaser in respect of Capital Recovery Charges or Debt Reduction Charges, as determined by the District, shall not be treated as Debt Obligations for purposes of this Agreement. For purposes of this Agreement, the principal amount of Debt Obligations issued after January 31, 2006 shall be deemed to amortize in accordance with the Assumed Debt Service with respect thereto, and not on the actual principal amount of the District’s Debt Obligations that may be outstanding on the date of calculation.

“*Deemed Maturity*” means that date determined by the District as of the issuance or incurrence of a Debt Obligation, by adding to the date of issuance or incurrence of such Debt Obligation, *the lesser of* (a) twenty-five (25) years, or (b) the Average Service Life of the Capital Improvements expected to be financed by the District from the proceeds thereof, as determined by the District.

“*Independent Investment Banker*” means an investment banking firm selected by the District in its discretion that is nationally recognized for its knowledge and experience in the pricing and sale of debt securities and that has, or whose parent company has, a rating from at least two of the Rating Agencies of not less than “A-” in the case of S&P and Fitch, and “A3” in the case of Moody’s.

“*Index Rate*” means, with respect to each Debt Obligation, as of the applicable date of calculation, the fixed interest rate, as determined by the District in consultation with an Independent Investment Banker as of the date of issuance or incurrence thereof, equal to 110% of the weighted average annual interest rate that such Debt Obligation would bear (i) based on the then current underlying long term credit rating of the District; (ii) assuming that interest on such Debt Obligation would be includable in the income of the holders thereof for federal income tax purposes; and (iii) assuming that such Debt Obligation were amortized on a level debt service basis over the applicable amortization period described in the definition of “Assumed Debt Service.” In determining the Index Rate of any Debt Obligation, the District may consider interest indices and other market data generally available as of the date of calculation.

“*In Service Date*” means the estimated weighted average date the Capital Improvements expected to be financed from proceeds of a Debt Obligation are or are expected to be placed in service, as determined by the District.

2. **Determination of Net Costs.** For purposes of this Agreement, the District’s Chelan Power System net costs (“Net Costs”) for any given month shall include all costs and expenses of every kind and description, both direct and indirect, paid or accrued by the District in such Month with respect to its ownership, operation, maintenance, repair and improvement of, and the production and delivery of Output from, the Chelan Power System, as determined by the District, including without duplication (whether under this Agreement, the Transmission Agreement or the Interconnection Agreement), the items of cost and expense described below in this Section 2, plus any cost or expenses incurred by

the District in such month in administering this Agreement that are unique to Purchaser or Purchaser's performance (or failure to perform) hereunder. Net Costs shall not include any depreciation expense or any expense incurred in the District's purchasing Energy or its use of Energy from another source other than the Chelan Power System. It is specifically understood that Purchaser's costs of Output shall be determined in relation to the Net Costs as herein defined in this Appendix A and other provisions of this Agreement. Such Net Costs shall include, without intending to limit the generality of the foregoing:

- (a) **Operating and Maintenance Costs.** All operating and maintenance costs of every kind and description, both direct and indirect ("Operating Costs"), paid or accrued by the District with respect to the operation, maintenance and repair of, or the production, sale or delivery of Output from, the Chelan Power System or any part thereof, including allocable District overhead and administrative costs, and costs of generation integration for the Chelan Power System provided by the District's distribution system, all as the District may reasonably determine consistent with GAAP, FERC regulations (including FERC's Uniform System of Accounts) and the District's accounting policies, practices and procedures. Without limiting the generality of the foregoing, Operating Costs shall include those items of cost described in subsections (i) through (iv) below.
 - (i) **Taxes and Assessments.** All governmental taxes, assessments or other similar charges with respect to its ownership, operation, maintenance or repair of, or the production, sale or delivery of Output from, the Chelan Power System or any part thereof, including payments by the District in lieu of such governmental taxes, assessments or other similar charges.
 - (ii) **Certification, Relicensing and Decommissioning Costs.** All costs determined by the District to be reasonably allocable to the certification, re-licensing or decommissioning of any of the Projects or any part thereof. The District agrees that it will not accelerate payment of costs associated with measures required or agreed upon, in the District's sole discretion, for the relicensing of either Project in advance of the date(s) necessary to comply with existing and anticipated FERC and other regulatory requirements or settlement agreements related to relicensing.
 - (iii) **Litigation.** All judgments, claims, settlements, arbitration awards and other similar costs and liabilities with respect to its ownership, operation, maintenance, repair or improvement of, or the production, sale or delivery of Output from, the Chelan Power System, including attorneys' fees and costs, in each case to the extent not paid from proceeds of insurance or otherwise recovered from third parties.

- (iv) **Loss Prevention.** All costs for the prevention of any loss or damage to the Chelan Power System, and all costs of the correction of any loss or damage to the Chelan Power System to the extent not paid from proceeds of insurance covering such loss or damage.

Anything in this Appendix A to the contrary notwithstanding, Operating Costs shall not include costs paid or deemed paid from the proceeds of Debt Obligations or to the extent the costs of Capital Improvements were paid from Capital Recovery Charges or Debt Reduction Charges as contemplated in Sections 7.01 (F) and (G).

The Purchaser agrees that the District may, in its sole discretion, determine what Operating Costs shall be incurred in connection with the ownership, operation, maintenance and improvement of, and the production, sale and delivery of Output from, the Chelan Power System.

Notwithstanding anything to the contrary, if an item of cost or expense referred to above or any part thereof shall relate to less than all of the Share Participants, or shall clearly not be applicable to a Share Participant, such item shall only be included as an item of Net Costs with respect to those Share Participants to which such cost or expense relates.

- (b) **Financing Costs.** Financing Costs (“Financing Costs”) for each Month shall consist of the monthly accrual, as determined by the District, of the following costs payable or deemed payable by the District or the Chelan Power System, as the case may be, in connection with the issuance, incurring and carrying of Debt Obligations:

- (i) **Outstanding Debt Obligations.** With respect to Debt Obligations that are outstanding as of January 31, 2006 (“Outstanding Debt Obligations”), the Purchaser will pay Financing Costs based on the payment and amortization schedule attached hereto as Schedule A-1, and regardless of actual payments owed by the District and regardless of any subsequent changes in such Debt Obligations, whether as a result of prepayments, refundings, restructuring or otherwise.

- (ii) **Future Debt Obligations.** With respect to Debt Obligations that are incurred after January 31, 2006 (“Future Debt Obligations”), the Purchaser will (a) pay, commencing November 1, 2011, the monthly amortization of the Assumed Debt Service on such Debt Obligations attributable to Rocky Reach, and (b) pay, commencing July 1, 2012, the monthly amortization of the Assumed Debt Service on such Debt Obligations attributable to Rock Island.

Following the issuance or incurrence of any Debt Obligation, the District will make available to the Purchaser, at its request, a written schedule showing the Capital Improvements expected to be financed by the District from the proceeds thereof, the estimated Average Service Life of such Capital Improvements as determined by the District and the scheduled monthly Financing Costs associated with such Debt Obligations.

- (iii) **Refunding Obligations.** The Purchaser's Financing Costs with respect to Debt Obligations shall be determined as of January 31, 2006 or the date of original issuance or incurrence thereof, as the case may be, and will not be affected by any subsequent direct or synthetic refinancing of such obligations.

Except as provided in Section 2(c) below, no adjustment will be made to the Purchaser's scheduled Debt Obligations payments as calculated in accordance with this Section as a result of the payment, purchase, defeasance, tender, acceleration, redemption or other restructure or modification of Debt Obligations after the initial issuance or incurrence thereof.

- (c) **Capital Recovery Charge and Debt Reduction Charge Adjustments.** If the District purchases, redeems or defeases outstanding debt of the Chelan Power System from moneys on deposit in the Capital Recovery Charge Fund or Debt Reduction Charge Fund, or from proceeds of insurance received with respect to components of the Capital Improvements that the District elects not to repair, rebuild or replace, all as determined by the District, the District shall provide the Purchaser with a credit against its monthly Financing Costs otherwise due from time to time hereunder, spread over a 25 year period from the month following the month of calculation (which the District agrees to complete as soon as reasonably practical following such purchase, redemption or defeasance), computed on a level monthly credit basis, using the following criteria, all as determined by the District: (i) the interest component of the credit shall be the actual weighted average interest rate applicable to Debt Obligations included in the Purchaser's Financing Costs (as set forth in Schedule A-1 and as determined in accordance with Section 2(b)(ii)), and (ii) the principal component of the credit shall equal the principal amount of debt of the Chelan Power System that was purchased, redeemed or defeased with such funds.

Anything in this Appendix A to the contrary notwithstanding, the District's determination of Net Costs, Operating Costs and Financing Costs shall be binding and conclusive on the Purchaser absent manifest error.

Notwithstanding the foregoing, the District, in its discretion, may adjust

the Financing Costs contemplated in this Section 2 as it deems necessary, from time to time, to correct any error in the computation thereof, or to reflect a material change in the District's reasonable estimate of the In Service Date or the Average Service Life with respect thereto, and shall either add to or credit the amounts otherwise due in such month under this Section 2, to reflect the cumulative effect of any such adjustment.

Anything in this Appendix A to the contrary notwithstanding, except as provided in Section 15.02 of this Agreement, no credits shall be given for any income or revenues from the sale or other disposition of Output to any person.

3. **Use of Funds; Separate Accounts.**

- (a) Except as otherwise expressly set forth in this Agreement, the District, in its sole discretion, may use payments received from the Purchaser under this Agreement in any manner that the District shall determine.
- (b) The moneys in any fund or account established pursuant to this Agreement may be deposited and invested on a commingled basis by the District; provided, that the District shall maintain adequate accounting records to reflect any restricted applications of the moneys on deposit therein.
- (c) The designation of any fund or account herein shall not be construed to require the establishment of any independent, self-balancing fund as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain funds for certain purposes and to establish certain priorities or requirements for application thereof as provided herein.

4. **Issuance and Incurrence of Debt Obligations and Refunding Obligations.**

The District in its discretion may issue and incur Debt Obligations for the purpose of financing Capital Improvements to the Chelan Power System and may issue or incur Refunding Obligations to Refinance Debt Obligations and Refunding Obligations.

Anything in this Agreement to the contrary notwithstanding, the covenants, agreements, terms and provisions of all Debt Obligations and Refunding Obligations, including all bond resolutions, loan resolutions, trust agreements and indentures, loan agreements, reimbursement agreements, leases, bonds, notes and other similar instruments, adopted or executed by the District with respect to such Debt Obligations and Refunding Obligations shall be determined by the District in its sole discretion.

SCHEDULE A-1

**SCHEDULE OF FINANCING COSTS WITH RESPECT TO DEBT
OBLIGATIONS OUTSTANDING AS OF JANUARY 31, 2006**

<u>Period</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Principal & Interest</u>	<u>Reserve & Contingency</u>	<u>Total Debt Service</u>	<u>Total Debt Obligation Outstanding(4)</u>
2011 RR (1)	2,845,770.78	2,363,260.12	5,209,030.90	333,333.34	5,542,364.24	231,747,832.10
2012 RR (2)	17,296,757.50	13,349,015.51	30,645,773.01	2,000,000.04	32,645,773.05	214,387,162.06
2012 RI (3)	<u>6,648,348.71</u>	<u>10,089,919.27</u>	<u>16,738,267.98</u>	<u>1,134,250.00</u>	<u>17,872,517.98</u>	<u>326,556,072.67</u>
2012 Total	23,945,106.21	23,438,934.78	47,384,040.99	3,134,250.04	50,518,291.03	540,943,234.73
2013	31,951,487.18	32,010,748.96	63,962,236.14	4,268,500.04	68,230,736.18	508,835,830.46
2014	34,070,581.26	30,279,484.44	64,350,065.70	4,268,500.04	68,618,565.74	474,596,282.00
2015	33,452,319.44	28,610,324.85	62,062,644.29	3,268,500.02	65,331,144.31	438,910,852.99
2016	33,272,297.15	26,918,105.06	60,190,402.20	2,268,500.00	62,458,902.20	405,440,120.21
2017	33,629,144.40	25,107,552.62	58,736,697.02	2,268,500.00	61,005,197.02	371,595,931.29
2018	25,786,035.52	22,918,336.37	48,704,371.89	2,268,500.00	50,972,871.89	345,576,852.25
2019	23,816,802.25	20,965,804.59	44,782,606.85	2,268,500.00	47,051,106.85	321,507,500.94
2020	25,278,962.53	19,560,195.11	44,839,157.64	2,268,500.00	47,107,657.64	295,954,851.31
2021	26,095,075.35	18,047,085.20	44,142,160.55	2,268,500.00	46,410,660.55	269,714,457.60
2022	27,521,910.08	16,440,932.73	43,962,842.81	2,268,500.00	46,231,342.81	242,192,547.53
2023	29,132,549.68	14,755,163.04	43,887,712.73	2,268,500.00	46,156,212.73	213,059,997.84
2024	30,365,634.32	12,990,312.02	43,355,946.34	2,268,500.00	45,624,446.34	182,694,363.53
2025	29,653,862.44	11,128,760.59	40,782,623.03	2,268,500.00	43,051,123.03	153,040,501.08
2026	29,742,752.10	9,306,331.14	39,049,083.24	2,268,500.00	41,317,583.24	123,297,748.98
2027	30,080,459.43	7,492,206.09	37,572,665.52	2,268,500.00	39,841,165.52	93,217,289.56
2028	30,766,917.37	5,671,857.89	36,438,775.26	2,448,739.56	38,887,514.81	62,450,372.19
2029	17,431,506.44	3,145,877.39	20,577,383.83	1,073,950.88	21,651,334.70	26,198,686.75
2030	6,741,011.77	1,582,782.42	8,323,794.19	-	8,323,794.19	19,457,674.98
2031	4,986,464.68	1,188,202.18	6,174,666.86	-	6,174,666.86	14,471,210.30

1) Beginning November 2011 amounts due related to the Rocky Reach System
2) 2012 amounts due related to the Rocky Reach System
3) Beginning July 2012 amounts due related to the Rock Island System
4) As of the beginning of each period.

APPENDIX B

OUTPUT, SCHEDULING, PLANNING AND TRANSMISSION

This Appendix B shall govern the determination of the Output to be made available to Purchaser under this Agreement. This Appendix B, in conjunction with the Transmission Agreement and the Interconnection Agreement, shall also govern the management, scheduling, delivery and transmission of the Output.

Definitions

In addition to the terms elsewhere defined in this Agreement, the following terms used in this Appendix B shall have the meanings ascribed to them below.

Biological Opinion - means any opinion issued by a Government Authority authorized to do so under the Endangered Species Act (ESA) that reviews and assesses whether the operating plan submitted by BPA, the U.S. Army Corps of Engineers and the Bureau of Reclamation will jeopardize the survival of any creature or creatures that have been determined to be threatened or endangered pursuant to the ESA.

Black Start Capability – The ability of generators to self-start without any source of off-site electric power and maintain adequate voltage and frequency while energizing isolated transmission facilities and auxiliary loads of other generators.

Bonneville Power Administration (BPA) - The Federal power marketing agency responsible for the selling of the output of all Columbia River Federal project generation, and ownership, operation and maintenance of a major share of the northwest high-voltage transmission system.

Canadian Entitlement – The amount of energy and capacity that Rocky Reach and Rock Island are obligated to return to BPA in its capacity as the US Entity for the account of the Canadian government to fulfill obligations under the US-Canadian Columbia River Treaty of 1964.

Chelan Power System Output includes adjustments for the following:

1. Canadian Entitlement
2. MCHC
3. PNCA
4. HCP
5. Biological Opinion
6. Hanford Reach Fall Chinook Protection Program
7. Immediate Spill Replacement
8. Operational Constraints

Fish Spill – The required spill of water for the passage of fish past the Projects as required by FERC order, the District's HCP, spill for studies, or other Regulatory Authorities.

Habitat Conservation Plans (HCP) - The plans approved as part of the Rocky Reach and Rock Island licenses to protect anadromous fish passing upstream and downstream at the projects.

Hanford Reach Fall Chinook Protection Program (Vernita Bar) - The agreement which defines the Mid-Columbia projects' (Grand Coulee, Chief Joseph, Wells, Rocky Reach, Rock Island, Wanapum, and Priest Rapids) operational obligations for the fresh water life cycle protection of the Hanford Reach Fall Chinook which has been signed by the District, National Oceanic and Atmospheric Administration's Department of Fisheries (NOAA Fisheries), Washington Department of Fish and Wildlife, PUD No. 2 of Grant County, and PUD No. 1 of Douglas County.

Immediate Spill Replacement – The energy received from the Federal government for the purpose of moving spill from the Federal system to reduce total dissolved gas levels downstream from Federal reservoirs.

Load Following/Regulation - The ability to adjust generation within an hour (or pursuant to dynamic scheduling) to follow variations in load. Load Following/Regulation is limited and constrained by the number of Units available, any limitations on the Units, Ramp Rate, and any other power or non-power restrictions.

Mid-Columbia Hourly Coordination (MCHC) - The 1997 Agreement For The Hourly Coordination Of Projects On The Mid-Columbia River (or its successor agreement) is an agreement among the principal parties that own or have rights to generation relating to the seven mid-Columbia hydro projects (Grand Coulee, Chief Joseph, Wells, Rocky Reach, Rock Island, Wanapum, and Priest Rapids). This agreement coordinates the hydraulic operation (generation, flows, and storage) among these projects.

Non-Spinning Operating Reserves – Those reserves that may be available at any time from all Units of the Chelan Power System not then connected to the system but capable of being connected and serving demand within a specified time.

Operational Constraints - Constraints on the Units, or a Project's operation that are deemed necessary by the District in its sole discretion meet any requirement due to the HCP, regulations, Laws, court orders, authority, safety, or to maintain reliability of the Chelan Power System, or to minimize equipment wear, maintain equipment, or repair/replace equipment, or that are due to any other event or circumstance described in Article VI of the Agreement or any other event beyond the control of the District.

Pacific Northwest Coordination Agreement (PNCA) – Shall mean the agreement among Northwest parties for the coordinated operation of the Columbia River system on a seasonal and monthly basis. The PNCA defines the firm energy output of the Chelan Power System, as well as other rights and obligations, including provisional energy, interchange energy, in-lieu energy, and others defined in the contract. The PNCA does not allow resources above the head works of Bonneville Dam to be removed from coordination, and currently all Capacity and Energy of the Chelan Power System is included in PNCA planning. PNCA serves as a settlement of the Federal Power Act Section 10(f) obligation to reimburse upstream Federal projects for energy gains as a result of the storage provided, as well as a FERC approved settlement among all Non-Federal

parties for upstream benefit payments. The Purchaser may need to become a signatory to PNCA or contract with another PNCA party to fulfill any and all of the obligations required by PNCA with respect to the Purchaser's Percentage of Output.

Pond/Storage – The volume of water, expressed in MWH, that can be stored behind a Project between its minimum and maximum headwater elevations.

Project Transmission Facilities - Those Project owned transmission facilities included in the Chelan Power System and listed in Appendix C that are utilized to transmit Output to the Chelan Transmission System.

Ramp Rate – means the rate of change in the level of generation for a specified period within all applicable Operational Constraints. The maximum Ramp Rate is a variable quantity based upon these limitations.

Regional Transmission Organization (RTO) – shall mean any regional transmission organization which governs loads, generation, ancillary services and transmission of both Parties. As of the Signing Date, there is no such RTO.

Remedial Action Schemes (RAS) - Any action implemented by the District utilizing the Chelan Power System to maintain the transfer capabilities and stability of the western electrical system.

Spinning Operating Reserves – The difference at any time between total available Capacity of all Units of the Chelan Power System then on-line and the sum of the then-current generation level of those on-line Units.

Spill – Water that passes over a spillway without going through turbines to produce energy.

Spill Past Unloaded Units - Spill that occurs while Units are not all fully loaded.

Transmission Rights – The Purchaser has transmission rights up to the Purchaser's Percentage of available Project Transmission Facilities as specified in Section 9 of this Appendix B, subject to the Transmission Agreement.

Unit - Each generating unit or collectively, the generating units at the Projects. The Units currently consist of the eleven generating Units C1 through C11 at Rocky Reach, the eleven generating Units BH (house Unit) and B1 through B10 at Rock Island Powerhouse One, and the eight generating Units U1 through U8 at Rock Island powerhouse Two. Unit may also include any other generating Units installed in the Chelan Power System.

Voltage Support / MegaVars (MVARs) – Shall mean reactive power supplied or absorbed by the Chelan Power System as required to maintain voltage at adjacent switchyards. Under certain operating conditions, the MVARs output from the Units may cause a reduction in the Capacity of the Chelan Power System.

OUTPUT

Section 1. Chelan Power System Output.

(A) **Energy Component.** Purchaser's Percentage of Output shall be determined in reference to actual deliverable electric energy from the Chelan Power System from time to time in amounts expressed in megawatt hours ("Equivalent Energy") as determined by the following methodology, it being understood that Output may be for purposes of this Appendix supplied by the District from any source and not necessarily from the Chelan Power System.

"Equivalent Energy" shall be determined in accordance with the following methodology:

1. Determine the average total stream flow for the day for both the Rocky Reach and the Rock Island Projects in thousand cubic feet per second (kcfs).
2. Determine the average turbine flow for the day at the Rocky Reach Project in thousand cubic feet per second (kcfs). Turbine flow equals the total stream flow less spill.
3. Determine the number of generating units which were available for operation hour by hour for both the Rocky Reach and the Rock Island Projects.

The District, in consultation with the Purchaser, will develop Tables for each Rocky Reach and Rock Island Projects to correlate the amount of Equivalent Energy to be made available to the Purchaser for variable turbine flows and unit availabilities. All upstream and downstream encroachments, adjustment for station service and losses to the Transmission Point(s) of Receipt will be reflected in the Tables. Energy deliveries or consumption obligations that are a Project responsibility under applicable Laws or agreements (including, but not limited to, fish hatcheries) will be reflected in the Tables. These Tables will be revised and updated by the District to reflect the current energy correlations.

4. Adjust the Table amounts, if necessary, to provide the required amount of reserves per the applicable reserve standard.
5. Adjust the Table amounts for any reductions, limitations or increases due to fishery programs, including but not limited to, spill for fish bypass and capability reductions for a bypass system.
6. Adjust the Table amounts for any reductions, limitations or increases due to the Hanford Reach Fall Chinook Protection Program and the Biological Opinion or any other limitations imposed by Government Authorities.
7. Adjust the Table amounts for any reductions, limitations or increases due to the HCP.
8. Allocate the Table amounts to appropriate hours of the day based on 90% of the actual shaping capability of the Projects.
9. Adjust the Table amounts for reductions or interruptions reasonably necessary to promote and support national, regional and local electric system stability and reliability (including, but not limited to, MVAR support of the transmission system).
10. Adjust the Table amounts for any other operational limitations lawfully imposed, force majeure events, and any other Operational Constraints.

11. Adjust the Table amounts for energy delivery obligations under the Canadian Entitlement Allocation Extension Agreement signed by the District and the Bonneville Power Administration, acting as the U.S. Entity under the U.S. Canada Treaty of 1964.
12. Adjust the Table amounts for any other exchange energy.
13. Adjust the Table amounts for all other Chelan Power System rights and obligations.
14. Adjust the Table amounts for energy delivery rights that are a Project right under applicable laws or agreements (including, but not limited to, PNCA).
15. Adjust the Table amounts for limitations imposed by and rights under the FERC licenses, MCHC, HCP, Biological Opinion, Hanford Reach Fall Chinook Protection Program and Immediate Spill Replacement.

(B) **Load Following and Regulation.** Output includes Load Following/Regulation services by the Chelan Power System.

(C) **Chelan Power System Rights and Obligations.** Output includes the rights and obligations from Canadian Entitlement, MCHC, PNCA, HCP, Biological Opinion, Hanford Reach Fall Chinook Protection Program and Immediate Spill Replacement.

(D) **Spinning Operating Reserves and Non-Spinning Operating Reserves.** The Purchaser's ability to utilize Output for purposes of Spinning Operating Reserves and Non-Spinning Operating Reserves shall be limited to and as provided in MCHC and its related operating protocols. The Parties agree that they will negotiate in good faith with each other and with other MCHC parties to modify MCHC's operating protocols in order to provide for the availability of Spinning Operating Reserves and Non-Spinning Operating Reserves; provided, however, that under any circumstances, the District reserves the right to refuse to place unloaded Units on-line for the sole purpose of meeting Purchaser's Spinning Operating Reserve obligations. Purchaser shall not be entitled to sell or transfer Spinning or Non-Spinning Operating Reserves. Purchaser's use of Spinning Reserves is limited to such use as necessary to meet regulatory or reliability requirements as described in Section 3 of this Appendix B.

(E) **Excluded Products and Services.** Output does not include the following:

(i) Capacity (Output does include Capacity required for load following and reserve requirements, as described in this Appendix B);

(ii) Pond/Storage;

(iii) Black Start Capability;

(iv) RAS;

(v) Voltage Support/MegaVars (MVARs); and

(vi) All other items not specifically included in Clauses (A) through (E) of this Section 1, except as otherwise described in Clause (G) below. It is Purchaser's responsibility to provide any additional ancillary services required to comply with safety and reliability standards in connection with Purchaser's receipt and use of Output.

CONTROL AREA SERVICES AND FEES

Section 2. **Control Area Services not included in Output.** The Purchaser's load is within the District's Balancing Authority. There are certain fees (such as WECC fees) that are assessed based on load in the District's Balancing Authority. The Purchaser will be responsible for their percentage share of the total assessment. Their percentage share of the total assessment will be calculated by multiplying the total assessment by the fraction of the Wenatchee Works annual energy usage, in MWHs, divided by the sum of the Wenatchee Works annual energy usage and the District's annual energy usage, in MWHs for the applicable period. These costs shall be charged as costs in addition to Net Costs.

OPERATING RESERVES AND THE NORTHWEST POWER POOL RESERVE SHARING GROUP

Section 3. **Operating Reserves.** The Purchaser is responsible for providing an adequate amount of operating reserves per the Regulatory Authority for an amount of generation equal to the "Equivalent Energy" and for an amount of load equal to the Wenatchee Works energy usage. The Purchaser may use their percentage share of the Output to provide these operating reserves; provided, however if the amount of operating reserves from the Output is less than the minimum required amount per the Regulatory Authority, the Purchaser shall procure operating reserves to meet the Regulatory Authority's minimum requirement. The Purchaser shall be responsible for all costs to purchase, schedule and deliver any necessary operating reserves. The District is a member of the Northwest Power Pool Reserve Sharing Group (NWPPRSG) which allows the District to provide fewer operating reserves than if the District was not a member. Since the Wenatchee Works Load is in the District's Balancing Authority, the Purchaser also shares in the benefits and obligations of the NWPPRSG.

SCHEDULING OF OUTPUT

Section 4. **Scheduling for Energy Deliveries.** Purchaser shall notify the District of the Wenatchee Works energy requirements and instruct the District on managing the Purchaser's Energy usage/resource balance. The District shall execute Supplemental Power Purchases and Excess Energy Sales to balance the Purchaser's resources with the Purchaser's energy usage per Appendix D. The Parties shall each be responsible for their respective adherence to all scheduling protocols in WECC, NERC, RTO, or another Regulatory Authority's imposed protocols. The scheduling protocols established in this Appendix B are not intended to confer or grant to Purchaser any additional rights or entitlements to Output beyond that otherwise described in the body of this Agreement.

OPERATING AND SCHEDULING PROCEDURES

Section 5. Modification or Addition of Operating and Scheduling Procedures. The District may establish new or additional operating or Scheduling procedures that the District considers necessary to effectuate this Agreement and to conform to standard Scheduling and operating practices in the region. Changes may also be made to conform to WECC, NERC or other Regulatory Authority's standard Scheduling protocol/practices. Changes for other reasons will be made by mutual agreement.

PLANNING DATA

Section 6. Planning Data. The District shall from time to time supply information as set forth in Section 5.05 of the Agreement for planning purposes.

OPERATING DATA

Section 7. Operating Data. Purchaser may from time to time request that the District provide Purchaser with available operating data related to the Chelan Power System, including planned outages, Fish Spill estimates and other anticipated events or circumstances that might affect Output over the ensuing 12 months. The District shall use commercially reasonable efforts to comply with such requests, to the extent such information is in the District's possession; provided, however, that the District shall not be liable to the Purchaser for any inaccuracies in such information or the failure of the District to deliver it in a timely manner. The Parties anticipate that the technology for the transfer of such information and the information required to operate Purchaser's Percentage of Output will change over time. The Parties agree to transfer operating information reasonably needed by Purchaser to manage its Percentage of Output by means of a technology that is both cost-effective and timely, as mutually agreed by the Parties.

COORDINATION AGREEMENT

Section 8. Pacific Northwest Coordination Agreement ("PNCA"). The District is currently a signatory of the PNCA and expects that the PNCA will remain in effect throughout the term of this Agreement. The District's current FERC licenses also require that the Projects be coordinated with other generating facilities in the Pacific Northwest. It is the intention of both Parties that Purchaser's Percentage of Output remain coordinated under the PNCA. All rights and duties under the PNCA as applicable to Purchaser's Percentage of Output shall be discharged solely by Purchaser, except as otherwise provided in this Section 8. None of the means to implement this coordination, whether through the Purchaser becoming signatory to the PNCA, or by means of the District's current PNCA contract, or other mutually agreeable methods are precluded or specified by this Agreement, and are left for later determination. If Purchaser is not a signatory to the PNCA, it is expected that another mutually acceptable agreement will be reached by the Parties prior to the delivery of any Purchaser's Percentage of Output to Purchaser. In the event that no such agreement is reached, Purchaser commits to becoming a signatory to PNCA and will assume all rights and obligations associated with coordinating its Purchaser's Percentage of Output under PNCA. The headwater benefit obligations defined by the PNCA are also a settlement of FERC Section 10(f) obligations to the

upstream Federal projects, as well as non-Federal parties. As such, any costs of such headwater benefits with respect to Rock Island and Rocky Reach are considered a Project cost and will be included in Net Costs.

TRANSMISSION

Section 9. **Transmission.** This section 9 of Appendix B is intended to describe the relationship between various services provided by the District in the Power Sales Agreement and the Transmission Agreement. Terms and conditions for all transmission service are contained in the Transmission Agreement.

(A) **Definitions.** As used in this Section 9, the following terms used in capitalized form shall have the following meanings:

Chelan Transmission System – The District’s electric facilities, whether owned or leased, that are operated at voltages in excess of 100,000 volts, including all associated system protection and control facilities, and any other facilities, including land and access roads that may be classified as “transmission facilities” pursuant to the FERC Uniform System of Accounts. The Chelan Transmission System does not include Project Transmission Facilities.

Interconnection Agreement - The agreement between Purchaser and the District providing for the interconnection of the Purchaser’s electric transmission facilities with the Chelan Transmission System, as well as terms and conditions for the parallel operation of the Chelan Transmission System and Purchaser’s transmission system. Promptly following the execution of the Power Sales Agreement, and in all events prior to January 1, 2010 or such later date as agreed upon by the Parties, the Parties will enter into the Interconnection Agreement in form and substance reasonably satisfactory to the District and the Purchaser.

Transmission Point(s) of Delivery - The point(s) where the Chelan Transmission System interconnects with the Purchaser’s electric transmission facilities or a third party’s electric transmission facilities.

Transmission Point(s) of Receipt - The point(s) as defined in the Transmission Agreement of interconnection with the Chelan Transmission System.

Transmission Agreement – An agreement dated _____ between the Purchaser and the District that provides terms and conditions for the transmission of the Purchaser’s Percentage of Project Output over the Chelan Transmission System from specified Transmission Point(s) of Receipt to Transmission Point(s) of Delivery.

(B) **Third Party Transmission Service.**

Purchaser is responsible for obtaining all necessary transmission capacity, arranging scheduling and paying associated costs to transmit all “Equivalent Energy” obtained from its Purchaser’s Percentage of Output from the Transmission Point(s) of Delivery to Purchaser’s system or any alternate point of receipt. The Purchaser is also responsible for

obtaining all necessary transmission capacity, arranging scheduling and paying associated costs to transmit Supplemental Power Purchases as per Section a) of Appendix D.

(C) Project Facilities.

Project Transmission Facilities may be required to transmit Purchaser's Percentage of Output from the relevant interconnection points to the Transmission Point(s) of Receipt. Purchaser shall pay a pro-rata share, equal to its Purchaser's Percentage of Output, of the costs of construction, maintenance and upkeep of Project Transmission Facilities as part of Net Costs and shall be entitled to use the same share of the electric capacity. Project Transmission Facilities are depicted on Appendix C. Any unused capacity on Project Transmission Facilities shall be available for use by the District.

It will be Purchaser's responsibility to handle its own transmission availability posting and scheduling in accordance with FERC regulations for its pro-rata share of the capacity of Project Transmission Facilities.

(D) Chelan Transmission Service.

Prior to the initial delivery of Purchaser's Percentage of Output, Purchaser and the District intend to enter into a Transmission Agreement (and, at the discretion of the District, a separate Interconnection Agreement).

The Transmission Agreement shall contain all terms and conditions required to effectuate the delivery of Purchaser's Percentage of Output from the Purchaser's "Transmission Point(s) of Receipt", across the Chelan Transmission System to the Purchaser's "Transmission Point(s) of Delivery." The Parties will structure the Transmission Agreement as required to support the efficient exchanges of electric capacity and energy contemplated by Canadian Entitlement, MCHC, and PNCA, and to allow Purchaser flexibility in designation of Transmission Points of Delivery and Transmission Points of Receipt, so long as such flexibility does not adversely affect the safety and reliability of the Chelan Transmission System, the District's retail electric service obligations, or other firm District transmission service obligations.

In addition to specifying Transmission Point(s) of Receipt and Transmission Point(s) of Delivery, the Transmission Agreement will also specify the maximum amount of transmission demand that the District commits to transmit for the Purchaser to each Transmission Point(s) of Receipt and/or Transmission Point(s) of Delivery, a formula for determining electric line loss compensation by the Purchaser to the District, and a methodology for determining the transmission rate paid by the Purchaser to the District. The Parties contemplate that the Transmission Agreement shall run contemporaneously with the Agreement; provided, however, that any Interconnection Agreement between the Parties may have a term that extends beyond the term of the Agreement.

APPENDIX C
Project Transmission Facilities

Rocky Reach:

All generator step-up transformers

All lines from Rocky Reach to the Rocky Reach Switchyard including the breakers and switches associated with these lines connecting them to the bus.

Rock Island:

All generator step-up transformers

All lines from Rock Island to the McKenzie Switchyard including the breakers and switches associated with these lines connecting them to the bus.

The Rock Island Powerhouse Two 115 kv breakers 3-350, 3-360, and 3-370 with their associated switches.

APPENDIX D

EXCESS ENERGY SALES AND SUPPLEMENTAL POWER PURCHASES

The District will use Commercially Reasonable Efforts to assist Purchaser, at its request, with the management of its power resource portfolio for Wenatchee Works.

- a) At Purchaser's request, the District will make market purchases/sales (Supplemental Power Purchases and sales of Excess Energy) to balance all of the resources with Wenatchee Works plant load. The District and Purchaser shall mutually agree upon the amounts and timing for forward and balance of the month sales and purchases. The District will make decisions as to preschedule and real time sales and purchases. Purchaser acknowledges that market prices for purchases/sales fluctuate rapidly and that prompt response times and sales confirmations are necessary to achieving the desired pricing structure.
- Purchaser shall specify in its Forward Sales Request the proposed effective date of each such sale (the "Start Date"), the termination date thereof (which shall not be earlier than the balance of the month, nor later than three (3) months (or other mutually agreeable period) from the date of the Forward Sales Request) (the "End Date"), and the amount of Excess Energy that it wishes to sell (in increments of not less than 25 MW). The period between the Start Date and the End date is referred to herein as the "Forward Sales Period." The date so specified shall not be later than the scheduled expiration date of this Agreement.
 - Purchaser shall specify in its Forward Purchase Request the proposed effective date of each such purchase (the "Start Date"), the termination date thereof (which shall not be earlier than the balance of the month, nor later than three (3) months from the date of the Forward Purchase Request) (the "End Date"), and the amount of power that it wishes to purchase (in increments of not less than 25 MW). The period between the Start Date and the End date is referred to herein as the "Forward Purchase Period."
 - Purchaser will provide the District a list of approved counterparties for these forward purchases/sales. The District makes no representation to Purchaser about the creditworthiness of any counterparties or the capacity, reliability or appropriateness of said counterparty for the transactions. Purchaser specifically agrees that it is not relying upon the District for any determination of the creditworthiness or capacity, reliability or appropriateness of the counterparties to the transactions.
 - If, following a Forward Sales Request or Forward Purchase Request, the District, Purchaser reach agreement as to the advisability of such transactions, the District shall use commercially reasonable efforts to effectuate such sales or purchases to one or more parties on a list of counterparties approved in advance by Purchaser, in accordance with normal energy sales procedures

then in place by the District. Purchaser shall bear the full risk of all such sales and purchases.

- The District shall be listed as the source or sink control area on electronic tags.
 - The District shall maintain appropriate internal records of the forward purchases/sales of energy so that such forward and balance of the month purchases/sales may be tracked separately from other sales/purchases made by the District.
 - The purchase/sales price of the forward transactions shall be the price as evidenced by the confirmation documentation. Broker fees, when applicable, shall be billed to Purchaser. All transmission fees/charges associated with the energy transactions will also be charged to Purchaser. Any purchase of energy will require use of the District's transmission system and appropriate charges will be paid by the Purchaser to the District for the use of the transmission system.
 - Purchaser will pay scheduling fees per the District's Electric Rate Schedule 4, except to the extent a Sales and Administrative Charge has been charged with respect to such Forward Sales pursuant to this Agreement.
 - The District will not be obligated to post any collateral, margin, or other security interest to facilitate the transactions described herein or otherwise. If the District completes a purchase or sales transaction and subsequently the counterparty requires that such collateral, margin, or other security interest to secure performance under that purchase or sale transaction, it will be the responsibility of Purchaser to post any required collateral in a timely fashion and in such form that is acceptable to the counterparty. If Purchaser failure to promptly post the required collateral the District may reverse the transaction with the counterparty and charge Purchaser for any losses associated with the transaction reversal or termination, together with all unwind costs and expenses.
 - In the event forward sales made by the District are greater either on the high load hours or light load hours than the energy available to Purchaser, the shortfall shall be considered a Supplemental Power Purchase.
- b) Purchaser may not submit Forward Sales Requests or Forward Purchase Requests when they are in default under this Agreement.
- c) Purchaser will bear all risks associated with purchases/sales including, without limitation, the non-payment risk, the risk of after the fact refunds, price caps or any other downward adjustment to the sales price. The District will, upon request of Purchaser, assign to Purchaser the contractual rights associated with such

purchases/sales. Purchaser shall bear the full costs associated with all sales and purchases, including, without limitation, all Losses, non-delivery risk, the non-payment risk, the risk of refunds, price caps or any other downward adjustment to the sales price and all collection and enforcement costs.

- d) Purchaser, as a condition to the initiation of any sale or purchase agree to indemnify and hold the District harmless from any and all adverse consequences resulting from any sale or purchase, including, without limitation (A) non-payment, late payments, contract disputes, collection fees, costs and expenses or other difficulties with the counterparties, brokerage fees and penalties and (B) all other losses, costs and expenses associated with such sales and purchases (all such adverse consequences being collectively referred to as “Losses”). Losses shall not include any actual or perceived impact on the District caused by changes in market prices as a result of any sale or purchase. Any losses may be deducted from any Surplus Proceeds as determined by the District.
- e) The parties agree that the District shall not be liable to Purchaser, and Purchaser hereby waive any and all claims, for Losses or damages arising from any miscalculation of the amount of resources available to Purchaser, the failure of any counterparty to take or pay for the energy, the failure of any counterparty to deliver energy, whether or not the Power could be sold at higher prices, whether or not the Power could have been purchased at lower prices, or any other losses or damages due to sales or purchases or lack of sales or purchases of said energy by the District, in each case except to the extent such Losses arose from the District’s gross negligence or willful misconduct.

In the event of a default by any purchaser of energy from the District’s system for preschedule and real time sales, Purchaser’s share of any revenue derived from such sales, shall be reduced in proportion to their sales in relation to all sales from the District’s system in the period of the default. In the event of any recovery of funds after default, Purchaser will receive a credit in proportion to their share of the original losses, net of Purchaser’s share of all costs of collection. In the event of retroactive price caps, rebates, refunds, or any retroactive price reduction or increase imposed on the District, Purchaser’s respective daily high load and light load sales prices will be reduced or increased to reflect the District’s adjusted sales price and a billing adjustment issued.

APPENDIX E

[Initial Shutdown Amount and Shutdown Settlement Amount]

Column	A	B
	Initial Shutdown Amount	Shutdown Settlement Amount
2012	8,615,526	87,067,603
2013	8,615,526	83,676,133
2014	8,615,526	80,081,175
2015	8,615,526	76,270,520
2016	8,615,526	72,231,225
2017	8,615,526	67,949,573
2018	8,615,526	63,411,021
2019	8,615,526	58,600,156
2020	8,615,526	53,500,640
2021	8,615,526	48,095,152
2022	8,615,526	42,365,335
2023	8,615,526	36,291,729
2024	8,615,526	29,853,707
2025	8,615,526	23,029,404
2026	8,615,526	15,795,642
2027	8,615,526	8,127,855
2028	8,615,526	8,127,855

The amounts in Column B above are subject to adjustment in accordance with Amendment Two to the Restated and Amended Industrial Power Sales Contract.

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