

## DOCKETED

<b>Docket Number:</b>	16-RPS-02
<b>Project Title:</b>	Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility
<b>TN #:</b>	212420
<b>Document Title:</b>	19-2007-03-28-BC Hydro Agreement No-BP 05-020-B (Bates Nos. LA000196-LA000273)
<b>Description:</b>	N/A
<b>Filer:</b>	Pjoy Chua
<b>Organization:</b>	LADWP
<b>Submitter Role:</b>	Applicant
<b>Submission Date:</b>	7/22/2016 4:52:25 PM
<b>Docketed Date:</b>	7/22/2016

**POWER PURCHASE AGREEMENT**

BETWEEN

THE CITY OF LOS ANGELES ACTING BY AND THROUGH ITS  
DEPARTMENT OF WATER AND POWER

AND

POWEREX CORP.

DWP No. BP 05-020-B



1 **TABLE OF CONTENTS**

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

ARTICLE I DEFINITIONS AND INTERPRETATION..... 2

    Section 1.1    Definitions..... 2

    Section 1.2    Interpretation..... 9

ARTICLE II CONDITIONS PRECEDENT AND DETERMINATION OF  
RENEWABLE ENERGY PRICE ..... 10

    Section 2.1    Conditions Precedent ..... 10

    Section 2.2    Conditions Precedent for benefit of Powerex ..... 10

    Section 2.3    Failure of Conditions Precedent..... 10

    Section 2.4    Process for establishing Renewable Energy Price ..... 11

ARTICLE III TERM AND EARLY TERMINATION..... 13

    Section 3.1    Effective Date and Term ..... 13

    Section 3.2    Survivability ..... 13

    Section 3.3    Early Termination. .... 13

    Section 3.4    Early Termination by Mutual Agreement..... 13

ARTICLE IV PURCHASE OF ENERGY ..... 13

    Section 4.1    Sale and Purchase Obligation ..... 13

    Section 4.2    Operating Reserves ..... 13

    Section 4.3    Source Control Area ..... 13

    Section 4.4    Failure to Deliver the Contract Quantity ..... 13

    Section 4.5    Failure to Receive the Contract Quantity..... 14

    Section 4.6    Additional Provisions for Non-Delivery/Non-Receipt ..... 14

    Section 4.7    Delivery of Non-Renewable Energy..... 14

    Section 4.8    Guaranteed Percentage of Renewable Energy..... 16

ARTICLE V PRICING FOR DELIVERED ENERGY ..... 17

    Section 5.1    Pricing for Delivered Energy..... 17

    Section 5.2    Renewable Energy. .... 17

    Section 5.3    Renewable Energy Credits..... 17

    Section 5.4    Quantity of Energy delivered..... 18

    Section 5.5    Mobile-Sierra ..... 18

1	ARTICLE VI TAXES, ENVIRONMENTAL CREDITS AND SCHEDULING .....	18
2	Section 6.1    Taxes.....	18
3	Section 6.2    Environmental Credits .....	19
4	Section 6.3    Scheduling of Energy.....	19
5	ARTICLE VII CREDIT SUPPORT .....	19
6	Section 7.1    Powerex’s Credit Support.....	19
7	Section 7.2    Credit Provisions.....	19
8	Section 7.3    Collateral Threshold.....	19
9	Section 7.4    Powerex Collateral Threshold.....	20
10	Section 7.5    Exceeding Collateral Threshold.....	20
11	Section 7.6    Posting of Performance Assurance .....	21
12	Section 7.7    Disputes regarding requested Performance Assurance.....	21
13	Section 7.8    Holding Posted Performance Assurance.....	21
14	Section 7.9    Letter of Credit Failure. ....	23
15	ARTICLE VIII BILLING AND PAYMENT .....	24
16	Section 8.1    Billing and Payment.....	24
17	Section 8.2    Annual Accounting .....	25
18	Section 8.3    Records and Audits .....	25
19	Section 8.4    Audit to confirm Renewable Energy .....	25
20	Section 8.5    Power Revenue Fund .....	25
21	ARTICLE IX REPRESENTATIONS AND WARRANTIES .....	26
22	Section 9.1    Representations and Warranties by LADWP .....	26
23	Section 9.2    Representations and Warranties by Powerex.....	27
24	ARTICLE X DEFAULT; TERMINATION AND REMEDIES; AND CALCULATION	
25	OF TERMINATION PAYMENT .....	28
26	Section 10.1    Default.....	28
27	Section 10.2    Default Remedy. ....	29
28	Section 10.3    Termination for Default. ....	29
29	Section 10.4    Calculation of Termination Payment.....	30
30	Section 10.5    Delivery of Performance Assurance .....	32
31	Section 10.6    Powerex Termination Right.....	33

1	ARTICLE XI DISPUTE RESOLUTION .....	33
2	Section 11.1    Dispute Resolution.....	33
3	ARTICLE XII MISCELLANEOUS .....	35
4	Section 12.1    Authorized Representative.....	35
5	Section 12.2    Notices .....	35
6	Section 12.3    Regulatory Compliance .....	35
7	Section 12.4    No Dedication of Facilities .....	35
8	Section 12.5    Force Majeure. ....	35
9	Section 12.6    Confidential Information .....	37
10	Section 12.7    Assignment of Agreement .....	37
11	Section 12.8    Ambiguity .....	37
12	Section 12.9    Attorney Fees & Costs.....	38
13	Section 12.10   Voluntary Execution .....	38
14	Section 12.11   Entire Agreement.....	38
15	Section 12.12   Waiver of Immunity.....	38
16	Section 12.13   Governing Law .....	38
17	Section 12.14   Effect of Section Headings .....	38
18	Section 12.15   Waiver .....	38
19	Section 12.16   Relationship of the Parties .....	39
20	Section 12.17   Third Party Beneficiaries .....	39
21	Section 12.18   Liability and Damages .....	39
22	Section 12.19   Severability .....	39
23	Section 12.20   Currency.....	39
24	Section 12.21   Counterparts.....	39
25	Section 12.22   Communications .....	39
26		
27		
28	APPENDIX A    FACILITIES/ ELIGIBLE RESOURCES .....	A-1
29	APPENDIX B    CONTACT INFORMATION .....	B-1
30	APPENDIX C    GUARANTEE AGREEMENT .....	C-1
31	APPENDIX D    CONTROL AGREEMENT .....	D-1
32	APPENDIX E    PRICING REFRESH MECHANISM. ....	E-1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

**POWER PURCHASE AGREEMENT**

**PARTIES**

The parties to this POWER PURCHASE AGREEMENT (“Agreement”) are the City of Los Angeles acting by and through its Department of Water and Power (“LADWP”), a department organized and existing under the Charter of the City of Los Angeles, a municipal corporation of the State of California and Powerex Corp., a corporation incorporated under the laws of British Columbia and authorized to do business in the State of California under the name “Powerex Energy Corp.” (“Powerex”) (individually a “Party” and collectively the “Parties”).

**RECITALS**

WHEREAS, on June 30, 2004 LADWP issued a request for proposals to acquire renewable resources;

WHEREAS, Powerex responded to the June 30, 2004 request for proposals and following negotiation has agreed to sell to LADWP and LADWP has agreed to purchase renewable energy attributed to small hydroelectric generation and other renewable energy sources;

WHEREAS, on June 29, 2005 LADWP developed and Los Angeles City Council adopted a renewable portfolio standard;

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made;

WHEREAS, this Agreement has been executed by Powerex and delivered to LADWP in order for LADWP to seek necessary approvals from its Board of Commissioners and Los Angeles City Council; it will become legally binding on Powerex only in accordance with the terms and subject to the conditions precedent contained herein and only when this Agreement has been executed and delivered by LADWP in accordance with the processes provided for in Article II;

WHEREAS, this Agreement is subject to completion by inserting the Renewable Energy Price as determined in accordance with the Pricing Refresh Mechanism;

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Parties agree as follows:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

Section 1.1 **Definitions.** In this Agreement, the following capitalized terms shall have the following meanings:

**“Aggregate Contract Quantity”** for a period means the quantity of Energy determined by multiplying the Contract Quantity for that period by the total number of hours during that period, and, subject to Section 12.5(b), subtracting therefrom the number of MWh not delivered in that period due to either Force Majeure claimed or invoked by either Party or LADWP’s unexcused failure to receive Energy.

**“Agreement”** means this Power Purchase Agreement, DWP No. BP 05-020-B, including the Appendices and Attachments.

**“Agreement Reference Date”** means the date on which this Agreement is executed by Powerex and delivered to LADWP to be submitted to the Board of Commissioners for approval, being March 1, 2007.

**“Authorized Representative”** means the person designated by a Party as such pursuant to Section 12.1.

**“Bankruptcy”** means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for thirty (30) days.

**“Board of Commissioners”** means the Board of Water and Power Commissioners organized and existing under the Charter of the City, that has the jurisdiction, among other things, to control, regulate and manage LADWP.

**“BPA”** means the Bonneville Power Administration.

**“Business Day”** means any day other than a Saturday or Sunday or a United States or Canadian holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Canadian holidays shall be holidays observed by Canadian chartered banks in the Province of British Columbia.

**“Cash”** means lawful currency of the United States of America.

**“Charter”** means the Charter of the City.

**“City”** means the City of Los Angeles, California, a municipal corporation of the State of California.

**“Claim”** has the meaning set forth in Section 11.1(b).

**“Collateral Threshold”** has the meaning set forth in Section 7.3.

**“Commencement Date”** means April 1, 2007, being the commencement date for deliveries of Energy under this Agreement.

1 **“Concurrent Agreement”** means Power Purchase Agreement DWP No. BP 05-020-A between  
2 the Parties in the form of the agreement executed and delivered by Powerex at the Agreement  
3 Reference Date.

4 **“Confidential Information”** means trade secrets, pricing, payment and billing information  
5 (including broker sheets and similar pricing data), generation data, information provided in  
6 connection with audits or disputes, and any other similar information marked as “confidential”,  
7 in each case that is provided by a Party to the other Party in connection with the operation of this  
8 Agreement, and includes information provided by a third party to the providing Party in  
9 confidence.

10 **“Contract Quantity”** means the quantity of Energy that Powerex has agreed to sell and that  
11 LADWP has agreed to purchase each hour of the Term at the Point of Delivery, as set forth in  
12 Section 4.1.

13 **“Contract Year”** means the 12 month period commencing on the Commencement Date and  
14 each 12 month period commencing on an anniversary of the Commencement Date.

15 **“Control Agreement”** means an agreement in substantially the form attached as Appendix D,  
16 where LADWP is the Posting Party and Powerex is the “Counterparty”. In the event that  
17 Powerex is the Posting Party, references in that agreement to “LADWP” shall be to Powerex and  
18 references in that agreement to the “Counterparty” shall be to LADWP.

19 **“Control Area”** means (i) any NERC certified control area(s), balancing authority area or  
20 similar area that operates in whole or in part in any one or more of Washington, Oregon, British  
21 Columbia or Alberta, and (ii) any other control area, balancing authority area or similar area that  
22 LADWP agrees in writing pursuant to Section 4.8(e) is a “Control Area” for purposes of this  
23 Agreement.

24 **“Controller”** means a Qualified Institution that has been designated by a Posting Party pursuant  
25 to Section 7.8(c)(iv) and that has entered into a Control Agreement with each of the Parties, or a  
26 Qualified Institution that is otherwise provided for under an existing Control Agreement.

27 **“Costs”** has the meaning set forth in Section 10.4(h)(iii)

28 **“Credit Rating”** means, with respect to LADWP, the unenhanced rating then assigned by S&P  
29 or Moody’s to LADWP’s Power System revenue bonds. With respect to Powerex (or its  
30 guarantor), if applicable, the rating then assigned by S&P, or Moody’s, to Powerex’s (or its  
31 Guarantor’s) senior unsecured debt (not supported by third party insurance enhancements) or if  
32 Powerex (or its Guarantor) does not have a rating for its senior unsecured debt, then the rating  
33 then assigned to Powerex (or its Guarantor) as its issuer rating.

34 **“Default”** has the meaning set forth in Section 10.1.

35 **“Defaulting Party”** has the meaning set forth in Section 10.1.

36 **“Delivered Energy”** means the MWh of Energy scheduled and actually delivered and received  
37 under this Agreement at the Point of Delivery.

1    **“Delivery Month”** has the meaning set forth in Section 4.7(b).

2    **“Effective Date”** means the date on which this Agreement becomes legally binding on the  
3 Parties, being the date on which each of the conditions precedent in Section 2.1 has been met and  
4 satisfied, or waived by Powerex, and this Agreement is executed and delivered by both Parties.

5    **“Eligible Letter of Credit”** means an irrevocable standby letter of credit which has been (A)  
6 duly executed and issued by an Eligible Letter of Credit Issuer, (B) in favor or for the benefit of  
7 the Secured Party, (C) available unconditionally on demand in writing in accordance with the  
8 terms and conditions of such letter of credit, (D) with an expiration date reasonably acceptable to  
9 the Secured Party, and (E) otherwise satisfactory to the Secured Party, acting reasonably, in all  
10 respects.

11   **“Eligible Letter of Credit Issuer”** means a U.S. state or federally chartered bank or a non-U.S.  
12 bank acting through a U.S. branch or agency office, which has senior unsecured long-term debt  
13 or deposits which, at the time when the relevant letter of credit is delivered to the Secured Party,  
14 are rated at least “A” by S&P and at least “A2” by Moody’s and which has a minimum asset  
15 base of at least U.S. \$10 billion.

16   **“Energy”** means electric energy to be sold and purchased hereunder, expressed in MWh.

17   **“Energy Price”** means the price in United States (U.S.) dollars per MWh for Delivered Energy  
18 that is not Renewable Energy, if any, being the price set forth in Section 5.1(b).

19   **“Facilities”** means

20           (a)    in the case of generating facilities owned by or under contract to BC  
21 Hydro, BC Hydro’s portfolio of hydroelectric generating facilities if designated by Powerex  
22 pursuant to Section 4.8(d) (without necessarily identifying each or any of them individually in  
23 such designation), each having a nameplate capacity not exceeding 30 MW; plus

24           (b)    any hydroelectric generating facility or facilities specifically designated  
25 by Powerex pursuant to Section 4.8(d) having a nameplate capacity not exceeding 30 MW and  
26 being located within a Control Area; plus

27           (c)    any generating facility or facilities designated by Powerex pursuant to  
28 Section 4.8(d) of the type referred to in Part 1 of Appendix A and located within a Control Area;  
29 plus

30           (d)    any generating facility or facilities designated by Powerex pursuant to  
31 Section 4.8(d) of a type referred to in Part 2 Appendix A and located within a Control Area,  
32 provided that LADWP has agreed, pursuant to Section 4.8(f), to the type of generating facility  
33 being designated.

34   **“FERC”** means the Federal Energy Regulatory Commission, or any successor agency thereto.

35   **“Firm Transmission”** means transmission that cannot be curtailed within an operating hour for  
36 economic reasons or bumped by higher priority transmission within the operating hour.

1 **“Force Majeure”** has the meaning set forth in Section 12.5 hereof.

2 **“Gains”** has the meaning set forth in Section 10.4(h)(i).

3 **“Guarantor”** of a Party means a third party that guarantees payment of the Party’s obligations  
4 under this Agreement to the other Party under a guarantee that is in full force and effect.

5 **“LADWP Approvals”** means the authorizations and approvals required in order for LADWP to  
6 execute and deliver this Agreement, including approval of the Board of Commissioners and Los  
7 Angeles City Council and applicable waiting periods.

8 **“Letter of Credit Failure”** has the meaning set forth in Section 7.9.

9 **“Los Angeles City Council”** means the City Council of the City, or any successor.

10 **“Losses”** has the meaning set forth in Section 10.4(h)(ii).

11 **“Moody’s”** means Moody’s Investors Service, Inc., or its successor.

12 **“MW”** means megawatts.

13 **“MWh”** means megawatt-hours.

14 **“NERC”** means the North American Electric Reliability Council or its successor organization, if  
15 any.

16 **“NOB”** means the Nevada-Oregon Border, at the point where LADWP’s and BPA’s electric  
17 systems meet on the Pacific Intertie DC Transmission Line.

18 **“Non-Defaulting Party”** has the meaning set forth in Section 10.3.

19 **“Non-Performing Party”** means Powerex where used in Section 4.6 with reference to Section  
20 4.4 and means LADWP where used with reference to Section 4.5 (or vice versa if Section 4.7(e)  
21 applies).

22 **“Pacific Prevailing Time”** means the time in Los Angeles, California.

23 **“Performance Assurance”** means, in respect of a Party, Cash or an Eligible Letter of Credit,  
24 valued as follows:

25 (a) Cash shall be valued at 100% of its face value;

26 (b) Eligible Letters of Credit shall be valued at 100% their face value.

27 **“Performing Party”** means LADWP where used in Section 4.6 with reference to Section 4.4  
28 and means Powerex where used with reference to Section 4.5 (or vice versa if Section 4.7(e)  
29 applies).

1 **“Person”** means any individual, corporation, partnership, joint venture, limited liability  
2 company, association, joint stock company, trust, unincorporated organization, entity,  
3 government or other political subdivision.

4 **“Point of Delivery”** means:

5 (a) NOB, delivered North to South (or South to North in the case of return  
6 pursuant to Section 4.7); or

7 (b) such other point of delivery as the Parties may agree from time to time;  
8 or

9 (c) such other point of delivery as the Parties’ schedulers may agree to on a  
10 temporary basis from time to time.

11 **“Posted Performance Assurance”** means Performance Assurance posted for the benefit of the  
12 Secured Party.

13 **“Posting Party”** has the meaning set forth in Section 7.5.

14 **“Power Revenue Fund”** means the fund in the City’s treasury known as the “Power Revenue  
15 Fund” to which all revenue from every source collected by LADWP in connection with its  
16 possession, management and control of the Power Assets is required to be deposited and  
17 credited.

18 **“Power Assets”** means all electric energy rights, lands, rights-of-way, sites, facilities and  
19 property used for the generation, transportation, distribution and delivery of power for the benefit  
20 of the City, its inhabitants and its customers and all other interests of the City related to its  
21 energy business under the possession, management and control of the Board of Commissioners.

22 **“Powerex’s Guarantor”** means British Columbia Hydro and Power Authority.

23 **“Present Value Rate”** means the sum of 0.50% plus the yield reported on page “USD” of the  
24 Bloomberg Financial Markets Services Screen (or, if not available, any other nationally  
25 recognized trading screen reporting on-line intraday trading in United States government  
26 securities) at 11:00 a.m. (New York City, New York time) for the United States government  
27 securities having a maturity that matches the average remaining Term.

28 **“Pricing Date”** means the date, determined in accordance with Section 2.4, on which the Pricing  
29 Refresh Mechanism is applied to determine the Renewable Energy Price.

30 **“Pricing Refresh Mechanism”** means the “Pricing Refresh Mechanism” attached as  
31 Appendix E, including its Attachments 1, 2 and 3, to be used to establish the Renewable Energy  
32 Price to be inserted in Section 5.1(a) at the Effective Date.

33 **“Prudent Utility Practices”** means those practices, methods, and equipment, as changed from  
34 time to time, that are commonly used in prudent engineering and operations to design and  
35 operate electric equipment lawfully and with safety, dependability, efficiency, and economy,

1 including any applicable practices, methods, acts, guidelines, standards and criteria of FERC,  
2 NERC, WECC and all applicable Requirements of Law.

3 **“Qualified Institution”** means the United States office of a commercial bank or trust company  
4 organized under the laws of the United States of America or a political subdivision thereof or a  
5 foreign bank with a branch office located in the United States and, in either case, having a Credit  
6 Rating of “A” or higher by S&P or “A2” or higher by Moody’s and having a minimum asset  
7 base of at least U.S. \$10 billion.

8 **“Reference Brokers”** means Prebon Energy Inc. and ICAP Energy LLC.

9 **“Reference Indices”** has the meaning set forth in the Pricing Refresh Mechanism.

10 **“Reference Price”** means the price per MWh identified as the “Reference Price” in the Pricing  
11 Refresh Mechanism for purposes of determining the Renewable Energy Price at the Effective  
12 Date by applying the Pricing Refresh Mechanism.

13 **“Reference Price Sheets”** has the meaning set forth in the Pricing Refresh Mechanism.

14 **“Renewable Energy”** in any hour means Delivered Energy that is attributed to generation from  
15 the Facilities in accordance with Section 5.2(a) (and deemed to be Renewable Energy delivered  
16 under this Agreement in accordance with Section 5.2(d), if the Concurrent Agreement is in  
17 effect) and is accordingly sold and purchased with Renewable Energy Credits.

18 **“Renewable Energy Credits”** means all attributes of an environmental nature that are created or  
19 otherwise arise from one MWh of Delivered Energy that is Renewable Energy, including, but not  
20 limited to tags, certificates or similar products or rights that may be associated with the Facilities  
21 as “green” or “renewable” electric generation resources. These attributes include all credits,  
22 allowances, offsets and similar rights issued, recognized, created or otherwise arising and  
23 associated with Delivered Energy that is Renewable Energy which may be used to claim  
24 responsibility for ownership of, any avoidance or reduction of emissions or pollutants, including,  
25 but not limited to mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide,  
26 particulate matter or similar pollutants or contaminants of air, water or soil, under any  
27 governmental, regulatory or voluntary program, including the United Nations Framework  
28 Convention on Climate Change and related Kyoto Protocol or other program.

29 **“Renewable Energy Price”** means the price in U.S. dollars per MWh for Renewable Energy  
30 that is sold and purchased under this Agreement, being the price set forth in Section 5.1(a).

31 **“Renewable Reference Price”** means the price per MWh identified as the “Renewable  
32 Reference Price” in the Pricing Refresh Mechanism, which the Parties acknowledge is the price  
33 they would have agreed as the “Renewable Energy Price” if both Parties had executed this  
34 Agreement on the Agreement Reference Date; the Renewable Reference Price will be adjusted in  
35 accordance with the Pricing Refresh Mechanism to establish the Renewable Energy Price for the  
36 Term of this Agreement.

37 **“Replacement Price”** means the price at which LADWP, acting in a commercially reasonable  
38 manner, effects a purchase of substitute electric energy in place of Energy not delivered by

1 Powerex hereunder or, absent such a purchase, the market price for such quantity of electric  
2 energy, as determined by LADWP in a commercially reasonable manner, at the Point of  
3 Delivery; provided that the Replacement Price shall not include any premium or other amount  
4 paid or payable to replace the Energy not delivered by Powerex with electric energy from  
5 renewable sources or paid or payable for Renewable Energy Credits associated with replacement  
6 electric energy.

7 **“Requirement of Law”** or **“Requirements of Law”** means any applicable U.S. or Canadian  
8 federal, provincial, state and local laws, statutes, regulations, rules, codes or ordinances enacted,  
9 adopted, issued or promulgated by any U.S. or Canadian federal, provincial, state, local or other  
10 governmental authority or regulatory body.

11 **“Resale Price”** means the price at which Powerex, acting in a commercially reasonable manner,  
12 effects a resale of Energy not received by LADWP hereunder or, absent such a resale, the market  
13 price for such quantity of Energy at the Point of Delivery as determined by Powerex in a  
14 commercially reasonable manner; provided that the Resale Price shall not include any premium  
15 or other amount paid or payable on the basis that the Energy is attributed to renewable sources or  
16 is sold with any associated Renewable Energy Credits.

17 **“Returned Energy”** has the meaning set forth in Section 4.7(b).

18 **“S&P”** means Standard & Poor’s Rating Group (a division of The McGraw-Hill Companies,  
19 Inc.) or its successor.

20 **“Secured Party”** has the meaning set forth in Section 7.5.

21 **“Specified Transmission Path”** means the transmission path specified by Powerex in  
22 accordance with Section 4.8(d) for delivery of Delivered Energy from the source Control Area of  
23 a Facility to the Point of Delivery and, if applicable, within the source Control Area.

24 **“System Emergency”** means,

25 (a) in the case of LADWP, an emergency condition or situation which  
26 affects the ability of LADWP’s electric system to receive Energy at the Point of Delivery; and

27 (b) in the case of Powerex, (i) emergency conditions affecting generation  
28 and/or transmission capability in the Control Area in British Columbia that could adversely  
29 affect BC Hydro’s ability to supply its domestic load, to the extent Powerex has designated  
30 Facilities in the Control Area in British Columbia; (ii) emergency conditions in the Control  
31 Area where any Facility is located affecting the ability of the source Control Area to deliver  
32 Energy, to the extent Powerex has designated Facilities in any Control Area other than the  
33 Control Area in British Columbia.

34 **“Term”** has the meaning set forth in ARTICLE III.

35 **“Termination Payment”** means in the case of a Default, the amount to liquidate this  
36 Agreement, as calculated pursuant to Section 10.4.

- 1 “WECC” means the Western Electricity Coordinating Council, or any successor entity thereto.
- 2 Section 1.2 **Interpretation.** In this Agreement, unless a clear contrary  
3 intention appears:
- 4 (a) the singular number includes the plural number and vice versa;
- 5 (b) reference to any Person includes such Person’s successors and assigns  
6 but, in case of a Party hereto, only if such successors and assigns are permitted by this  
7 Agreement, and reference to a Person in a particular capacity excludes such Person in any other  
8 capacity or individually;
- 9 (c) reference to any gender includes the other;
- 10 (d) reference to any agreement (including this Agreement), document,  
11 instrument or tariff means such agreement, document, instrument or tariff as amended or  
12 modified and in effect from time to time in accordance with the terms thereof and, if applicable,  
13 the terms hereof;
- 14 (e) capitalized words or capitalized phrases that are not defined herein but  
15 that have common trade or technical meanings in the electricity industry in the WECC region  
16 will have such meanings;
- 17 (f) reference to any Requirement of Law means such Requirement of Law as  
18 amended, modified, codified or reenacted, in whole or in part, and in effect from time to time,  
19 including, if applicable, rules and regulations promulgated thereunder;
- 20 (g) reference to any Article, Section, or Appendix means such Article of this  
21 Agreement, Section of this Agreement, or Appendix to this Agreement, as the case may be, and  
22 references in any Article or Section or definition to any clause means such clause of such  
23 Article or Section or definition;
- 24 (h) “hereunder”, “hereof”, “hereto” and words of similar import shall be  
25 deemed references to this Agreement as a whole and not to any particular Article or Section or  
26 other provision hereof or thereof;
- 27 (i) “including” (and with correlative meaning “include”) means including  
28 without limiting the generality of any description preceding such term;
- 29 (j) relative to the determination of any period of time, “from” means “from  
30 and including”, “to” means “to but excluding” and “through” means “through and including”;  
31 and
- 32 (k) reference to time shall always refer to Pacific Prevailing Time.

1  
2 **ARTICLE II**  
3 **CONDITIONS PRECEDENT AND DETERMINATION OF RENEWABLE ENERGY**  
4 **PRICE**

5 Section 2.1 **Conditions Precedent.** This Agreement has been executed and  
6 delivered by Powerex at the Agreement Reference Date subject to each of the following  
7 conditions precedent:

8 (a) Powerex has obtained all approvals of this Agreement by its senior  
9 management and its Board of Directors, as Powerex determines in its sole discretion are  
10 required, and Powerex has notified LADWP of the satisfaction or waiver of this condition on or  
11 before March 5, 2007;

12 (b) LADWP submits this Agreement to the Board of Commissioners for  
13 approval at its March 6, 2007 board meeting and this Agreement is approved by the Board of  
14 Commissioners at that meeting without conditions;

15 (c) LADWP gives Powerex at least 2 Business Days notice of the date and  
16 time that this Agreement will be posted on LADWP's website or will otherwise be made  
17 available to any member of the public;

18 (d) the Renewable Energy Price determined on the Pricing Date in  
19 accordance with the Pricing Refresh Mechanism is not less than US \$60.00 per MWh or more  
20 than US \$89.50 per MWh;

21 (e) the Renewable Energy Price, determined in accordance with the Pricing  
22 Refresh Mechanism and strictly in accordance with the process set out in Section 2.4, is  
23 inserted by LADWP in Section 5.1(a) and LADWP executes and delivers this Agreement, on  
24 the day following the Pricing Date and by the time specified in Section 2.4(g);

25 (f) LADWP executes and delivers this Agreement (with the Renewable  
26 Energy Price inserted pursuant to Section 2.1(e)) on or before March 28, 2007; and

27 (g) LADWP executes and delivers the Concurrent Agreement, concurrently  
28 with execution and delivery of this Agreement, and upon execution and delivery by LADWP all  
29 conditions precedent under Section 2.1 of the Concurrent Agreement have been met and  
30 satisfied, or waived by Powerex.

31 Section 2.2 **Conditions Precedent for benefit of Powerex.** The conditions  
32 precedent in Section 2.1 are for the sole benefit of Powerex and may be waived in writing by  
33 Powerex in whole or in part. LADWP shall provide Powerex with timely information that will  
34 allow Powerex to determine whether and when the conditions precedent in Section 2.1 (except  
35 Section 2.1(a)) are expected to be met and satisfied.

36 Section 2.3 **Failure of Conditions Precedent.** If any of the conditions  
37 precedent in Section 2.1 are not met and satisfied, or waived by Powerex in writing, then  
38 Powerex may by notice to LADWP withdraw its delivery of this Agreement and LADWP shall  
forthwith return to Powerex each copy of this Agreement executed by Powerex. Upon giving

1 such notice, this Agreement shall not be capable of becoming effective and neither Party shall  
2 have any liability to the other Party in consequence of this Agreement or negotiations leading  
3 up to execution thereof by Powerex and/or LADWP.

4                   Section 2.4 **Process for establishing Renewable Energy Price.** The Parties  
5 agree that the process and timing for applying the Pricing Refresh Mechanism to establish the  
6 Renewable Energy Price and execution and delivery of this Agreement by LADWP shall be as  
7 follows:

8                   (a) LADWP shall give Powerex telephone notice (to 604-891-5091 to any  
9 one of Anthony Des Lauriers, Dan O’Hearn, Murray Margolis or Miles Federspiel, in each case  
10 in person) on a Business Day as soon as the LADWP Approvals have been obtained and  
11 LADWP is prepared to execute this Agreement;

12                   (b) If the foregoing notice is given before 11:00 a.m. on any day, the ‘Notice  
13 Day’ for purposes of Section 2.4(c) shall be deemed to be that day. If given after 11:00 a.m. on  
14 any day, the ‘Notice Day’ shall be deemed to be the following Business Day.

15                   (c) The Pricing Date shall be a Monday, Tuesday or Wednesday, determined  
16 as follows:

<u>Notice Day</u>	<u>Pricing Date</u>
Wednesday, Thursday, Friday	the following Monday (or Tuesday if Monday is not a Business Day)
Monday	Tuesday
Tuesday	Wednesday

22 provided that if the day following the Pricing Date as determined above is not a Business Day,  
23 the Pricing Date shall be the next Business Day that is a Monday, Tuesday or Wednesday and  
24 that is followed by a Business Day.

25                   (d) The Pricing Refresh Mechanism shall be applied on the Pricing Date,  
26 using the Reference Price Sheets and Reference Indices, in each case at close of trading on the  
27 Pricing Date.

28                   (e) Before 9:00 a.m. on the day following the Pricing Date, Powerex shall  
29 determine the Renewable Energy Price in accordance with the Pricing Refresh Mechanism and  
30 shall give notice of the Renewable Energy Price to LADWP, together with (i) Reference Price  
31 Sheets and Reference Price Indices, and (ii) calculation sheets showing the calculations  
32 pursuant to the Pricing Refresh Mechanism to determine the Renewable Energy Price.

33                   (f) If the Renewable Energy Price determined in accordance with the Pricing  
34 Refresh Mechanism is higher than US \$89.50 or lower than US \$60.00 Powerex shall, at the  
35 same time as giving notice of the Renewable Energy Price to LADWP under Section 2.4(e),  
36 advise LADWP whether it waives the condition precedent in Section 2.1(d). If Powerex does

1 not waive the condition precedent in Section 2.1(d), it shall be deemed to have exercised its  
2 right to withdraw delivery of this Agreement as provided for under Section 2.3.

3 (g) Provided the Renewable Energy Price determined in accordance with the  
4 Pricing Refresh Mechanism is not higher than US \$89.50, LADWP shall execute and deliver  
5 this Agreement and as evidence thereof shall return the executed signature page to Powerex (in  
6 accordance with the provisions of Section 12.21) by 2:00 p.m. on the day following the Pricing  
7 Date. If it fails to do so, Powerex may by notice to LADWP withdraw its delivery of this  
8 Agreement and LADWP shall forthwith return to Powerex each copy of this Agreement  
9 executed by Powerex. Upon giving such notice, this Agreement shall not be capable of  
10 becoming effective and neither Party shall have any liability to the other Party in consequence  
11 of this Agreement or negotiations leading up to execution thereof by Powerex and/or LADWP.

12 (h) If the Renewable Energy Price determined in accordance with the Pricing  
13 Refresh Mechanism is higher than US \$89.50, LADWP may either:

14 (i) execute and deliver this Agreement, with the Renewable Energy  
15 Price inserted, notwithstanding that is higher than US \$89.50, and as evidence thereof  
16 shall return the executed signature page to Powerex, in accordance with the provisions of  
17 Section 12.21, by 2:00 p.m. on the day following the Pricing Date, or

18 (ii) give notice to Powerex that it will not proceed with this  
19 Agreement, in which case Powerex shall be deemed to have withdrawn its delivery of  
20 this Agreement and LADWP shall forthwith return to Powerex each copy of this  
21 Agreement executed by Powerex. Upon giving such notice, this Agreement shall not be  
22 capable of becoming effective and neither Party shall have any liability to the other Party  
23 in consequence of this Agreement or negotiations leading up to execution thereof by  
24 Powerex and/or LADWP.

25 (i) If LADWP fails to either execute and deliver this Agreement in  
26 accordance with Section 2.4(h)(i) or give notice in accordance with Section 2.4(h)(ii) by  
27 2:00 p.m. on the day following the Pricing Date, LADWP shall be deemed to have given notice  
28 in accordance with Section 2.4(h)(ii).

29 (j) For greater certainty, this Agreement is not capable of becoming  
30 effective by execution by LADWP, except strictly in accordance with the process set out in this  
31 Section 2.4. If either Party fails to strictly comply with this Section 2.4, then, unless strict  
32 compliance is waived in writing by the other Party, Powerex may by notice to LADWP  
33 withdraw its delivery of this Agreement and LADWP shall forthwith return to Powerex each  
34 copy of this Agreement executed by Powerex. Upon giving such notice, this Agreement shall  
35 not be capable of becoming effective and neither Party shall have any liability to the other Party  
36 in consequence of this Agreement or negotiations leading up to execution thereof by Powerex  
37 and/or LADWP.

1  
2

**ARTICLE III  
TERM AND EARLY TERMINATION**

3           Section 3.1 **Effective Date and Term.** This Agreement shall become legally  
4 effective and binding on the Parties on the Effective Date and only provided that each of the  
5 conditions precedent set forth in Section 2.1 is met and satisfied or waived by Powerex. The  
6 sale and purchase of Energy hereunder shall have a term (the "Term") of four (4) years and nine  
7 (9) months commencing on the Commencement Date.

8           Section 3.2 **Survivability.** The provisions of ARTICLE IX, ARTICLE X  
9 and ARTICLE XI shall survive the termination of this Agreement. The provisions of  
10 ARTICLE VII and ARTICLE VIII shall continue in effect after termination to the extent  
11 necessary to provide for final billing and adjustments related to any period prior to termination  
12 of this Agreement, including payment of any money due and owing pursuant to this Agreement.

13           Section 3.3 **Early Termination.** This Agreement may be terminated upon  
14 the exercise of the Parties' rights to terminate pursuant to Section 10.3, Section 10.6 or Section  
15 12.5(e).

16           Section 3.4 **Early Termination by Mutual Agreement.** This Agreement  
17 may be terminated upon mutual agreement of the Parties.

18  
19

**ARTICLE IV  
PURCHASE OF ENERGY**

20           Section 4.1 **Sale and Purchase Obligation.** Powerex shall, unless excused  
21 by Force Majeure (including a System Emergency), deliver and sell to LADWP and LADWP  
22 shall, unless excused by Force Majeure (including a System Emergency), receive and purchase  
23 25 MWh of Energy (the "Contract Quantity") each hour during the Term at the Point of  
24 Delivery. The sole remedy for a failure to deliver or receive Energy to be sold and delivered  
25 hereunder shall be as set forth in Section 4.4 and Section 4.5.

26           Section 4.2 **Operating Reserves.** In connection with the sale and purchase  
27 of Delivered Energy under this Agreement, Powerex shall hold operating reserves in the source  
28 Control Area(s) from which the Delivered Energy is scheduled. The operating reserves  
29 required to be held shall be as required by WECC at the Agreement Reference Date.

30           Section 4.3 **Source Control Area.** Delivered Energy shall be scheduled by  
31 Powerex from a Control Area, provided that nothing in this Agreement requires that Delivered  
32 Energy be scheduled or tagged from any one or more specific Facilities located in the source  
33 Control Area.

34           Section 4.4 **Failure to Deliver the Contract Quantity.** If Powerex fails to  
35 deliver the Contract Quantity in any hour, unless excused by Force Majeure or LADWP's  
36 failure to perform, then Powerex shall be liable to LADWP for (i) the product of the amount  
37 (whether positive or negative), if any, by which the Replacement Price differed from the Energy  
38 Price (Replacement Price – Energy Price) and the amount by which the quantity provided by  
39 Powerex was less than the hourly Contract Quantity; plus (ii) the amount of transmission

1 charge(s), if any, for firm transmission service incurred to achieve the Replacement Price, less  
2 the reduction, if any, in transmission charge(s) achieved as a result of the reduction in  
3 Powerex's schedule or delivery (based on LADWP's reasonable commercial effort to achieve  
4 such reduction). If the total amount for any hour calculated under this Section 4.4 is negative,  
5 then Powerex shall not be obligated to pay any amount under this Section 4.4.

6           **Section 4.5 Failure to Receive the Contract Quantity.** If LADWP fails to  
7 receive the Contract Quantity in any hour, unless excused by Force Majeure or Powerex's  
8 failure to perform, LADWP shall be liable to Powerex for (i) the product of the amount  
9 (whether positive or negative), if any, by which the Energy Price differed from the Resale Price  
10 (Energy Price – Resale Price) and the amount by which the quantity received by LADWP was  
11 less than the hourly Contract Quantity; plus (ii) the amount of transmission charge(s), if any, for  
12 firm transmission service which Powerex incurred to achieve the Resale Price, less the  
13 reduction, if any, in transmission charge(s) achieved as a result of the reduction in LADWP's  
14 receipt of Energy (based on Powerex's reasonable commercial efforts to achieve such  
15 reduction). If the total amount for any hour calculated under this Section 4.5 is negative, then  
16 LADWP shall not be obligated to pay any amount under this Section 4.5.

17           **Section 4.6 Additional Provisions for Non-Delivery/Non-Receipt.** The  
18 following provisions shall also apply in the case of an unexcused failure to deliver or receive  
19 the hourly Contract Quantity:

20           (a) The Non-Performing Party shall pay any amount due from it under this  
21 section within the billing period as specified in Section 8.1.

22           (b) The Parties agree that the amounts recoverable under Section 4.4 and  
23 Section 4.5 are a reasonable estimate of loss and not a penalty, and represent the sole and  
24 exclusive remedy for the Performing Party. Such amounts are payable for the loss of bargain  
25 and the loss of protection against future risks.

26           (c) Each Party agrees that it has a duty to mitigate damages in a  
27 commercially reasonable manner to minimize any damages it may incur as a result of the other  
28 Party's performance or non-performance of this Agreement.

29           (d) In the event the Non-Performing Party disputes the calculation of the  
30 damages under Section 4.4 or Section 4.5, the Non-Performing Party shall pay the full amount  
31 of the damages as required by Section 8.1 to the Performing Party. After informal dispute  
32 resolution as required by Section 11.1(a), any remaining dispute involving the calculation of the  
33 damages shall be referred to binding dispute resolution as provided by ARTICLE XI. If  
34 resolution or agreement results in a refund, the refund shall be made forthwith together with  
35 interest at the rate provided for in Section 8.1(a).

36           **Section 4.7 Delivery of Non-Renewable Energy.**

37           (a) Powerex expects that, subject to Force Majeure, generation from the  
38 Facilities will be at least equivalent to the Contract Quantity each hour. However, the Parties  
39 acknowledge that at the time of delivering Delivered Energy to LADWP hereunder, Powerex

1 will not be able to determine whether there is equivalent generation that can be attributed to the  
2 Facilities so that the Delivered Energy is Renewable Energy.

3 (b) If it is subsequently determined pursuant to Section 5.2 that any  
4 Delivered Energy delivered by Powerex in any hour of a month (the "Delivery Month") was not  
5 Renewable Energy, then LADWP shall return to Powerex at the Point of Delivery (or such  
6 other point of delivery as the Parties' schedulers may agree), an amount of energy ("Returned  
7 Energy") equal to the amount of Delivered Energy delivered in the Delivery Month that was not  
8 Renewable Energy. Returned Energy shall be returned to Powerex in accordance with Section  
9 4.7(c).

10 (c) The Parties shall use commercially reasonable efforts to negotiate  
11 satisfactory arrangements for return of the Returned Energy, including dates, hours and  
12 quantities, by at least 3 Business Days before the beginning of the second calendar month  
13 following the Delivery Month. Failing agreement on satisfactory arrangements for return by 3  
14 Business Days before the beginning of such month, Returned Energy shall be returned on the  
15 same hour and on the same date as the date of delivery but in the second following calendar  
16 month or, if there is no corresponding date in such second following calendar month, on the last  
17 day of the second following calendar month, in the same hours as the hours of delivery;  
18 provided that if LADWP would be obliged to return more than the Contract Quantity of  
19 Returned Energy in any hour, LADWP may, at its election, deliver any excess Returned Energy  
20 in the same hour of the immediately following day, or, if Returned Energy cannot be delivered  
21 in such hour (because the quantity to be returned exceeds the Contract Quantity), the same hour  
22 of the immediately following day, and so on until all Returned Energy is delivered. By way of  
23 example only, Delivered Energy that is not Renewable Energy and is delivered Hour Ending  
24 (HE) 1000 on January 3, 2007, would be returned HE 1000 on March 3, 2007; Delivered  
25 Energy that is not Renewable Energy delivered HE 2300 on December 31, 2006 would be  
26 returned HE 2300 on the last day of February, 2007. Notwithstanding the foregoing provisions  
27 of this Section 4.7(c), the Parties' schedulers may from time to time agree to other arrangements  
28 for return of Returned Energy.

29 (d) Powerex shall pay LADWP the Energy Price for each MWh of Returned  
30 Energy returned to Powerex at the Point of Delivery pursuant to this Section 4.7.

31 (e) If LADWP fails to deliver or Powerex fails to receive Returned Energy  
32 when agreed to be delivered, then the provisions of Section 4.4 and Section 4.5 shall apply with  
33 necessary changes, except that references to "Powerex" in those Sections and in the definitions  
34 of "Replacement Price" and "Resale Price" shall be to "LADWP", and vice versa.

35 (f) LADWP shall schedule delivery of Returned Energy in accordance with  
36 normal pre-scheduling practices, including timelines and procedures, except as the Parties'  
37 schedulers may otherwise agree from time to time.

38 (g) LADWP shall be responsible for obtaining the transmission and for the  
39 transmission costs and losses to deliver Returned Energy to the Point of Delivery and Powerex  
40 shall be responsible for obtaining the transmission and for the transmission costs and losses to  
41 deliver Returned Energy from and after the Point of Delivery.

1                   Section 4.8   **Guaranteed Percentage of Renewable Energy.**

2                   (a)     At the Agreement Reference Date, Powerex intends and expects that,  
3 except in unusual or unforeseen circumstances, 100% of Delivered Energy in any hour will be  
4 Renewable Energy and, in accordance with Section 4.7(b), LADWP shall return an amount of  
5 energy equivalent to Delivered Energy that is not Renewable Energy. Notwithstanding the  
6 foregoing intention and expectation, Powerex shall have no liability if less than 100% of  
7 Delivered Energy in any hour is Renewable Energy unless in each of two consecutive rolling  
8 12-month periods during the Term the aggregate quantity of Renewable Energy delivered in  
9 each such 12-month period is less than 90% of the Aggregate Contract Quantity for such  
10 period.

11                   (b)     If the aggregate quantity of Renewable Energy delivered in each of two  
12 consecutive rolling 12-month periods during the Term is less than 90% of the Aggregate  
13 Contract Quantity for each such period, then Powerex shall be deemed to be in Default pursuant  
14 to Section 10.1(h) and LADWP may exercise the termination rights provided for in Section  
15 10.3. The right to terminate this Agreement pursuant to Section 10.3 shall be the sole remedy  
16 for such a failure.

17                   (c)     To meet the Renewable Energy percentages referred to in Section 4.8(a),  
18 Powerex shall have the right to deliver Energy attributed to any Facility designated by Powerex  
19 pursuant to Section 4.8(d), provided that the Energy is scheduled from the Control Area where  
20 the Facility is located. For greater certainty, Facilities may be located in one or more Control  
21 Areas and Powerex may change its designation of Facilities for each Contract Year under  
22 Section 4.8(d).

23                   (d)     Powerex shall by notice to LADWP, given at least ten (10) days before  
24 the commencement of the Term and thereafter at least ninety (90) days before the  
25 commencement of each Contract Year, designate one or more Facilities to which Delivered  
26 Energy may be attributed, the Control Area in which each such Facility is located and the  
27 Specified Transmission Path for delivering Delivered Energy attributed to each such Facility.  
28 A designation shall apply with respect to the Contract Year that commences immediately  
29 following such designation. If Powerex fails to designate Facilities or one or more Control  
30 Areas for any Contract Year by the time specified above in this Section 4.8(d), the designation  
31 for the previous Contract Year shall be deemed to continue.

32                   (e)     Powerex may by notice to LADWP from time to time request that  
33 LADWP agree to include one or more control areas in the definition of "Control Area", in  
34 addition to control areas referred to in clause (i) of that definition. In such case, Powerex shall  
35 consult with LADWP regarding such additional control area(s) and reliability of schedules  
36 therefrom. LADWP shall notify Powerex that it either agrees or does not agree to including  
37 such control area(s) in the definition of "Control Area" within thirty (30) days of receiving  
38 Powerex's notice, failing which LADWP shall be deemed to agree to include such control area  
39 within such definition. LADWP shall not withhold its agreement unreasonably.

40                   (f)     Powerex may by notice to LADWP from time to time request that  
41 LADWP agree to one or more types of generating facilities referred to in Part 2 of Appendix A  
42 for purposes of clause (d) of the definition of "Facilities". In such case, Powerex shall consult

1 with LADWP regarding such type(s) of generating facilities and shall provide sufficient  
2 information to permit LADWP to make an informed decision. LADWP shall notify Powerex  
3 that it either agrees or does not agree to including such type(s) of generation for purposes of  
4 clause (d) of the definition of "Facilities" within thirty (30) days of receiving Powerex's notice,  
5 failing which LADWP shall be deemed to agree to include such type(s) within such definition.  
6 LADWP shall not withhold its agreement unreasonably.

7 (g) Nothing in Section 4.8(d) shall give Powerex the right to change the  
8 Point of Delivery without agreement by LADWP or its schedulers.

9 **ARTICLE V**  
10 **PRICING FOR DELIVERED ENERGY**

11 **Section 5.1 Pricing for Delivered Energy.**

12 (a) Subject to Section 5.1(b), LADWP shall pay Powerex \$75.67 per MWh  
13 (the "Renewable Energy Price") for each MWh of Delivered Energy delivered by Powerex at  
14 the Point of Delivery during the Term.

15 (b) If Delivered Energy in any hour is not Renewable Energy, then the price  
16 for that Delivered Energy (the "Energy Price") shall be the Renewable Energy Price reduced by  
17 \$4.50 per MWh.

18 **Section 5.2 Renewable Energy.**

19 (a) Delivered Energy shall be attributed to the aggregate generation from the  
20 Facilities for any hour without any action of either Party, as long as the aggregate generation  
21 from the Facilities for that hour, rounded down to the nearest whole MWh, is equal to or greater  
22 than the quantity of Delivered Energy in that hour scheduled from the Control Area(s) where  
23 the Facilities are located. Delivered Energy may be attributed to generation from one or more  
24 different Facilities located in one or more different Control Areas each hour.

25 (b) If the quantity of Delivered Energy in an hour exceeds the aggregate  
26 generation from the Facilities for that hour (rounded down to the nearest whole MWh), the  
27 excess Delivered Energy will not be Renewable Energy and shall be returned to Powerex in  
28 accordance with Section 4.7(b).

29 (c) Attributing Delivered Energy to the aggregate generation from the  
30 Facilities shall in no way require that generation be scheduled or tagged from such Facilities or  
31 actually transmitted from any such Facilities to the Point of Delivery.

32 (d) For so long as the Concurrent Agreement is in effect, the provisions of  
33 Section 5.2(d) of the Concurrent Agreement shall apply in determining the quantity of  
34 Renewable Energy delivered for purposes of Section 4.7 and Section 4.8 of each of this  
35 Agreement and the Concurrent Agreement.

36 **Section 5.3 Renewable Energy Credits.** The Parties agree that the  
37 amounts paid by LADWP pursuant to Section 5.1(a) include compensation for one Renewable

1 Energy Credit associated with each MWh of Delivered Energy that is Renewable Energy  
2 purchased by LADWP pursuant to this Agreement and that LADWP is entitled to utilize any  
3 and all such Renewable Energy Credits to (i) meet any voluntary, statutory or regulatory  
4 mandate to own, construct or contract for the purchase of renewable energy produced using  
5 small hydroelectric generators (or other types of generation referred to Appendix A); (ii) meet  
6 the requirements of any green pricing program by which LADWP resells the power to retail  
7 customers as green or renewable energy; and (iii) offset, avoid, reduce or obtain credit for any  
8 reduction of pollutants or air emissions created by LADWP's electric operating facilities.  
9 Powerex makes no representation or warranty whatsoever that Renewable Energy or Renewable  
10 Energy Credits sold hereunder do or will meet any of the foregoing mandates or requirements  
11 referred to in clauses (i) and (ii) above or are or will be effective for the purposes referred to in  
12 clause (iii) above. Powerex represents that (i) any Facilities designated will, (A) if they are not  
13 hydroelectric generating facilities, be other facilities of the type referred to in Part 1 of  
14 Appendix A (or Part 2, with agreement of LADWP); and (B) if they are hydroelectric  
15 generating facilities, have a nameplate capacity not exceeding 30 MW, and (ii) Powerex will  
16 not use, sell or otherwise transfer Renewable Energy Credits associated with Delivered Energy  
17 to third parties. The Parties agree that LADWP is entitled to utilize any and all Renewable  
18 Energy Credits associated with Delivered Energy commencing on the Commencement Date and  
19 for the Term.

20 Section 5.4 **Quantity of Energy delivered.** Powerex shall specify the  
21 quantity of Delivered Energy in each hour of a month that is Renewable Energy in the bill for  
22 that month delivered to LADWP pursuant to Section 8.1. Such bill shall be deemed to be an  
23 attestation by Powerex as to the quantity of Renewable Energy delivered. The quantity of  
24 Delivered Energy that is Renewable Energy shall be subject to audit by LADWP pursuant to  
25 Section 8.4.

26 Section 5.5 **Mobile-Sierra.** Both parties agree that the standard of review for  
27 changes to this Agreement proposed by a Party, a non-party or FERC acting sua sponte, shall be  
28 the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas  
29 Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power  
30 Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

31 **ARTICLE VI**  
32 **TAXES, ENVIRONMENTAL CREDITS AND SCHEDULING**

33 Section 6.1 **Taxes.**

34 (a) Powerex is liable for and shall pay, or cause to be paid, or reimburse  
35 LADWP for if LADWP has paid, all taxes applicable to the sale and purchase of Delivered  
36 Energy (including any Renewable Energy Credits associated therewith) that arise prior to the  
37 Point of Delivery.

38 (b) LADWP is liable for and shall pay, cause to be paid, or reimburse  
39 Powerex for if Powerex has paid, all taxes applicable to the sale and purchase of Delivered  
40 Energy (including any Renewable Energy Credits associated therewith) arising at and from the  
41 Point of Delivery, including any taxes imposed or collected by the City or any taxing authority  
42 with jurisdiction over LADWP.

1 (c) During the Term, as between Powerex and LADWP, Powerex shall pay  
2 or cause to be paid all present or future taxes or fees applicable to the Facilities. Powerex or the  
3 owner thereof shall receive the benefit of any new tax credits, allowances, or other credits  
4 related to the Facilities.

5 Section 6.2 **Environmental Credits.** Powerex shall obtain in its own name  
6 and at its own expense or ensure that the owner of the Facilities obtains at its own expense any  
7 and all pollution or environmental credits or offsets necessary to operate the Facilities in  
8 compliance with any Requirements of Law applicable to the operation thereof.

9 Section 6.3 **Scheduling of Energy.**

10 (a) Powerex shall be responsible for reserving and scheduling any  
11 transmission required to deliver Energy to the Point of Delivery. Powerex shall schedule  
12 deliveries of Energy in accordance with normal scheduling practices.

13 (b) All Energy shall be delivered on Firm Transmission over the Specified  
14 Transmission Path.

15 (c) Powerex shall be solely responsible for the costs of transmission and all  
16 transmission losses up to the Point of Delivery, and LADWP shall be solely responsible for the  
17 costs of transmission and all transmission losses at, from and after the Point of Delivery.

18 (d) In the event of a transmission curtailment or interruption (as described in  
19 Section 12.5(d)) on the Specified Transmission Path, Powerex shall immediately notify  
20 LADWP of the curtailment, and the magnitude of the curtailment. The transmission  
21 curtailment shall be deemed a Force Majeure in accordance with Section 12.5(d).

22 **ARTICLE VII**  
23 **CREDIT SUPPORT**

24 Section 7.1 **Powerex's Credit Support.** Within three (3) Business Days  
25 after the Effective Date, Powerex shall provide LADWP with a guarantee issued by Powerex's  
26 Guarantor in substantially the form attached as Appendix C, guaranteeing the financial  
27 obligations of Powerex under this Agreement as provided for therein.

28 Section 7.2 **Credit Provisions.** The provisions of this ARTICLE VII shall  
29 apply to the purchase and sale of Renewable Energy hereunder.

30 Section 7.3 **Collateral Threshold.** The Collateral Threshold of a Party for  
31 purposes of this Agreement at any time shall be the lower of (i) the amount set forth in the table  
32 immediately below opposite the lowest Credit Rating for the Party (Party X) (or Party X's  
33 Guarantor), if any, as determined by Moody's or S&P or (ii) the amount of the dollar limit in  
34 the guarantee provided by Party X's Guarantor at the time.

<b>Collateral Threshold (in U.S. dollars)</b>	<b>Credit Rating (Moody's)</b>	<b>Credit Rating (S&amp;P)</b>
\$12,500,000	Aaa	AAA
\$10,000,000	Aa1, Aa2 or Aa3	AA+, AA or AA-
\$7,500,000	A1, A2 or A3	A+, A or A-
\$3,500,000	Baa1 or Baa2	BBB+ or BBB
\$2,500,000	Baa3	BBB-
\$0	Below Baa3 or not rated	Below BBB- or not rated

1  
2 Provided, however, that Party X's Collateral Threshold for this Agreement shall be zero if a  
3 Default with respect to Party X or its Guarantor has occurred and is continuing.

4           Section 7.4       **Powerex Collateral Threshold.** Powerex may at any time  
5 and from time to time (including at the time of a request by LADWP for Performance  
6 Assurance) increase the amount of the guarantee provided by Powerex's Guarantor up to the  
7 amount set forth in the table above opposite the lowest Credit Rating for Powerex's Guarantor  
8 and Powerex's Collateral Threshold shall be increased accordingly. No such increase shall  
9 become effective until Powerex has provided LADWP with a new guarantee or an amended  
10 guarantee (in substantially the form of guarantee attached as Appendix C). If the operation of  
11 the foregoing results in the sum of Powerex's Posted Performance Assurance, if any, plus  
12 Powerex's Collateral Threshold being in excess of its Termination Payment (rounding upwards  
13 to the next multiple of \$250,000), then Powerex may request that Powerex's Posted Performance  
14 Assurance be reduced accordingly and LADWP shall comply with such request and return any  
15 excess Posted Performance Assurance within three (3) Business Days. For greater certainty, the  
16 return of excess Posted Performance Assurance shall include any execution and delivery by  
17 LADWP to Powerex, at the request of Powerex, of a written consent to any amendment to an  
18 Eligible Letter of Credit held by LADWP reducing the authorized principal amount thereof by an  
19 amount not exceeding such excess.

20           Section 7.5       **Exceeding Collateral Threshold.** At any time after the  
21 Effective Date, and regardless of whether a Default has occurred, if the Termination Payment  
22 that would be payable by a Party ("Party X") upon termination of this Agreement for Party X's  
23 Default, as computed by the other Party ("Party Y"), exceeds the Collateral Threshold of Party X  
24 plus Party X's Posted Performance Assurance, if any, Party Y (the "Secured Party") may request  
25 that Party X (the "Posting Party") provide Performance Assurance to Party Y in an amount equal  
26 to the amount by which Party X's Termination Payment at that time would exceed Party X's  
27 Collateral Threshold plus Party X's Posted Performance Assurance, if any (rounding upwards to  
28 the next multiple of \$250,000). If a Default has occurred with respect to the Secured Party, then  
29 in such case, for so long as the Default continues, the Non-Defaulting Party shall compute the  
30 Termination Payment on behalf of the Secured Party.

1                   Section 7.6       **Posting of Performance Assurance.** The Posting Party shall  
2 deliver the Performance Assurance by the end of the third Business Day after receipt of such  
3 written request, provided such written request is received by the Posting Party on or before  
4 10:00 a.m. on the date of receipt, otherwise Performance Assurance shall be delivered by the end  
5 of the fourth Business Day, and failure to do so shall constitute a Default pursuant to Section  
6 10.1(e). If at any time the total amount of Posted Performance Assurance provided by the  
7 Posting Party exceeds the amount by which the Posting Party's Termination Payment exceeds  
8 the Posting Party's Collateral Threshold, then on any Business Day, the Posting Party, at its sole  
9 cost, may request a reduction of the Posted Performance Assurance to the amount by which the  
10 Posting Party's Termination Payment, as computed by the Secured Party, exceeds the Posting  
11 Party's Collateral Threshold (rounding upwards to the next multiple of \$250,000). At the request  
12 of the Posting Party from time to time the Secured Party shall compute the Posting Party's  
13 Termination Payment and give notice thereof to the Posting Party. In such case, the Secured  
14 Party shall redeliver to the Posting Party the requested Performance Assurance within three (3)  
15 Business Days of the request. For greater certainty, the redelivery of Performance Assurance  
16 shall include any execution and delivery by the Secured Party to the Posting Party, at the request  
17 of the Posting Party, of a written consent to any amendment to an Eligible Letter of Credit held  
18 by the Secured Party reducing the authorized principal amount thereof by an amount not  
19 exceeding the amount of the reduction of Performance Assurance requested by the Posting Party  
20 pursuant to this Section 7.6.

21                   Section 7.7       **Disputes regarding requested Performance Assurance.** If a  
22 Posting Party disputes the amount of Performance Assurance requested by the Secured Party,  
23 then the Posting Party shall notify the Secured Party of the existence and nature of the dispute  
24 not later than 4:00 p.m. on the next Business Day after the Secured Party has requested  
25 Performance Assurance. Notwithstanding this section and the giving of such notice, the Posting  
26 Party shall provide Performance Assurance to satisfy its collateral requirement as specified in  
27 Section 7.6 pending resolution of the dispute. In all such cases, the Parties thereafter shall  
28 promptly negotiate in good faith in order to reconcile or resolve the dispute. If the Parties fail to  
29 resolve the dispute on or before the second Business Day following the date the notice is given  
30 by the Posting Party contesting the Performance Assurance request, then the Termination  
31 Payment shall be calculated using the average of the quotations obtained by the Secured Party  
32 from three (3) dealers or brokers in electricity and/or forward contracts for electricity.

33                   Section 7.8       **Holding Posted Performance Assurance.**

34                   (a)       If a Posting Party is required to provide Performance Assurance, rather  
35 than providing Cash or an Eligible Letter of Credit to the Secured Party, the Posting Party may  
36 provide Cash to a Controller to be held pursuant to a Control Agreement.

37                   (b)       When requested by the Posting Party, the Secured Party shall enter into a  
38 Control Agreement with the Posting Party's Controller.

39                   (c)       If Performance Assurance is held by the Posting Party's Controller, the  
40 following conditions shall apply:

1 (i) Posted Performance Assurance in the form of Cash may be held  
2 only in the United States;

3 (ii) The Controller shall hold the Posted Performance Assurance in a  
4 deposit account within the Controller with the title of such account indicating that the  
5 property contained therein is being held as Posted Performance Assurance for the  
6 ownership of the Posting Party, subject to the security interest of the Secured Party;

7 (iii) Such deposit account shall be segregated from the Posting Party's  
8 funds; and

9 (iv) The initial Controller for the Posting Party shall be designated by  
10 the Posting Party in writing prior to providing Performance Assurance in response to the  
11 Secured Party's first request for Performance Assurance.

12 (d) Performance Assurance in the form of Cash may be provided to and held  
13 by the Secured Party (and not by a Controller of the Posting Party) if and for so long as the  
14 following conditions apply:

15 (i) the Secured Party is not a Defaulting Party;

16 (ii) Posted Performance Assurance in the form of Cash is held only in  
17 the United States;

18 (iii) the Secured Party or Secured Party's Guarantor has a Credit Rating  
19 of at least Baa2 by Moody's and BBB by S&P;

20 (e) If and for so long as the conditions in Section 7.8(d)(i) and Section  
21 7.8(d)(iii) apply then, notwithstanding any provision of the California Commercial Code to the  
22 contrary, the Secured Party shall have the right to:

23 (i) sell, pledge, re-hypothecate, assign, invest, use, commingle or  
24 otherwise dispose of, or otherwise use in its, business any Performance Assurance it  
25 holds, free from any claim or right of any nature whatsoever of the Posting Party,  
26 including any equity or right of redemption by the Posting Party; and

27 (ii) register any Performance Assurance in the name of the Secured  
28 Party.

29 (f) To the extent the Posting Party requests that Performance Assurance be  
30 substituted, then the Posting Party shall be entitled to substitute one form of Performance  
31 Assurance for the other form of Performance Assurance (which, for greater certainty, shall  
32 include the substitution of Cash held under a Control Agreement for an Eligible Letter of Credit  
33 and vice versa) upon three (3) Business Day's notice to the Secured Party and the Secured Party  
34 shall take all reasonable steps at the Posting Party's expense to facilitate the substitution of such  
35 Performance Assurance.

1                   Section 7.9    **Letter of Credit Failure.**

2                   (a)    For the purposes of this transaction, "Letter of Credit Failure" shall  
3 mean, with respect to an Eligible Letter of Credit Issuer:

4                               (i)    a failure to renew or substitute an Eligible Letter of Credit by no  
5 later than 30 calendar days prior to expiry thereof;

6                               (ii)   the Eligible Letter of Credit Issuer fails to maintain a Credit Rating  
7 of at least "A" by S&P and at least "A2" by Moody's or fails to maintain an asset base of  
8 at least U.S.\$10 billion;

9                               (iii)   the Eligible Letter of Credit Issuer fails to comply with or perform  
10 its obligations under such Eligible Letter of Credit if such failure continues after the lapse  
11 of any applicable grace period;

12                              (iv)   the Eligible Letter of Credit Issuer disaffirms, disclaims, repudiates  
13 or rejects, in whole or in part, or challenges the validity of, such Eligible Letter of Credit;

14                              (v)   such Eligible Letter of Credit expires or terminates, or fails or  
15 ceases to be in full force and effect for purposes of this Agreement (other than in  
16 accordance with its terms) at any time during the a period in which Posted Performance  
17 Assurance is required;

18                              (vi)   with respect to the Eligible Letter of Credit Issuer, such issuer  
19 becomes bankrupt or such entity consolidates or amalgamates with, or merges with or  
20 into, or transfers all or substantially all of its assets to, another entity and, at the time of  
21 such consolidation, amalgamation, merger or transfer, the resulting, surviving or  
22 transferee entity fails to assume all the obligations of such Party under this transaction to  
23 which it or its predecessor was a Party by operation of law or pursuant to an agreement  
24 reasonably satisfactory to the other Party.

25                   (b)    No Letter of Credit Failure shall occur with respect to an Eligible Letter  
26 of Credit after the time such Eligible Letter of Credit is required to be cancelled or returned in  
27 accordance with the terms of this Agreement. Unless otherwise agreed in writing by the  
28 Parties, each Eligible Letter of Credit shall be provided in such a manner as is mutually agreed  
29 in writing by the Parties or is customary in the relevant market, and each Eligible Letter of  
30 Credit shall be maintained for the benefit of the Secured Party.

31                   (c)    When providing Eligible Letters of Credit, the Posting Party may  
32 increase the amount of an outstanding Eligible Letter of Credit or procure one or more  
33 additional Eligible Letters of Credit. In all cases, the costs and expenses (including but not  
34 limited to the reasonable costs, expenses and attorney's fees of the Secured Party) of  
35 establishing, renewing, substituting, canceling and increasing the amount of one or more  
36 Eligible Letters of Credit (as the case may be) shall be borne by the Posting Party.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

**ARTICLE VIII**  
**BILLING and PAYMENT**

Section 8.1 **Billing and Payment.** Billing and payment for the power purchases by LADWP under this Agreement and for any other amounts due and payable by either Party hereunder shall be as follows:

(a) Subject to Section 8.1(e) on or before the 10<sup>th</sup> day of the month following a month in which deliveries occur hereunder, Powerex shall render one bill to LADWP showing (i) the Delivered Energy during the preceding month, (ii) the quantity of Delivered Energy that is Renewable Energy and the quantity of Delivered Energy, if any, that is not Renewable Energy, (iii) the amount, if any, payable by either Party to the other pursuant to Section 4.4 or Section 4.5, and (iv) the aggregate amount payable by LADWP for Delivered Energy (net of amounts, if any, payable for Energy returned by LADWP to Powerex pursuant to Section 4.7) , at the address set forth in Appendix B or such other address as is provided by LADWP in writing. LADWP shall pay such bills rendered by Powerex by wire transfer to the accounts designated on the bills rendered by Powerex on or before the 20<sup>th</sup> day of the month in which the bill was received or the 10<sup>th</sup> day after receipt of the bill, whichever is later; provided that if the 20<sup>th</sup> day of the month or the 10<sup>th</sup> day after receipt falls on a non-Business Day then the due date shall be the next Business Day. Bills or portions of bills which are not paid by the due date shall thereafter accrue an interest charge at the rate of one percent (1.0%) per month or the maximum rate permitted by law, whichever is less, from and including the date payment was due to but excluding the date such payment is made.

(b) Any amount which, through audit or corrections to metering data or discovery of inadvertent errors, is determined to have been overpaid shall be repaid as soon as such correction or discovery is made, together with interest at the rate of one percent (1.0%) per month or the maximum rate permitted by law, whichever is less, from and including the date payment was made to but excluding the date such repayment is made. Any amount which, through audit or corrections to metering data or discovery of inadvertent errors, is determined to have been underpaid shall be paid, without interest, as soon as such correction or discovery is made.

(c) A Party shall have the right to dispute the accuracy of any bill or payment only for a period of two (2) years from the date on which the bill was initially delivered. If a Party's records reveal that a bill was not delivered, then the Party may deliver to the other Party a bill within two (2) years from the date on which the bill would have been delivered under Section 8.1(a). The right to payment is waived with respect to any amounts not billed within such two (2) year period.

(d) In the event any portion of any bill is in dispute, the disputed amount shall nonetheless be paid under protest when due. The Party disputing a payment shall promptly notify the other Party in writing of the basis for the dispute. Disputes shall be discussed and resolved by the Authorized Representatives, who shall use their best efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with ARTICLE XI. Upon resolution of any dispute, the required amount of payment or refund shall be paid within five (5) Business Days after such

1 determination, with interest accrued at the rate of one percent (1.0%) per month or the  
2 maximum rate permitted by law, whichever is less, computed from and including the due date  
3 to but excluding the date such payment or refund is paid.

4 (e) In the event a Party fails to deliver or receive the Contract Quantity in  
5 any hour, the Non-Performing Party shall pay to the Performing Party the amount payable, if  
6 any, pursuant to Section 4.4 or Section 4.5, as applicable, within five (5) Business Days of  
7 demand by the Performing Party, failing which demand, such amount shall be payable in  
8 accordance with Section 8.1(a).

9 Section 8.2 **Annual Accounting.** Within sixty (60) days after the end of each  
10 Contract Year, Powerex shall provide LADWP with an accounting for the Contract Year then  
11 ended. Such accounting shall break down deliveries of Delivered Energy during the year by the  
12 type of generating facility (for example, the percentage attributed to small hydro, wind and  
13 other renewable generation types), and by Control Area.

14 Section 8.3 **Records and Audits.** Powerex and LADWP shall each keep  
15 complete and accurate records and all other data required by each of them for the purposes of  
16 proper administration of this Agreement, including such records as may be required by  
17 applicable regulatory authorities. To facilitate payment and verification, Powerex and LADWP  
18 shall keep all books and records necessary for billing and payments and grant the other Party  
19 access to those records to the extent required to verify billings and payment. Powerex and  
20 LADWP, at their own expense, shall have the right to audit and to examine the billing and  
21 operating records and data kept by the other Party relating to the administration of this  
22 Agreement at any time during the Term. All such records and data shall be maintained by each  
23 Party throughout the Term and for a period of not less than three (3) years following the  
24 termination hereof. All such audits and examinations shall be conducted upon reasonable  
25 notice and during normal business hours.

26 Section 8.4 **Audit to confirm Renewable Energy.** LADWP shall have the  
27 right at any time upon reasonable notice to Powerex to audit records and other information  
28 within Powerex's control as may be necessary to verify that Delivered Energy sold and  
29 purchased under this Agreement in any hour is attributable to generation from the Facilities and  
30 is accordingly Renewable Energy. Such records shall include available generation records  
31 and/or meter data. Powerex shall use commercially reasonable efforts to procure access for  
32 LADWP to generation records and meter data with respect to the Facilities that are necessary to  
33 verify that generation from the Facilities in any hour is equal to or exceeds the amount of  
34 Delivered Energy for that hour. If an audit establishes a discrepancy of more than five (5)  
35 percent between the quantity of Delivered Energy billed to LADWP as Renewable Energy and  
36 the quantity of Delivered Energy attributable to generation from the Facilities in any period,  
37 then Powerex will reimburse LADWP for the reasonable cost of its audit as it relates to that  
38 period.

39 Section 8.5 **Power Revenue Fund.** Any amounts payable by LADWP under  
40 this Agreement shall be payable solely from the LADWP Power Revenue Fund. LADWP  
41 represents that the financial statements issued by LADWP with respect to the "Power System  
42 (Energy Services)" from time to time reflect the assets, liabilities and financial condition of the

1 Power Revenue Fund. Other than the Power Revenue Fund, no other fund or account held by  
2 or on behalf of LADWP or the City of Los Angeles (or any other division thereof) may be used  
3 to satisfy any such obligations.

4 **ARTICLE IX**  
5 **REPRESENTATIONS AND WARRANTIES**

6 Section 9.1 **Representations and Warranties by LADWP.** LADWP makes  
7 the following representations and warrants to Powerex:

8 (a) LADWP is a department of the City of Los Angeles duly organized,  
9 validly existing and in good standing under the laws of the State of California and has the legal  
10 power and authority to own its properties, to carry on its business as now being conducted and  
11 to enter into this Agreement and carry out the transactions contemplated hereby and perform  
12 and carry out all covenants and obligations on its part to be performed under and pursuant to  
13 this Agreement.

14 (b) The Power Revenue Fund is established in and by the Charter and under  
15 the provisions of the Charter, all revenue from every source collected by LADWP in connection  
16 with its possession, management and control of the Power Assets is required to be deposited in  
17 the City Treasury to the credit of the Power Revenue Fund.

18 (c) All amounts of any kind that may become owing or payable under this  
19 Agreement from time to time are properly payable out of the Power Revenue Fund.

20 (d) Any and all acts, conditions and things required to exist, to happen and to  
21 be performed, precedent to and in the incurring of LADWP's obligations under this Agreement  
22 exist, have happened and have been performed in due time, form and manner, as required by  
23 the Constitution and statutes of the State of California and the Charter and all ordinances of the  
24 City and the obligations under this Agreement, together with all other indebtedness of LADWP  
25 and the City payable out of the Power Revenue Fund, is within every debt and other limit  
26 prescribed by the Constitution and statutes of the State of California and the Charter.

27 (e) LADWP has complied with all Requirements of Law and all  
28 requirements and practices of the City, in each case relating to procurement of goods or services  
29 and that are applicable to the processes and negotiations leading to the execution of this  
30 Agreement.

31 (f) The execution, delivery and performance by LADWP of this Agreement  
32 have been duly authorized by all necessary action, and do not and will not require any consent  
33 or approval of LADWP's Board of Commissioners or the Los Angeles City Council, other than  
34 that which has been obtained.

35 (g) The execution and delivery of this Agreement, the consummation of the  
36 transactions contemplated hereby and the fulfillment of and compliance with the provisions of  
37 this Agreement do not and will not conflict with or constitute a breach of or a default under, any  
38 of the terms, conditions or provisions of any Requirements of Law, or any organizational  
39 documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness

1 or any other agreement or instrument to which LADWP is a party or by which it or any of its  
2 property is bound, or result in a breach of or a default under any of the foregoing.

3 (h) This Agreement constitutes the legal, valid and binding obligation of  
4 LADWP enforceable in accordance with its terms, except as such enforceability may be limited  
5 by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the  
6 enforcement of creditors' rights generally or by general equitable principles, regardless of  
7 whether such enforceability is considered in a proceeding in equity or at law.

8 (i) There is no pending, or to the knowledge of LADWP, threatened action  
9 or proceeding affecting LADWP before any governmental authority which purports to affect  
10 the legality, validity or enforceability of this Agreement.

11 Section 9.2 **Representations and Warranties by Powerex.** Powerex makes  
12 the following representations and warranties:

13 (a) Powerex is a corporation, duly organized, validly existing and in good  
14 standing under the laws of the British Columbia, is qualified to do business in the State of  
15 California and has the legal power and authority to own its properties, to carry on its business as  
16 now being conducted and to enter into this Agreement and, subject to the receipt of the  
17 regulatory approvals, carry out the transactions contemplated hereby and perform and carry out  
18 all covenants and obligations on its part to be performed under and pursuant to this Agreement.

19 (b) Subject to each of the conditions precedent in Section 2.1 being met and  
20 satisfied or waived, Powerex has complied with all Requirements of Law and all of its  
21 requirements and practices, in each case relating to sale of electricity and that are applicable to  
22 the processes and negotiations leading to the execution of this Agreement.

23 (c) The execution, delivery and performance by Powerex of this Agreement  
24 (subject to each of the conditions precedent in Section 2.1 being met and satisfied or waived)  
25 have been duly authorized by all necessary action, and do not and will not require any consent  
26 or approval of Powerex's Board of Directors or equity holders other than that which has been  
27 obtained.

28 (d) The execution and delivery of this Agreement, the consummation of the  
29 transactions contemplated hereby and the fulfillment of and compliance with the provisions of  
30 this Agreement, do not and will not conflict with or constitute a breach of or a default under,  
31 any of the terms, conditions or provisions of any Requirements of law, or any organizational  
32 documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness  
33 or any other agreement or instrument to which Powerex is a Party or by which it or any of its  
34 property is bound, or result in a breach of or a default under any of the foregoing, and Powerex  
35 has obtained all permits, licenses, approvals and consents of governmental authorities required  
36 for the lawful performance of its obligations hereunder, except as referred to in Section 12.5(e).

37 (e) Subject to each of the conditions precedent in Section 2.1 being met and  
38 satisfied or waived, this Agreement will constitute the legal, valid and binding obligation of  
39 Powerex enforceable in accordance with its terms, except as such enforceability may be limited  
40 by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the

1 enforcement of creditors' rights generally or by general equitable principles, regardless of  
2 whether such enforceability is considered in a proceeding in equity or at law.

3 (f) There is no pending, or to the knowledge of Powerex, threatened action  
4 or proceeding affecting Powerex before any governmental authority which purports to affect the  
5 legality, validity or enforceability of this Agreement.

6 **ARTICLE X**  
7 **DEFAULT; TERMINATION AND REMEDIES;**  
8 **AND CALCULATION OF TERMINATION PAYMENT**

9 Section 10.1 **Default.** Each of the following events or circumstances shall  
10 constitute a "Default" by the responsible Party (the "Defaulting Party"):

11 (a) *Payment Default.* Failure to pay any amount when due under this  
12 Agreement, which is not cured within three (3) Business Days after receiving notice thereof  
13 from the other Party .

14 (b) *Performance Default.* Failure to perform any of its duties or obligations  
15 under this Agreement, when and as due (other than the failure to make any payment) which is  
16 not cured within thirty (30) calendar days after receipt of notice thereof from the other Party;  
17 provided that a failure to deliver or receive the Contract Quantity as provided for hereunder  
18 shall not constitute a "Default" as long as the Party failing to deliver or receive such Energy  
19 pays the amount, if any, provided for in Section 4.4 or Section 4.5 as the case may be, within  
20 the time specified in Section 8.1.

21 (c) *Inaccuracy of Representations and Warranties.* Inaccuracy of any  
22 representations and warranties made herein at the time made or deemed to be made.

23 (d) *Bankruptcy.* Bankruptcy of the Defaulting Party.

24 (e) *Performance Assurance Failure.* The failure by the Defaulting Party to  
25 provide Performance Assurance to the other Party in the form, amount and within the time limit  
26 provided for in ARTICLE VII or to redeliver Performance Assurance when required to do so  
27 pursuant to ARTICLE VII.

28 (f) *Guarantor Defaults.* With respect to its Guarantor, if any:

29 (i) if a material representation or warranty made by the Guarantor in  
30 connection with this Agreement, is false or misleading in any material respect when made  
31 or when deemed made or repeated; or

32 (ii) the failure of the Guarantor to make any payment required in any  
33 guarantee made in connection with this Agreement, and such failure shall not be  
34 remedied within three (3) Business Days after notice; or

35 (iii) the institution, with respect to the Guarantor, by the Guarantor or  
36 by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or

1 similar insolvency proceeding or other relief under any bankruptcy or insolvency law  
2 affecting creditor's rights or a petition is presented or instituted for its winding-up or  
3 liquidation; or

4 (iv) the failure, without written consent of the other Party, of a  
5 Guarantor's guarantee to be in full force and effect for purposes of this Agreement (other  
6 than in accordance with its terms) prior to the satisfaction of all obligations of such Party  
7 under this Agreement; or

8 (v) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in  
9 whole or in part, or challenge the validity of, any guarantee.

10 (g) *Letter of Credit Failure.* A Letter of Credit Failure with respect to the  
11 Defaulting Party.

12 (h) *Renewable Energy Percentage Default.* Default by Powerex pursuant to  
13 Section 4.8(b).

14 (i) *Controller Default.* With respect to its Controller:

15 (i) failure by the Controller to pay any amount when due under a  
16 Control Agreement which is not cured within three (3) Business Days after receiving  
17 notice thereof from the other Party; or

18 (ii) failure by the Controller to perform any of its duties or obligations  
19 under a Control Agreement, when and as due (other than the failure to make any  
20 payment) which is not cured within thirty (30) calendar days after receipt of notice  
21 thereof from the other Party; or

22 (iii) inaccuracy of any representations and warranties made in a Control  
23 Agreement at the time made or deemed to be made.

24 **Section 10.2 Default Remedy.**

25 If either Party is in Default, the other Party may without further notice exercise any rights and  
26 remedies provided herein or otherwise available at law or in equity, including the right to  
27 terminate this Agreement pursuant to Section 10.3.

28 **Section 10.3 Termination for Default.**

29 (a) If Default occurs, the Party that is not the Defaulting Party (the  
30 "Non-Defaulting Party") shall possess the right to terminate this Agreement upon notice (by  
31 facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be  
32 effective immediately upon receipt. If the Non-Defaulting Party fails to exercise this right of  
33 termination within thirty (30) days following the time when the Default (other than a Default  
34 referred to in Section 10.1(h)) becomes known (or more than thirty days if the Non-Defaulting  
35 and Defaulting Parties agree to an extension), then such right of termination shall no longer be  
36 available to the Non-Defaulting Party as a remedy for the event(s) of Default; provided,  
37 however, this thirty day requirement for exercising termination rights shall not apply to defaults  
38 pursuant to Section 10.1(d) and Section 10.1(f). If LADWP fails to exercise this right of

1 termination within thirty (30) days following the time when a Default referred to in Section  
2 10.1(h) first becomes known to LADWP (or more than thirty days if Parties agree to an  
3 extension), then such right of termination shall no longer be available to LADWP as a remedy  
4 for that event of Default and the right of termination for any subsequent Default under Section  
5 10.1(h) that is based on any part of the same delivery period as the previous Default shall not be  
6 available until such time as six (6) months has passed from when the previous Default first  
7 became known to LADWP. LADWP shall notify Powerex upon a Default referred to in  
8 Section 10.1(h) becoming known to it.

9 (b) Upon termination, the Non-Defaulting Party shall liquidate this  
10 Agreement as soon as practicable. The Termination Payment shall be calculated in accordance  
11 with Section 10.4. The Termination Payment shall be the sole and exclusive remedy for the  
12 Non-Defaulting Party for termination of this Agreement for the time period beginning at the  
13 time notice of termination under this Section 10.3 is received.

14 (c) Upon termination, the Non-Defaulting Party may withhold any payments  
15 it owes the Defaulting Party for any obligations incurred prior to termination under this  
16 Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting  
17 Party. The Non-Defaulting Party shall possess the right to set-off the amount due it under this  
18 Section 10.3 by any such payments due the Defaulting Party as provided in Section 10.4(d).

19 Section 10.4 **Calculation of Termination Payment.** The Non-Defaulting  
20 Party shall calculate the Termination Payment as follows:

21 (a) The Gains and Losses shall be determined by comparing the value of the  
22 remaining term, Contract Quantity, delivery schedule, Point of Delivery, and Energy Price  
23 under this Agreement had it not been terminated to the equivalent quantities and relevant  
24 market prices (excluding the market price of any renewable energy attributes similar to  
25 Renewable Energy Credits) for the remaining Term either quoted by a bona fide third party  
26 offer or which are reasonably expected to be available in the market under a replacement  
27 contract for this Agreement. To ascertain the market prices of a replacement contract, the Non-  
28 Defaulting Party may consider, among other valuations, quotations from dealers in energy  
29 contracts and bona fide third party offers, all adjusted for the length of the remaining Term and  
30 differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be  
31 required to enter into replacement transactions in order to determine the Termination Payment.  
32 If Powerex is the Non-Defaulting Party then, as full compensation for loss of sale of the  
33 Renewable Energy Credits associated with the Contract Quantity, the Losses calculated above  
34 shall be increased by \$4.50 per MWh multiplied by the Contract Quantity and further  
35 multiplied by the number of hours in the remaining Term. If LADWP is the Non-Defaulting  
36 Party then, as full compensation for loss of the Renewable Energy Credits associated with the  
37 Contract Quantity, the Losses calculated above shall be increased by \$4.50 per MWh multiplied  
38 by the Contract Quantity and further multiplied by the number of hours in the remaining Term.

39 (b) The Gains and Losses calculated under Section 10.4(a) shall be  
40 discounted to present value using the Present Value Rate as of the time of termination (to take  
41 account to the period between the time notice of termination was effective and when such  
42 amount would have otherwise been due if this Agreement had been performed in full).

1 (c) The Non-Defaulting Party shall set off or aggregate, as appropriate, its  
2 Gains and Losses (as calculated in Section 10.4(a)) and Costs and notify the Defaulting Party.  
3 If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, after any  
4 aggregation or set-off as provided in Section 10.4(e), the Defaulting Party shall within three (3)  
5 Business Days of receipt of such notice, pay the Termination Payment to the Non-Defaulting  
6 Party, which amount shall bear interest at the Present Value Rate from the time notice of  
7 termination was received until paid. Subject to Section 10.4(d), if the Non-Defaulting Party's  
8 aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party, after any  
9 aggregation or set-off as provided in Section 10.4(e), shall pay the remaining amount to the  
10 Defaulting Party within three (3) Business Days of the date notice of termination was received  
11 including interest at the Present Value Rate from the time notice of termination was received  
12 until the Defaulting Party receives payment.

13 (d) In the case of a Default pursuant to Section 10.1(h), if LADWP's  
14 aggregate Gains exceed its aggregate Losses and Costs, then LADWP shall not be obligated to  
15 pay the remaining amount to Powerex, without prejudice to LADWP's obligation to pay any  
16 amounts otherwise owing to Powerex under this Agreement.

17 (e) The Non-Defaulting Party shall aggregate or set off, as appropriate, at its  
18 election, any or all other amounts accruing due or owing between the Parties under this  
19 Agreement (including amounts accruing due or owing for Energy delivered by either Party for  
20 which payment has not then been received) against (i) the amount by which the Non-Defaulting  
21 Party's aggregate Losses and Costs exceed its aggregate Gains, or (ii) the amount by which the  
22 Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, so that all such  
23 amounts are aggregated and/or netted to a single, liquidated amount. The single, liquidated  
24 amount shall be referred to in this Agreement as the "Termination Payment" to the extent it is  
25 payable by the Defaulting Party to the Non-Defaulting Party.

26 (f) (i) If the Non-Defaulting Party owes the Defaulting Party monies  
27 under this Section 10.4, then notwithstanding the three (3) Business Day payment  
28 requirement detailed above, the Non-Defaulting Party may elect to pay the Defaulting  
29 Party the monies owed under this Section 10.4 over the remaining Term. The  
30 Non-Defaulting Party may make this election by providing notice to the Defaulting  
31 Party within three (3) Business Days of the notice being provided to terminate and  
32 liquidate under this Section 10.4. The Non-Defaulting Party shall provide the  
33 Defaulting Party with the details on the method for recovering the monies owed over the  
34 remaining Term. That method shall ensure that the Defaulting Party receives a payment  
35 each month through the end of the Term which allows it to receive the monies which  
36 would have been due it under Section 10.4(c) and Section 10.4(e) in total (to be  
37 recovered over the Term to replicate as closely as possible the payment streams under  
38 this Agreement) provided that the discounting using the Present Value Rate referenced  
39 in Section 10.4(b) shall not be reflected in determining the amounts to be recovered  
40 under this provision. Any disputes as to the methodology shall be resolved pursuant to  
41 the dispute resolution procedures in ARTICLE XI.

42 (ii) This Section 10.4(f) and the rights and obligations under it shall  
43 survive termination of this Agreement.

1 (iii) The Party owed monies under this Section 10.4(f) shall have the  
2 right to request Performance Assurance consistent with ARTICLE VII even after  
3 termination of this Agreement.

4 (iv) If the Party owing money defaults on its payment obligations  
5 consistent with Section 10.1(a) or defaults with regard to providing performance  
6 assurance consistent with Section 10.1(e), then the other Party shall have the right (by  
7 notice) at any time after the Party owing money defaults to require that Party to pay all  
8 monies owed under this Agreement within three (3) Business Days of receipt of the  
9 notice. The monies to be paid under this accelerated payment provision shall be the  
10 remaining amounts to be paid under this Agreement reflecting a discount using the  
11 Present Value Rate from the date of the notice.

12 (g) If the Defaulting Party disagrees with the calculation of the Termination  
13 Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall  
14 be submitted to informal dispute resolution as provided in Section 11.1(a) and thereafter  
15 binding dispute resolution as provided for in ARTICLE XI. Pending resolution of the dispute,  
16 the Defaulting Party shall pay the full amount of the Termination Payment calculated by the  
17 Non-Defaulting Party within three (3) Business Days (except if the option under Section 10.4(f)  
18 has been invoked in which case the payment times in that provision would apply) of receipt of  
19 notice of termination as set forth in Section 10.4(c) and Section 10.4(e) subject to the  
20 Non-Defaulting Party refunding, with interest, at the Present Value Rate, any amounts  
21 determined to have been overpaid.

22 (h) For purposes of this Section 10.4:

23 (i) "Gains" means the economic benefit (exclusive of Costs), if any,  
24 resulting from the termination of this Agreement, determined in a commercially  
25 reasonable manner as calculated in accordance with this Section 10.4;

26 (ii) "Losses" means the economic loss (exclusive of Costs), if any,  
27 resulting from the termination of this Agreement, determined in a commercially  
28 reasonable manner as calculated in accordance with this Section 10.4;

29 (iii) "Costs" means brokerage fees, commissions and other similar  
30 transaction costs and expenses reasonably incurred in terminating any specifically related  
31 arrangements or entering into arrangements which replace this Agreement, transmission  
32 and ancillary service costs associated therewith, and excluding attorneys' fees, if any,  
33 incurred in connection with the Non-Defaulting Party enforcing its rights with regard to  
34 this Agreement. The Non-Defaulting Party shall use reasonable efforts to mitigate or  
35 eliminate these Costs.

36 (iv) In no event, however, shall a Party's Gains, Losses or Costs  
37 include any penalties or similar charges imposed by the Non-Defaulting Party.

38 Section 10.5 **Delivery of Performance Assurance.** Upon calculation of the  
39 Termination Payment or the amount payable by the Non-Defaulting Party to the Defaulting  
40 Party pursuant to Section 10.4(c), the Secured Party, to the extent it is owed either such amount,

1 shall be entitled to require the Controller to deliver up any Performance Assurance and/or shall  
2 be entitled to draw down any necessary amount under any Eligible Letter of Credit and, after  
3 calculation of the Termination Payment or such amount owing by the Non-Defaulting Party,  
4 apply any amounts held by it in satisfaction of any such amount owed to it. Any excess amount  
5 shall be returned to the Posting Party (including any undrawn letters of credit) and the Secured  
6 Party shall instruct any Controller to return any unapplied Cash to the Posting Party.

7                   **Section 10.6 Powerex Termination Right.**

8                   (a)     In addition to all other rights under this Agreement, Powerex shall have  
9 the right, which may be exercised at any time during the Term, to terminate this Agreement if  
10 BC Hydro wishes to retain or acquire for its system requirements a significant part or all of the  
11 Energy (including capacity) that Powerex would otherwise deliver under this Agreement during  
12 the following Contract Year. Powerex shall give LADWP at least six (6) months notice of its  
13 intent to terminate this Agreement, specifying the effective date of the termination. Such notice  
14 shall include written attestation from BC Hydro that BC Hydro wishes to retain or acquire a  
15 significant part or all of such Energy for its system requirements.

16                   (b)     Upon termination in accordance with Section 10.6(a), the provisions of  
17 Section 10.3(b), Section 10.3(c) and Section 10.4 shall apply with necessary changes, provided  
18 that references to "Defaulting Party" shall be deemed to be references to Powerex and  
19 references to "Non-Defaulting Party" shall be references to LADWP, (although the Parties  
20 agree that Powerex shall not be considered to be in default hereunder). Except as may be  
21 provided for in Section 10.3(b), Section 10.3(c) and Section 10.4, Powerex shall have no  
22 liability to LADWP resulting from termination in accordance with Section 10.6(a).

23   **ARTICLE XI**  
24   **DISPUTE RESOLUTION**

25                   Section 11.1 **Dispute Resolution.** Disputes under this Agreement between  
26 Powerex and LADWP shall be resolved in accordance with the provisions of this ARTICLE XI.

27                   (a)     Any Claim shall, at the request of either Party, be referred to a senior  
28 representative of each of the Parties for resolution on an informal basis as promptly as  
29 practicable. In the event the senior representatives are unable to resolve the dispute within  
30 thirty (30) calendar days of such referral or such other period as the Parties may mutually agree,  
31 either Party may submit the matter to binding arbitration in accordance with Section 11.1(b)  
32 through Section 11.1(d).

33                   (b)     Any claim, counterclaim, demand, cause of action, dispute, and  
34 controversy arising out of or relating to this Agreement or the relationship established by this  
35 Agreement, any provision hereof, the alleged breach thereof, or in any way relating to the  
36 interpretation or the subject matter of this Agreement, involving the Parties and/or their  
37 respective representatives (a "Claim"), even though any such Claim allegedly is extra-  
38 contractual in nature, whether such Claim sounds in contract, tort, or otherwise, at law or in  
39 equity, under state or federal law, whether provided by statute or the common law, for damages  
40 or any other relief, shall be resolved exclusively by binding arbitration pursuant to the

1 Commercial Arbitration Rules of the American Arbitration Association (“AAA”) and may not  
2 be resolved by a law suit. Each Party hereby represents that is has read, understood and agrees  
3 to use the AAA rules in connection herewith. If Powerex initiates arbitration it shall first  
4 comply with the claim filing requirements of California *Government Code* Section 901 *et seq*,  
5 to the extent such requirements are applicable.

6 (c) The place of arbitration shall be Los Angeles, California. The language  
7 of the arbitration shall be English. It is agreed that the arbitrators shall have no jurisdiction or  
8 authority to award treble, exemplary or punitive damages of any type under any circumstances  
9 whether or not such damages may be available under any applicable law, and each of the parties  
10 hereby waive their rights, if any, to recover any such damages. To the fullest extent permitted  
11 by law, the parties shall maintain in confidence the fact that an arbitration has been  
12 commenced, all documents and information exchanged during the course of the arbitration  
13 proceeding, and the arbitrators' award, provided that each of the parties shall be entitled to  
14 disclose such matters to their own officers, directors and employees, their professional advisors  
15 and other representatives as necessary for the purposes of conducting the arbitration, and may  
16 make such disclosures in the course of legal proceedings as may be required to pursue any legal  
17 right arising out of or in connection with the arbitration. The Parties understand and agree,  
18 however, that the LADWP is subject to and must comply with the California Public Records  
19 Act, *Government Code* Section 6250 *et seq*, and the Ralph M. Brown Act, *Government Code*  
20 Section 54950 *et seq*, and al other requirements pertaining to open government.

21 (d) If any applicable law or statute authorizes any form of court proceeding  
22 in any of the courts of the United States that in any way arises out of or is related to an  
23 arbitration conducted pursuant to this Agreement (“Related Proceedings”), then, to the extent  
24 that any such matter is in whole or in part eligible for resolution by a United States District  
25 Court, whether or not the dispute may in whole or in part also be eligible for resolution in a  
26 state court, each Party irrevocably:

27 (i) submits to the exclusive jurisdiction of the United States District  
28 Court located in the City of Los Angeles, California for the purposes of such Related  
29 Proceedings; and

30 (ii) waives any objection which it may have at any time to the laying  
31 of venue of any Related Proceedings brought in any such court, waives any claim that  
32 such Related Proceedings have been brought in an inconvenient forum, and further  
33 waives the right to object, with respect to such Related Proceedings, that such court does  
34 not have any jurisdiction over such Party. Nothing in this Agreement precludes either  
35 Party from bringing a proceeding in any jurisdiction to enforce an arbitration award or  
36 any judgment enforcing an arbitration award, nor shall the bringing of such proceedings  
37 in any one or more jurisdictions preclude the bringing of enforcement proceedings in any  
38 other jurisdiction.

39 (e) Nothing in this ARTICLE XI shall be construed to delay the exercise of  
40 remedies pursuant to Section 10.2 pending the resolution of any dispute.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

**ARTICLE XII**  
**MISCELLANEOUS**

Section 12.1 **Authorized Representative.** Each Party shall designate an Authorized Representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an "Authorized Representative"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) calendar days after execution of this Agreement, each Party shall notify the other Party in writing of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement.

Section 12.2 **Notices.** Unless otherwise provided, all notices, requests and demands under this Agreement shall be given in writing. All written notices, requests and demands under this Agreement shall be deemed properly sent if delivered in person or sent by facsimile transmission or courier to the persons and addresses specified in Appendix B. A notice, request or demand shall be deemed given when actually received at the address specified in Appendix B.

Section 12.3 **Regulatory Compliance.** Each Party shall at all times comply with all applicable laws, ordinances, rules and regulations applicable to it. As applicable, each Party shall give all required notices, shall use best efforts to procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

Section 12.4 **No Dedication of Facilities.** Any undertaking by one Party to the other Party under any provisions of this Agreement shall not constitute the dedication of the system or any portion thereof of either Party to the public or to the other Party or any other person or entity, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 12.5 **Force Majeure.**

(a) Neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement (other than the obligations of a Party to make payment of amounts due under this Agreement) when the failure of performance shall be due to a Force Majeure despite all reasonable efforts of such Party to prevent or mitigate its effects. A Party which is not able to perform its obligations under this Agreement shall give a written detailed description of the Force Majeure to the other Party within a reasonable time following the triggering of the event(s), which notice shall include information with respect to the nature, cause and date of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such notice shall be excused from fulfilling its obligations under this Agreement until such time that the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Powerex is unable to deliver Energy due to a Force Majeure, LADWP shall have no obligation to pay for Energy not delivered under

1 this Agreement from the start of the Force Majeure until Powerex resumes delivery thereof  
2 under this Agreement. This Section 12.5 does not excuse LADWP from payments for Energy  
3 received up to the time of the Force Majeure. Any Party whose performance under this  
4 Agreement is hindered by a Force Majeure shall make all reasonable efforts to perform its  
5 obligations under this Agreement and to mitigate the effects of the Force Majeure.

6 (b) For purposes of Section 4.8(b), a Force Majeure claimed or invoked by  
7 Powerex shall not operate to reduce the Aggregate Contract Quantity for the purpose of  
8 determining whether the aggregate quantity of Renewable Energy delivered in any 12-month  
9 period is less than 90% of the Aggregate Contract Quantity for such period, except if it is a  
10 Force Majeure of the kind referred to in Section 12.5(d).

11 (c) The term "Force Majeure" means any cause beyond the control, and not  
12 the result of negligence of the Party affected or due to removable or remediable causes which it  
13 fails to remove or remedy within a reasonable period of time, which cause the affected Party by  
14 exercise of due diligence is unable to avoid and, when occurred, overcome, including, but not  
15 restricted to, flood, drought, earthquake, storm, fire, lightening, epidemic, war, riot, civil  
16 disturbance or disobedience, labor dispute, labor or material shortage, sabotage, System  
17 Emergency, and action or non-action by, or failure to obtain or maintain the necessary permits,  
18 authorizations or approvals, or renewals thereof from, any governmental agency or authority.  
19 Nothing contained in this Section 12.5 shall be construed so as to require either Party to settle a  
20 strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of  
21 its obligations by reason of a Force Majeure shall give prompt notice of such fact and shall  
22 exercise due diligence to remove such inability within a reasonable time period. A Force  
23 Majeure does not include (i) an act of negligence or wrongdoing; (ii) any requirement to meet a  
24 renewable portfolio standard or any change (whether voluntary or mandatory) in any renewable  
25 portfolio standard that may affect the value to LADWP of the Renewable Energy purchased  
26 hereunder; (iii) events arising from the failure by the owner thereof to operate and maintain the  
27 Facilities in accordance with Prudent Utility Practices; (iv) an increase in the variable and fixed  
28 costs of operation and maintenance of the Facilities, unless the increase is caused by a Force  
29 Majeure; (v) failure of third Parties to provide goods or services essential to a Party's  
30 performance, unless such failure is caused by a Force Majeure; (vi) delays in or an inability of a  
31 Party to obtain financing or (vii) economic hardship.

32 (d) Notwithstanding the "due diligence" obligations or obligations to remove  
33 or remedy the causes set forth in the foregoing paragraph (which do not apply to this paragraph  
34 except as specified below), where the entity providing transmission services for deliveries  
35 under this Agreement interrupts such transmission service, the interruption in transmission  
36 service shall be considered a Force Majeure under this Section 12.5 provided that Firm  
37 Transmission involving the Specified Transmission Path was obtained pursuant to a  
38 transmission tariff or contract to effectuate the delivery under this Agreement, and the entity  
39 providing transmission service curtailed or interrupted such Firm Transmission pursuant to the  
40 applicable transmission tariff or contract.

41 (e) If Powerex has designated Facilities located within British Columbia  
42 from time to time it shall be a Powerex event of Force Majeure if the National Energy Board of  
43 Canada does not renew or replace Powerex's existing Export Permits No. EPE 118 and EPE

1 119 on terms acceptable to Powerex in its sole discretion, on or before their expiry date of  
2 September 30, 2008 (or any extension of such expiry date granted by the National Energy  
3 Board). From and after the expiry of such existing permits, Section 12.5(a) shall apply to  
4 relieve Powerex of the obligation to deliver energy due to such Force Majeure event. If such  
5 Force Majeure event continues for ninety (90) days after the expiry of such existing permits,  
6 Powerex may by notice to LADWP terminate this Agreement without liability of either Party to  
7 the other Party resulting from such termination. Powerex shall use reasonable efforts to keep  
8 LADWP fully informed as to the status of the renewal or replacement of such existing permits  
9 but shall have no liability for unintentionally failing to do so.

10 (f) If an event of Force Majeure substantially prevents a Party from  
11 performing its material obligations under this Agreement for more than one hundred and eighty  
12 (180) consecutive days, either Party may by notice to the other Party terminate this Agreement  
13 without liability of either Party to the other Party resulting from such termination. The Party  
14 affected by the event of Force Majeure shall use reasonable efforts to keep the other Party fully  
15 informed as to the status of the Force Majeure but shall have no liability for unintentionally  
16 failing to do so.

17 Section 12.6 **Confidential Information.** All Confidential Information  
18 obtained by either party from the other party shall be used only in connection with such party's  
19 exercise of its rights or performance of its obligations under this Agreement and shall be kept  
20 confidential by the receiving party and its representatives, except as may be required by law  
21 including the California Public Records Act, Cal. Govt. Code §§ 6250 et. seq. and the Ralph M.  
22 Brown Act, Cal. Govt. Code §§ 54950 et. seq, applicable regulation or judicial process;  
23 provided, however, that if the receiving party is required to disclose such Confidential  
24 Information by applicable law, regulation or legal process, the receiving party shall use best  
25 efforts to notify the disclosing party of such pending disclosure and consult with the disclosing  
26 party prior to such disclosure as to the advisability of seeking a protective order or other means  
27 of preserving the confidentiality of the Confidential Information; provided that the receiving  
28 Party shall have no liability for unintentionally failing to do so. The provisions of this Section  
29 12.6 shall survive for five (5) years after the termination of this Agreement.

30 Section 12.7 **Assignment of Agreement.** Neither Party shall assign nor  
31 transfer this Agreement, in whole or in part, or any of its interests hereunder to any other person  
32 or entity without the prior written consent of the other Party hereto. Such consent shall not be  
33 unreasonably withheld by either Party. Any attempt to transfer or assign this Agreement, or any  
34 privilege hereunder, without such prior written consent, except as provided herein, shall be void  
35 and confer no right on any Person that is not a Party to this Agreement.

36 Section 12.8 **Ambiguity.** The Parties acknowledge that this Agreement was  
37 jointly prepared by them, by and through their respective legal counsel, and any uncertainty or  
38 ambiguity existing herein shall not be interpreted against either Party on the basis that the Party  
39 drafted the language, but otherwise shall be interpreted according to the application of the rules  
40 on interpretation of contracts.

1                   Section 12.9 **Attorney Fees & Costs.** Both Parties agree that in any action to  
2 enforce the terms of this Agreement that each Party shall be responsible for its own attorney  
3 fees and costs.

4                   Section 12.10 **Voluntary Execution.** Each Party acknowledges that it has  
5 read and fully understands the content and effect of this Agreement and that the provisions of  
6 this Agreement have been reviewed and approved by its respective counsel. Each Party further  
7 acknowledges that it is sophisticated, experienced and knowledgeable regarding the electricity  
8 industry and green attributes including 'renewable energy credits', that it is able to evaluate the  
9 risks and merits of this Agreement and is not relying in any manner on the other Party for  
10 advice or analysis regarding the risks or merits of this Agreement. Neither Party is a fiduciary  
11 of the other Party. Each Party further acknowledges that it has executed this Agreement  
12 voluntarily, subject only to the advice of its own counsel, and does not rely on any promise,  
13 inducement, representation or warranty that is not expressly stated herein.

14                   Section 12.11 **Entire Agreement.** This Agreement and the Concurrent  
15 Agreement contain the entire understanding concerning the subject matter hereof and therein  
16 and supersede and replace any prior negotiations, discussions or agreements between the  
17 Parties, or any of them, concerning that subject matter, whether written or oral, except as  
18 expressly provided for herein. This Agreement and the Concurrent Agreement are fully  
19 integrated documents. Each Party acknowledges that no other Party, representative or agent,  
20 has made any promise, representation or warranty, express or implied, that is not expressly  
21 contained in this Agreement or the Concurrent Agreement that induced the other Party to sign  
22 this Agreement or the Concurrent Agreement.

23                   Section 12.12 **Waiver of Immunity.** Without limiting the provisions of  
24 Section 11.1, Powerex irrevocably waives, to the fullest extent permitted by applicable law,  
25 with respect to itself and its revenues and assets (irrespective of their use or intended use), all  
26 immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) relief by way  
27 of injunction, order for specific performance or for recovery of property, (iii) attachment of its  
28 assets (whether before or after judgment) and (iv) execution or enforcement of any judgment to  
29 which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of  
30 any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will  
31 not claim any such immunity in any proceedings.

32                   Section 12.13 **Governing Law.** This Agreement shall be interpreted,  
33 governed by, and construed under the laws of the State of California without consideration of  
34 conflicts of law principles.

35                   Section 12.14 **Effect of Section Headings.** Section headings appearing in this  
36 Agreement are inserted for convenience only and shall not be construed as interpretations of  
37 text.

38                   Section 12.15 **Waiver.** The failure of either Party to this Agreement to enforce  
39 or insist upon compliance with or strict performance of any of the terms or conditions hereof, or  
40 to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment

1 of any such terms, conditions or rights, but the same shall be and remain at all times in full  
2 force and effect.

3           Section 12.16 **Relationship of the Parties.** This Agreement shall not be  
4 interpreted to create an association, joint venture or partnership between the Parties nor to  
5 impose any partnership obligation or liability upon either such Party. Neither Party shall have  
6 any right, power or authority to enter into any agreement or undertaking for, or act on behalf of,  
7 or to act as an agent or representative of, the other Party.

8           Section 12.17 **Third Party Beneficiaries.** This Agreement shall not be  
9 construed to create rights in, or to grant remedies to, any third Party as a beneficiary of this  
10 Agreement or any duty, obligation or undertaking established herein.

11           Section 12.18 **Liability and Damages.** To the extent permitted by law, neither  
12 Party and neither Party's directors, members of its governing bodies, officers or employees  
13 shall be liable to the other Party for any loss or damage to property, loss of earnings or  
14 revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or  
15 punitive damages, which may occur or result from the performance or non-performance of this  
16 Agreement, including any negligence arising hereunder.

17           Section 12.19 **Severability.** In the event any of the terms, covenants or  
18 conditions of this Agreement, or the application of any such terms, covenants or conditions,  
19 shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms,  
20 covenants and conditions of this Agreement and their application not adversely affected thereby  
21 shall remain in force and effect, provided that the remaining valid and enforceable provisions  
22 materially retain the essence of the Parties' original bargain.

23           Section 12.20 **Currency.** All dollar amounts under this Agreement (including  
24 the Appendices hereof) are specified and payable in United States dollars.

25           Section 12.21 **Counterparts.** This Agreement may be executed in  
26 counterparts which together shall constitute a single agreement. A Party may execute and  
27 deliver this Agreement by executing the signature page and delivering the executed signature  
28 page to the other Party by fax transmission or by electronic mail, in which case the Agreement  
29 shall be considered executed and delivered by both Parties upon each Party having received an  
30 original or copy of the executed signature page, transmitted as provided above. Immediately  
31 following the Effective Date, a Party delivering the signature page by fax transmission or  
32 electronic mail shall also deliver the originally signed signature page to the other Party.

33           Section 12.22 **Communications.** Each Party shall use reasonable efforts to  
34 give the other Party notice of its intention to issue any press release regarding this Agreement,  
35 its execution, its terms and conditions or a Party's performance and to give the other Party an  
36 opportunity to provide comments with regard to the press release. A Party shall have no  
37 liability to the other Party for failing to comply with this provision.

1 IN WITNESS WHEREOF, each Party was represented by legal counsel during the negotiation  
2 and execution of this Agreement and the Parties have executed this Agreement to be effective on  
3 the Effective Date.

4  
5 DEPARTMENT OF WATER AND POWER OF  
6 THE CITY OF LOS ANGELES BY  
7 BOARD OF WATER AND POWER COMMISSIONERS OF  
8 THE CITY OF LOS ANGELES

9  
10  
11 Effective Date: MAR 28 2007

By: *Ronald F Deaton*  
12 Ronald F Deaton, General Manager

AUTHORIZED BY RES. 007 166  
MAR 06 2007

13  
14  
15 And: *Barbara E. Moseley*  
16 Secretary

17  
18 APPROVED AS TO FORM AND LEGALITY  
ROCKARD J. DELGADILLO, CITY ATTORNEY

19 BY *Dirk P. Briersma*  
20 MAR 15 2007  
Dirk P. Briersma  
Deputy City Attorney

21  
22 POWEREX CORP

23  
24  
25 Agreement

26 Reference Date: MAR 21 2007 By: *Teresa Conway*  
27 Teresa Conway, President and CEO  
28

APPROVED  
as to form only  
*du*  
Solicitor  
POWEREX CORP.

APPENDIX A

1  
2  
3  
4  
5  
6  
7

PART 1

hydroelectric (30 MW or less nameplate capacity), biomass, landfill gas, and wind.

PART 2

biodiesel, digester gas, waste gas, solar thermal, geothermal, photovoltaics, fuel cells  
with renewable fuels and ocean wave technologies

1  
2  
3 **APPENDIX B**

4 **LADWP and Powerex Billing, Notification and Scheduling Contact Information**

5 1. Notices pursuant to Section 12.2 shall be sent to the following addresses:

6 1.1 If to LADWP:

7 Department of Water and Power  
8 of the City of Los Angeles  
9 111 North Hope Street, Room 1250 JFB  
10 Los Angeles, California 90012  
11 Attention: Mohammed Beshir

12 Telephone: 213-367-0237  
13 Facsimile: 213-367-3829

14 1.2 If to Powerex:

15 Powerex Corp.  
16 1400 – 666 Burrard Street  
17 Vancouver, British Columbia  
18 V6C 2X8  
19 Attention: Contracts Manager

20 Telephone (604) 891-6090  
21 Facsimile: (604) 891-5025

22 2. Billings and payments pursuant to Section 7 shall be transmitted to the following  
23 addresses:

24 2.1 If Payment to LADWP:

25 Department of Water and Power  
26 of the City of Los Angeles  
27 P.O. Box 51111  
28 Los Angeles, California 90051-0100  
29 Attention: Accounts Receivable

30 2.2 If Billing to LADWP:

31 Department of Water and Power of the City of Los Angeles  
32 Accounting Division — Accounts Payable Section  
33 P.O. Box 51211  
34 Room 424 JFB  
35 Los Angeles, CA 90051-5511  
36 Attn: Supervisor of Accounts Payable

1           2.3    If Payment to Powerex:  
2                    Powerex Corp.  
3                    1400 – 666 Burrard Street  
4                    Vancouver, British Columbia  
5                    V6C 2X8  
6                    Attention: Energy Accounting  
7                    Telephone (604) 891-6063  
8                    Facsimile: (604) 891-6011

9           2.4    If Billing to Powerex:  
10                   Powerex Corp.  
11                   1400 – 666 Burrard Street  
12                   Vancouver, British Columbia  
13                   V6C 2X8  
14                   Attention: Energy Accounting  
15                   Telephone (604) 891-6063  
16                   Facsimile: (604) 891-6011

17          2.5    Credits and Collections by Powerex:  
18                   Powerex Corp.  
19                   1400 – 666 Burrard Street  
20                   Vancouver, British Columbia  
21                   V6C 2X8  
22                   Attention: Credit Manager  
23                   Telephone (604) 891-6064  
24                   Facsimile: (604) 891-5025

25                   With additional notices of Default to:  
26                     
27                   Attention: Manager, Risk Management  
28                   Telephone (604) 891-5081  
29                   Facsimile: (604) 891-5056

30    3.       All notices related to scheduling shall be sent to the following address:

31                   If to LADWP:  
32                   Department of Water and Power  
33                   of the City of Los Angeles  
34                   P.O. Box 111, Room 1148  
35                   Los Angeles, California 90051  
36                   Attention: ECC Dispatcher  
37                   Telephone: (818) 771-6771  
38                   Facsimile: (818) 771-6606

1  
2  
3  
4  
5  
6  
7  
8  
9

If to Powerex:

Powerex Corp.  
1400 – 666 Burrard Street  
Vancouver, British Columbia  
V6C 2X8  
Attention: Scheduling  
Telephone: (604) 891-6005  
Facsimile: (604-891-5045

1 APPENDIX C

2  
3 GUARANTEE AGREEMENT

4  
5 This Guarantee ("Guarantee") dated as of the \_\_\_ day of \_\_\_\_\_, 200\_ is made  
6 and entered into by British Columbia Hydro and Power Authority, a British Columbia  
7 corporation ("Guarantor").

8 WITNESSETH:

9 WHEREAS, Powerex Corp. ("Company") has entered a Power Purchase  
10 Agreement DWP No. BP 05-020-B (the "Agreement") with the City of Los Angeles, acting by  
11 and through its Department of Water and Power (the "Guaranteed Party"); and

12 WHEREAS, Guarantor will directly or indirectly benefit from the Agreement.

13 NOW THEREFORE, in consideration of the Guaranteed Party agreeing to  
14 conduct business with Company, Guarantor hereby covenants and agrees as follows:

15 1. GUARANTEE. Subject to the provisions hereof, Guarantor hereby irrevocably and  
16 unconditionally guarantees the timely payment when due of the obligations of Company  
17 under the Agreement (the "Obligations") to the Guaranteed Party in accordance with the  
18 Agreement. If Company fails to pay any Obligations, Guarantor shall forthwith pay to  
19 the Guaranteed Party the amount due in the same currency and manner provided for in  
20 the Agreement. This Guarantee shall constitute a guarantee of payment and not of  
21 collection. Until all of the Obligations are paid in full, the Guarantor shall have no right  
22 of subrogation with respect to any payments it makes under this Guarantee. The liability  
23 of Guarantor under the Guarantee shall be subject to the following:

24 (a) Guarantor's liability hereunder shall be and is specifically limited to payments or  
25 penalties expressly required to be made in accordance with the Agreement (even  
26 if such payments or penalties are deemed to be damages) and, except to the extent  
27 specifically provided in the Agreement or herein, in no event shall Guarantor be  
28 subject hereunder to consequential, exemplary, equitable, loss of profits, punitive,  
29 tort or any other damages, costs, or attorney's fees.

30 (b) Notwithstanding Section 1(a), **the aggregate liability of the Guarantor under**  
31 **this Guarantee shall not exceed U.S. \$10,000,000 (Ten Million U.S. Dollars).**

32 2. DEMANDS AND NOTICE. If Company fails to pay any Obligations, the Guaranteed  
33 Party may make a demand upon the Guarantor (hereinafter referred to as a "Payment  
34 Demand"). A Payment Demand shall be in writing and shall briefly specify in reasonable  
35 detail what amount Company has failed to pay and an explanation of why such payment  
36 is due, with a specific statement that the Guaranteed Party is calling upon Guarantor to

1 pay under this Guarantee. A Payment Demand satisfying the foregoing requirements  
2 shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single  
3 written Payment Demand shall be effective as to any specific failure to pay during the  
4 continuance of such failure to pay, until Company or Guarantor has cured such failure to  
5 pay, and additional written Payment Demands concerning such failure to pay shall not be  
6 required until such failure to pay is cured.

7 3. TERM. This Guarantee shall remain in full force and effect until the date it is terminated  
8 by thirty (30) days Notice from Guarantor to Guaranteed Party. When this Guarantee is  
9 terminated in accordance with the foregoing, Guarantor shall have no further liability  
10 hereunder, except as provided in the last sentence of this paragraph. No such termination  
11 shall affect Guarantor's liability with respect to any Obligations arising under, from, or  
12 out of the Agreement prior to the effective date of the termination.

13 4. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

14 (a) it is a corporation duly organized and validly existing under the laws of the  
15 Province of British Columbia and has the corporate power and authority to  
16 execute, deliver and carry out the terms and provisions of this Guarantee;  
17

18 (b) no authorization, approval, consent or order of, or registration or filing with, any  
19 court or other governmental body having jurisdiction over Guarantor is required  
20 on the part of Guarantor for the execution and delivery of this Guarantee, except  
21 for approval as to the giving of this Guarantee under the Guarantees and  
22 Indemnities Regulation (British Columbia), which approval has been obtained;  
23 and

24 (c) this Guarantee constitutes a valid and legally binding agreement of Guarantor  
25 enforceable against Guarantor in accordance with its terms, except as the  
26 enforceability of this Guarantee may be limited by the effect of any applicable  
27 bankruptcy, insolvency, reorganization, moratorium or similar laws affecting  
28 creditors' rights generally and by general principles of equity.  
29

30 5. SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor's own defenses and  
31 rights hereunder, Guarantor reserves to itself all rights, set-offs, counterclaims and other  
32 defenses to which Company or any other affiliate of Guarantor is or may be entitled to  
33 arising from or out of the Agreement or otherwise, except for defenses arising out of the  
34 bankruptcy, insolvency, dissolution or liquidation of Company.

35 6. EFFECT OF BANKRUPTCY BY COMPANY. The Guarantor's obligation to pay under  
36 this Guarantee shall not be affected in any way by the institution with respect to the  
37 Company of a bankruptcy, reorganization, moratorium or similar insolvency proceeding  
38 or other relief under any bankruptcy or insolvency law affecting creditor's rights or a  
39 petition for the Company's winding-up or liquidation. Guarantor further agrees that this  
40 Guarantee shall continue to be effective or be reinstated, as the case may be, if at any  
41 time payment, or any part thereof, of any Obligations, or interest thereon is rescinded or

1 must otherwise be restored or returned by the Guaranteed Party upon the bankruptcy,  
2 insolvency, dissolution or reorganization of the Company.

3 7. AMENDMENT. No term or provision of this Guarantee shall be amended, modified,  
4 altered, waived, or supplemented except in a writing signed by the Guarantor and  
5 Guaranteed Party.

6 8. WAIVERS. Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b)  
7 presentment and demand concerning the liabilities of Guarantor, except as expressly  
8 hereinabove set forth; and (c) any right to require that any action or proceeding be  
9 brought against Company or any other person, or except as expressly hereinabove set  
10 forth, to require that the Guaranteed Party seek enforcement of any performance against  
11 Company or any other person, prior to any action against Guarantor under the terms  
12 hereof.

13 Except as to applicable statutes of limitation, each and every right, remedy and power  
14 hereby granted to the Guaranteed Party or allowed it by law or other agreement shall be  
15 cumulative and not exclusive of any other, and may be exercised by the Guaranteed Party  
16 at any time or from time to time. No failure on the part of the Guaranteed Party to  
17 exercise, and no delay in exercising, any right, remedy or power hereunder shall operate  
18 as a waiver thereof, nor shall any single or partial exercise by the Guaranteed Party of  
19 any right, remedy or power hereunder preclude any other or future exercise of any right,  
20 remedy or power.

21 Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable  
22 fees and expenses of outside counsel) incurred in the enforcement or protection of the  
23 rights of the Guaranteed Party in connection with a breach by the Company of the  
24 Obligations or, to the extent incurred after demand under this Guarantee has been made  
25 and not timely honored, in connection with a breach of this Guarantee by the Guarantor,  
26 provided, however, no such expenses shall be payable by the Guarantor if no payment  
27 under this Guarantee is due.

28 Guarantor consents to the renewal, compromise, extension, acceleration or other changes  
29 in the time of payment of or other changes in the terms of the Obligations, or any part  
30 thereof or any changes or modifications to the terms of the Agreements.

31 9. ASSIGNMENT. The Guarantor shall not assign this Guarantee without the express  
32 written consent of the Guaranteed Party. The Guaranteed Party shall be entitled to assign  
33 its rights under this Guarantee in its sole discretion.

34 10. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other  
35 document to be given hereunder by any party to another (herein collectively called  
36 "Notice") shall be in writing and delivered personally or mailed by certified or registered  
37 mail, postage prepaid and return receipt requested, or by telegram or telecopier, as  
38 follows:

1 To Guaranteed Party: [LADWP to fill in] \_\_\_\_\_

2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 Attn: \_\_\_\_\_

5 Fax No.: ( ) \_\_\_\_\_

6  
7 To Guarantor: British Columbia Hydro and Power Authority  
8 333 Dunsmuir Street  
9 Vancouver, British Columbia V6B 5R3  
10 Attn: Treasury Department  
11 Fax No.: (604) 623-4545  
12

13 Notice given by personal delivery or mail shall be effective upon actual receipt. Notice  
14 given by telegram or telecopier shall be effective upon actual receipt if received during  
15 the recipient's normal business hours, or at the beginning of the recipient's next business  
16 day after receipt if not received during the recipient's normal business hours. All Notices  
17 by telegram or telecopier shall be confirmed promptly after transmission in writing by  
18 certified or registered mail or personal delivery.

19 11. MISCELLANEOUS. THIS GUARANTEE SHALL IN ALL RESPECTS BE  
20 GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF  
21 THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF  
22 CONFLICTS OF LAWS.

23 Any action or litigation of any kind initiated by Guarantor or the Guaranteed Party will  
24 be brought in the Federal District Court located in the city of Los Angeles, California (the  
25 "Federal District Court") unless the Federal District Court determines that it does not  
26 have jurisdiction over such action or litigation and dismisses such action or litigation for  
27 lack of jurisdiction, in which case such action or litigation may be initiated in a California  
28 state court of competent jurisdiction located in Los Angeles, California. Guarantor and  
29 Guaranteed Party irrevocably consent to the personal jurisdiction of such courts solely in  
30 connection with actions arising from this Guarantee, and to service of process by any  
31 means authorized by California law, and hereby waive the right to transfer the venue of  
32 any such litigation. The Guaranteed Party also agrees to provide Guarantor with Notice  
33 pursuant to Paragraph 10 of service of process.

34 This Guarantee shall be binding upon Guarantor, its successors and assigns and enure to  
35 the benefit of and be enforceable by the Guaranteed Party, its successors and assigns.  
36 The Guarantee embodies the entire agreement and understanding between Guarantor and  
37 the Guaranteed Party and supersedes all prior agreements and understandings relating to  
38 the subject matter hereof. The headings in this Guarantee are for purposes of reference  
39 only, and shall not affect the meaning hereof.

1 12. WAIVER OF IMMUNITY. For the purposes of this Guarantee, the Guarantor hereby  
2 waives and agrees not to assert in such suit, action or proceeding, in each case, to the  
3 fullest extent permitted by applicable law, any claim that (i) the Guarantor is immune  
4 from suit or any legal process (whether through service or notice, attachment prior to  
5 judgment, attachment in aid of execution, execution or otherwise) with respect to it or its  
6 property; (ii) any such suit, action or proceeding is brought in an inconvenient forum; or  
7 (iii) the venue of any such suit, action or proceeding is improper. In addition, Guarantor  
8 hereby irrevocably waives any and all rights to trial by jury with respect to any legal  
9 proceeding arising out of or relating to this Guarantee or any Obligations.

10  
11 EXECUTED as of the day and year first above written on the respective dates set forth below.

12  
13 BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

14  
15 By: \_\_\_\_\_  
16 Name: Alister Cowan  
17 Title: Executive Vice President Finance &  
18 Chief Financial Officer  
19 Date: \_\_\_\_\_

20  
21  
22  
23 By: \_\_\_\_\_  
24 Name: Michael Standbrook  
25 Title: Treasurer  
26 Date: \_\_\_\_\_

27

## APPENDIX D

CONTROL AGREEMENT  
(DWP Agreement No. BP 05-020-B)

This CONTROL AGREEMENT (the "Agreement") is dated as of August 24, 2007 (the "Effective Date"), by and among US BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America ("Controller"), THE CITY OF LOS ANGELES, ACTING BY AND THROUGH ITS DEPARTMENT OF WATER AND POWER ("LADWP"), and POWEREX CORP. ("Counterparty").

WHEREAS, LADWP and Counterparty have entered into a Power Purchase Agreement (DWP No. BP 05-020-B) (such agreement, as amended, supplemented, restated and replaced from time to time, herein referred to as the "Power Purchase Agreement") and LADWP has agreed to pledge certain Performance Assurance (as defined in the Power Purchase Agreement) to secure LADWP's obligations to Counterparty under the Power Purchase Agreement;

WHEREAS, LADWP and Counterparty have requested Controller to hold any Performance Assurance pledged by LADWP to Counterparty, as set forth herein; and

WHEREAS, Controller has agreed to hold any Performance Assurance so pledged by LADWP to the Counterparty in a deposit account for the benefit of the Counterparty as secured party pursuant to this Agreement;

NOW, THEREFORE, in consideration of the premises, undertakings and covenants herein, the parties agree as follows:

**1. Appointment and Acceptance.**

1.1 LADWP, to secure the performance of its obligations to the Counterparty under and in accordance with the provisions of the Power Purchase Agreement, will deposit with Controller from time to time certain Performance Assurance, as specified in writing by LADWP to Controller. LADWP and Counterparty hereby appoint Controller as controller to provide custody and other services in connection with the Performance Assurance, constituting cash delivered from time to time to Controller hereunder by, or at the direction of the LADWP, and income, distributions and payments received by Controller with respect thereto (collectively the "Assets"); and Controller hereby agrees to act in such capacity, and perform such services, and hold the Assets in a separately segregated deposit account established by Controller pursuant to Section 2.6 hereof for the benefit of the Counterparty as secured party (the "Account"), upon the terms and conditions set forth below herein.

1.2 As continuing security for payment and performance by all its present and future obligations to Counterparty under the Power Purchase Agreement, LADWP hereby grants to Counterparty a pledge and security interest in and to all Performance Assurance as may from time to time be deposited with Controller and held in the Account and in any and all proceeds, if any, thereof (the "Counterparty Security Interest").

1 1.3 For purposes of this Agreement, all references contained herein to actions,  
2 instructions and responsibilities (other than the obligations set forth in Sections 16 and 18  
3 below) of LADWP shall include, apply to and be binding upon LADWP's consultants,  
4 advisors or agents, including, without limitation, any investment manager or advisor,  
5 appointed and authorized by LADWP to direct Controller or otherwise take actions on  
6 behalf of LADWP in connection with Controller's services and responsibilities  
7 hereunder. LADWP shall provide written notice to Controller and Counterparty of the  
8 identity of all such appointed parties and the scope of their authority to act hereunder.  
9 LADWP shall be responsible for providing to each such party a copy of this Agreement  
10 and all written policies and procedures of Controller governing its performance of  
11 services hereunder that LADWP shall receive from time to time.

12 **2. Asset Delivery, Transfer, Custody and Safekeeping.**

13 2.1 Pursuant to the provisions of the Power Purchase Agreement, LADWP will from  
14 time to time deliver (or cause to be delivered) cash to Controller with written instructions  
15 that it is to be Assets hereunder, which Controller shall receive and accept for the  
16 Account. All transactions involving Assets shall be recorded in the records maintained  
17 by Controller for the Account and Controller shall promptly notify Counterparty of  
18 receipt of Assets and the amount of Assets received. Controller shall have no duty or  
19 obligation to confirm that such Assets constitute Performance Assurance.

20 2.2 [Reserved]

21 2.3 Subject to the provisions of Section 3 below, LADWP, by delivery to Controller  
22 of a request in the form attached as Exhibit A hereto (a "Request"), may request  
23 Controller to release Assets held in the Account or substitute other Assets and request  
24 Controller to release and return Assets to LADWP, or otherwise deliver Assets to such  
25 location or third party, as such Request may indicate. Controller is hereby authorized to  
26 make such release, substitution, return or delivery, as the case may be, in accordance with  
27 any Request executed by both LADWP and Counterparty, provided that, in connection  
28 therewith it is the sole responsibility of LADWP to provide any transfer documentation  
29 as may be required by any third party recipient. Controller shall have no power or  
30 authority to assign, hypothecate, pledge or otherwise dispose of any Assets, except as  
31 provided herein. Controller shall have no obligation to determine whether any proposed  
32 release or substitution complies with any Performance Assurance requirements under the  
33 Power Purchase Agreement.

34 2.4 Controller shall furnish LADWP and Counterparty, as part of the services for  
35 which Controller charges its basic fee hereunder, with monthly Account statements  
36 reflecting all Asset transactions in the Account during the reporting period and ending  
37 Asset holdings. In addition, Controller shall provide LADWP and Counterparty on-line  
38 access to the Account (which on-line information shall be updated at least daily) to allow  
39 such parties to view transactions made by Controller with respect to the Account and a  
40 listing of the Assets held by Controller in the Account.

41 2.5 [RESERVED]

1 2.6 All cash received and held as Assets by Controller hereunder shall be held in a  
2 general interest bearing deposit account (which may be an interest bearing term deposit  
3 account) established by Controller in California in the name of LADWP. For all  
4 purposes of this Agreement, "cash" shall include all cash or money delivered, physically  
5 or electronically (including without limitation by wire transfer) to or received by  
6 Controller as Assets and, when collected, all funds received from checks or drafts  
7 delivered to or received by Controller as Assets. The terms of such deposit shall be  
8 deemed to include a statement that the Controller's jurisdiction, for the purposes of  
9 Division 9 of the California Commercial Code, shall be the State of California. All  
10 earnings from such deposit account shall be for the account of LADWP but shall be  
11 received by the Controller and upon such receipt shall constitute Assets hereunder.

12 2.7 LADWP hereby authorizes and approves Controller's performance of its services  
13 and duties hereunder consistent with the terms and conditions of Controller's duly  
14 adopted policies and procedures, as established and modified from time to time, related to  
15 the subject matter hereof to the extent that such policies and procedures are not  
16 inconsistent with any of the provisions hereof.

17 2.8 The Account shall at all times be a "deposit account" as defined in Section  
18 9102(29) of the California Commercial Code. The Account shall at all times be  
19 established, maintained and governed by the laws of the State of California. Subject to  
20 the foregoing provisions of this Section 2.8, the nature of the Account (including without  
21 limitation the rate of interest earned thereon) shall be established by the Controller in  
22 accordance with written instructions received from time to time from LADWP.

23 2.9 Controller represents and warrants that it is not party to any agreement to accept  
24 instructions with respect to the Account or the Assets from any parties other than  
25 LADWP and Counterparty and agrees that it will not enter into any such agreement or  
26 any other agreement which would allow any party other than LADWP or Counterparty to  
27 have any control over the Account or any of the Assets.

### 28 **3. Default and Termination Events.**

29 3.1 In the event that Counterparty gives notice (a "Default Notice") to Controller that  
30 a Default (as defined in the Power Purchase Agreement) by LADWP shall have occurred  
31 and be continuing under the Power Purchase Agreement or an event shall have occurred  
32 which, with the giving of notice or lapse of time or both, would constitute a default under  
33 the Power Purchase Agreement, upon receipt of such Notice of Default, Controller shall  
34 no longer accept LADWP's instructions with respect to the Assets. Further, Controller  
35 shall act solely in accordance with the written instructions of the Counterparty with  
36 respect to Counterparty's rights pursuant to the Power Purchase Agreement, including the  
37 right unilaterally to demand delivery of any or all Assets in the Account by written  
38 instructions to Controller and to sell any Assets included therein at public or private sale,  
39 all to satisfy the obligations of LADWP to the Counterparty under the Power Purchase  
40 Agreement. In the event of any such sale, the Counterparty, after deducting all its costs  
41 and expenses, including reasonable attorneys' fees and expenses, incurred in connection  
42 therewith and due to it pursuant to the Power Purchase Agreement, from the proceeds of  
43 such sale, shall, subject to the claims of any third parties, apply the remainder towards the

1 obligations of LADWP to the Counterparty under the Power Purchase Agreement and  
2 shall return the surplus, if any, to LADWP. Controller must fully and conclusively rely  
3 without further inquiry on any statements set forth in any Notice of Default or in any  
4 written instructions subsequently delivered by Counterparty, as provided for in this  
5 Section 3.1.

6 3.2 Upon and during the continuance of any Default, Counterparty shall have and  
7 may exercise, with respect to the Account, the Assets or any of them, any and all rights  
8 available at law to a secured party, including without limitation all such rights available  
9 under the California Commercial Code. Without limitation of the foregoing,  
10 Counterparty shall have no obligation to exhaust any other remedy it may have, under the  
11 Power Purchase Agreement or otherwise, before exercising any of its rights and remedies  
12 against the Account or any of the Assets.

13 **4. Powers of Controller.** In the performance of its duties hereunder, Controller  
14 shall have the following powers:

15 4.1 To hold the Assets in the name of LADWP in the Account.

16 4.2 To make, execute, acknowledge and deliver any and all documents of transfer and  
17 conveyance and any or all other instruments that may be necessary or appropriate to carry  
18 out the duties described and powers granted herein.

19 4.3 To employ or consult with experts, advisors and legal counsel (who may be  
20 employed also by LADWP) and to rely on information and advice received from such  
21 controllers, experts, advisors and legal counsel.

22 4.4 To perform any and all other administrative acts deemed by Controller necessary  
23 or appropriate to the proper discharge of its duties hereunder, provided however, that  
24 Controller exercises its powers in a commercially reasonable manner.

25 5. [RESERVED]

26 6. [RESERVED]

27 7. [RESERVED]

28 8. [RESERVED]

29 9. [RESERVED]

30 **10. No Discretionary Authority; Standard of Care.** LADWP and Controller  
31 acknowledge that, except to the extent set forth in any separate instrument signed by the parties  
32 with respect to this Agreement, Controller's duties hereunder do not include any discretionary  
33 authority, control or responsibility with respect to the management or disposition of any Asset;  
34 that Controller has no authority or responsibility to render investment advice with respect to any  
35 Asset; and that Controller is not a fiduciary with respect to LADWP. In addition, it is agreed  
36 that:

1 10.1 Controller shall have no duty to make any evaluation or to advise anyone of the  
2 suitability or propriety of action or proposed action of LADWP in any particular  
3 transaction involving an Asset.

4 10.2 Absent Controller's negligence or failure to act in a commercially reasonable  
5 manner, Controller shall not be liable for any loss or diminution of Assets for its actions  
6 taken in reliance upon an instruction from LADWP.

7 10.3 Controller shall have no duty or responsibility to monitor or otherwise investigate  
8 the actions or omissions of LADWP or Counterparty.

9 10.4 Controller shall only be responsible for the performance of such duties as are  
10 expressly set forth herein or in instructions of LADWP or Counterparty which are not  
11 contrary to the provisions of this Agreement. Controller shall exercise commercially  
12 reasonable care in the performance of its services hereunder. In no event shall Controller  
13 be liable for indirect or consequential damages.

14 10.5 Controller shall not be responsible or liable for any failure or delay in  
15 performance of its obligations under this Agreement arising out of or caused, directly or  
16 indirectly, by instructions, actions or omissions of LADWP or of Counterparty or by  
17 circumstances beyond Controller's reasonable control, including, without limitation, loss  
18 or malfunctions of utility, transportation, computer (hardware and software) or  
19 communication service; nor shall any such failure or delay give LADWP the right to  
20 terminate this Agreement, except as provided in Section 19 of this Agreement.

21 **11. Regarding Controller.** The acceptance by Controller of its duties under this  
22 Agreement is subject to the following terms and conditions, which shall govern and control the  
23 rights, duties, liabilities and immunities of Controller:

24 11.1 Appointment of Successor Controller. LADWP shall have the right to remove the  
25 controller and appoint another qualified organization (which shall be a "bank", as defined  
26 in Section 9102(8) of the California Commercial Code) as successor controller at any  
27 time upon not less than thirty (30) days written notice to the Controller and receipt of the  
28 written consent of the Counterparty, which consent shall not be unreasonably withheld,  
29 conditioned or delayed. The successor controller shall execute and deliver an instrument  
30 accepting such appointment and agreeing to be bound by this Agreement and it shall,  
31 without further acts, be vested with all the estates, properties, rights, powers, and duties  
32 of the predecessor Controller as if originally named as Controller under the terms of this  
33 Agreement. Controller shall be discharged from any further duties and liability under this  
34 Agreement.

35 11.2 Resignation of Controller. Controller may resign and be relieved as Controller  
36 hereunder at any time upon not less than sixty (60) written notice to LADWP and  
37 Counterparty; *provided, however*, that no such resignation shall take effect unless and  
38 until a successor controller shall have been appointed pursuant to the provisions of  
39 Section 11.1 above and shall have accepted the duties hereunder. If no appointment of a  
40 successor controller shall be made pursuant to the provisions of Section 11.1 above  
41 within forty-five (45) days of receipt of such notice, the Controller may petition any court

1 of competent jurisdiction to appoint a successor Controller and such court may appoint a  
2 successor controller (which shall be a “bank” as defined in Section 9102(8) of the  
3 California Commercial Code). The successor Controller shall execute and deliver an  
4 instrument accepting such appointment and agreeing to be bound by this Agreement and  
5 it shall, without further acts, be vested with all the estates, properties, rights, powers, and  
6 duties of the predecessor Controller as if originally named as Controller under the terms  
7 of this Agreement. Controller shall be discharged from any further duties and liability  
8 under this Agreement.

9 11.3 Automatic Succession. Any company (which shall be a “bank” as defined in  
10 Section 9102(8) of the California Commercial Code) into which Controller may be  
11 merged or with which it may be consolidated, or any company (which shall be a “bank”  
12 as defined in Section 9102(8) of the California Commercial Code) to whom Controller  
13 may transfer a substantial amount of its escrow business and which enters into an  
14 agreement agreeing to be bound by this Agreement, shall be the successor to Controller  
15 without the execution or filing of any paper or any further act on the part of any of  
16 LADWP and Counterparty, anything herein to the contrary notwithstanding.

17 11.4 Controller Not Bound. Controller is not bound by any agreement (including the  
18 Power Purchase Agreement), arrangement or understanding relating to or arising out of  
19 the matters provided for in this Agreement, other than as expressly set forth herein.

20 **12. Regarding LADWP.**

21 12.1 LADWP Covenant. LADWP will not offset or otherwise seek to apply or request  
22 or require Controller to apply the Assets to pay down or offset any other debts or  
23 obligations owed or owing by LADWP or its affiliates to Counterparty or its affiliates or  
24 to any other person, except under the netting provisions in the Power Purchase  
25 Agreement, and Counterparty waives any offset or other rights it may have under  
26 applicable law to apply, seek to apply, or to request or require Controller to pay or apply  
27 the Assets against any such other debts or obligations.

28 12.2 Representation and Warranty of LADWP. LADWP represents and warrants to  
29 Counterparty, which representation and warranty shall be deemed to be repeated on each  
30 day that Assets are held by the Controller hereunder, that:

- 31 (a) it is the legal and beneficial owner of each of the Assets, free and clear of  
32 any mortgage, pledge, charge, lien or other encumbrance (save and except  
33 for the Counterparty Security Interest;
- 34 (b) no financing statement under the Uniform Commercial Code is on file in  
35 any jurisdiction claiming a security interest in or describing (whether  
36 specifically or generally) the Assets or any part thereof; and
- 37 (c) it has the corporate capacity and power to grant the Counterparty Security  
38 Interest in the Assets and the granting of the Counterparty Security  
39 Interest in the Assets does not breach any law applicable to LADWP or  
40 any agreement to which it is a party or by which any of the Assets are  
41 bound.

1           **13. Liabilities of LADWP and Counterparty.** Neither the deposits of the Assets  
2 nor any provisions of this Agreement shall directly or indirectly limit any liabilities of LADWP  
3 and Counterparty to each other under the Power Purchase Agreement.

4           **14. Books, Records and Accounts.**

5           14.1 Controller will make and maintain proper books of account and complete records  
6 of all Assets and transactions in the Account maintained by Controller hereunder.  
7 Controller will preserve for the periods prescribed by applicable federal statute or  
8 regulation all records required to be maintained.

9           14.2 On at least four (4) business days' notice, Controller will make available to and  
10 permit inspection during Controller's regular business hours by LADWP and  
11 Counterparty and their auditors of all books, records, and accounts retained by Controller  
12 (or, to the extent practicable, its agents) in connection with its duties hereunder.

13           **15. Instructions and Directions.**

14           15.1 Controller shall be deemed to be "instructed," "directed" or "notified," or to have  
15 received appropriate "instructions," "directions" or "notifications" upon receipt of written  
16 instructions, directions or notifications, or in the case of cash movement, written or oral  
17 instructions, directions or notifications, (a) signed or given by any person(s) whose  
18 name(s) and signature(s) are listed on the most recent certificates delivered by LADWP  
19 and Counterparty to Controller which lists those persons authorized to give orders,  
20 corrections and instructions in the name of and on behalf of LADWP and Counterparty,  
21 or (b) signed or given by any other person(s) duly authorized by LADWP or  
22 Counterparty to give instructions, directions or notifications to Controller hereunder or  
23 whom Controller commercially reasonably believes to be so authorized.

24           15.2 Appropriate instructions or directions shall include instructions or directions sent  
25 to Controller by letter, memorandum telegram, telecopy facsimile (to the extent the  
26 sender provides telephonic notice to the recipient of such facsimile, with the original to  
27 be sent to the recipient by the sender as soon as practicable thereafter), video (CRT)  
28 terminal or other "on-line" system, or similar means of communication, or in the case of  
29 cash movement, given orally over the telephone or in person.

30           15.3 In the event that Controller is instructed to deliver Assets to any party other than  
31 LADWP or LADWP's agent or Counterparty or Counterparty's agent, appropriate  
32 instructions shall include, and LADWP and Counterparty shall supply, customary transfer  
33 documentation or instructions as required by such party, and, to the extent that such  
34 documentation or instructions have not been supplied, Controller shall not be deemed to  
35 have received appropriate instructions.

36           **16. Compensation; Security.**

37           16.1 LADWP shall pay to Controller fees for its services under this Agreement and  
38 shall reimburse Controller for out of pocket expenses and costs incurred by it hereunder  
39 as set forth in Controller's then current applicable fee schedule ("Appendix A") or such  
40 other fee arrangement as Controller and LADWP may otherwise agree in writing.

1 16.2 If there shall arise for whatever reason an overdraft in LADWP's Account  
2 hereunder, or if LADWP is for any other reason indebted to Controller hereunder,  
3 LADWP agrees to repay Controller on demand the amount of the overdraft or other  
4 indebtedness, plus accrued interest at a rate per annum (based on a 360-day year for the  
5 actual number of days involved) equal to 1% over U.S. Bank National Association (or  
6 any successor bank) reference rate (applicable to commercial lending) in effect from time  
7 to time, such rate to be adjusted on the effective date of any change in such reference  
8 rate.

9 16.3 Controller acknowledges and agrees that it shall have no claim, lien, security  
10 interest or right of set-off or counterclaim against, or any right to apply in payment, any  
11 of the Assets in respect of any obligation or liability, present or future, direct or  
12 contingent, arising hereunder or otherwise, of LADWP to it.

13 17. **LADWP Responsibility.** LADWP shall be responsible for the review of all  
14 reports, accountings and other statements provided thereto by Controller, and shall within ninety  
15 (90) calendar days following receipt thereof notify Controller of any mistakes, defects or  
16 irregularities contained or identified therein, after which time all such matters shall be presumed  
17 to be ratified, approved and correct and shall not provide any basis for claim or liability against  
18 Controller.

19 18. **Indemnification.** LADWP hereby agrees to indemnify Controller and its  
20 controlling person, officers, directors, employees and agents (each an "Indemnified Party") and  
21 hold each Indemnified Party harmless from and against any cost, losses, claims, liabilities, fines,  
22 penalties, damages and expenses (including reasonable attorneys' and accountants' fees)  
23 (collectively, a "Claim") arising out of: (a) LADWP's actions or omissions; (b) the acceptance  
24 and performance of the powers or duties of Controller hereunder, including the costs and  
25 expenses of defending itself against any claim or liabilities in connection with the exercise or  
26 performance of any of its powers or duties hereunder; or (c) Controller's action taken or omitted  
27 hereunder in reliance upon LADWP's instructions, or upon any information, order, indenture,  
28 stock certificate, power of attorney, assignment, affidavit or other instrument delivered hereunder  
29 to Controller, reasonably believed by Controller to be genuine or bearing the signature of a  
30 person or persons authorized by LADWP to sign, countersign or execute the same; provided, that  
31 LADWP shall not defend or indemnify an Indemnified Party for any Claim arising from the  
32 Indemnified Party's willful misfeasance, bad faith or negligence in the performance of its duties,  
33 or reckless disregard of its duties under this Agreement.

34 19. **Termination.**

35 19.1 Subject to the following sentence, this Agreement shall terminate five (5) years  
36 and sixty (60) days from the Effective Date, provided that either of LADWP and  
37 Counterparty may terminate this Agreement without cause at any time by giving written  
38 notice to the other and to the Controller thirty (30) business days in advance of the  
39 termination. If there are Assets held by the Controller on the expiry date (whether the  
40 date is five (5) years and sixty (60) days from the Effective Date or any earlier date  
41 arising from the delivery of the notice of termination by LADWP or Counterparty of the  
42 term, such term will be extended to expire on the earliest date on which no Assets are  
43 held by the Controller, whether pursuant to the terms of the Agreement, the joint written

1 instructions of LADWP and Counterparty or a final and unappealable order of a court  
2 having jurisdiction.

3 19.2 Upon termination of this Agreement, Controller shall follow such commercially  
4 reasonable LADWP and Counterparty joint written instructions concerning the transfer of  
5 Assets and records; provided, that (a) Controller shall have no liability for shipping and  
6 insurance costs associated therewith; (b) Controller shall not be required to make any  
7 such delivery or payment until full payment shall have been made by LADWP of all  
8 liabilities constituting a charge on or against Controller and until full payment shall have  
9 been made to Controller of all its compensation, costs, including special termination  
10 costs, if any, and expenses hereunder; and (c) Controller shall have been reimbursed for  
11 any advances of monies made hereunder to LADWP.

12 19.3 Upon termination of this Agreement, all obligations of the parties to each other  
13 hereunder shall cease, except that all indemnification provisions herein shall survive with  
14 respect to any Claims arising from events prior to such termination.

15 **20. Binding Obligations.** LADWP, Controller and Counterparty each hereby  
16 represent that this Agreement constitutes its legal, valid and binding obligation enforceable in  
17 accordance with the terms hereof; subject, as to enforcement of remedies, to applicable  
18 bankruptcy and insolvency laws, and to general principles of equity.

19 **21. General Provisions.**

20 21.1 Notice. Except as provided in paragraph 15 above, any notice or other  
21 communication under this Agreement shall be in writing and shall be considered given  
22 when delivered by certified mail, return receipt requested, to the parties at the addresses  
23 set forth as follows (or at such other address as a party may specify by notice to the  
24 other):

25 To Controller:

26 U.S. Bank National Association  
27 633 West Fifth Street, 24<sup>th</sup> Floor  
28 Los Angeles, California 90071  
29 Attention: Ms. Linda Verstuyft  
30 Telephone: (213) 615-6052  
31 Facsimile: (213) 615-6199  
32

33 To the LADWP:

34 Department of Water and Power of the City of Los Angeles  
35 111 N. Hope Street, Room 465  
36 Los Angeles, CA 90012  
37 Attention: Peter Huynh  
38 Telephone: (213) 367-4671  
39 Facsimile: (213) 367-3909  
40

1 To the Counterparty:

2 Powerex Corp.  
3 1400 – 666 Burrard Street  
4 Vancouver, British Columbia  
5 V6C 2X8  
6 Attention: Bernice Crick  
7 Telephone: (604) 895-7093  
8 Facsimile: (604) 891-5025

9 Notice shall be effective upon receipt if by mail, or on the date of personal  
10 delivery (by private messenger, courier service or otherwise) or facsimile (to the extent  
11 the sender provides telephonic notice to the recipient of such transmission with the  
12 original sent to the recipient by the sender as soon as practicable), whichever occurs first,  
13 to the addresses indicated above. The above addresses and individuals may be changed  
14 at any time by an instrument in writing executed by the party giving the same and given  
15 to the other party, in accordance with the procedure set forth above.

16 21.2 No Tax Responsibility. Notwithstanding any other terms or conditions contained  
17 herein, Controller shall not be responsible for, and LADWP does hereby waive all duties  
18 or functions of Controller (imposed by law or otherwise) relating to the withholding and  
19 government deposit of any and all taxes, or amounts with respect thereto, that may be  
20 incurred or payable in connection with the Account established hereunder, income or  
21 gain realized on Assets held therein or transactions undertaken with respect thereto.  
22 Except as required by law in such manner that cannot be delegated to or assumed by  
23 LADWP, Controller shall have no responsibility to undertake any federal, state or local  
24 tax reporting in connection with Assets, the Account or transactions therein.

25 21.3 Complete Agreement; Modification. This Agreement contains a complete  
26 statement of all the arrangements between the parties with respect to its subject matter,  
27 supersedes all existing agreement(s) between them concerning the subject, and cannot be  
28 amended or modified in any manner except by a written agreement executed by all  
29 parties.

30 21.4 Attorney's Fees & Costs. Subject to Section 16 and Section 18, in any dispute  
31 arising under this Agreement, each party shall pay its own attorney's fees and costs.

32 21.5 Governing Law. This Agreement shall be governed by and construed in  
33 accordance with the laws of the State of California applicable to agreements made and to  
34 be performed in California.

35 21.6 Assignment. No party may assign any of its rights hereunder without the consent  
36 of the other, which consent shall not be unreasonably withheld. The foregoing consent  
37 requirement does not apply if either party shall merge or consolidate with or sell  
38 substantially all of its assets to another corporation, provided that such other corporation  
39 shall assume without qualification or limitation all obligations of that party hereunder  
40 either by operation of law or by contract and the credit rating of the surviving entity is not  
41 lower than that of the original party to this Agreement.

1 21.7 Separability. If any provision of this Agreement is invalid or unenforceable, the  
2 balance of the Agreement shall remain in effect, and if any provision is inapplicable to  
3 any person or circumstances, it shall nevertheless remain applicable to all other persons  
4 and circumstances.

5 21.8 No Third Party Rights. In performing its services hereunder, Controller is acting  
6 solely on behalf of LADWP and Counterparty. No agency, contractual or service  
7 relationship shall be deemed to be established hereby between Controller and any other  
8 persons.

9 21.9 Counterparts. This Agreement may be executed in any number of counterparts,  
10 each of which shall be considered an original, but all of which together shall constitute  
11 the same instrument.

12 21.10 Represented by Legal Counsel. The LADWP, Controller and Counterparty were  
13 represented by their respective legal counsel during the negotiation and execution of this  
14 Agreement.

15 21.11 Time of Essence. Time is of the essence of this Agreement.

16 21.12 Further Assurances. Each of the parties hereto shall, at the request and expense of  
17 any other party, execute and deliver all such documents and do all such things as may be  
18 reasonably required by such other party to give effect to this Agreement.

19 21.13 Waiver of Immunity. Counterparty irrevocably waives, to the fullest extent  
20 permitted by applicable law, with respect to itself and its revenues and assets (irrespective  
21 of their use or intended use), all immunity on the grounds of sovereignty or other similar  
22 grounds from (i) suit, (ii) release by way of injunction, order for specific performance or  
23 for recovery of property, (iii) attachment of its assets (whether before or after judgment),  
24 and (iv) execution or enforcement of any judgment to which it or its revenues or assets  
25 might otherwise be entitled in any proceeding in the courts of any jurisdiction and  
26 irrevocably agrees, to the extent permitted by applicable law, that it will not claim any  
27 such immunity in any such proceedings.

28 21.14 Enurement. This Agreement shall enure to the benefit of and be binding upon the  
29 parties and their respective successors and permitted assigns.

1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed  
2 by their duly authorized representatives as of the date and year first above written.

3  
4 Date Signed: 10/21/07

DEPARTMENT OF WATER AND POWER OF  
THE CITY OF LOS ANGELES, as LADWP

6 By:

7 BOARD OF WATER AND POWER  
8 COMMISSIONERS OF THE CITY OF  
9 LOS ANGELES

10 By: [Signature]

11 Its: ROBERT K. ROZANSKI  
Acting General Manager

12 and: Barbara E. Moschov  
13 Secretary

14  
15 Date Signed: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION,  
as Controller

17 By: [Signature]

18 Name: LINDA VERSTUYK

19 Title: Vice President

20  
21 Date Signed: OCTOBER 2, 2007

POWEREX CORP.  
as Counterparty

23 By: [Signature]

24 Name: MICHAEL STANDBROOK

25 Title: ACTING VICE-PRESIDENT, FINANCE  
26 AND CHIEF FINANCIAL OFFICER

27  
APPROVED  
as to form only  
LP  
Solicitor  
POWEREX CORP.

AUTHORIZED BY RES. 007 166  
MAR 06 2007



Corporate Trust Services  
60 Livingston Ave  
St. Paul, MN 55107

**Schedule of Fees for Services as  
Controller**

**For  
Los Angeles Department of Water and Power / Powerex  
US Bank as Controller Dated 8/24/2007**

01010	<b>Acceptance Fee</b> The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time fee, payable at closing.	\$1,000.00
16156	<b>Legal Expenses</b> Includes fees and expenses of legal counsel (except for the fees associated with rendering a standard legal opinion).	At Cost
04280	<b>Administration</b> Annual administration fee for performance of the routine duties associated with the management of the account. Administration fees are payable in advance.	\$2,500.00
SUCH0000	<b>Incidental Expense</b> Charge for miscellaneous expenses such as; fax, messenger service, overnight mail, telephone, stationery and postage. This charge is a percent of total Administration Fees, charged in arrears.	10.0%
<b>Direct Out of Pocket Expenses</b> Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel after the initial close, travel expenses and filing fees.		At Cost
<b>Extraordinary Services</b> Extraordinary services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the service and the responsibility involved. At our option, these charges will be billed at a flat fee or at our hourly rate then in effect.		

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

**Dated: August 23, 2007**

**LA000262**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

*EXHIBIT A*  
REQUEST

TO: [Name of Controller]

Reference is made to the Control Agreement dated as of \_\_\_\_\_  
, \_\_\_\_\_ by and among \_\_\_\_\_ (“Controller”), the City  
of Los Angeles, acting by and through its Department of Water and Power (“LADWP”) and  
Powerex Corp. (“Counterparty”) (the “Control Agreement”). Capitalized terms used in this  
Request and not otherwise defined shall have the meanings given to such terms in the Control  
Agreement.

LADWP hereby requests the Controller to take the actions described below with respect to the  
Assets described below:

[insert particulars of Assets and instructions to release, substitute, return or otherwise deliver  
Assets]

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

DEPARTMENT OF WATER AND POWER OF  
THE CITY OF LOS ANGELES, as LADWP

By: \_\_\_\_\_

The Counterparty hereby consents to the aforesaid Assets being dealt with by the Controller in  
the aforesaid manner.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

POWEREX CORP.  
as Counterparty

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

1  
2 **APPENDIX E**

3 **Pricing Refresh Mechanism**

4 This Pricing Refresh Mechanism, including Attachments 1, 2 and 3, is attached as Appendix E to  
5 the Power Purchase Agreement with Agreement Reference Date of 1st day of March, 2007 (the  
6 "Agreement"). This Pricing Refresh Mechanism establishes the Parties' agreed methodology for  
7 adjusting the "Renewable Reference Price" agreed between the Parties on the Agreement  
8 Reference Date up to the Pricing Date, based on percentage changes to certain market indices or  
9 prices as agreed in this Pricing Refresh Mechanism. Percentage changes to the market indices or  
10 prices (as set forth in this Pricing Refresh Mechanism) will be applied to the Reference Price,  
11 and \$4.50 will be added thereto in order to establish the Renewable Energy Price, all as provided  
12 for in this Pricing Refresh Mechanism. The Renewable Energy Price will be inserted in Section  
13 5.1(a) of the Agreement at the Effective Date. The Renewable Energy Price so determined will  
14 apply for the term of the Agreement in accordance with its terms.

15 **1. Defined Terms.**

- 16 (a) In this Pricing Refresh Mechanism, the following capitalized words and  
17 terms shall have the following meanings:
- 18 (i) **"NYMEX Gas Price"** means the natural gas price determined in  
19 accordance with Attachment 2.
- 20 (ii) **"Reference Indices"** on any date means the natural gas settle  
21 prices as published by NYMEX and available on its website  
22 (<http://www.nymerc.com/futures/innf.txt>) at close of trading (close  
23 of open out cry session) on that date.
- 24 (iii) **"Reference Price"** means the Renewable Reference Price minus  
25 \$4.50 per MWh.
- 26 (iv) **"Reference Price Sheets"** on any date means the SP-15 broker  
27 price sheets obtained from the Reference Brokers after close of  
28 trading on that date.
- 29 (v) **"Renewable Reference Price"** means US\$73.00 per MWh.
- 30 (vi) **"SP-15 Price"** means the electricity price determined in  
31 accordance with Attachment 1.
- 32 (b) Capitalized words and terms not defined in this Pricing Refresh  
33 Mechanism shall have the meanings ascribed to them in Section 1.1 of the  
34 Agreement.

35 **2. NYMEX Gas Price and SP-15 Price.** The Parties agree that:

- 36 (a) the NYMEX Gas Price determined as at the Agreement Reference Date  
37 (based on the prior day's close by agreement of the Parties) is US\$7.859  
38 per MMBtu;

1 (b) the SP-15 Price determined as at the Agreement Reference Date (based on  
2 the prior day's close by agreement of the Parties) is US\$76.24 per MWh.

3 3. **Refresh Mechanism.**

4 The Renewable Energy Price shall be set on the Pricing Date by applying to the  
5 Reference Price the percentage change between the Agreement Reference Date  
6 and the Pricing Date of the NYMEX Gas Price and the SP-15 Price and adding  
7 \$4.50 to the result thereof, all as determined in accordance with Attachment 3.

8 4. **Market Disruption provisions.**

9 (a) If relevant market prices or indices for any relevant period are not  
10 published at a Pricing Date due to illiquidity or disruption in markets, the  
11 Pricing Date will be the next following Business Day that meets the  
12 requirements for a Pricing Date under Section 2.4(c) of the Agreement.

13 (b) If one of the Reference Brokers ceases indefinitely to publish broker price  
14 sheets for the required periods, then the Parties will endeavour to agree on  
15 a replacement Reference Broker, failing which the remaining Reference  
16 Broker will be the only Reference Broker.

1 **Attachment 1 – Calculation of “SP-15 Price”**

2 **Steps for Calculation of the SP-15 Price**

3 **Step 1 – Determine “Prebon Market Prices”**

4 “Prebon Market Prices” on any day means the average of the “SP15 On-Peak Bid” and the  
 5 “SP15 On-Peak Offer” published by Prebon on broker sheets at the close of trading on that day  
 6 for each following periods:

Periods	Prebon (SP15, On-Peak)		Prebon Market Price (rounded to 2 decimals)
	Bid	Offer	$\frac{Bid + Offer}{2}$
Q2/07			
Q3/07			
Q4/07			
2008			
2009			
2010			
2011			

7  
 8 **Step 2 - Determine “ICAP Market Prices”**

9 “ICAP Market Prices” on any day means the average of the “SP15 HL Bid” and the “SP15 HL  
 10 Ask” published by ICAP on broker sheets at the close of trading on that day for each following  
 11 periods:

Periods	ICAP (SP15, HL)		ICAP Market Price (rounded to 2 decimals)
	Bid	Ask	$\frac{Bid + Ask}{2}$
Q2/07			
Q3/07			
Q4/07			
2008			
2009			
2010			
2011			

1 **Step 3 - Determine the “Prebon Term Market Price”**

2 “Prebon Term Market Price” on any day means the weighted average of the “Prebon Market  
3 Prices” for that day, calculated as follows.

Period	Multiplier	Prebon Market Price	Weighted Price (Multiplier * Market Price)
Q2/07	0.25		
Q3/07	0.25		
Q4/07	0.25		
2008	1		
2009	1		
2010	1		
2011	1		
			Sum of Weighted Prices
			Divided by aggregate multiplier ÷ 4.75
			<b>Prebon Term Market Price</b> (rounded to 2 decimals)

4

5 **Step 4 - Determine the “ICAP Term Market Price”**

6 “ICAP Term Market Price” on any day means the weighted average of the “ICAP Market  
7 Prices” for that day, calculated as follows:

Period	Multiplier	ICAP Market Price	Weighted Price (Multiplier * Market Price)
Q2/07	0.25		
Q3/07	0.25		
Q4/07	0.25		
2008	1		
2009	1		
2010	1		
2011	1		
			Sum of Weighted Prices
			Divided by the aggregate multiplier ÷ 4.75
			<b>ICAP Term Market Price</b> (rounded to 2 decimals)

1

2 **Step 5 – Determine the SP-15 Price**

3 “SP-15 Price” on a day means the mid-point between the Prebon Term Market Price and the  
4 ICAP Term Market Price for that day, provided that the Prebon Term Market Price is within +/-  
5 1% or +/- \$1.00, whichever is greater, of such mid-point, calculated as follows:

	Term Market Price (TMP)	Midpoint (rounded to 2 decimals)	Negative Range (NR) (-1%)	Positive Range (PR) (+1%)
		$\frac{\text{Prebon TMP} + \text{ICAP TMP}}{2}$	Midpoint*0.99	Midpoint*1.01
Prebon				
ICAP				

6

7 If the Prebon Term Market Price is not within +/- 1% or +/- \$1.00, whichever is greater, of the  
8 mid-point between the Prebon Term Market Price and the ICAP Term Market Price for that day  
9 then the Pricing Date will be the following Business Day that meets the requirements for a  
10 Pricing Date in accordance with Section 2.4 of the Agreement, and the foregoing Steps 1 through  
11 5 will again apply.

1  
2  
3  
4  
5  
6  
7  
8

**Attachment 2 – Calculation of “NYMEX Gas Price”**

**Steps for Calculation of the NYMEX Gas Price**

**Step 1 – Determine Most Recent Settle Prices**

“Most Recent Settle Prices” on any day means the price published by NYMEX at (<http://www.nymerc.com/futures/innf.txt>) after the close of trading (close of open outcry session) on that day as the “Today’s Settle” for Natural Gas futures for each of the following periods:

Period	Most Recent Settle Price
Apr-07	
May-07	
Jun-07	
Jul-07	
Aug-07	
Sep-07	
Oct-07	
Nov-07	
Dec-07	
Jan-08	
Feb-08	
Mar-08	
Apr-08	
May-08	
Jun-08	
Jul-08	
Aug-08	
Sep-08	
Oct-08	
Nov-08	
Dec-08	
Jan-09	
Feb-09	
Mar-09	
Apr-09	
May-09	
Jun-09	
Jul-09	
Aug-09	
Sep-09	
Oct-09	
Nov-09	
Dec-09	

Jan-10	
Feb-10	
Mar-10	
Apr-10	
May-10	
Jun-10	
Jul-10	
Aug-10	
Sep-10	
Oct-10	
Nov-10	
Dec-10	
Jan-11	
Feb-11	
Mar-11	
Apr-11	
May-11	
Jun-11	
Jul-11	
Aug-11	
Sept-11	
Oct-11	
Nov-11	
Dec-11	

1

2 **Step 2 – Determine NYMEX Gas Price**

3 “NYMEX Gas Price” on any day means the simple average of the Most Recent Settle Prices for  
 4 that day, calculated as follows:

$$\text{NYMEX Gas Price (rounded to 3 decimals)} = \frac{\text{Total of Most Recent Settle Prices}}{57}$$

5

1  
2 **Attachment 3 – Calculation of “Renewable Energy Price”**

3 **Steps for Calculation of the Renewable Energy Price**

4 **Step 1 – Calculate the “% Change” for each of the SP-15 Price and the NYMEX Gas Price**

5 The % Change in the SP-15 Price shall be determined by subtracting the SP-15 Price determined  
6 on the Agreement Reference Date from the SP-15 Price determined on the Pricing Date and then  
7 dividing the difference by the SP-15 Price determined on the Agreement Reference Date.

8 The % Change in the NYMEX Gas Price shall be determined by subtracting the NYMEX Gas  
9 Price determined on the Agreement Reference Date from the NYMEX Gas Price determined on  
10 the Pricing Date and then dividing the difference by the NYMEX Gas Price determined on the  
11 Agreement Reference Date.

	Price on Agreement Reference Date	Price on Pricing Date	% Change (rounded to 2 decimals)
			$\frac{\text{Price on Pricing Date} - \text{Price on Agreement Reference Date}}{\text{Price on Agreement Reference Date}}$
SP-15 Price			
NYMEX Gas Price			

12  
13 **Step 2 – Determine which “% Change” to use**

14 If the % Changes are:

- 15 a) Both negative, than the smallest % Change will be used;  
16 b) Both positive, than the average of the % Changes will be used;  
17 c) One negative and other positive, then the positive % Change will be used.

18 For purposes of clause a) above the “smallest % Change” means the % Change having the  
19 smallest absolute number so that, for example, a % Change of -5% is smaller than a % Change of  
20 -7%.

21 **Step 3 – Determine the Renewable Energy Price**

22 The % Change will be multiplied by the Reference Price and the result (which may be negative)  
23 will be added to the Reference Price. The resultant amount will be increased by \$4.50 (as per  
24 Section 5.1(b) of the Agreement) to establish the Renewable Energy Price.

25  $\text{Renewable Energy Price (rounded to 2 decimals)} = \text{Reference Price} * (1 + \% \text{ Change}) + \$4.50$

