**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), or the ASC Methodology.

2.1 “Appendix 1” means the electronic form on which «Customer Name» reports its Contract System Costs and other necessary data to BPA for the calculation of «Customer Name»’s Base Period ASC pursuant to the ASC Methodology.

2.2 “Average System Cost” or “ASC” means the rate charged by «Customer Name» to BPA for BPA’s purchase of power from «Customer Name» under Section 5(c) of the Northwest Power Act for each Exchange Period and is the quotient obtained by dividing Contract System Costs by Contract System Load, all in accordance with the ASC Methodology.

2.3 “ASC Methodology” or “ASCM” means the methodology, as may be amended or superseded, used to determine ASC, as developed by BPA pursuant to Section 5(c)(7) of the Northwest Power Act. Exhibit C contains a website link to the current version of the ASC Methodology. This Agreement is subject to the ASC Methodology, but such ASC Methodology is not incorporated as part of this Agreement.

2.4 “ASC Review Process” means the administrative proceeding conducted by BPA and concurrent with BPA’s rate case proceedings to determine a utility’s ASC, as further defined in the ASCM.

2.5 “Base Period” means the calendar year of the most recent FERC Form 1 data at the commencement of the ASC Review Period, as further defined in the ASCM.

2.6 “Base Period ASC” means the ASC determined in the ASC Review Period using «Customer Name»’s Base Period data, in accordance with the ASCM.

2.7 “Business Day(s)” means every Monday through Friday except federal holidays.

2.8 “Contract System Costs” means «Customer Name»’s costs includable in and subject to the provisions of Appendix 1, all in accordance with the ASCM. Under no circumstances shall Contract System Costs include costs excluded from the ASC by Section 5(c)(7) of the Northwest Power Act.

2.9 “Contract System Load” means: the total Regional retail load included in the FERC Form 1, in accordance with the ASCM.

2.10 “Cost Benefits” means monetary benefit payments made to «Customer Name» as determined pursuant to section 5 of this Agreement for pass-through to «Customer Name»’s Residential Load pursuant to section 10.

2.11 “Due Date” shall have the meaning as described in section 9.8.2.

2.12 “Effective Date” means the effective date of this Agreement, as determined pursuant to section 1 above.

2.13 “Environmental Attributes” means the environmental and non-power characteristics of power, however defined or titled and arising under any federal, state, or local law or regulation, including but not limited to current or future certificates, credits, benefits, and avoided emissions attributable to the generation of energy from a resource, as defined in Exhibit H of the Provider of Choice contract. 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.

2.14 “Exchange Period” means the period during which «Customer Name»’s ASC is effective for the calculation of «Customer Name»’s Cost Benefits under this Agreement. Each Exchange Period shall be the period of time concurrent with the duration of each BPA wholesale power rate period.

2.15 “Fiscal Year” or “FY” means the period beginning each October 1 and ending the following September 30.

2.16 “FERC Form 1” means the annual filing submitted to the Federal Energy Regulatory Commission required by 18 CFR §141.1, as specified in the ASCM.

2.17 “In-Lieu Power” means firm power acquired by BPA from a source(s) other than «Customer Name» at a cost less than «Customer Name»’s ASC as provided in Section 5(c)(5) of the Northwest Power Act. The In-Lieu Power is then sold by BPA to «Customer Name» in an In-Lieu transaction at the applicable PF Exchange Rate, or its successor.

2.18 “Informational Filing” means the ASC filings after the final published ASC reports for an ASC Review Process and before the start of the subsequent ASC Review Process.

2.19 “Issue Date” shall have the meaning as described in section 9.8.1.

2.20 “Jurisdiction” means the service territory of «Customer Name» within which a particular Regulatory Body has authority to approve «Customer Name»’s retail rates. Jurisdictions must be within the Region.

2.21 “New Large Single Load” or “NLSL” has the meaning specified in Section 3(13) of the Northwest Power Act and in BPA’s NLSL Policy.

2.22 “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §839, Public Law No. 96‑501, as amended.

2.23 “PF Exchange Rate” or “PFx” means the rate for exchange power established by BPA in a proceeding pursuant to Section 7(i) of the Northwest Power Act, or its successor.

2.24 “Potential NLSL”*(06/18/25 Version)* means a load at a facility that BPA determines is capable of growing ten average megawatts or more in a consecutive 12‑month monitoring period that may qualify as an NLSL.

2.25 “Purchase and Exchange Sales” shall have the meaning as described in sections 5.1 and 5.2 of the body of this Agreement.

2.26 “Rate Period” means the period of time during which a specific set of rates established by BPA pursuant to the PRDM is intended to remain in effect.

2.27 “Region” or “Regional” means the Pacific Northwest as defined in Section 3(14) of the Northwest Power Act.

2.28 “Regulatory Body” means a state commission or consumer-owned utility governing body, or other entity authorized to establish retail electric rates in a Jurisdiction.

2.29 “Residential Exchange Program” or “REP” means the program implemented under this Agreement and established by Section 5(c) of the Northwest Power Act.

2.30 “REP Benefits” means monetary payments made to «Customer Name» that are Cost Benefits as defined in 2.10 above and benefits resulting from In-Lieu Power deliveries for pass-through to «Customer Name»’s Residential Load pursuant to section 10.

2.31 “Residential Load” means the «Customer Name»’s exchangeable load, as defined in the Northwest Power Act and clarified in Exhibit A.

2.32 “Review Period” means the period of time during which «Customer Name»’s ASC Appendix 1 is under review by BPA. The Review Period begins on June 1 or such other date as determined by BPA and ends on or about November 15 of the Fiscal Year prior to the Fiscal Year BPA implements a change in wholesale power rates.

2.33 “Third Party Transmission Provider” means a transmission provider other than BPA that provides transmission service to serve «Customer Name»’s load.

2.34 “Uncontrollable Force” shall have the meaning specified in section 13.

**6. INVOICING FOR COST BENEFITS**

 *Option 1: REPSIA rollover/historical*

6.1 **Rate Case Billing Determinant**

The rate case billing determinant for the Purchase and Exchange Sale pursuant to section 5 above for any month of a Rate Period shall be equal to the average of «Customer Name»’s Residential Load for

a) the same month in the “Base Period” (as that term is defined in BPA’s ASC Methodology) applicable to such Rate Period, and

b) the same month in the 12 months following such Base Period.

6.2 **Invoicing for Residential Load**

6.2.1 Through the customer portal or successor, «Customer Name» shall submit to BPA an invoice no later than the 15th of each month that includes the amount of «Customer Name»’s Residential Load for the prior month pursuant to section 6.1. Each such invoice shall be subject to adjustment pursuant to sections 7, 8 and 10 below.

6.2.2 Within 30 calendar days following BPA’s receipt of each monthly invoice from «Customer Name», and subject to sections 7, 8 and 10 below, BPA shall verify the invoice and pay such invoice electronically in accordance with instructions on each such invoice. If the 30th calendar day is a Saturday, Sunday, or federal holiday, BPA shall pay such invoice electronically the next Business Day.

6.2.3 Additionally, «Customer Name» shall submit the sum of «Customer Name»’s Residential Load for such month. Each submittal shall be subject to adjustment pursuant to sections 7, 8 and 10 below.

6.3 For purposes of calculating «Customer Name»’s Cost Benefits in Section 5.3, BPA’s applicable PF Exchange rate will not be subject to mid-Rate Period risk adjustments (for example, the Power Cost Recovery Adjustment Clause, the Power Reserves Distribution Clause, and the Financial Reserves Policy Surcharge). Additionally, for purposes of calculating «Customer Name»’s Cost Benefits in Section 5.3, «Customer Name»’s ASC will not be subject to mid-Rate Period adjustments, pursuant to the ASCM, for major resource additions or reductions, NLSLs, or changes to service territory.

*End option 1*

*Option 2: Forecast*

6.1 **Rate Case Forecast**

Pursuant to the ASC Methodology, «Customer Name» shall provide a forecast of «Customer Name»’s Residential Load as part of the ASC Review Process and Informational Filings. Such forecast will be in monthly increments for each month of the applicable Exchange Period.

6.2 **Invoicing for Residential Load**

6.2.1 Through the customer portal or successor, «Customer Name» shall submit to BPA an invoice no later than the 15th of each month that includes the amount of «Customer Name»’s Residential Load of the prior month. Each such invoice shall be subject to adjustment pursuant to sections 7, 8 and 10 below.

6.2.2 Within 30 days following the submittal of each monthly invoice by «Customer Name», and subject to sections 7, 8 and 10 below, BPA shall verify the invoice and pay such invoice electronically in accordance with instructions on each such invoice. If the 30th calendar day is a Saturday, Sunday, or federal holiday, BPA shall pay such invoice electronically the next Business Day.

*End option 2*

6.3/4 **Late Payments**

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.

6.4/5 **Residential Load Net of In-Lieu Power**

«Customer Name»’s Residential Load will be adjusted to reflect the net amount of Residential Load amount less the In-Lieu Power amount pursuant to section 9.10.

6.5/6 **Disputed Invoices or Bills**

6.5.1 If «Customer Name» disputes any portion of a charge or credit on «Customer Name»’s estimated or final bills, «Customer Name» 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, «Customer Name» shall pay the entire bill by the Due Date. This section 6.5.1 does not allow «Customer Name» to challenge the validity of any BPA rate or «Customer Name» ASC.

6.5.2 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.

6.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 15, «Customer Name» is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

**7. ACCOUNTING AND REVIEW**

7.1 **Accounting Records Requirements**

«Customer Name» shall keep up-to-date records, accounts, and related documents that pertain to this Agreement. These records, accounts, and documents shall contain information that supports:

1. «Customer Name»’s ASC as determined pursuant to the ASC Methodology;
2. identification of the consumers that comprise «Customer Name»’s Residential Load;
3. the amount of Residential Load invoiced to BPA;
4. In-Lieu Power delivery schedules and records; and
5. evidence that the REP Benefits have been passed through to consumers that comprise «Customer Name»’s Residential Load, as provided for in section 10 below.

BPA retains the right to review or inspect «Customer Name»’s records, accounts, and related documents pertaining to this Agreement for any Fiscal Year consistent with the provisions of sections 7, 8, 10, 17 and Exhibit E of this Agreement.

7.2 **Duty to Retain Records**

«Customer Name»’s shall retain records pursuant to section 7.1 for any Fiscal Year up to 60 months after the end of such Fiscal Year.

7.3 **Compliance Review Program**

The REP’s Compliance Review Program provides reasonable assurance the REP Benefits, as determined pursuant to section 5 and 9 of this Agreement, paid to «Customer Name» are passed-through to «Customer Name»’s Residential Load as required under the Section 5(c) of the Northwest Power Act. The REP Compliance Review Program encompasses three processes to monitor payments of REP Benefits and verify «Customer Name»’s Residential Load.

«Customer Name» shall fully cooperate in good faith with any such reviews or inspections pursuant to this section 7.3. BPA retains the right to take action consistent with the results of such reviews or inspections to require the pass-through of such benefits to «Customer Name»’s Residential Load.

7.3.1 **End-of-Year REP Benefit Certification**

 Following the conclusion of each Fiscal Year, BPA shall conduct an annual compliance review process to certify the REP Benefits paid to «Customer Name» are passed-through to «Customer Name»’s Residential Load in accordance with sections 10.1, 10.2 and 10.3 of this Agreement.

7.3.2 **Biennial AUP Compliance Review**

BPA may, at its expense, elect to engage «Customer Name»’s certified public accountant (CPA) pursuant to Exhibit E to assist in performing the requirements of this section 7.3.2.

7.3.3 **Residential Load Reviews**

BPA may, from time to time, perform an eligibility validation review, consistent with the provisions of section 17.1 and Exhibit A of this Agreement, of «Customer Name»’s Residential Loads.

**8. ADJUSTMENTS TO REP BENEFITS**

The REP Benefits providedto«Customer Name» under this Agreement shall be subject to adjustments by BPA to account for the overpayment or underpayment of REP Benefits, if any, for the period October 1, 2028, through September 30, 2044, made to «Customer Name» under this Agreement.

8.1 **True-Up of Underpayments and Overpayments**

If BPA determines that «Customer Name» has received REP Benefits for ineligible load, including an NLSL, or that other errors have occurred in implementing this Agreement that result in an overpayment, then any such overpayment shall be returned to BPA within 30 days of BPA’s determination, or BPA may adjust future REP Benefit payments to «Customer Name». If BPA determines that «Customer Name» has not received REP Benefits owed to «Customer Name» due to errors in implementing this Agreement that result in an underpayment, then BPA shall pay «Customer Name» such REP Benefits within 30 days of BPA’s determination that such benefits were not received.

8.2 **Adjustments to Payments Related to Remedies**

If BPA makes an adjustment to REP Benefits pursuant to section 14.2, any such adjustments shall be limited to those established by BPA in its power rate adjustment proceedings or other forums established by BPA for the determination of the amount of underpayment or overpayment to be recovered and the associated recovery period; provided however, that any such adjustment is subject to the resolution of all administrative or judicial review thereof.

**9. IN-LIEU TRANSACTIONS**

All written notices sent by either Party under this section 9 shall be pursuant to section 12.

9.1 **BPA’s Right to In-Lieu**

In lieu of purchasing all or a portion of the electric power offered to BPA pursuant to section 5.1 by «Customer Name» at its ASC, BPA may acquire or make arrangements to acquire In-Lieu Power if the cost of such power is less than «Customer Name»’s ASC.

9.2 **In-Lieu Notice(s)**

BPA shall provide written notice to «Customer Name» of its election to acquire In-Lieu Power pursuant to 9.1 no less than 10 months prior to implementing an In-Lieu Power transaction. Issuance of this notice starts the 30-calendar day opt out window described in section 9.3 below. BPA shall, in each written In-Lieu notice, provide the following:

1. **Amount of In‑Lieu Power.**

The amount of In-Lieu Power in monthly increments and expressed in megawatts and megawatt hours. The amount of In-Lieu Power will not exceed «Customer Name»’s Residential Load determined pursuant to section 6.1.

1. **BPA’s Cost of Acquiring In-Lieu Power.**

The cost of the In-Lieu Power inclusive of transmission costs to deliver such In-Lieu Power to «Customer Name»’s Point of Delivery (POD).

1. **Duration of the In-Lieu Power Sale.**

The anticipated start and end date of the In-Lieu Power sale.

1. **Source of In-Lieu Power.**

The purchasing entity from which BPA will purchase the In-Lieu Power. The In-Lieu Power will be firm power.

1. **Customer’s Point of Delivery of In-Lieu Power**.

The scheduling POD to which BPA shall deliver the In-Lieu Power to «Customer Name» as defined in Exhibit D of this Agreement.

 9.3 **In-Lieu Power Opt Out Election**

«Customer Name» may, within 30 calendar days after receipt of an In-Lieu Power notice, elect to opt out of the In-Lieu Power delivery. In lieu of receiving the In-Lieu Power delivery, «Customer Name» may elect to lower «Customer Name»’s ASC pursuant to this section. In such instance, BPA shall reduce «Customer Name»’s ASC to the weighted average of the In-Lieu Power at BPA’s acquisition cost for In-Lieu Power and the remaining Residential Load at «Customer Name»’s ASC. Payments would be made pursuant to section 6.

For example, if «Customer Name»’s Residential Load is 200 MWh and BPA proposes to implement an In-Lieu Power sale for 100 MWh, «Customer Name» would exchange 200 MWhs at the weighted average ASC.

1. Residential Load of 200MWh at $80/MWh ASC,
2. In-lieu Power of 100MWh at $70/MWh BPA’s acquisition cost,
3. Under this election, the full 200MWh will be sold to BPA at the weighted average ASC $75/MWh,
4. BPA will make payments at ($75/MWh - applicable PFx rate) x 200 MWh = «Customer Name»’s Cost Benefits adjusted for In-Lieu Power.

If the resulting Cost Benefit is negative, the Purchase and Exchange Sales would suspend pursuant to section 11.2.

9.4 **Price of In-Lieu Power**

BPA shall sell In-Lieu Power to «Customer Name» at the applicable PF Exchange Rate and applicable GRSPs, or their successors, established by BPA in a proceeding pursuant to Section 7(i) of the Northwest Power Act, or its successor.

9.5 **In-Lieu Scheduling**

 BPA shall schedule power in accordance with Exhibit D.

9.6 **In-Lieu Conveyance of Environmental Attributes**

Any Environmental Attributes of physically delivered In-Lieu Power will be conveyed to «Customer Name».

9.7 **Residential Load Net of In-Lieu Power**

In the event «Customer Name» has elected to take physical delivery of In-Lieu Power, for purposes of the Cost Benefit calculation in section 5.3, «Customer Name»’s Residential Load will be adjusted to reflect the net amount of Residential Load amount less the In-Lieu Power amount.

9.8 **Billing and Payment for In-Lieu Power**

9.8.1 **Billing**

BPA shall electronically bill «Customer Name» monthly for physical deliveries of In-Lieu Power under this Agreement, and all products and services, including any charges and credits incurred, provided during the preceding month(s). However, if electronic transmittal of the bill is not possible, then BPA shall mail a physical copy of the bill to «Customer Name». BPA may send «Customer Name» an estimated bill prior to a final bill and may send subsequent revisions if needed. The Issue Date is the date BPA sends the bill to «Customer Name».

9.8.2 **Payment**

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

If «Customer Name» has made payment on an estimated bill then:

1. if the amount of the final bill exceeds the amount of the estimated bill, then «Customer Name» shall pay BPA the difference between the estimated bill and final bill by the final bill’s Due Date; or
2. if the amount of the final bill is less than the amount of the estimated bill, then BPA shall pay «Customer Name» the difference between the estimated bill and final bill by the 20th day after the final bill’s Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, then BPA shall pay the difference by the next Business Day.

9.9 **Late Payments**

If «Customer Name» has not paid its bill in full by the Due Date, BPA shall apply a daily interest charge to any unpaid balance 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 four percent, divided by 365; or

(2) the Prime Rate times 1.5, divided by 365.

9.10 **Disputed Bills**

Disputes of any portion of a charge or credit on «Customer Name»’s estimated or final bills under this section shall be addressed pursuant to section 6.5/6 above.

**10.** **PASS‑THROUGH OF REP BENEFITS**

10.1 All REP Benefit amounts, pursuant to sections 6 and 9 above, shall be passed through to «Customer Name»’s Residential Load. The form of such pass-through shall be: (1) a separately stated credit to applicable retail rates on «Customer Name»’s consumers’ monthly electric bills; (2) monetary payments; or (3) another form as directed by the applicable Regulatory Body(ies).

10.2 REP Benefits shall be passed through in full by «Customer Name» on a monthly basis. Distributions of REP Benefits for the Residential Load may be made by «Customer Name» in advance of its receipt of any such REP Benefits from BPA and that such REP Benefits may be used to set off distributions to the Residential Load made by «Customer Name» after October 1, 2028.

If the amount of REP Benefits held by «Customer Name» is less than $1,000,000*,* then «Customer Name» may distribute REP Benefits on a less frequent basis, provided that distributions are made at least once each Fiscal Year.

Any remaining REP Benefits held shall be distributed to «Customer Name»’s Residential Load no later than twelve months following the earlier of: (a) the end of the term of this Agreement; or (b) termination or suspension of this Agreement.

10.3 REP Benefits shall be passed through consistent with any procedures developed by «Customer Name»’s Regulatory Body(ies) that are not otherwise inconsistent with this Agreement, the Northwest Power Act, or other applicable federal law. Until «Customer Name» has passed through such REP Benefits pursuant to section 10.1 above, REP Benefits received by «Customer Name» shall be identified on «Customer Name»’s books of account and shall accrue interest at the rate(s) established by «Customer Name»’s Regulatory Body(ies).

10.4 **Customer Bill Credit Notice**

 «Customer Name» will ensure that any entity that issues customer bills to «Customer Name»’s residential and farm consumers shall provide written notice on such customer bills that the benefits of this Agreement are “BPA REP Credit” or such other as approved by BPA.

**12. 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; or

(5) by another method agreed to by the Parties.

Notices are effective when received. Either Party shall notify the other Party of changes to their contact information. After such notice, BPA may unilaterally amend this section to reflect such changes to the Parties’ contact information.

The Parties shall deliver notices to the following person and address:

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

|  |  |
| --- | --- |
| If to «Customer Name»:«Utility Name»«Street Address»«PO Box »«City, State Zip»Attn: «Contact Name» «Contact Title»Phone: «###-###-####»FAX: «###-###-####»E-Mail: «E-mail address» | If to BPA:Bonneville Power Administration«Street Address»«PO Box»«City, State Zip»Attn: «AE Name - Routing» Account ExecutivePhone: «###-###-####»FAX: «###-###-####»E-Mail: «E-mail address» |

**13. UNCONTROLLABLE FORCES**

13.1 A Party shall not be in breach of an obligation under this Agreement to the extent its failure to fulfill the obligation is due to an Uncontrollable Force. “Uncontrollable Force” means an event beyond the reasonable control, and without the fault or negligence, of the Party claiming the Uncontrollable Force, that prevents that Party from performing its obligations under this Agreement and which that Party could not have avoided by the exercise of reasonable care, diligence, and foresight. Uncontrollable Forces include each event listed below, to the extent it satisfies the foregoing criteria, but are not limited to these listed events:

(1) any curtailment or interruption of firm transmission service on BPA’s or a Third Party Transmission Provider’s System that prevents delivery of In-Lieu Power sold under this Agreement to «Customer Name»;

(2) any failure of «Customer Name»’s distribution or transmission facilities that prevents «Customer Name» from delivering power to end-users;

(3) strikes, work stoppage, or terrorist acts;

(4) floods, earthquakes, other natural disasters, epidemics, or pandemics; and

(5) final orders or injunctions issued by a court or regulatory body having subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court having subject matter jurisdiction.

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

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

(1) promptly 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 commercially reasonable 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 12.

**14. GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be interpreted consistent with and governed by federal law. «Customer Name» 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 14, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

14.1 **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 may include, but are not limited to, (1) the establishment or the implementation of rates and rate methodologies, (2) the establishment or implementation of the Average System Cost Methodology; (3) NLSL calculations and determinations, and (3) the establishment or implementation of a BPA policy. Any dispute regarding any rights or obligations of «Customer Name» or BPA under such final action shall not be subject to arbitration under this Agreement. For purposes of this section 14, “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 14, then «Customer Name» may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 14.

14.2 **Remedies**

If the Federal Energy Regulatory Commission (FERC) or a court of competent jurisdiction remands, reverses, or otherwise finds unlawful a BPA final decision or decisions that affect «Customer Name»’s REP Benefits under this Agreement, then BPA will review and determine the rights and obligations of the Parties through additional administrative action(s) as necessary to respond to such regulatory or court decisions.

14.3 **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 14.1 above, shall be subject to arbitration, as set forth below.

«Customer Name» may request that BPA engage in binding arbitration to resolve any dispute. If «Customer Name» 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 14.3 and sections 14.4 and 14.5 are met. BPA may request that «Customer Name» engage in binding arbitration to resolve any dispute. In response to BPA’s request, «Customer Name» may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 14.3 and sections 14.4 and 14.5 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 14.1 above and is not resolved via binding arbitration, unless «Customer Name» notifies BPA that it does not wish to proceed with nonbinding arbitration.

14.4 **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.

14.5 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 14. 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.

14.6 **Finality**

14.6.1 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.

14.6.2 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.

14.7 **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.

**15. STATUTORY PROVISIONS**

15.1 **Restrictions on Exchange Sales**

Pursuant to Section 5(c)(6) of the Northwest Power Act, exchange sales to «Customer Name» under this Agreement shall not be restricted below the amounts of electric power acquired by BPA from, or on behalf of, such «Customer Name».

15.2 **New Large Single Loads and CF/CTs**

15.2.1 **Customer Notice of Large Loads and Determination of an NLSL**

«Customer Name» shall provide reasonable notice to BPA of any expected increase in a single load that may qualify as a Potential NLSL or NLSL.

Pursuant to this section 15.2, BPA shall determine if any load associated with a single facility that is capable of growing ten Average Megawatts or more in a consecutive 12 month period is a Potential NLSL or an NLSL.

«Customer Name»’s Potential NLSLs and NLSLs shall be subject to monitoring as determined necessary by BPA. For the purposes of this section 15.2, and section 1 of Exhibit B, ten Average Megawatts in a consecutive 12-month monitoring period equates to 87,600,000 kilowatt-hours in any consecutive 12-month period with 365 days and 87,840,000 kilowatt-hours for any consecutive 12-month period with 366 days.

In accordance with BPA’s NLSL Policy and the terms of this section 15.2, BPA may determine that a load is an NLSL as follows:

15.2.1.1 Pursuant to Section 3(13) of the Northwest Power Act, BPA shall determine an increase in production load to be an NLSL if any load associated with a new facility, an existing facility, or an expansion of an existing facility, which is not Contracted For, or Committed To (CF/CT), as determined by the Administrator, by a public body, cooperative, investor-owned utility, or federal agency customer prior to September 1, 1979, and which will result in an increase in power requirements of such customer of ten Average Megawatts or more in any consecutive 12‑month period.

15.2.1.2 For the sole purpose of computing the increase in energy consumption between any two consecutive 12‑month periods of comparison under this section 15.2.1, BPA shall determine if the reductions in the end-use consumer’s load associated with a facility during the first 12‑month period of comparison are due to unusual events reasonably beyond the control of the end-use consumer, and, if so, BPA shall compute the energy consumption as if such reductions had not occurred.

15.2.1.3 The Parties may agree that the applicable increase in load of installed production equipment at a facility will equal or exceed ten Average Megawatts consumption over any 12 consecutive months and that such production load constitutes an NLSL. Any such agreement will be a binding NLSL determination, and BPA shall add the NLSL to section 1 of Exhibit B.

15.2.1.4 Unless the Parties agree pursuant to section 15.2.1.3 above, BPA shall determine whether a new load or an increase in existing load at a facility is an NLSL. If BPA determines that the load at a facility is an NLSL, then BPA shall notify «Customer Name» and BPA shall add the NLSL to section 1 of Exhibit B if such is not already in Exhibit B after the facility determination pursuant to section 15.2.2.

15.2.1.5 BPA shall list «Customer Name»’s CF/CT loads, Potential NLSLs and NLSLs in section 1 of Exhibit B.

15.2.2 **Determination of a Facility**

BPA shall make a written determination as to what constitutes a single facility, for the purpose of identifying an NLSL. BPA’s determination will be made by applying some or all of the following criteria:

(1) whether the load is operated by a single end-use consumer;

(2) whether the load is in a single location;

(3) whether the load serves a manufacturing process which produces a single product or type of product;

(4) whether separable portions of the load are interdependent;

(5) whether the load is separately metered from other loads;

(6) whether the load is contracted for, served or billed as a single load under «Customer Name»’s customary billing and service policy or practices;

(7) consideration of the facts from previous similar situations; and

(8) any other factors the Parties determine to be relevant.

15.2.3 **Access and Metering**

Upon BPA request, «Customer Name» shall provide physical access to its substations and other service locations where BPA needs to perform inspections or gather information for purposes of implementing section 3(13) of the Northwest Power Act. Such BPA inspections may include but are not limited to those needed to make a facility, final NLSL, or CF/CT determination. «Customer Name» shall coordinate with the end-use consumer to provide BPA, at reasonable times, physical access to inspect a facility for these purposes.

For any load that is monitored by BPA for an NLSL determination, and for any load at any facility that was determined by BPA to be an NLSL, BPA may, in its sole discretion, install BPA-owned meters. If the Parties agree, «Customer Name» may install meters meeting specifications BPA provides to «Customer Name». «Customer Name» and BPA shall enter into a separate agreement for the location, ownership, cost responsibility, access, maintenance, testing, replacement and liability of the Parties with respect to such meters. «Customer Name» shall coordinate with BPA and the end-use consumer to arrange for metering locations that allow accurate measurement of the load at a facility. «Customer Name» shall arrange for BPA to have physical access to such meters and «Customer Name» shall ensure BPA has access to all meter data for loads that are monitored under this section 15.2 and section 1 of Exhibit B that BPA determines are necessary to forecast, plan, schedule, and bill for power.

15.2.4 **Undetermined NLSLs**

If BPA concludes in its sole judgment that «Customer Name» has not fulfilled its obligations, or has not been able to obtain access or information from the end-use consumer under this section 15.2, then BPA may determine any large load capable of growing ten Average Megawatts or more in a consecutive 12-month period or any Potential NLSL subject to monitoring to be an NLSL. Such NLSL determination shall be final unless «Customer Name» proves to BPA’s satisfaction that the applicable increase in load did not equal or exceed ten Average Megawatts in any 12‑month monitoring period.

15.3 **BPA Appropriations Refinancing**

The Parties agree that the provisions of Section 3201(i) of the Bonneville Power Administration Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104‑134, 110 Stat. 1321, 350, as stated in the United States Code on the Effective Date, are incorporated by reference and are a material term of this Agreement.

**16. STANDARD PROVISIONS**

16.1 **Amendments**

Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or exhibit, no amendment of this Agreement shall be of any force or effect unless set forth in writing and signed by authorized representatives of each Party. Upon «Customer Name»’s request, and to the extent BPA determines it is practicable, BPA shall provide «Customer Name» a reasonable opportunity to review any unilateral provision or exhibit revisions, or the data that will be input into an exhibit revision, prior to BPA making such unilateral revisions.

16.2 **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.

16.3 **Assignment**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party’s written consent. Such consent shall not be unreasonably withheld. Without limiting the foregoing, BPA’s refusal to consent to assignment shall not be considered unreasonable if, in BPA’s sole discretion the sale of power by BPA to the assignee would violate any applicable statute. «Customer Name» may not transfer or assign this Agreement to any of its retail consumers.

16.4 **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.

16.5 **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 of any other breach of this Agreement.

16.6 **BPA Policies**

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

**17. INFORMATION EXCHANGE AND CONFIDENTIALITY**

17.1 **Information Exchange**

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement. Such information shall be provided in a timely manner.

17.2 **Confidentiality**

Before «Customer Name» provides information to BPA that is confidential, or is otherwise subject to privilege or nondisclosure, «Customer Name» shall clearly designate such information as confidential. BPA shall notify «Customer Name» as soon as practicable of any request received under the Freedom of Information Act (FOIA), or under any other federal law or court or administrative order, for any confidential information. BPA shall 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 confidential information within BPA to employees who need it for purposes of administering this Agreement.

**18. SIGNATURES**

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

|  |  |
| --- | --- |
| «FULL NAME OF CUSTOMER» | UNITED STATES OF AMERICADepartment of EnergyBonneville Power Administration |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| By |  |  | By |  |
|  |  |  |  |  |
| Name |  |  | Name |  |
|  | *(Print/Type)* |  |  | *(Print/Type)* |
| Title |  |  | Title |  |
|  |  |  |  |  |
| Date |  |  | Date |  |

**Exhibit A**

**RESIDENTIAL LOAD DEFINITION**

1. «Customer Name»’s Residential Load is the sum of the loads within the Region eligible for the Residential Exchange Program under the tariff schedules described below, as determined pursuant to BPA’s Customer Load Eligibility Guidelines, or its successor. Such load will be adjusted for distribution losses as determined pursuant to the ASC Methodology, as revised, supplemented, or superseded.
2. Such tariff schedules as presently effective include:

2.1 for all schedules listed below, include the amount, expressed in kilowatthours, of Qualifying Residential and Small Farm Load supplied by «Customer Name» under:

2.1.1 «schedule»

2.1.2 «schedule»

2.1.3 «schedule»

1. See <https://www.bpa.gov/energy-and-services/power/residential-exchange-program> for the current version of BPA’s Customer Load Eligibility Guidelines.
2. BPA may unilaterally revise this exhibit to modify these tariff schedules and/or incorporate additional qualifying tariff schedules, subject to BPA’s determination that the loads served under these schedules are qualified under the Northwest Power Act.

**Exhibit B**

**CF/CT AND NEW LARGE SINGLE LOADS**

**1. CF/CT AND NEW LARGE SINGLE LOADS**

*Option 1: Include the following if customer has* ***no*** *CF/CT loads.*

1.1 **CF/CT Loads**

«Customer Name» has no loads identified that were contracted for, or committed to (CF/CT), as of September 1, 1979, as defined in Section 3(13)(A) of the Northwest Power Act.

*End Option 1*

*Option 2: Include the following if customer* ***has*** *CF/CT loads.*

*Drafter’s Note: If customer has more than one CF/CT, number each separately as (1), (2), etc. and indent appropriately.*

1.1 **CF/CT Loads**

The Administrator has determined that the following loads were CF/CTs as of September 1, 1979, as defined in Section 3(13)(A) of the Northwest Power Act.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **End Use Consumer’s Name** | **Facility Name** | **Facility Location** | **Date of CF/CT determination** | **Amount of firm energy contracted for, or committed to (MW)** |
|  |  |  |  |  |
| Note: Amount of Firm Energy is at 100 percent load factor. |

*End Option 2*

*Option 1: Include the following if customer* ***has no*** *POTENTIAL NLSLs.*

1.2 **Potential NLSLs**

«Customer Name» has no identified potential NLSLs.

*End Option 1*

*Option 2: Include the following if customer* ***has*** *POTENTIAL NLSL(s).*

*Drafter’s Note: If customer has more than one potential NLSL, number each separately as (1), (2), etc. and indent appropriately.*

1.2 **Potential NLSLs**

«Customer Name» has the following identified potential NLSL(s):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **End Use Consumer’s Name** | **Facility Name** | **Facility Location** | **Date of BPA facility determination** | **12-month Monitoring Period** |
|  |  |  |  | «Month Day» through «Month Day» |

*End Option 2*

1.3 **NLSLs**

*Option 1: Include the following if customer* ***has no*** *existing NLSLs.*

«Customer Name» has no NLSLs.

*End Option 1*

*Option 2: Include the following if customer* ***has*** *an existing NLSL and will serve the NLSL with a* ***non-federal firm resource****.*

1.3.1 **NLSL**

«Customer Name» has one or more NLSLs and listed below pursuant to section 15.2 of the body of this Agreement.

*Drafter’s Note: If customer has more than one NLSL, number each separately as (1), (2), etc. and indent appropriately. Add facility name if there are two NLSLs at same site or as needed.*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **End Use Consumer’s Name** | **Facility Name** | **Facility Location** | **Date of BPA facility determination** | **12-month Monitoring Period** | **Date Load Determined to be an NLSL** | **Manner of Service** |
|  |  |  |  | «Month Day» through «Month Day» |  | «Direct *or* Transfer» |

*End Option 2*

**2. REVISIONS**

BPA shall unilaterally revise section 1, CF/CT and New Large Single Loads to reflect BPA’s determinations made in accordance with section 15.2 of the body of the Agreement and section 1 of this Exhibit B. All other changes to this Exhibit B will be made by mutual agreement of the Parties.

**Exhibit C**

**AVERAGE SYSTEM COST METHODOLOGY**

See <https://www.bpa.gov/energy-and-services/power/residential-exchange-program> for the current version of BPA’s Average System Cost Methodology.

**Exhibit D**

**IN-LIEU POWER SCHEDULING AND SETTLEMENTS**

1. **DEFINITIONS AND ACRONYMS**

1.1 “Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

1.2 “Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

1.3 “Electronic Tag” or “E-Tag” means an electronic record that contains the details of a transaction to transfer energy from a source point to a sink point where the energy is scheduled for transmission across one or more Balancing Authority Area(s), consistent with all relevant WECC, NAESB, NERC, or their successors, and FERC requirements.

1.4 “Interchange Points” means the points where Balancing Authority Areas interconnect and at which the interchange of energy between Balancing Authority Areas is monitored and measured.

1.5 Prescheduling: The process (electronic, oral, and written) of establishing and verifying with all scheduling parties, advance hourly Transactions through the following Workday(s). Preschedules apply to the following day or days (if the following day or days are not Workday(s).

1.6 “«Customer Name»’s POD” means the scheduling point of delivery (POD) at which BPA shall deliver the In-Lieu Power to «Customer Name», which will be reflected in the E-Tag. The scheduling POD will be the «Customer Name»’s system, unless BPA and «Customer Name» mutually agree to another POD.

1.7 “Resource Support Services” or “RSS” means a suite of services BPA Power Services provides to integrate federal and non-federal resources defined in Exhibit J and priced in each regular 7(i) Process consistent with chapter 6 of the PRDM.

1.8 Real-Time: The hourly or minute-to-minute operation and scheduling of a power system as opposed to those operations which are prescheduled a day or more in advance.

1.9 “Shaping Capacity” shall have the meaning as established in section 1.4 of Exhibit C, when applicable, as an hourly range for each month within which a customer may reshape the hourly energy amount of its Block purchase, on a day-ahead basis.

**2**. **SCHEDULING IN-LIEU POWER**

2.1 **E-Tags**

BPA shall create any necessary E‑Tags for delivery of the In-Lieu Power under this Agreement pursuant to section 9. When completing the E-Tag, BPA shall insert the BPA contract number of this Agreement in the "reference" column of the miscellaneous section of the E-Tag.

3. DELIVERY *(06/18/25 Version)*

3.1 **Acquisition of Transmission Service**

2.1 BPA shall acquire transmission services to deliver the In-Lieu Power to «Customer Name»’s POD.

3.1 «Customer Name» shall acquire transmission services for delivery from the «Customer Name»’s POD to load.

3.2 **Failure to Deliver**

If BPA is unable to deliver In Lieu Power to «Customer Name»’s POD due to transmission curtailments or other system constraints, the parties to this Agreement shall arrange to either (1) re-schedule such power at a later date, or (2) financially settle the applicable schedule after-the-fact.

3.3 **Liability for Delivery**

BPA shall not be liable for any claims for non-delivery of power to any points beyond Customer Name»’s POD. 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.

3.4 **Real Power Losses**

BPA is responsible for the real power losses necessary to deliver In-Lieu Power to «Customer Name»’s POD.

1. **EMERGING ENERGY MARKETS**

The Parties to this Agreement agree to work cooperatively together, and to take such actions as are reasonably necessarily, to implement the In-Lieu Power deliveries under this Agreement in a sound and businesslike manner in the event BPA, «Customer Name», or any intervening transmission system, enters a new or emerging organized energy market including, but not limited to, a day-ahead energy market.

**5. TAKE OR PAY**

«Customer Name» shall pay for the In-Lieu Power that BPA makes available under section 9.1, at the applicable PF Exchange Rate, pursuant to section 9.4, whether or not «Customer Name» took delivery of such power.

**6. AFTER THE FACT**

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

**7. REVISIONS**

BPA may unilaterally revise this exhibit as necessary:

(1) to implement changes that BPA determines are reasonably necessary to allow it to meet its power and scheduling obligations under this Agreement, or

(2) to comply with requirements of WECC, NAESB, NERC, WRAP or their successors or assigns, or

(3) to comply with requirements of the Parties to this Agreement entering new and emerging markets.

**Exhibit E**

**COMPLIANCE PROGRAM**

1. **BIENNIAL AGREED-UPON PROCEDURES COMPLIANCE REVIEW**

Pursuant to section 7 of the body of the Agreement, «Customer Name» agrees to cooperate with a Biennial Agreed-Upon Procedures (AUP) Compliance Review, or AUP Review, initiated by BPA of «Customer Name»’s accounts and financial records concerning this Agreement.

* 1. **Final AUP Report**

After conclusion of «Customer Name»’s AUP Review, BPA may, and the CPA shall, produce a Final AUP Report documenting the reviewer’s findings and provide the report to «Customer Name».

1.2 **Third-Party Engagement of «Customer Name»’s CPA**

BPA may, at its expense, elect to engage «Customer Name»’s certified public accountant (CPA) that also prepares its financial accounts and audits to conduct the AUP Review pursuant to section 7 and this Exhibit E. In such instance, BPA shall request that «Customer Name» contract with its CPA. «Customer Name» shall (1) obtain an engagement letter between «Customer Name» and its CPA, and (2) ensure the CPA provides BPA a letter of acknowledgement of such engagement. The engagement letter and letter of acknowledgement should provide the Parties to this Agreement a detailed statement of the work to be performed to meet the AUP Review included in Exhibit E, the hours, and the fee for such work.

«Customer Name» shall be responsible for ensuring that:

(1)  each AUP Review report provides all information requested by BPA consistent with the AUP Compliance Review procedures in section 3 of this Exhibit E; and

(2) «Customer Name»’s CPA is contractually obligated to conduct each AUP Review in accordance with the applicable auditing standards, *e.g.,* General, Field Work, and Reporting Standards for Attestation Engagements as contained in the Government Auditing Standards (the Yellow Book) by the Comptroller General of the United States of America; the Public Company Accounting Oversight Board (PCAOB) Statements of Standards for Attestation Engagements; or, the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements.

1.2.1 **Documentation Provided to «Customer Name»’s CPA**

To conduct the AUP Review, BPA shall make accessible to «Customer Name» the following documentation to be provided to «Customer Name»’s CPA:

(1) Two of «Customer Name»’s Final ASC Reports containing the ASCs in effect during the Base Period and the year after the Base Period applicable to the Exchange Period subject to the AUP Compliance review;

*Option 1: If section 6 adopts a fixed Residential Load Billing Determinant use this language:*

(2) «Customer Name»’s Residential Load documentation pursuant to section 6.1, for the Exchange Period subject to the AUP Review, that contains the Residential Load for each month of the Base Period and the year after the Base Period.

*Option 2: If section 6 adopts a forecast Residential Load use this language:*

(2) «Customer Name»’s Residential Load of actuals, pursuant to section 6.1, billed to BPA for REP Benefits for each month during the Exchange Period subject to AUP Review

(3) «Customer Name»’s End-of-Year REP Benefit Certification packets for each Fiscal Year of the Exchange Period subject to the AUP Compliance Review;

(4) BPA’s applicable Power Rate Schedules and General Rate Schedule Provisions (GRSPs) for the Exchange Period subject to the AUP Review; and

(5) the then in-effect Customer Load Eligibility Guidelines (CLEG).

1.3 **BPA’s Reimbursement Cap and Reimbursement of Invoiced CPA Fees to** «Customer Name»

1.3.1 **BPA’s Reimbursement Cap**

At the commencement of the AUP Review, pursuant to section 1 of this Exhibit E, BPA shall provide «Customer Name» with a letter that includes the maximum amount BPA shall reimburse «Customer Name» for the upcoming final AUP Review report. «Customer Name»’s reimbursement cap shall be determined solely by BPA and shall be based on BPA’s overall reporting budget for all parties participating in the Residential Exchange Program. If the estimate in «Customer Name»’s CPA engagement letter exceeds «Customer Name»’s reimbursement cap, BPA may adjust the AUP Review procedures to ensure the CPA’s review can be completed at or under the reimbursement cap. If such adjustment is necessary, BPA shall promptly notify «Customer Name» and adjust «Customer Name»’s AUP Review procedures.

1.3.2 **Reimbursement of Fees**

BPA shall reimburse «Customer Name» for its CPA fees for completing the AUP review pursuant to section 7 of the body of this Agreement and section 3 of this Exhibit E.

**2. REVISIONS**

BPA may, upon not less than 10 business days’ prior written notice to «Customer Name», unilaterally revise this Exhibit E to implement changes that BPA determines are reasonably necessary to allow it to conduct reviews of the accounts and financial records concerning BPA customers’ participation in the Residential Exchange Program.

BPA shall provide a draft of any material revisions of this exhibit to «Customer Name», with reasonable time for comment, prior to BPA’s written notice of the revision.

**3. AUP COMPLIANCE REVIEW PROCEDURES**

This section 3 of Exhibit E outlines the procedures to conduct Biennial AUP Compliance Reviews.

 **Definitions:**

“Applicable Exchange Period” means the Exchange Period subject to the Biennial AUP Compliance Review.

*Only for Option 1 of section 6:*

“Residential Load Worksheet” means the worksheet developed by BPA for validation by IOU, that contains the calculation of «Customer Name»’s Exchange Period Residential Load pursuant to section 6 of the body of this Agreement. The Residential Load Worksheet contains the Residential Load for each month of the Base Period and the year after the Base Period, and the two-year average load by month for the twelve-month Applicable Exchange Period

“System-sourced Residential Load” means the Residential Load produced by CUSTOMER from it’s system that contains the monthly retails sales (load) data.

 *Only for Option 1 of section 6:*

3.1 **RESIDENTIAL LOAD SUPPORTED BY LOAD DATA**

The objective of this section 3.1 is to confirm the source data used to calculate «Customer Name»’s Residential Load for the Applicable Exchange Period.

* + 1. To complete this review, compare «Customer Name»’s Residential Load Worksheet with «Customer Name»’s System-sourced Residential Load data for each of the corresponding months of the Base Period and the year following the Base Period of the Applicable Exchange Period. Note any exceptions.

3.1.2 **CPA Only**: Using «Customer Name»’s System-sourced Residential Load obtained in section 4.1.1 above, calculate a two-year average by month of load for a twelve-month period. Cross-check against the same data within the Residential Load Worksheet. Note any exceptions.

3.1.3 Follow up with «Customer Name» personnel for explanations of any monthly differences greater than 1% and document such explanations and differences.

*For Option 2 of section 6:*

3.1 **RESIDENTIAL LOAD SUPPORTED BY LOAD DATA**

The objective of this section 3.1 is to confirm the source or supporting data validates «Customer Name»’s Residential Load that were invoiced to BPA for REP Benefits during the Applicable Exchange Period.

* + 1. To complete this review, «Customer Name» shall provide the source or supporting data of its Residential Load invoiced to BPA for each of the months during the Applicable Exchange Period. Note any exceptions.

3.1.2 Compare each month’s load provided by «Customer Name» in section 3.1.2 to the Residential Load invoiced to BPA during the Applicable Exchange Period. Note any exceptions.

3.1.3 Follow up with «Customer Name» personnel for explanations of any monthly differences greater than 1% and document such explanations and differences.

3.2 **RESIDENTIAL AND FARM BILLS CONTAIN CORRECT REP BENEFITS**

The objective of this section is to confirm, by random sample review of consumers’ electric bills for the Applicable Exchange Period, that the REP Benefit specified by the appropriate tariff is reflected on the consumers’ electric bills, and that the REP Benefit has been calculated correctly using (1) the appropriate REP tariff credit and (2) the energy usage on the bill (subject to any kWh cap).

3.2.1 «Customer Name» shall provide copies of all tariffs in effect during the Applicable Exchange Period that were eligible for REP Benefits.

3.2.2 «Customer Name» shall make accessible a list of the Residential Load accounts from the Applicable Exchange Period that were recipients of the REP Benefits. If the list is transmitted to BPA, the list shall not contain any customer personally identifiable information (PII), such as, names and addresses; however, stand-alone account numbers may be provided.

3.2.3 From such list of accounts, a random sample of 50 residential and farm accounts will be selected. The total population of the residential and farm accounts does not need to be tied-out for completeness.

3.2.4 For each of the 50 randomly selected accounts, «Customer Name» shall provide copies of the bills. If the bills are transmitted to BPA, none of the bills shall include any customer PII.

3.2.5 For each of the bills, BPA or «Customer Name»’s CPA shall verify the credit specified on the residential and farm tariff is applied to calculate the REP Benefit and is calculated correctly (subject to any kWh cap imposed by «Customer Name». The total population of the residential and farm accounts does not need to be tied-out for completeness. Note any exceptions.

3.2.6 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3.3 **IRRIGATION BILLS CONTAIN CORRECT REP BENEFITS**

The objective of this section is to confirm, by random sample review of consumers’ irrigation/pumping bills for the Applicable for the Exchange Period, that the REP Benefit specified by the appropriate tariff is reflected on the consumer bill and that the REP Benefit has been calculated correctly using (1) the appropriate REP tariff credit and (2) the energy usage of the bill (not to exceed 222,000 kWh/month). If «Customer Name» does not have any irrigation load, notate and move to section 3.4.

3.3.1 «Customer Name» shall provide copies of all tariffs in effect during the Applicable Exchange Period covering «Customer Name»’s irrigation load that were eligible of the REP Benefits.

3.3.2 «Customer Name» shall provide the months during the Applicable Exchange Period that comprised the high irrigation season.

3.3.3 «Customer Name» shall provide a list of irrigation load accounts, with single and multiple metered irrigation/pumping loads from the «Customer Name»’s high irrigation season that were recipients of REP Benefits during the Applicable Exchange Period. If the list is transmitted to BPA, the list shall not contain any customer personally identifiable information (PII), such as, names and addresses; however, stand-alone account numbers may be provided

3.3.4 From such list of accounts, a random sample of 25 irrigation account bills will be selected. The total population of the irrigation accounts does not need to be tied out for completeness.

3.3.5 For each of the 25 randomly selected irrigation accounts, Customer Name» shall provide copies of the bills. If the bills are transmitted to BPA, none of the bills shall include any customer PII .

3.3.6 For each of the bills, BPA or «Customer Name»’s CPA shall verify the credit specified irrigation/pumping tariff is applied to calculate the REP Benefit and is calculated correctly. Furthermore, BPA or «Customer Name»’s CPA shall verify the REP Benefit applied is not calculated on any (combined/aggregated) monthly irrigation/pumping load in excess of 222,000 kWh/month per farm (as defined in the Customer Eligibility Load Guidelines. Note any exceptions.

3.3.7 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3.4 **«CUSTOMER NAME»’S END-OF-YEAR REP BENEFIT CERTIFICATION SUPPORTED BY BOOKS AND RECORDS**

The objective of this section is to confirm the information contained in the End-of-Year (EOY) REP Benefit Certifications for each of the applicable Fiscal Years of the Exchange Period subject to the AUP Review ties with the «Customer Name»’s accounts, exclusive of benefits from In-Lieu Power deliveries.

3.4.1 For each of the Fiscal Years of the Exchange Period, agree beginning balances of REP Pass-through account as reported in the respective «Customer Name»’s EOY REP Benefit Certifications with «Customer Name»’s general ledger accounts or subsidiary accounting records for the same time period. Note any exceptions.

3.4.2 For each of the Fiscal Years of an Exchange Period, agree the total amount of Cost Benefit payments made by BPA as reported in the «Customer Name»’s EOY REP Benefit Certifications with «Customer Name»’s general ledger accounts or subsidiary accounting records for the same periods of time. Note any exceptions.

3.4.3 For each of the Fiscal Years of an Exchange Period, agree the total Cost Benefits «Customer Name» disbursed to its Residential Load as reported in the respective «Customer Name»’s EOY REP Benefit Certifications with «Customer Name»’s general ledger accounts or subsidiary accounting records for the same period of time. Note any exceptions.

3.4.4 For each of the Fiscal Years of an Exchange Period, compare the method reported to compute interest expense accrued on under-distributed Cost Benefits in the “Notes” section of «Customer Name»’s EOY REP Benefit Certifications with the method used to compute interest expense on the «Customer Name»’s general ledger accounts or subsidiary accounting records for the same periods of time. Note any exceptions.

3.4.5 For each of the Fiscal Years of an Exchange Period, confirm the amounts of interest accrued on under-distribution of Cost Benefits as reported in the respective «Customer Name»’s EOY REP Benefit Certifications with the amounts recorded on the utility’s general ledger accounts or subsidiary accounting records for the same period. Note any exceptions.

3.4.6 For each of the Fiscal Years of an Exchange Period, agree year-end balances of REP Pass-through accounts as reported in the respective «Customer Name»’s EOY REP Benefit Certifications with «Customer Name»’s general ledger account or subsidiary accounting records for the same period of time.

3.4.7 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3.5 **FEDERAL COLUMBIA RIVER BENEFIT BILL NOTICE**

Confirm that all of the sampled residential, farm, and irrigation «Customer Name» bills include a statement or a reference to “BPA REP Credit”, or such other reference as approved by BPA.

3.6 **REVISIONS**

3.6.1 BPA may, upon not less than 10 business days’ prior written notice to «Customer Name», unilaterally revise this exhibit’s biennial AUP Compliance Review procedures to implement changes that BPA determines are reasonably necessary to allow it to conduct reviews of the accounts and financial records concerning BPA customers’ participation in the Residential Exchange Program.

3.6.2 BPA shall provide a draft of any material revisions of these AUP Review procedures to «Customer Name», with reasonable time for comment, prior to BPA’s written notice of the revision.