

POWER SALES AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
ALCOA INC.

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- Exhibit A Firm Power Entitlement**
- Exhibit B Billing**
- Exhibit C Price Caps (Table 1)**
- Exhibit D Special Provisions**
- Exhibit E Metering**
- Exhibit F Scheduling**
- Exhibit G Power Reserves**
- Exhibit H Form of Guarantee**

This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and Alcoa Inc. (Alcoa), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." Alcoa is a corporation organized under the laws of the State of Pennsylvania, and registered therein as entity number 10514, taxpayer identification number 25-0317820.

RECITALS

By its terms Alcoa's current block power sales agreement (Contract No. 06PB-11744) continues through September 30, 2011, and power deliveries under this Agreement are expected to commence on October 1, 2011.

BPA is authorized to sell power to Alcoa, a direct service industrial customer, pursuant to section 5(d)(1)(A) of the Northwest Power Act, 16 U.S.C. § 839c(d)(1)(A).

On October 10, 2008, the Parties signed a Memorandum of Understanding (MOU No. 09PB-12006) which described the process necessary to establish a power sales agreement for the period Fiscal Years 2012 through 2028, and which established a framework of principles for the terms and conditions of such power sales contract.

Given its most current load and resource projections for the Federal Columbia River Power System, this Agreement contemplates and provides for BPA to acquire power to support sales to Alcoa under this Agreement.

It is BPA's intent to treat acquisitions of power by BPA in support of sales to Alcoa under this Agreement as Federal Base System Resource replacements.

Concomitantly with the execution of this Agreement BPA has issued a record of decision addressing comments regarding the MOU and this Agreement submitted by BPA customers and other interested parties, and providing BPA's rationale for its decision to enter into the Agreement.

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

TERMS

The Parties agree:

1. **TERM**

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2028, unless it is terminated earlier pursuant to the terms of the Agreement. Power deliveries by BPA to Alcoa's Intalco Plant are expected to commence on October 1, 2011; the commencement and continuation of service under

this Agreement during its term is subject to, among other things, the acquisition of power within the timeframes, in the amounts, and at or below the prices specified in this Agreement, that are necessary to support the power deliveries contemplated hereunder.

All liabilities incurred by each party hereunder will be preserved until satisfied, notwithstanding the expiration or termination of this Agreement.

2. DEFINITIONS

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions ("GRSPs"). If a term is not defined in any of the named sources, then the term shall be given its normal and customary meaning, with due regard to generally accepted business practices, including the status of the undefined term as a generally recognized term of art.

- 2.1 "Alcoa Load" means that Alcoa hourly load at the Intalco Plant served under this Agreement.
- 2.2 "Allocated Power" means the amount of power acquired by BPA pursuant to sections 5, 6, and 7 of this Agreement, as specified in Exhibit A.
- 2.3 "Allowable Expenditures" shall have the meaning described in section 11.4.
- 2.4 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.
- 2.5 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.
- 2.6 "Business Days" means every Monday through Friday except for Federal holidays.
- 2.7 "Contingent Acquisition" means a proposed ten-year power purchase transaction that is memorialized in a power purchase agreement where BPA's obligation for the first five years of the transaction is non-contingent and BPA's obligation for the second five years of the transaction is contingent on the occurrence of certain conditions specified in such power purchase agreement.
- 2.8 "Demand Entitlement" shall have the meaning described in section 1.2 of Exhibit B.
- 2.9 "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH).

- 2.10 “Employment Expenditures” shall have the meaning described in section 9.1.
- 2.11 “Federal Base System Resources” has the meaning contained in the Northwest Power Act, 16 U.S.C. § 839a(10).
- 2.12 “Firm Power” means electric power that PS will make available at the Industrial Firm power rate to Alcoa under this Agreement in equal hourly amounts for every hour of the Fiscal Year specified in Exhibit A.
- 2.13 “Fiscal Year” or “FY” means the period that begins each October 1 and which ends the following September 30. Even though, as noted in Section 1, certain actions are, or may be, required prior to the commencement of power deliveries, the first Fiscal Year under this Agreement is the 2012 Fiscal Year, which begins October 1, 2011, and continues through September 30, 2012.
- 2.14 “Initial Curtailment Period” means the first 24 months, contiguous or non-contiguous, that Alcoa curtails deliveries of Firm Power by BPA under this Agreement pursuant to section 10.4 during the period prior to October 1, 2016. The Initial Curtailment Period ends on the earlier of the first day of the twenty fifth month that Alcoa curtails deliveries under section 10.4 or October 1, 2016; provided, however, if 70 aMW of Firm Power becomes available for BPA to reallocate pursuant to section 10.6 and BPA successfully completes the power acquisitions in support of all or a portion of such additional Firm Power as requested by Alcoa prior the start of the Initial Curtailment Period, then the Initial Curtailment Period means the first 12 months, contiguous or non-contiguous, that Alcoa curtails deliveries under section 10.4 and the Initial Curtailment Period shall end on the earlier of the first day of the thirteenth month that Alcoa curtails deliveries under section 10.4 or October 1, 2016.
- 2.15 “Intalco Plant” means the Alcoa aluminum smelting facilities served from BPA’s Intalco Substation, where the 13.8 kilovolt facilities of BPA and Alcoa are connected.
- 2.16 “Issue Date” shall have the meaning described in section 15.1.
- 2.17 “Liquidated Damages” shall have the meaning described in section 11.2.1.
- 2.18 “Liquidated Gains” shall have the meaning described in section 11.2.3.
- 2.19 “Net Firm Power” shall have the meaning described in Exhibit G.
- 2.20 “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq., Public Law No. 96-501, as amended.
- 2.21 “Party” or “Parties” means BPA and/or Alcoa.

- 2.22 “Points of Metering” means the interconnection points between BPA, Alcoa and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.
- 2.23 “Power Reserves” shall have the meaning described in Exhibit G.
- 2.24 “Power Services” or “PS” means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.
- 2.25 “Power Supply Agreement” shall have the meaning described in section 8.4.
- 2.26 “Price Caps” means the maximum amount BPA will pay for average annual blocks of power for service to Alcoa Load during a Fiscal Year.
- 2.27 "Primary Points of Receipt" shall have the meaning described in section 13.1.
- 2.28 "Reallocated Power" means the amount of power reallocated to Alcoa pursuant to section 10.6 and specified in Exhibit A.
- 2.29 “Reduced Liquidated Damages” shall have the meaning described in section 11.2.2.
- 2.30 “Region” or “Regional” means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).
- 2.31 “Transmission Services” or “TS” means the organization or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

3. APPLICABLE RATES

Sales by BPA to Alcoa under this Agreement shall be made at the Industrial Firm Power rate (the “IP rate”) in effect at the time of such sales, and are subject to all applicable GRSPs.

3.1 Industrial Firm Power Rate

Consistent with applicable law, BPA will propose an IP rate schedule each time it establishes power rates during the term of this Agreement. Alcoa will purchase Firm Power provided by BPA under this Agreement at the applicable IP rate for the rate period, as established through the procedures specified in section 7(i) of the Northwest Power Act (16 U.S.C § 839e(i)), or its successor, including all adjustments and charges developed in accordance with all applicable statutory ratemaking directives.

Alcoa acknowledges that BPA has not agreed to propose that the IP rate be established at any particular level for any rate period included within the term of this Agreement, and that, while it reserves all rights with respect to

challenging rates proposed or established by BPA, Alcoa bears any risks associated with the IP rate level established each rate period by BPA pursuant the above referenced rate setting procedures.

3.2 **Additional Charges**

Alcoa is subject to any applicable additional charges, including penalty charges (e.g., the Unauthorized Increase Charge), established in BPA's Wholesale Power Rate Schedules and associated GRSPs.

4. **PURCHASE AND SALE FOR FY 2012 THROUGH FY 2028**

As specified herein, for the period FY 2012 through FY 2028, BPA shall provide Firm Power in amounts specified below and Alcoa shall purchase such power unless: (a) such power has not been acquired by BPA at or below the applicable Price Caps identified in the body of this Agreement, or if not specified in the body of this Agreement then in Table 1 of Exhibit C; (b) Alcoa has lost all or part of its Firm Power entitlement pursuant to curtailments in excess of those permitted by section 10.5 of this Agreement; (c) the Agreement has terminated; or (d) Alcoa has failed to operate the Intalco Plant at a level equal to or greater than 160 aMW for a least six months during the period January 1, 2009, through September 30, 2011.

All purchases of Firm Power by Alcoa under this Agreement shall be used exclusively to serve the Alcoa Load.

BPA's obligation to acquire power in support of sales to Alcoa under this Agreement, in addition to being contingent on meeting the applicable Price Cap requirement, is contingent on any such acquisition complying with all applicable statutory requirements, including any required environmental review under the National Environmental Policy Act (42 U.S.C. §§ 4321, *et seq.*), and each other condition contained in section 8 of this Agreement. For the avoidance of doubt, the Parties expressly acknowledge that BPA will not be obligated to enter into any acquisition, including any Contingent Acquisition, that BPA believes, in its reasonably exercised discretion, is priced at a level that is in excess of the prevailing forward market price in the same market for a similar power product and for a similar term of years, even if such acquisition or Contingent Acquisition is otherwise at a price equal to or less than the applicable Price Cap(s); provided, however, that BPA agrees that any proposed acquisition by BPA from Alcoa pursuant to sections 6.2.1, 6.3.1, or 7.2, will meet this requirement through implementation of the procedures contained in section 8.3.1.

All such power acquisitions will be purchased as flat annual blocks of power.

5. **PHASE 1 – SINGLE TEN-YEAR PERIOD PURCHASE AND SALE FOR FY 2012 THROUGH FY 2021**

For the ten-year period FY 2012 through FY 2021 ("Phase 1"), BPA shall sell and Alcoa shall purchase, as determined in this section 5 and in section 6 below, 160 aMW or 240 aMW of Firm Power.

BPA will initially endeavor to acquire 240 aMW, including in whole or in part through Contingent Acquisitions, as provided below.

5.1 Ten-Year Acquisition by BPA for Phase 1

BPA will, on or before March 31, 2009, endeavor to enter into one or more acquisitions, including through Contingent Acquisitions, totaling 240 aMW and covering the full ten-year period of Phase 1, at an average price of \$72/MWh or less. BPA will pursue such acquisitions in consultation with Alcoa and provide Alcoa two Business Days' prior written notice before it executes any acquisition under this section 5, including Contingent Acquisitions; provided, however, that BPA may execute, without Alcoa's prior approval, and in BPA's sole discretion, such acquisitions, including Contingent Acquisitions, that are consistent with this Agreement.

In the event Alcoa notifies BPA, as provided in section 6.1, to forgo seeking such acquisitions, including Contingent Acquisitions, sufficient to cover the full ten-year period, then the sale and purchase for Phase 1 will be divided into two separate five-year periods, pursuant to section 6.

5.2 Notice of Completion of Ten-Year Acquisition

BPA will revise the amounts of Allocated Power for the appropriate Fiscal Years specified in Exhibit A to reflect acquisitions (excluding Contingent Acquisitions until such time as such Contingent Acquisition culminates in a BPA power purchase obligation), and notify Alcoa's representative in writing if and when it has executed any acquisition, including any Contingent Acquisition, pursuant to this section 5 for the full ten-year period.

5.3 Termination

In the event BPA has not executed one or more acquisitions, including any Contingent Acquisitions, that together total 240 aMW by March 31, 2009, and Alcoa has not provided notice to BPA pursuant to section 6.1 below, then this Agreement will terminate on April 1, 2009.

5.4 Liquidated Damages

Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions, including any Contingent Acquisition made by BPA that culminates in a BPA power purchase obligation.

5.5 Credit Assurance

Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA, immediately prior to BPA consummating any acquisition pursuant to this section 5, including any Contingent Acquisition, with an irrevocable standby letter of credit in the amount of \$20 million, in a form acceptable to BPA, and issued by a bank that meets the requirements contained in section 8.4.5.5 of this Agreement. Such letter of credit shall have an expiration date one-year from its date of issuance, and BPA may require replacement letters of credit in the amount of \$20 million so that a letter of credit in the amount of \$20 million is in place on a continuous basis for the term of this Agreement. Nothing in this section 5.5

shall limit BPA's right to demand additional adequate assurance pursuant to section 22.8 of this Agreement.

In the event that Alcoa fails to provide any letter of credit required by this section 5.5 then BPA may terminate this Agreement.

6. PHASE 1 - CONVERSION FROM A SINGLE TEN-YEAR PERIOD TO TWO SEPARATE FIVE-YEAR PERIODS

Subject to the terms and conditions specified in this section 6, the single ten-year period described in section 5 may be converted to two separate five-year periods pursuant to the following subsections.

6.1 Notice Requesting Conversion to Two Separate Five-Year Periods

Alcoa may relieve BPA of its obligation to endeavor to enter into one or more acquisitions, including Contingent Acquisitions, covering the full ten-year period provided for in section 5, by notifying BPA's representative in writing any time prior to March 31, 2009, directing BPA to endeavor to acquire power for two separate five-year periods in accordance with the provisions of this section 6. Upon receiving such notice, BPA shall no longer be obligated to pursue acquisitions, including Contingent Acquisitions, totaling 240 aMW for the full ten-year period.

If, however, BPA has executed one or more acquisitions, including Contingent Acquisitions, that together total 240 aMW prior to receiving notice from Alcoa to proceed pursuant to this section 6, then Alcoa's notice shall be of no force and effect.

6.2 First Five-Year Period (FY 2012 through FY 2016)

In the event Alcoa provides notice pursuant to section 6.1 to divide Phase 1 into two separate five-year periods, BPA will sell 240 aMW of Firm Power to Alcoa for the period FY 2012 through FY 2016 (the "First Five-Year Period"), provided that prior to December 1, 2010, BPA has succeeded in acquiring 240 aMW for the full First Five-Year Period at an average price at or below \$72 per MWh.

6.2.1 Alcoa Put Right

In the event BPA has not acquired all 240 aMW for the full First Five-Year Period by June 30, 2009, then Alcoa shall have the right through December 31, 2009, to offer to sell to BPA the unprocured balance of annual flat amounts of power for the full First Five-Year Period.

Subject to the conditions in sections 8, BPA shall accept Alcoa's offer, at a price that is the lesser of: (a) Alcoa's (weighted average) purchase price(s), or (b) a price that, when combined with the weighted average of all of BPA's purchases, including the purchase in (a), is equal to or less than \$72 per MWh for this First Five-Year Period.

6.2.2 Notice

BPA will revise the amounts of Allocated Power for the appropriate Fiscal Years specified in Exhibit A and notify Alcoa's representative if

and when BPA has acquired 240 aMW, as provided in this section 6.2, for the full First Five-Year Period.

6.2.3 Termination

In the event BPA has not acquired the 240 aMW for the full First Five-Year Period as provided by this section 6.2 by December 1, 2010, then this Agreement will terminate.

6.2.4 Liquidated Damages

Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions made by BPA for the First Five-Year Period.

6.2.5 Credit Assurance

Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA, immediately prior to BPA consummating any acquisition pursuant to this section 6, with an irrevocable standby letter of credit in the amount of \$20 million, in a form acceptable to BPA, and issued by a bank that meets the requirements contained in section 8.4.5.5 of this Agreement. Such letter of credit shall have an expiration date one-year from its date of issuance, and BPA may require replacement letters of credit in the amount of \$20 million so that a letter of credit in the amount of \$20 million is in place on a continuous basis for the term of this Agreement. Nothing in this section 6.2.5 shall limit BPA's right to demand additional adequate assurance pursuant to section 22.8 of this Agreement.

In the event that Alcoa fails to provide any letter of credit required by this section 6.2.5 then BPA may terminate this Agreement.

6.3 Second Five-Year Period (FY 2017 through FY 2021)

In the event Alcoa provides notice pursuant to section 6.1 to divide Phase 1 into two separate five-year periods BPA will sell either 160 aMW or 240 aMW of Firm Power to Alcoa for the period FY 2017 through FY 2021 (the "Second Five-Year Period"), provided that (a) BPA has acquired 240 aMW for the First Five-Year Period, and (b) BPA has acquired power in the amounts and within the timeframes specified in this section 6.3 for the Second Five-Year Period at or below the applicable Price Caps, or the aggregate average thereof, specified in Table 1 of Exhibit C.

BPA will initially endeavor to acquire 240 aMW for the full Second Five-Year Period by March 31, 2010.

6.3.1 Alcoa Put Right

In the event BPA has not acquired all 240 aMW for the full Second Five-Year Period by March 31, 2010, then Alcoa shall have the right through June 30, 2014, to offer to sell to BPA the unprocured balance of annual flat amounts of power for the full Second Five-Year Period.

Subject to the conditions in sections 8, BPA shall accept Alcoa's offer, at a price that is the lesser of: (a) Alcoa's (weighted average) purchase price(s), or (b) a price that, when combined with the weighted average of all of BPA's purchases, including the purchase in (a), is equal to or less than \$72 per MWh for this Second Five-Year Period.

6.3.2 Acquisitions Beginning July 2014

BPA will (a) beginning July 1, 2014, and continuing until the date BPA publishes its initial wholesale power rate proposal in the Federal Register for the first rate period falling in whole or in part within the Second Five-Year Period, endeavor to acquire any unprocured balance of the 240 aMW for the full balance of the Second Five-Year Period at a price such that the weighted average price of all BPA purchases for the Phase 1 period equals \$72/MWh or less, or (b) beginning July 1, 2014, and continuing until the date BPA publishes its initial wholesale power rate proposal in the Federal Register for each rate period falling in whole or in part within the Second Five-Year Period, endeavor to acquire 160 aMW or 240 aMW for each individual two-year rate period at or below the applicable 240 aMW Price Cap (averaged over the rate period) specified in Table 1 of Exhibit C, or the applicable 160 aMW Price Cap specified in Table 1 of Exhibit C (averaged over the rate period).

Notwithstanding anything else in this section 6, if BPA has acquired at least 160 aMW for the Second Five-Year Period, Alcoa will either purchase 160 aMW of Firm Power under this Agreement, or pay Liquidated Damages, if any, under section 11.

6.3.3 Notice

BPA will revise the amounts of Allocated Power for the appropriate Fiscal Years specified in Exhibit A and notify Alcoa's representative if and when BPA has acquired 160 aMW or 240 aMW, as provided in this section 6.3, for the Second Five-Year Period or any individual rate period therein.

6.3.4 Termination

In the event BPA has not acquired 160 aMW or 240 aMW as provided by section 6.3.2 for any individual rate period prior to the date BPA publishes its initial wholesale power rate proposal in the Federal Register for such rate period, then BPA's obligation to endeavor to acquire power for such rate period will terminate, but this Agreement will not terminate.

6.3.5 Liquidated Damages

Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions made by BPA for the Second Five-Year Period.

7. PHASE 2 - PURCHASE AND SALE FOR FY 2022 THROUGH FY 2028

For the period FY 2022 through FY 2028 (“Phase 2”), BPA shall sell and Alcoa shall purchase Firm Power in the amounts specified in this section 7. BPA will endeavor to acquire power for the Phase 2 period on a rate period basis.

7.1 Phase 2 Acquisition

BPA will sell 160 aMW of Firm Power to Alcoa for each rate period within the Phase 2 period, provided that, consistent with this section 7, BPA has acquired 160 aMW of power for a rate period at or below the applicable Price Caps (averaged over the applicable rate period) specified in Table 1 of Exhibit C.

7.2 Alcoa’s Put Right

In the event BPA has not acquired all 160 aMW nine months prior to the beginning of each rate period falling in whole or in part within the Phase 2 period, then Alcoa shall have the right, until the date BPA publishes its initial wholesale power rate proposal in the Federal Register for such rate period, to offer to sell to BPA the unprocured balance of annual flat amounts of power for such rate period. Subject to the conditions in sections 8, BPA shall accept Alcoa’s offer provided that the weighted average price of all purchases for the rate period, inclusive of the proposed Alcoa sale to BPA, are at or below the applicable 160 aMW Price Cap specified in Table 1 of Exhibit C.

7.3 Notice

BPA will revise the amounts of Allocated Power for the appropriate Fiscal Years specified in Exhibit A and notify Alcoa’s representative if and when BPA has acquired, as provided by this section 7, 160 aMW for any individual rate period within the Phase 2 period.

7.4 Termination

In the event BPA has not acquired 160 aMW, as provided by this section 7, for the last rate period within the Phase 2 period, then this Agreement will terminate.

7.5 Liquidated Damages

Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions made by BPA for the Phase 2 period.

7.6 Economic Study to Provide Additional Power

Following any notice to Alcoa pursuant to section 7.3, and in the event that wholesale power market prices are below the Price Caps in Table 1 of Exhibit C for the Phase 2 period by more than 20 percent, then upon Alcoa’s request BPA will conduct an economic study of the Regional impacts of providing Alcoa with additional power above 160 aMW that may be available within the Price Caps specified in Table 1 of Exhibit C. This provision is not intended and shall not be construed as requiring BPA to offer any such

additional power to Alcoa during the Phase 2 period, irrespective of the conclusions or findings of any economic study undertaken.

This section 7.6 shall not apply if Alcoa is reallocated any Firm Power made available by the reduction of another direct service industry smelter customer's entitlement pursuant to section 10.6.

8. ACQUISITION CONDITIONS

8.1 Statutory and Policy Requirements

Alcoa acknowledges and agrees that BPA's obligation to acquire power in support of sales to Alcoa under this Agreement is contingent on a determination by BPA that each such acquisition (including any Contingent Acquisition, or acquisition of power offered to BPA by Alcoa pursuant to sections 6.2.1, 6.3.1, or 7.2.1) is consistent and in compliance with all applicable requirements and conditions regarding the acquisition of resources contained in BPA's enabling statutes, including but not limited to section 6 of the Northwest Power Act (16 U.S.C. §§ 839d, *et seq.*), and on the completion of any required environmental review under the National Environmental Policy Act (42 U.S.C. §§ 4321, *et seq.*) and other applicable federal environmental statutes or regulations.

In addition, such acquisitions must be consistent with any BPA risk policy adopted by the BPA Administrator and in effect at the time any proposed acquisition is being evaluated by BPA.

8.2 Price Caps and Other Limitations

8.2.1 Price Caps

The Price Caps specified in Table 1 of Exhibit C represent the maximum amount BPA will pay for average annual blocks of power to support sales to Alcoa (unless a lower maximum amount is specified in the body of this Agreement) including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs, costs incurred for any credit requirements pursuant to section 8.4, and the cost or forecasted cost to BPA of a credit default swap or other risk hedging instrument purchased by BPA in connection with this Agreement. In the event that BPA incurs any of the foregoing environmental or regulatory costs in connection with an acquisition after the date it enters into such acquisition, and such costs result in BPA paying an effective acquisition price that exceeds the Price Cap(s) applicable to such acquisition, then such costs will be included in the calculation of any reduction of the Price Caps pursuant to section 2 of Exhibit C.

Unless specified otherwise in this Agreement, references to Price Caps should be read to mean the weighted average of acquisitions made by BPA to support sales to Alcoa over all Fiscal Years comprising the particular delivery period.

8.2.2 Other Limitations

8.2.2.1 BPA will not make a plant specific acquisition from a coal-fired resource.

8.2.2.2 BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to in section 8.2.1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

8.3 Alcoa Purchases and Offers of Sale to BPA

8.3.1 Power Purchase Price Standard

Notwithstanding anything else in this Agreement to the contrary, any offers of sales of power by Alcoa to BPA referred to in this Agreement must be at the lower of the applicable Price Cap or Alcoa's actual and reasonable purchase cost at the time the purchase in question is made. Alcoa will seek to obtain three broker quotes for any power purchase it makes that it intends to offer to BPA pursuant to section 6.2.1, 6.3.1, 7.2, and will present any offered price to BPA's representative to obtain prior approval of the purchase and BPA shall respond to such request (a) for purchases of 18-month or less, within the same day if such prior approval is sought before 9 a.m. Pacific Time, or by 8 a.m. on the next Business Day if such request is made after 9 a.m. Pacific Time, and (b) for purchases of over 18 months, within three Business Days.

In all cases, Alcoa shall make a purchase at the lowest price tendered by a qualified counterparty. Alcoa will retain and, upon BPA's request, provide its records documenting the reasonableness of such purchase, and BPA will have the right to verify such cost by audit to ensure that BPA did not pay more than the actual cost of power acquired by Alcoa.

8.3.2 Additional Offers of Sale

In addition to Alcoa's rights specified in sections 6.2.1, 6.3.1, and 7.2, during any period that BPA is seeking to make acquisitions or Contingent Acquisitions as specified in sections 5, 6, and 7, Alcoa may present other potential acquisition opportunities to BPA for its consideration.

8.4 Third-Party Supplier Credit and Collateralization Requirements

In light of Alcoa's obligations to BPA under section 11.3 of this Agreement in the event of a supplier default, BPA agrees to require supplier credit and collateralization provisions in any agreement from a third-party power supplier ("Supplier") under sections 5, 6 or 7 hereunder ("Power Supply Agreement") consistent with this section 8.4. BPA will consult Alcoa

regarding BPA's negotiation and implementation of the credit and collateralization provisions in any Power Supply Agreement.

8.4.1 Financial Statements

Any Power Supply Agreement shall provide that BPA has the right to request from the Supplier, or its guarantor (if any), audited annual financial statements where such financial statements are not already available on such Supplier's or its guarantor's internet website. Notwithstanding the foregoing, where a Supplier's obligations under the Power Supply Agreement are supported by a guarantee, provision of the guarantor's audited financial statements shall constitute full compliance with this section 8.4.1 by such Supplier.

8.4.2 Performance Assurance

If BPA believes, based on information that it has received, that the ability of the Supplier, or a Supplier's guarantor (if any) (each a "Failing Party") to perform its obligations under the Power Supply Agreement or a guarantee has been or will, with the passage of time be, impaired, then BPA will demand, consistent with the terms of such Power Supply Agreement, adequate assurance of performance of those obligations ("Adequate Assurance"). Adequate Assurance shall be in a form of Collateral (as defined in section 8.4.5.1 below) provided for in the Power Supply Agreement, and that is deemed acceptable and adequate to BPA.

8.4.3 Third Party Beneficiary

Any Power Supply Agreement shall provide that Alcoa shall be a third-party beneficiary of the security provisions required in the Power Supply Agreement by this Section 8.4 of this Agreement; provided, however, that Alcoa will consult BPA prior to commencing any legal proceeding against a Supplier with respect to such credit and collateralization provisions.

8.4.4 Collateral Support Obligations

8.4.4.1 At the end of each week BPA shall calculate the amount that would be owed by Supplier to BPA, if any, as if the Power Supply Agreement were terminated for cause, as of such Business Day (the "Exposure Amount"). If the Exposure Amount exceeds the sum of the Supplier's Collateral Threshold (defined below) plus any Collateral (defined below) already posted by the Supplier and held by BPA ("Posted Collateral"), then the Supplier shall be required to transfer additional Collateral in an amount equal to the positive difference between (i) the Exposure Amount and (ii) the sum of the Supplier's Collateral Threshold plus any Posted Collateral (the "Required Margin").

The Required Margin shall be transferred to BPA by the close of business on the next Business Day following the Business Day on which notice of the demand for such Required Margin (a “Collateral Notice”) is provided by BPA.

8.4.4.2 The Exposure Amount shall be the net positive difference between payments that would have been made to the Supplier by BPA pursuant to the Power Supply Agreement and the forward prices for electric power delivered to the Mid-C delivery point for the then-remaining term of the Power Supply Agreement as reflected in the average of the posted prices found on the Intercontinental Exchange, TFS Energy and Prebon Energy indices, or their successors (“Indices”) for the remaining term of the Power Supply Agreement. In the event that the Indices fail to post forward prices for the entire remaining term of the Power Sale Agreement, the forward price closest to the last day of the Power Sale Agreement shall be escalated at an annual rate of 3.5 percent to calculate the Exposure Amount for the remaining term of the Power Supply Agreement.

8.4.4.3 If BPA and Supplier cannot agree on the Exposure Amount in any week, then the undisputed portion of any Collateral to be provided to BPA by Supplier or returned by BPA to Supplier (“Undisputed Amount”) shall be required to be transferred by the close of the next Business Day following the Business Day on which the Collateral Notice is sent. BPA will then calculate the Exposure Amount by seeking three actual quotations for electric power for the remaining term of the Power Supply Agreement, and using the arithmetic average of those quotations BPA shall then notify the Supplier of such amended Exposure Amount (“Amended Collateral Notice”)

Any additional Collateral required to be provided or returned as a result of such Amended Collateral Notice shall be transferred by the close of the next Business Day following the Business Day on which the Amended Collateral Notice is sent.

8.4.4.4 The Power Supply Agreement shall specify that BPA shall have free and unrestricted use of all cash Collateral provided to it.

8.4.5 **Credit Definitions**

8.4.5.1 “Collateral” means: (a) cash, (b) a Letter of Credit (as defined below), or (c) a guarantee (as defined below). Collateral in the form of a Letter of Credit or guarantee shall be valued at

zero if there are 30 days or less remaining before its expiration.

8.4.5.2 “Collateral Threshold” means the lower of (i) the amount specified opposite the Credit Rating (as defined below) of Supplier in the table below, (ii) the amount specified opposite the Credit Rating of Supplier’s guarantor in the table below, and (iii) in the event a guarantee has been posted as Collateral, 80% of the dollar limit set forth in such guarantee. Notwithstanding the foregoing, if Supplier or Supplier’s guarantor is not rated by S&P or Moody’s or if the Supplier or the Supplier’s guarantor is in default under the Power Supply Agreement or the guarantee, as the case may be, then the Collateral Threshold shall be zero.

S&P	Moody's	Collateral Threshold
AA- and above	Aa3 and above	\$40 million
A-, A, A+	A3, A2, A1	\$30 million
BBB, BBB+	Baa2, Baa1	\$10 million
BBB-	Baa3	\$5 million
Below BBB-	Below Baa3	\$ zero

8.4.5.3 “Credit Rating” shall mean with respect to an entity on any Business Day, the respective rating then assigned to its unsecured, senior long-term debt (not supported by third-party credit enhancement) by S&P or Moody’s or a successor to either of them. In the event of an inconsistency in ratings assigned by S&P or Moody’s the lowest rating assigned shall control.

8.4.5.4 “Guarantee” means a form of agreement in substantially the same form as that provided as Exhibit H of this Agreement.

8.4.5.5 “Letter of Credit” means an irrevocable standby letter of credit in a form satisfactory to BPA, issued by a commercial bank that is not an affiliate of the Supplier, having an office in the United States, with total assets of at least \$5,000,000,000 and whose Credit Rating at such time is at least “A-” by S&P and at least “A3” by Moody’s; in the event such a commercial bank is rated by only one of S&P or Moody’s, eligibility will be based on the available rating.

8.4.5.6 “Moody’s” shall mean Moody’s Investor Services, Inc. or its successor.

8.4.5.7 “S&P” shall mean Standard and Poor’s Rating Services (a division of McGraw-Hill, Inc.) or its successor.

9. EMPLOYMENT EXPENDITURES AND CAPITAL INVESTMENT

9.1 Employment and Capital Commitments

Alcoa commits to make the minimum annual Employment Expenditures specified in the Expenditure and Investment Table below, at the Intalco Plant through the term of this Agreement. “Employment Expenditures” shall mean, and will be limited to, regular compensation for employees and contractors, which is comprised of wages, benefits, and customary performance bonuses, and will not include any extraordinary bonuses or similar types of awards. If Alcoa fails to make annual Employment Expenditures each Fiscal Year equal to or greater than the minimum annual Employment Expenditures specified in the Expenditure and Investment Table, BPA may terminate this Agreement.

Alcoa also commits to the capital investments, at the Intalco Plant, specified in the Expenditures and Investment Table, provided that BPA has acquired power, pursuant to section 5 or section 6, for the full ten-year period of Phase 1, by March 31, 2010. Capital investments shall be limited to costs for items (a) that are depreciated as capital expenditures consistent with generally accepted accounting principles, or (b) that are associated with the repair or maintenance of capital equipment, provided that any costs under this subpart (b) shall be limited to ten-percent of Actual Capital Invested (as defined in 9.2.1 below).

Expenditures and Investment Table

Pot-Lines	Minimum Annual Employment Expenditures (2012\$)	5-Year Capital Investment	10-Year Capital Investment*
1 pot-line	\$38 million	\$0 million	\$125 million
1.5 pot-lines	\$48 million	\$0 million	\$160 million
2 pot-lines	\$56 million	\$0 million	\$200 million

*Notes: Alcoa may initiate its capital spending in 2009 in anticipation of deliveries by BPA under this Agreement. Minimum annual Employment Expenditure amounts will be escalated to account for inflation, as measured by the Implicit Price Deflator for Gross Domestic Product maintained by the United States government, Bureau of Economic Analysis.

9.1.1 Minimum Annual Employment Expenditure

In the event 70 aMW of Firm Power becomes available for BPA to reallocate pursuant to section 10.6 and BPA successfully completes the power acquisitions in support of all or a portion of such additional Firm Power as requested by Alcoa, then Alcoa must meet the 2 pot-lines minimum annual Employment Expenditure amount described in the Expenditures and Investment Table effective the Fiscal Year

following the Fiscal Year such additional Firm Power is initially made available by BPA.

9.2 **Capital Investment Commitment Comparison**

9.2.1 **Capital Investment Notification**

In the event that BPA is successful in acquiring power pursuant to section 5 of this Agreement or pursuant to section 6.2 and 6.3 of this Agreement by March 31, 2010, then on or before September 1, 2012, Alcoa will notify BPA of its actual capital invested amount for the Intalco Plant. Such notice will include: (a) the actual dollar amount of capital invested by Alcoa in the Intalco Plant between January 1, 2009, and the date of the notice ("Actual Capital Invested"); (b) the anticipated dollar amount of capital committed to be invested in the Intalco Plant in any remaining portion of the period prior to September 30, 2021; and, (c) the anticipated annual dollar amount of capital committed to be invested in the Intalco Plant between October 1, 2021 and September 30, 2028. The sum of these items (a), (b), and (c) in this paragraph shall equal Alcoa's capital invested in the Intalco Plant ("Capital Invested"). Beginning September 1, 2013, and on each September 1 thereafter, as applicable, Alcoa will notify BPA of the updated Actual Capital Invested in the Intalco Plant between January 1, 2009, and the date of such notice.

9.2.2 **10-Year Capital Investment**

In the event Alcoa is required to provide BPA the notice specified in section 9.2.1, then such notice will be required annually until such time as Actual Capital Invested is greater than 100 percent of the 1.5 pot-lines 10-Year Capital Investment described in the Expenditures and Investment Table, above, or this Agreement is terminated, whichever is earlier, provided, further, that if 70 aMW of Firm Power becomes available for BPA to reallocate pursuant to section 10.6 and BPA successfully completes the power acquisitions in support of such additional Firm Power as requested by Alcoa by March 31, 2010, then Alcoa's Actual Capital Invested obligation must be consistent with the 2 pot-lines 10-Year Capital Investment amount described in the Expenditures and Investment Table effective October 1, 2017.

9.2.3 **Capital Investment Less Than 50 Percent**

In the event that BPA is successful in acquiring power pursuant to Section 5 of this Agreement or pursuant to Sections 6.2 and 6.3 of this Agreement by March 31, 2010, the Actual Capital Invested by October 1, 2016 shall be equal to or greater than 50 percent of the 1.5 pot-lines 10-Year Capital Investment established in section 9.2.2, otherwise BPA may terminate this Agreement.

9.2.4 **Capital Investment Less Than 80 Percent**

In the event that BPA is successful in acquiring power pursuant to Section 5 of this Agreement or pursuant to Sections 6.2 and 6.3 of this

Agreement by March 31, 2010, the Actual Capital Invested by October 1, 2021 shall be equal to or greater than 80 percent of the 10-Year Capital Investment amount established in section 9.2.2, otherwise this Agreement will terminate effective October 1, 2021.

9.2.5 Capital Investment Greater Than 80 Percent

In the event Alcoa's Actual Capital Invested is equal to or greater than 80 percent but less than 100 percent of the 10-Year Capital Investment amount, established in section 9.2.2 by October 1, 2021, BPA shall reduce the 160 aMW Price Caps in Table 1 of Exhibit C FY 2022 through FY 2028 by the amount Alcoa's Actual Capital Invested is less than 100 percent of the 10-Year Capital Investment amount established in section 9.2.2. Such reduction shall be applied as specified in section 3 of Exhibit C. Additionally, prior to each October 1, beginning October 1, 2022, BPA will compare the updated Actual Capital Invested submitted by Alcoa, pursuant to section 9.2.1, to the Capital Invested amount that is specified in the annual notice.

9.3 Expenditure and Investment Documentation

Alcoa will retain and, upon BPA's request, provide BPA access to its records documenting Employment Expenditure and Capital Invested amounts for the Intalco Plant, and BPA will have the right to verify such amounts by audit.

10. CURTAILMENT

10.1 BPA Curtailment if Unable to Acquire 160 aMW after FY 2016

In consideration of Alcoa's agreement in section 6.3 to provide BPA with the flexibility to reduce its acquisition costs below the Price Caps, and to accept the risk that in exercising that flexibility that BPA may ultimately be unable to acquire 160 aMW at or below the Price Caps, then in the event BPA is unable to acquire 160 aMW to support sales to Alcoa within the 160 aMW Price Cap specified in Table 1 of Exhibit C for any period after FY 2016 (a "BPA Curtailment"), BPA will curtail deliveries to Alcoa Load and make payments to Alcoa as provided in 10.1.1 and 10.1.2.

10.1.1 BPA Payments

BPA will pay Alcoa \$5.0 million for each BPA Curtailment to cover shutdown/start-up costs, plus \$2.9 million (in 2012\$) to offset Employment Expenditures, as specified in section 9.1 for each full month of any BPA Curtailment, up to the \$85 million cap described in 10.1.2. Any such payments from BPA to Alcoa will be made as specified in section 15.3.

10.1.2 Termination

If and when accumulated BPA Curtailment payments reach \$85 million (in 2012\$), this Agreement will terminate.

10.2 BPA Restriction for Reserve Obligations

Alcoa shall make available for restriction by BPA during the term of this Agreement up to 10 percent of its Net Firm Power, upon notice and for such durations as specified in Exhibit G, for purposes of providing Power Reserves for BPA's firm power loads within the region, as provided for in the Northwest Power Act. Alcoa will be compensated for the value of such Power Reserves made available to BPA through an adjustment to the IP rate, as provided for in the Northwest Power Act, and as established by BPA in its wholesale power rate proceedings.

10.2.2 Additional or Alternative Arrangements for Reserves Restriction

Nothing in this Agreement shall preclude BPA and Alcoa from entering into arrangements, either by amendment to this Agreement through a separate agreement, for Alcoa to provide BPA with additional or alternative restriction rights for purposes of providing reserves for BPA's firm power loads within the region.

10.3 Temporary Load Reduction

A temporary reduction of power deliveries due to a power system reliability need, other than a restriction under section 10.2 above, or emergency will be treated as an Uncontrollable Force event, and will not be considered a curtailment under this Agreement.

10.4 Alcoa Curtailment

Alcoa may curtail deliveries of power by BPA under this Agreement pursuant to this section 10.4. Alcoa shall endeavor to provide notice to BPA at least seven Business Days in advance of a curtailment; provided, however, that such notice shall in no event be less than three Business Days prior to the beginning of a curtailment. Such notice shall specify the amount of Firm Power to be curtailed and the duration of the curtailment. The election to curtail, and the amount and duration of such curtailment, may not be changed without BPA's consent. Any Alcoa curtailment of deliveries by BPA, in whole or in part, will be subject to Liquidated Damages, Reduced Liquidated Damages and Liquidated Gains calculations pursuant to section 11 below.

10.5 Curtailed Amount

For any amount of Firm Power made available to Alcoa that it does not use for 36 consecutive months ("Curtailed Amount"), Alcoa will lose its right to purchase an equal amount of Firm Power for the remaining term of this Agreement. The following procedure shall be used to determine any Curtailed Amount:

- (1) Beginning in October 2014, and following each month thereafter, BPA shall track the amount of Demand Entitlement that Alcoa has taken during each of the preceding 36 months,

- (2) In order to retain its Firm Power entitlement, Alcoa must, for at least one month during the preceding 36 months, have received the full Allocated Power amount specified in section 1 of Exhibit A. If this condition has not been satisfied, then Alcoa's Firm Power entitlement made available pursuant to section 4 shall be reduced by the Curtailed Amount,
- (3) BPA shall provide notice of the Curtailed Amount and Alcoa's revised Firm Power entitlement. Such revision shall become effective at 2400 hours on the last day of the month in the month that BPA provides notice to Alcoa of such revision, and
- (4) For purposes of this section 10.5, restrictions by BPA pursuant to section 10.2 will be treated as though Alcoa had received the amount of power so restricted.

10.6 Reallocation of Curtailed Amount from Another Customer

Upon Alcoa's request, and to the extent consistent with all other requirements and limitations in this Agreement regarding BPA acquisitions, BPA shall reallocate up to 70 aMW: 1) of any Firm Power made available by the reduction of Columbia Falls Aluminum Company's (CFAC) entitlement pursuant to the section of a CFAC contract corresponding to this section 10.6 and in effect after September 30, 2011; or 2) of any of CFAC's Unused Benefit Amounts under Contract No. 06PB-11745 (as that term is defined in such contract), or any successor contract for the FY 2010-2011 period, that Alcoa acquires after this Agreement becomes effective; provided, that, a) such acquired Unused Benefit Amounts are retained by Alcoa through September 30, 2011, and b) the cost of such reallocation is, or can be, supported by a power acquisition by BPA at or below \$72 per MWh in Phase 1, and in Phase 2 at or below \$80/MWh in 2021\$. This Reallocated Power will be additive to Alcoa's Allocated Power amount, and such amounts will be reflected in Exhibit A.

Alcoa must make the request specified in this section 10.6 within twelve months following the effective date of the other direct service industry smelter customer's entitlement reduction.

11. LIQUIDATED DAMAGES AND GAINS

11.1 Liquidated Damages and Gains Associated with BPA Acquisitions or Alcoa Curtailments

Alcoa shall be liable to BPA for Liquidated Damage amounts, if any, Reduced Liquidated Damage Amounts, if any, and will share in any Liquidated Gain amounts, if any, pursuant to this section 11, in the event: (a) BPA has made at least 160 aMW of acquisitions for any period, and Alcoa fails to take-and-pay for any Firm Power made available to it by BPA (including during the period of any Uncontrollable Force event that otherwise prevents Alcoa from performing its obligations hereunder, or in the event this Agreement has

terminated pursuant to sections 23.4, 23.5, or 23.6), or (b) Alcoa has curtailed deliveries of Firm Power pursuant to section 10.4.

If BPA has acquired less than 160 aMW for any period pursuant to sections 5, 6, or 7, at BPA's option, it may (a) retain such power for its own use and account, and section 11.2 below shall not apply, or (b) sell to Alcoa (and Alcoa shall be obligated to purchase) such power at BPA's average cost of acquiring such power. Any sale by BPA to Alcoa pursuant to the immediately preceding clause shall be transacted under separate contract, and pursuant to BPA's then existing surplus power rate schedule.

Otherwise, when BPA has acquired power in amounts equal to or greater than 160 aMW for any of the separate periods described in this Agreement, Alcoa shall be obligated to pay BPA Liquidated Damages, if any, or Reduced Liquidated Damages, if any, pursuant to sections 11.2 and 11.3, below.

11.2 Liquidated Damage or Gain Calculation and Allocation

BPA will be the Party responsible for calculating Liquidated Damages, Reduced Liquidated Damages and Liquidated Gains. In determining the market price and calculating Liquidated Damages and Liquidated Gains, BPA will act in good faith and will use commercially reasonable procedures in order to produce a commercially reasonable result. BPA may consider any relevant information in its calculation, including, without limitation, (a) firm or indicative quotations by one or more third-parties for replacement transactions; (b) relevant market data supplied by one or more third-parties; and (c) relevant market data derived from internal BPA sources, if that data is the same type used by BPA in the regular course of its business for the valuation of similar transactions; provided, however, that BPA shall not be required to enter into replacement transactions in order to determine or assess Liquidated Damage or Liquidated Gain amounts.

BPA will calculate Liquidated Damages, Reduced Liquidated Damages or Liquidated Gains, as applicable, within five Business Days after BPA has determined, either through notice from Alcoa or otherwise, that an event has occurred giving rise to the need to calculate a liquidated amount.

Alcoa shall be obligated to pay (i) BPA Reduced Liquidated Damages during the Initial Curtailment Period if Alcoa makes its minimum annual Employment Expenditures and (ii) Liquidated Damages after the Initial Curtailment Period. If Alcoa fails to make its minimum annual Employment Expenditures during any portion of the Initial Curtailment Period, Alcoa shall be obligated to pay Liquidated Damages during such portion of the Initial Curtailment Period.

11.2.1 Liquidated Damages

Liquidated Damages will equal 100 percent of the difference (where the market price is below the original acquisition price) between the acquisition price for power acquired by BPA and the market price measured at the time such Liquidated Damages are calculated,

multiplied by the number of MWh of undelivered Firm Power; provided, however, that in the event section 11.2.3 is severed from this Agreement, BPA will offset such Liquidated Damages by the positive difference, during the period prior to the curtailment, between BPA's original acquisition price and the Price Caps applicable to such acquisitions, up to a total amount of offsets equal to \$70 million over the remaining term of the Agreement; provided, further, such \$70 million shall be reduced by 150 percent of any amount that the calculation of Reduced Liquidated Damages during the Initial Curtailment Period was less than the calculation of Liquidated Damages for that same undelivered Firm Power. Such positive difference shall be calculated by comparing (i) the original average acquisition price for purchases during the portion prior to the curtailment of the term of the acquisition used in the Liquidated Damages calculation, to (ii) the weighted average of the Price Caps that were applicable to each purchase. Such offset shall not be made following a material breach of this Agreement by Alcoa. BPA will make reasonable efforts to mitigate any Liquidated Damages.

11.2.2 **Reduced Liquidated Damages**

Reduced Liquidated Damages will equal 100 percent of the difference (where the market price is below the applicable IP Rate) between the IP Rate applicable to the undelivered Firm Power and the market price measured at the time such Reduced Liquidated Damages are calculated, multiplied by the number of MWh of undelivered Firm Power.

11.2.3 **Liquidated Gains**

Liquidated Gains will equal 100 percent of the difference (where the market price exceeds the original acquisition price) between the market price measured at the time such Liquidated Gains are calculated and the acquisition price for power acquired by BPA, multiplied by the number of MWh of undelivered Firm Power. There will be no calculation of Liquidated Gains during the Initial Curtailment Period and any amounts that would have been calculated shall be retained by BPA. Liquidated Gains will be held and maintained by BPA, and such amounts shall be disbursed by BPA solely for reimbursement to Alcoa for certain Allowable Expenditures for the Intalco Plant, as identified in section 11.4; provided, however, that (a) any such reimbursements will be limited to: (i) of the first \$140 million, 67 percent of the Liquidated Gains obtained from such remarketed power, with the balance of 33 percent retained by BPA for its own account; (ii) of the next \$140 million, 33 percent of the Liquidated Gains obtained from such remarketed power, with the balance of 67 percent retained by BPA for its own account; and (iii) of any amounts above \$280 million, 50 percent of the Liquidated Gains obtained from such remarketed power, with the balance of 50 percent retained by BPA for its own account; (b) any Liquidated Gain amounts that would otherwise be available for Allowable Expenditure

reimbursement will first be used to offset (i) any BPA Curtailment payments, and (ii) 150 percent of any amount that the calculation of Reduced Liquidated Damages during the Initial Curtailment Period was less than the calculation of Liquidated Damages for that same undelivered Firm Power; and (c) no Liquidated Gain amounts obtained following a material breach of this Agreement by Alcoa will be available for Allowable Expenditure reimbursement.

11.3 **Supplier Default**

11.3.1 **Third Party Supplier Default**

In the event BPA acquires power from a third-party supplier with a credit rating of “A” or better at the time such acquisition is made (as rated by the Moody’s, Fitch, or Standard and Poor’s rating companies) and BPA includes in the Power Supply Agreement with such supplier the credit requirements provided for in section 8.4 of this Agreement, and such supplier defaults under its Power Supply Agreement with BPA, then Alcoa shall provide BPA with written notice, within 48 hours after notification from BPA of such supplier default, that it elects to either (i) terminate purchases from BPA under this Agreement, effective as of the notice date, equal to the amount of the defaulted acquisition, or (ii) in addition to payment by it under the IP rate, pay BPA the amount by which the market price for power at the Mid-C trading hub exceeds the original acquisition price under the defaulted agreement for power supplied by BPA to serve the Alcoa Load until such time as BPA can enter into a replacement acquisition, and then pay BPA the positive difference of such replacement acquisition minus the original acquisition price under the defaulted agreement times the undelivered MWh under the defaulted agreement minus any default payments or performance assurance payments received by BPA.

In addition, with respect to the 48-hour period between the notice of default provided by BPA to Alcoa and Alcoa’s notice to BPA, Alcoa agrees that, in addition to payment under the IP rate, it will reimburse BPA for the amount by which the market price for power at the Mid-C trading hub exceeds the original acquisition price under the defaulted agreement, for all power delivered by BPA to Alcoa during such 48-hour period.

11.3.2 **Alcoa Default**

In the event BPA acquires power from Alcoa or an Alcoa affiliate and Alcoa or its affiliate defaults under its supply agreement with BPA, then Alcoa shall either (i) terminate purchases from BPA under this Agreement equal to the amount of the defaulted acquisition, or (ii) in addition to payment by it under the IP rate, pay BPA the amount by which the market price for power at the Mid-C trading hub exceeds the original acquisition price under the defaulted agreement for power supplied by BPA to serve the Alcoa Load until such time as BPA can

enter into a replacement acquisition, and then to pay BPA the positive difference of a replacement acquisition by BPA minus the original acquisition price under the defaulted agreement times the undelivered MWh under the defaulted agreement minus any default payments or performance assurance payments received by BPA.

11.4 Allowable Expenditures

“Allowable Expenditures” include payments made by Alcoa for (a) employment compensation (which are consistent with the provisions of section 9.1), (b) costs for restarting production at the Intalco Plant following a shutdown or curtailment, including the purchase of raw materials and contract labor for such purpose; (c) equipment upgrades to the Intalco Plant (whether such upgrades are expensed or capitalized); (d) costs incurred for decommissioning the Intalco Plant (whether such costs are expensed or capitalized); and (e) environmental remediation costs associated with the Intalco Plant (whether such costs are expensed or capitalized). Alcoa will retain and, upon BPA’s request, provide its records documenting the reasonableness of the Allowable Expenditures, and BPA will have the right to verify such Allowable Expenditures by audit.

Any Liquidated Gain amounts available for Allowable Expenditure reimbursement that are unused for such purpose on the date when the Intalco Plant is no longer subject to a government order relating to (d) or (e) above, will be retained by BPA for its own account.

12. SCHEDULING

12.1 Scheduling

Alcoa shall schedule power in accordance with Exhibit F.

13. DELIVERY

13.1 Definitions

13.1.1 “Primary Points of Receipt” means the points on the Pacific Northwest transmission system where Firm Power is forecasted to be made available by Power Services to Alcoa for purposes of obtaining a long-term firm transmission contract.

13.1.2 “Scheduling Points of Receipt” means the points on the Pacific Northwest transmission system where Firm Power is made available by Power Services to Alcoa for purposes of transmission scheduling.

13.1.3 “Point of Delivery” means the point described in Exhibit E to which Alcoa delivers power.

13.2 Transmission Service

13.2.1 Alcoa is responsible for making arrangement for, and payment of, delivery of power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.

13.2.2 Alcoa shall obtain prior BPA approval for, and shall provide at least 60 days' notice to Power Services prior to changing Balancing Authority Areas and.

13.2.3 At Alcoa's request, Power Services shall provide Alcoa with Primary Points of Receipt and other information needed to enable Alcoa to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide Alcoa with Scheduling Points of Receipt. Power Services has the right to provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse Alcoa for any incremental, direct, non-administrative costs incurred by Alcoa to comply with delivering Firm Power from such a Scheduling Point of Receipt to Alcoa's Intalco Plant if the following conditions, as outlined in 13.2.3.1 or 13.2.3.2 below, as applicable, have been met:

13.2.3.1 If Alcoa has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

13.2.3.1.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

13.2.3.1.2 Alcoa has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and

13.2.3.1.3 Alcoa's transmission schedule was curtailed due to non-firm status under PTP transmission service or Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

13.2.3.2 If Alcoa has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

13.2.3.2.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

13.2.3.2.2 Alcoa's transmission schedule was curtailed due to non-firm status under its secondary service status and Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

13.2.3.3 In the event power cannot be scheduled from a BPA Scheduling Point of Receipt (other than a Primary Point of Receipt) then Alcoa may request and, consistent with BPA's standard practices to achieve efficient system operation and reliability, BPA will move the Scheduling Point of Receipt to a point on the FCRTS where energy can be made available and scheduled to Alcoa's load ("Alternative Scheduling Point of Receipt"), if such a point is available and providing the power from that Alternative Scheduling Point of Receipt would not cause BPA to violate any type of non-power constraint.

13.3 **Liability for Delivery**

Alcoa waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 13.2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

13.4 **Real Power Losses**

BPA is responsible for the real power losses necessary to deliver Firm Power across the Federal Columbia River Transmission System to Alcoa's POD(s) listed in Exhibit E. Alcoa shall be responsible for any real power losses over non-federal transmission facilities.

14. **METERING**

Alcoa's purchase obligations in sections 4 are not dependant on amounts scheduled and do not require retail load meters for billing and payment.

15. BILLING AND PAYMENT

15.1 Billing

BPA shall bill Alcoa monthly for all products and services provided during the preceding month(s). BPA may send Alcoa an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Alcoa. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

15.2 Payment

Alcoa shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If Alcoa has made payment on an estimated bill then:

15.2.1 if the amount of the final bill exceeds the amount of the estimated bill, then Alcoa shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or

15.2.2 if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay Alcoa the difference between the estimated bill and final bill by the 20th day after the final bill's Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

15.3 Payment by BPA

BPA shall make any BPA Curtailment payments established in section 10.1 to Alcoa electronically. All payments must be received by the 20th day following the last day of the month in which any such Curtailment payment is due. If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

15.4 Late Payments

After the Due Date, a late payment charge, equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

15.5 **Termination**

If Alcoa has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If Alcoa does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that Alcoa is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 18 Notices and Contact Information.

15.6 **Disputed Bills**

15.6.1 If Alcoa disputes any portion of a charge or credit on Alcoa's estimated or final bills, Alcoa shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Alcoa shall pay the entire bill by the Due Date. This section 15.6.1 does not allow Alcoa to challenge the validity of any BPA rate.

15.6.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

15.6.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 20, Alcoa is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

16. **INFORMATION EXCHANGE AND CONFIDENTIALITY**

16.1 **General Requirements**

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast Alcoa Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). Information requested under this section 16.1 shall be provided in a timely manner.

16.2 **Reports**

Alcoa shall notify BPA of public sources from which Alcoa's annual financial reports and any statements by its authorized officers are readily available and BPA will secure such reports and statements for its use. In the event Alcoa's annual financial reports and statements by its authorized officers

become unavailable from public sources Alcoa shall provide such reports upon request from BPA.

16.3 Meter Data

Alcoa consents to allow Power Services to receive Alcoa’s meter data from Transmission Services or BPA’s metering function.

16.4 Confidentiality

Before Alcoa provides information to BPA that Alcoa deems to be confidential commercial or financial information, Alcoa shall clearly designate such information as confidential. BPA shall notify Alcoa as soon as practicable, but in any case as provided by applicable law or regulation, of any request received under the Freedom of Information Act (FOIA) (5 U.S.C. §§ 552 *et seq.*), or under any other federal law or court or administrative order, for any information designated as confidential by Alcoa. BPA shall only release such confidential information consistent with FOIA, or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of such confidential information within BPA to employees who need it for purposes of administering this Agreement.

17. CONSERVATION AND ENVIRONMENTAL ATTRIBUTES

17.1 Conservation

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

17.2 Renewable Energy Certificates and Carbon Credit Treatment

17.2.1 “Carbon Credit” means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.

17.2.2 “Environmental Attributes” means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.

17.2.3 “Renewable Energy Certificates” or “RECs” means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

17.2.4 BPA shall not be obligated to provide Environmental Attributes, Carbon Credits, or RECs, or the value of any or all of them, to Alcoa

under this Agreement, absent a court decision or order requiring it to do so.

17.2.5 BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to Alcoa.

18. NOTICES AND CONTACT INFORMATION

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

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

References in this Agreement to the "BPA representative" and the "Alcoa representative" are to the persons listed below. Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

If to **Alcoa**:

Alcoa Inc.
4050 Mountain View Road
P.O. 937
Ferndale, WA 98248
Attn: **Mike Rousseau**
Plant Manager
Phone: **360-384-7061**
FAX: **360-384-6185**
E-Mail: **Mike.Rousseau@alcoa.com**

If to BPA:

Bonneville Power Administration
905 NE 11th Avenue
P.O. 3621
Portland, OR 97208-3621»
Attn: **Mark E. Miller**
Account Executive
Phone: **503-230-4003**
FAX: **503-230-3681**
E-Mail: **memiller@bpa.gov**

19. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable

Force” means an event beyond the reasonable control of, and without the fault or negligence of the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which by exercise of that Party’s reasonable care, diligence and foresight such Party was unable to avoid. Uncontrollable Forces include but are not limited to:

- 19.1 any unplanned curtailment or interruption of firm transmission service used to deliver Firm Power under this Agreement to Alcoa whether such curtailment or interruption occurs on BPA’s or a third party’s transmission system;
- 19.2 any failure of Alcoa's production, distribution or transmission facilities that prevents Alcoa from taking Firm Power delivered to the Point of Receipt;
- 19.3 strikes or work stoppage, including the threat of imminent strikes or work stoppages; *provided, however*, that nothing contained in this provision shall be construed to require any party to settle any strike or labor dispute in which it may be involved.
- 19.4 floods, earthquakes, or other natural disasters; terrorist acts; and
- 19.5 final orders or injunctions issued by a court or regulatory body having competent jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force.

If an Uncontrollable Force prevents a party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 18, Notices and Contact Information.

20. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Alcoa and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties’ executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute

resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 20, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

20.1 Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Alcoa or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 20, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 20, then Alcoa may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 20.

20.2 Arbitration

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 20.1 above, shall be subject to arbitration, as set forth below.

Alcoa may request that BPA engage in binding arbitration to resolve any dispute. If Alcoa requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 20.2 and sections 20.3 and 20.4 are met. BPA may request that Alcoa engage in binding arbitration to resolve any dispute. In response to BPA's request, Alcoa may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 20.2 and sections 20.3 and 20.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 20.1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

20.3 Arbitration Procedure

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

20.4 Arbitration Remedies

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 20. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

20.5 Finality

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

20.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

20.6 Arbitration Costs

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

21. STATUTORY PROVISIONS

21.1 Prohibition on Resale of Firm Power

Alcoa shall not resell Firm Power purchased from BPA under this Agreement, but may resell surplus power purchased from BPA under separate transactions as contemplated in sections 11.1 or 23.5.

21.2 BPA Appropriations Refinancing Act

The text of the BPA Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit D, Special Provisions.

22. STANDARD PROVISIONS

22.1 Amendments

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

22.2 Entire Agreement and Order of Precedence

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

22.3 Assignment

Alcoa may assign this Agreement upon 90 days written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of Alcoa's facilities that are served, in whole or in part, with power provided under this Agreement, and then only if such assignee expressly agrees in writing to be bound by the terms of this Agreement. Such assignment will be subject to any reasonable requirement by BPA that the assignee provide credit security, in a form acceptable to BPA, to secure performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by Alcoa is permitted.

22.4 No Third-Party Beneficiaries

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

22.5 Waivers

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

22.6 BPA Policies

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

22.7 Severability

If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, unlike section 10.1 and section 11.2.3 each of which the Parties agree is severable, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages, other than as provided in section 11, associated with any term being severed from this Agreement.

22.8 Performance Assurance

When reasonable grounds for insecurity arise with respect to the performance of Alcoa, BPA may in writing demand adequate assurance of due performance and specify the form such assurance shall take. The type of assurance BPA may require includes, but is not limited to, providing a letter of credit, posting a security deposit, or requiring prepayment, as appropriate. Failure of Alcoa to provide such assurance within the time specified by BPA in its request for adequate assurance shall be considered a material breach and may, in BPA's sole discretion, create reasonable grounds to suspend or terminate this Agreement. If adequate assurance is not provided, or is not provided in the form specified in the request for adequate assurance, BPA shall have five Business Days from the date such assurance was required to be provided to notify Alcoa in writing of its intentions with respect to termination or suspension of the contract. Any waiver by BPA of its right to suspend or terminate this Agreement shall not be considered a waiver of said rights with respect to future instances when adequate assurance may be required. Written notices sent under this section must comply with section 18, Notices and Contact Information.

22.9 Drafting of Agreement

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation or other event of negotiation, drafting or execution hereof.

22.10 Execution by Counterparts

This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

23. TERMINATION

For ease of reference, this section 23 is intended to collect into one section termination events specified in various sections of this Agreement, plus describe certain additional termination events not described elsewhere.

23.1 BPA Unable to Complete Ten-Year Purchase

This Agreement will terminate if BPA has not completed the ten-year purchase specified in section 5 and Alcoa has not submitted notice by March 31, 2009, as specified in section 6.1, to proceed according to provisions specified in sections 6.2 and 6.3. Termination will be effective April 1, 2009.

23.2 BPA Unable to Complete First Five-Year Purchase

This Agreement will terminate pursuant to section 6.2.3, effective December 1, 2010.

23.3 BPA Curtailment Payments Exceed \$85 Million

This Agreement will terminate when accumulated BPA Curtailment payments specified in section 10.1 exceed \$85 million (in 2012\$). Termination shall be effective at the end of the month for which accumulated BPA Curtailment payment amounts exceed \$85 million (in 2012\$).

23.4 Failure to Make Minimum Capital Investment

This Agreement will terminate pursuant to section 9.2.4, effective October 1, 2021.

23.5 Court Ordered Additional Power Sales Contract

In the event BPA is obligated by court order or decision to offer Alcoa any other additional power sales, and the Parties subsequently enter into such other additional power sales, then this Agreement will terminate upon commencement of performance under the other additional power sales contract. Alcoa shall pay BPA Liquidated Damages, if any, for power acquired by BPA under this Agreement to serve the Alcoa Load; provided, however, that at BPA's option, it may (a) retain such power for its own use and account, and in such event section 11.2 of this Agreement shall not apply, or (b) sell to Alcoa (and Alcoa shall be obligated to purchase) such power at BPA's average cost of acquiring such power. Any sale by BPA to Alcoa pursuant to the immediately preceding clause shall be transacted under separate contract, and pursuant to BPA's then existing surplus power rate schedule.

23.6 BPA's Right to Terminate

BPA may terminate this Agreement if:

- (1) Alcoa fails to take and pay for Firm Power made available to it under this Agreement, unless such failure is not excused under section 10.4 or section 19.
- (2) Alcoa fails to provide payment assurance satisfactory to BPA as required by section 22.8.

- (3) Alcoa fails to make the minimum annual Employment Expenditures required by section 9.1.
- (4) Alcoa fails to make the minimum capital investment required by section 9.2.3.
- (5) Alcoa resells Firm Power.
- (6) Alcoa fails to provide BPA with an initial or replacement letter of credit as provided by sections 5.5 or 6.2.5.

Such termination under any subpart of this section 23 is without prejudice to any other remedies available to BPA under law.

23.7 Fallback Negotiation

If this Agreement is terminated under section 23.1 or 23.2, the Parties will negotiate in good faith to arrive at a mutually acceptable alternative arrangement, and, consistent with applicable law BPA will propose an IP rate schedule for the rate period immediately following such termination.

24. SIGNATURES

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

Alcoa Inc.

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name John G. Thuestad
(Print/Type)

Name Stephen J. Wright
(Print/Type)

Title President,
US Primary Products

Title Administrator and Chief
Executive Officer

Date _____

Date _____

EXAMPLE
Exhibit A
FIRM POWER ENTITLEMENT

1. ALCOA FIRM POWER PURCHASE OBLIGATION

Fiscal Year	Allocated Power MW	Reallocated Power MW	Firm Power MW	Minimum Annual Employment Expenditures (\$m)	10-Year Capital Investment (\$m)
2012					
2013					
2014					
2015					
2016					
2017					
2018					
2019					
2020					
2021					
2022					
2023					
2024					
2025					
2026					
2027					
2028					

2. REVISIONS

Following completion of power acquisitions for each Fiscal Year BPA shall unilaterally update the table in section 1 of this Exhibit, according to sections 4, 5, 6, 7, and 9 of the body of this Agreement.

Exhibit B
BILLING

1. INDUSTRIAL FIRM POWER ENTITLEMENTS

- 1.1 The MW made available by BPA under this Agreement multiplied by: (1) the number of HLH; and (2) the number of LLH in the applicable month establishes Alcoa's HLH and LLH Energy Entitlements.
- 1.2 The MW amount made available by BPA under this Agreement establishes Alcoa's Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE

Hourly Firm Power scheduled by Alcoa in excess of amounts specified in Exhibit A shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PS.

3. REVISIONS

If this exhibit is inconsistent with BPA's Industrial Firm Power Rate Schedule, or its successor, as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

**Exhibit C
PRICE CAPS**

1. POWER PURCHASE PRICE CAPS

TABLE 1

Fiscal Year	160 aMW price cap (\$/MWh)	240 aMW price cap (\$/MWh)
FY12	n/a	\$ 72.00
FY13	n/a	
FY14	n/a	
FY15	n/a	
FY16	n/a	
FY17	\$ 102.00	
FY18	\$ 104.00	\$ 84.00
FY19	\$ 107.00	\$ 86.00
FY20	\$ 109.00	\$ 88.00
FY21	\$ 111.00	\$ 90.00
FY22	\$ 98.00	n/a
FY23	\$ 100.00	n/a
FY24	\$ 102.00	n/a
FY25	\$ 104.00	n/a
FY26	\$ 107.00	n/a
FY27	\$ 109.00	n/a
FY28	\$ 112.00	n/a

2. PRICE CAP ADJUSTMENT FOR EXCEEDING \$650 MILLION

Prior to FY 2022, BPA shall determine the amount by which the cost for service to Alcoa Load under the terms of this Agreement during Phase 1 (FY 2012 through FY 2021), including but not limited to the costs referenced in section 8.2.1, exceeded revenues from power sales for service to Alcoa Load. Revenue from power sales to Alcoa Load will be based on BPA's actual IP rate during Phase 1. BPA will reduce, pro rata, the 160 aMW Price Caps specified in Table 1 of this Exhibit FY 2022 through FY 2028, by the amount, if any, such total cost exceeds \$650 million. The reduction (\$/MWh) to be applied to the Price Caps, if any, will be calculated by dividing the amount exceeding \$650 million by the total number of hours in the period FY 2022 through FY2028.

3. PRICE CAP ADJUSTMENT FOR INSUFFICIENT CAPITAL INVESTMENT

In the event the 160 aMW Price Caps specified in Table 1 of this Exhibit FY 2022 through FY 2028 need to be reduced by BPA as specified in section 9.2.5 of the body of the Agreement. BPA will determine the amount of such reduction (\$/MWh) by first subtracting the Actual Capital Invested amount specified by Alcoa pursuant to section 9.2.1 of the body of this Agreement from 100 percent of the 10-Year Capital Investment amount established in section 9.2.2 of the body of this Agreement and

then dividing such difference by the product of multiplying 160 MW by the number of hours in the period FY 2022 through FY 2028.

4. REVISIONS

BPA may unilaterally revise this exhibit to implement reductions, if any, pursuant to section 2 and 3 of this Exhibit.

Exhibit D
SPECIAL PROVISIONS

1. BPA APPROPRIATIONS REFINANCING

In accordance with section 21.2 of the body of this Agreement, section (i) of the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. No. 104-134, 110 Stat. 1321–350, is included in this Agreement--

(i) Contract Provisions

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996--

- (1) the Administrator shall establish rates and charges on the basis that
 - (A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b) of the BPA Refinancing Act;
 - (B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c) of the BPA Refinancing Act;
 - (C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and
 - (D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;
- (2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) of the BPA Refinancing Act and to pay the interest on the principal amount under subsection (c) of the BPA Refinancing Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;
- (3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United

States on a claim for a breach of the contract provisions required by this Part; and

- (4) the contract provisions specified in this Part do not--
 - (A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or
 - (B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to--
 - (i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or
 - (ii) design rates

2. REVISIONS

This exhibit shall be revised by mutual agreement of the Parties to reflect additional special provisions during the term of this Agreement.

**Exhibit E
METERING**

1. METERING

Directly Connected Points of Delivery

BPA POD Name: Intalco 13.8 kV;
BPA POD Number: TBD*;
WECC Balancing Authority: BPAT;

Location: the point in BPA's Intalco Substation where the 13.8 kV facilities of BPA and Alcoa are connected;

Voltage: 13.8 kV;

TBD* This data element is currently unresolved and shall be determined by BPA prior to June 1, 2011.

2. REVISIONS

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

Exhibit F
SCHEDULING

1. SCHEDULING FEDERAL RESOURCES

Alcoa is responsible for creating E-Tags for all deliveries of federal power purchased under this Agreement.

In the event of an unplanned outage that affects future hours, Alcoa or its scheduling agent is responsible for adjusting e-Tags to accurately reflect the amount of load actually being served by generation provided by BPA.

2. AFTER THE FACT

BPA and Alcoa agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and Alcoa shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. REVISIONS

BPA may unilaterally revise this exhibit: (1) to implement changes that are applicable to all customers who are subject to this exhibit and that BPA determines are reasonably necessary to meet its power and scheduling obligations under this Agreement or (2) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit G
POWER RESERVES

1. DEFINITIONS

- (a) “Event” is a system condition under which PS needs additional power to meet its obligations to meet regional firm load after utilizing best efforts to balance its resources and obligations through other methods. The beginning of an Event shall be identified by a notice from PS to Alcoa that such condition has occurred, and that BPA will restrict up to 10 percent of Net Firm Power. The end of the Event shall occur when PS has notified Alcoa that full service has been restored. An Event shall not include adverse market conditions when power is available for purchase and BPA elects for economic reasons not to purchase power, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.

The Event shall be reinstated and continue as follows:

- (1) If the Event Duration was 5 Event Minutes or less, then the Event shall be reinstated if PS again restricts Firm Load within 2 hours of the last Event Minute;
 - (2) If the Event Duration was more than 5 Event Minutes but less than 15 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 4 hours of the last Event Minute;
 - (3) If the Event Duration was more than 15 Event Minutes but less than 22 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 6 hours of the last Event Minute;
 - (4) If the Event Duration was more than 22 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 8 hours of the last Event Minute;
- (b) “Event Duration” shall be the total cumulative Event Minutes of the Event.
- (c) “Event Minute” shall be the minutes of restriction (or any portion thereof) during an Event. If PS restricts less than its full entitlement in any Event Minute, then for purposes of defining the Event, the Event Minutes and Event Duration, PS shall be deemed to have restricted the entire amount of power available for restriction under this Agreement.
- (d) “Material Plant Damage” means the inability of Alcoa to resume industrial production at all or any portion of the Intalco Plant because of damage to plant production facilities resulting from a restriction; for example, the inability to resume electrolysis in one or more pots without rebuilding or substantially repairing such pot(s).

- (e) “Net Firm Power” shall mean all Firm Power made available by PS under this Agreement less the sum of: (a) any power restricted by TS under any other agreement, and (b) wheel turning loads.
- (f) “Power Reserves” are those reserves provided by Alcoa under this Agreement that are necessary to protect firm power loads within the region after PS has utilized best efforts to protect such loads using other methods.
- (g) “Restricted Energy” means energy not made available to Alcoa hereunder because of an Event.

2. AMOUNT OF RESERVES

When necessary to provide Power Reserves, PS may restrict 10 percent of all Net Firm Power under this Agreement for up to 60 Event Minutes per Event and 4 Events per month.

Notwithstanding any other provision of this Agreement, PS shall use its best efforts to end an Event as soon as possible, and Alcoa agrees to cooperate in development of mechanisms that will enhance PS’s ability to notify Alcoa of the end of an Event.

Notwithstanding any other provision of this Agreement, PS shall have no contractual right under this Agreement which would cause Alcoa to incur Material Plant Damage; provided, PS shall not be liable for equitable relief or damages for such Material Plant Damage for an Event whose duration is 60 Event Minutes or less, except as provided in Section 4, below.

3. COMPENSATION FOR POWER RESERVES

Alcoa will be compensated by PS for Power Reserves provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act, and established by BPA in its wholesale power rate proceedings.

4. RESERVE LIQUIDATED DAMAGES

The Parties acknowledge that restrictions by PS beyond those allowed by this Agreement may result in damage to Alcoa facilities and lost aluminum production by Alcoa prior to Material Plant Damage, which is difficult to quantify. If the Event Duration exceeds 60 Event Minutes, then PS shall be liable to Alcoa as follows:

- (a) \$1000/MWh (in real 2012 dollars) of Restricted Energy during Event Minutes (or portion thereof), after Event Minute 60 of an Event and continuing for the full duration of the Event;
- (b) provided, that in lieu of (a) above and at PS’s option, if the Event Duration exceeds 60 Event Minutes, and Alcoa incurs, in its determination, Material Plant Damage as a direct result of the restriction, then as to the portion of its production facilities that suffers

Material Plant Damage, PS and Alcoa agree that these damages can be reasonably quantified and, therefore, for that portion of its production facilities, Alcoa may recover actual damages (excluding only lost production and lost profits); but such actual damages shall not exceed \$200/kW (in real 2012 dollars) of plant production facilities suffering Material Plant Damage. The liquidated damages charges in (a) above, shall continue to apply to that portion of Alcoa load which does not suffer Material Plant Damage. For purposes of this calculation, the Material Plant Damage shall be deemed to occur at the beginning of Event Minute 61.

5. MAKE UP POWER

When an Event ends, PS shall permit Alcoa to purchase from BPA, subject to power availability, additional amounts of power at the IP rate in excess of Allocated Power necessary to restore Alcoa facilities to normal operating conditions.

**Exhibit H
GUARANTEE**

This Guarantee (“Guarantee”) dated as of the ___ day of _____, 200_ is made and entered into by [INSERT NAME OF GUARANTOR], a [_____ corporation] (the “Guarantor”), in favor of the Bonneville Power Administration, an agency of the United States of America Department of Energy, its successors and permitted assigns (the “Guaranteed Party”).

WITNESSETH:

WHEREAS, [INSERT NAME OF UNDERLYING OBLIGOR] (the “Company”) and the Guaranteed Party have entered or anticipate entering into one or more transactions arising under one or more agreements or master agreements, including, but not limited to, transactions providing for the purchase and sale of electricity and agreements providing for electric power transmission services (such master agreements, confirmations, schedules, instruments and other documents confirming, evidencing, securing or guaranteeing any transaction between the Company and the Guaranteed Party collectively the “Agreements”); and

WHEREAS, the Guarantor will directly or indirectly benefit from the Agreements.

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

1. GUARANTEE. The Guarantor hereby irrevocably and unconditionally guarantees the timely and complete payment when and as due (whether at the stated maturity, by acceleration, upon one or more dates set for payment, or otherwise, including without limitation the payment of amounts of interest that would be due but for the operation of any section under Title 11 of the United States Code or any applicable federal, state or foreign bankruptcy, insolvency or liquidation law) of the obligations of Company under the Agreements (the “Obligations”) to the Guaranteed Party in accordance with the Agreements. The Guarantor shall forthwith pay to the Guaranteed Party the amount due in the same currency and manner provided for in the Agreements. The Guarantor further agrees to pay all reasonable attorney’s fees, costs and expenses incurred by the Guaranteed Party in connection with the collection of any amounts payable hereunder or any enforcement of this Guarantee. This Guarantee shall constitute a guarantee of payment and not of collection. The Guarantor shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Obligations of Company to the Guaranteed Party are paid in full. The liability of the Guarantor under the Guarantee shall be subject to the following:

- (a) The Guarantor’s liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the

Agreements (even if such payments are deemed to be damages or are not recoverable in any bankruptcy, insolvency or liquidation proceeding involving the Company) and, except to the extent specifically provided in the Agreements, in no event shall the Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort or any other damages.

(b) Notwithstanding Section 1(a), **the aggregate liability of the Guarantor under this Guarantee shall not exceed _____ Million U.S. Dollars _____.**

2. **DEMANDS AND NOTICE.** Upon the occurrence and during the continuance of an Event of Default as defined in the applicable Agreement, or if the Company fails or refuses to pay any Obligations, the Guaranteed Party may make a demand upon the Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall briefly specify in reasonable detail the amount due and owing under an Agreement and what amount, if any, the Company has failed to pay, with a specific statement that the Guaranteed Party is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific failure to pay during the continuance of such failure to pay, until the Company or the Guarantor has cured such failure to pay, and additional written Payment Demands concerning such failure to pay shall not be required until such failure to pay is cured.

3. **TERM.** **This Guarantee shall remain in full force and effect until the earlier of (i) _____ or (ii) the date it is terminated by thirty (30) days Notice from Guarantor to Guaranteed Party (the "Termination Effective Date").** When this Guarantee is terminated in accordance with the foregoing, the Guarantor shall have no further liability hereunder with respect to any Obligations arising in respect of any transactions entered into between the Company and the Guaranteed Party after the Termination Effective Date; provided, however, that no such termination shall affect the Guarantor's liability with respect to any Obligations arising under or relating to any transaction under any Agreement entered into on or prior to the Termination Effective Date, including without limitation any amendments, supplements, modifications or renewals of any such transactions.

Upon any termination of this Guarantee by Guarantor pursuant to clause (ii) above, within thirty (30) days of the Termination Effective Date, the Guarantor and the Guaranteed Party shall exchange lists setting forth all transactions then existing as of the Termination Effective Date under each Agreement and the relevant termination or maturity date of each such transaction. The Guaranteed Party and the Guarantor will cooperate with each other to resolve any discrepancies between such lists.

4. **REPRESENTATIONS AND WARRANTIES.** The Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of [_____] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution and delivery of this Guarantee;
- (c) this Guarantee constitutes a valid and legally binding agreement of the Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;
- (d) the execution, delivery and performance of this Guarantee does not violate any law, order, rule or regulation applicable to the Guarantor, or any material agreement, instrument or document to which the Guarantor is party or by which its assets are bound; and
- (e) its [audited] financial statements as of [DATE], including without limitation the notes thereto, complete and correct copies of which have been provided to the Guaranteed Party, (i) are correct and complete in all material respects as of the dates and for the periods referred to therein, (ii) have been prepared in accordance with U.S. generally accepted accounting principles in effect as of the dates such financial statements were prepared, and (iii) fairly present in all material respects the financial condition and results of operations of the Guarantor. Since the date of such financial statements, there has been no material adverse change or development in the financial condition or results of operations of the Guarantor.

5. GUARANTEE ABSOLUTE. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee shall in no way be released, diminished, reduced, affected or impaired by reason of the happening from time to time of any of the following events, any of which may be done or occur without the necessity of any notice to or further consent of the Guarantor (all of which are expressly waived by the Guarantor): (i) to the fullest extent permitted by applicable law, any lack of validity or enforceability of any provision of any transaction or Agreement, or avoidance or subrogation of any of the Obligations; (ii) the release or waiver, by operation of law or otherwise, of the performance or observance by, to the fullest extent permitted by applicable law, the Company of any of the Obligations or any other term or condition in any Agreement to be performed by the Company; (iii) any extension in the time, or change in the manner or place of payment of, or any increase in the amount of, any or all of the Obligations, including without limitation the incurrence by the Company of new or additional Obligations pursuant to any transactions or Agreements entered into after the date hereof (subject to Section 3 hereof); (iv) any renewal, supplementation, modification, rearrangement or

amendment (whether material or otherwise) of any transaction, Agreement or Obligation; (v) any waiver, release, consent, extension, forbearance or granting of any indulgence by the Guaranteed Party in respect of any or all of the Obligations, or any failure, omission, delay, neglect, refusal or lack of diligence on the part of the Guaranteed Party to enforce, assert, or exercise any right, privilege, power or remedy conferred on the Guaranteed Party under any Agreement or otherwise in respect of any transaction or Obligation; (vi) any settlement or compromise of any Obligation, (vii) the taking or release of any security or guarantee in respect of any Obligation and (viii) any other event, action or circumstance which might otherwise, in the absence of this Section 5, constitute a legal or equitable defense or discharge of a surety or guarantor.

6. EFFECT OF BANKRUPTCY. The Guarantor's obligation to pay under this Guarantee shall not be affected in any way by the institution with respect to the Company of a bankruptcy, reorganization, moratorium or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition for the Company's winding-up or liquidation. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment obligation is annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by the Guaranteed Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Guarantor, or upon or as a result of the appointment of a receiver or conservator of, or trustee for Guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.
7. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and the Guaranteed Party.
8. WAIVERS. The Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b) presentment and demand concerning the liabilities of the Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against the Company or any other person, or except as expressly hereinabove set forth, to require that the Guaranteed Party seek enforcement of any performance against the Company or any other person, prior to any action against the Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of the Guaranteed Party in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of the Guarantor from any obligations hereunder.

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

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

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

To the Guaranteed Party: Bonneville Power Administration
905 NE 11th Ave.
Portland, OR 97232
Attn: Credit Manager, Rodney Ross DBC-3

To the Guarantor: _____

Attn: _____

11. MISCELLANEOUS. THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE, EXCEPT THAT TO THE EXTENT THE PARTIES' RIGHTS AND OBLIGATIONS ARE REQUIRED TO BE GOVERNED BY UNITED STATES FEDERAL LAW, THEN SUCH RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY UNITED STATES FEDERAL LAW.

WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS GUARANTEE, THE GUARANTOR HEREBY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY. THE GUARANTEED PARTY HEREBY AGREES THAT AS A MATTER OF VENUE IT WILL PURSUE ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS GUARANTEE IN THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY; PROVIDED, HOWEVER, THAT IF UNITED STATES FEDERAL LAW REQUIRES THAT SUCH SUIT, ACTION OR PROCEEDING BE PURSUED BY THE GUARANTEED PARTY IN ANOTHER COURT OR TRIBUNAL (WHETHER BY REMOVAL TO THE UNITED STATES COURT OF FEDERAL CLAIMS OR OTHERWISE), THE GUARANTEED PARTY SHALL PURSUE SUCH SUIT, ACTION OR PROCEEDING IN SUCH OTHER COURT OR TRIBUNAL AS MAY BE REQUIRED BY UNITED STATES FEDERAL LAW.

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

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

[NAME OF GUARANTOR]

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date: