

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

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**Exhibit A Billing**

<b>Exhibit B</b>	<b>Metering</b>
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<b>Exhibit E</b>	<b>Power Reserves</b>
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This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and 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

BPA is authorized to sell power to Alcoa, a direct service industrial customer, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839 et seq.

The Parties agree that if at any time during this Agreement, if Alcoa commits to expend strategic capital at the Intalco plant at levels in excess of the capital expenditures required in Section 19 that would require a period of amortization exceeding the remaining term of this Agreement, the parties will consult concerning whether it might be in their mutual interest to extend the term of this Agreement. As used herein "strategic capital" shall mean capital expenditures in excess of those required to maintain the Intalco plant in its current configuration and which would permit increased operating efficiency, environmental benefits, or increased production levels.

For administrative and decision making purposes, BPA has functionally separated its organization into two business lines, Power Services (PS) and Transmission Services (TS). This separation is solely for the purpose of clarifying which BPA function is responsible for specific activities, even when those activities require joint participation by both business lines.

The Parties agree:

**1. TERM**

This Agreement becomes effective and binding on the Parties as of the date signed (Execution Date) and will terminate at 2400 hours on September 30, 2022.

PS shall sell Firm Power and Alcoa shall purchase such power commencing January 1, 2013.

All liabilities or obligations incurred by each Party hereunder shall be preserved until satisfied, notwithstanding the expiration, cancellation, 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 "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.
- 2.3 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.
- 2.4 "Business Days" means every Monday through Friday except for Federal holidays.
- 2.5 "Demand Entitlement" shall mean the Firm Power amounts made available by BPA to Alcoa as established in section 4.1.
- 2.6 "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH).
- 2.7 "Equivalent Benefits" means benefits, as evaluated and determined by BPA in a record of decision, that are forecast to accrue to BPA as a result of providing Firm Power service to Alcoa hereunder, and that equal or exceed the forecast cost of providing such service including, without limitation, receipt of revenues from the IP rate for sales to Alcoa, reserves and other operational benefits, the benefits of Alcoa's waivers found in sections 18.12 and 22.2 of this Agreement, and the value of Alcoa's covenant in section 22.1 of this Agreement.
- 2.8 "Firm Power" means the amount(s) of electric power that PS will make available at the IP rate to Alcoa under this Agreement in equal hourly amounts for every hour of the Fiscal Year.
- 2.9 "Fiscal Year" or "FY" means the period that begins each October 1 and which ends the following September 30.
- 2.10 "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.

- 2.11 "IP rate" means the Industrial Firm Power Rate contained in BPA's 2012 Wholesale Power Rate Schedules, and each successor.
- 2.12 "Issue Date" shall have the meaning described in section 10.1.
- 2.13 "Ninth Circuit" or "Court" means the United States Court of Appeals for the Ninth Circuit.
- 2.14 "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.
- 2.15 "Minimum DSI Operating Reserve - Supplemental" means for the term of the Agreement the right for BPA to interrupt DSI load made available by each DSI purchasing Industrial Firm Power in a megawatt amount equal to 10 percent of Alcoa's hourly scheduled load. The availability of the Minimum DSI Operating Reserve – Supplemental must be consistent with North American Electric Reliability Corporation (NERC), Western Electricity Coordinating Council (WECC), or Northwest Power Pool (NWPP) standards and criteria:
- a. The interruptible load must be offline or the increased generation must be online within 8 minutes after a call from BPA;
  - b. In the event of a system disturbance, the interruptible load or increased generation must be accessible prior to a request for reserves from other NWPP parties;
  - c. The interruptible load must be available to be offline for up to 105 minutes, or increased generation must be available to be online for up to 105 minutes.
  - d. There are no limitations on the number of times or aggregate minutes the Minimum DSI Operating Reserve – Supplemental may be utilized.

BPA reserves the right to unilaterally amend this definition to implement changes that are applicable to Alcoa and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; and (b) comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

- 2.16 "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.
- 2.17 "Power Reserves" shall have the meaning of reserves provided by Alcoa to BPA which include reserves provided by separate agreement or Minimum DSI Operating Reserve - Supplemental as defined in this Agreement and described in Exhibit E.

- 2.18 "Power Services" or "PS" means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.
- 2.19 "Primary Points of Receipt" shall have the meaning described in section 8.1.1.
- 2.20 "Prior Agreement" means Contract No. 10PB-12175 between BPA and Alcoa, as amended.
- 2.21 "Purchase Deficiency" shall mean the amount of Firm Power Alcoa elects to operationally reduce as submitted by Alcoa in their notice of curtailment or notice of termination, pursuant to section 5 and/or section 19.1.
- 2.22 "Region" or "Regional" means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).
- 2.23 "Surplus Firm Power" means any electric power that BPA determines is in excess of its obligations incurred under sections 5(b), 5(c), and 5(d) of the Northwest Power Act.
- 2.24 "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).
- 2.25 "Wheel Turning Load" shall have the meaning described in the 2012 GRSPs and, for the purpose of the Agreement, shall equal 6 aMW.

### **3. APPLICABLE RATES**

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

#### **3.1 Industrial Firm Power Rate**

Alcoa shall 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, or in any manner other than as specified by statute, for any rate period included within the term of this Agreement, and that, Alcoa bears any risks associated with the IP rate level established each rate period by BPA pursuant to the above referenced rate setting procedures. Except as provided in section 18.12, Alcoa reserves all rights with respect to challenging rates proposed or established by BPA.

**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 OF FIRM POWER**

**4.1 Firm Power**

As provided herein, BPA shall make available Firm Power in the amount of 300 aMW, and Alcoa shall purchase such Firm Power on a take-or-pay basis.

**4.2 No Resale By Alcoa**

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

**4.3 Termination Upon Court Opinion or Other Ruling**

Notwithstanding anything in this Agreement to the contrary, in the event that the Ninth Circuit issues an opinion or other ruling that holds, or that otherwise renders, this Agreement unlawful and prevents BPA from performing its obligations hereunder, this Agreement shall terminate upon issuance of the Court's mandate, unless the Court further stays the issuance of the mandate or otherwise extends the period that BPA can provide service to Alcoa or unless this Agreement can be amended to comply with the Court's holdings. The Parties agree that they will confer prior to issuance of the mandate regarding issues arising from or related to any such Court order. BPA agrees not to challenge any effort by Alcoa to obtain a stay of the mandate or otherwise extend the period that BPA can provide service to Alcoa.

**5. CURTAILMENT**

**5.1 Notice of Curtailment**

Alcoa may, upon written notice to BPA, curtail all or a portion of Firm Power, subject to the limitations set forth below. Any such notice shall specify the amount of Firm Power to be curtailed, the duration of such curtailment, and the effective date that such curtailment shall commence; *provided, however*, that such effective date shall be no earlier than 90 days following the date that BPA receives such notice. The period of curtailment shall be for consecutive months. Any such notice, once received, shall not be changed by Alcoa without BPA's written consent.

**5.2 Number of Curtailments Allowed and Cumulative Duration of Curtailments**

Alcoa shall not provide BPA with more than two written notices to curtail during the term of this Agreement, and the cumulative duration of any such curtailment(s) shall not exceed 24 months. Alcoa shall maintain the applicable employment level specified in Exhibit F during any curtailment, and will maintain at least the pre-curtailment ratio between its salaried and non-salaried FTEs.

**5.3 Compensation to BPA During Curtailment through September 30, 2015**

From execution of the contract through September 30, 2015, during any period of curtailment, Alcoa shall incur Liquidated Damages pursuant to section 21 for the amount curtailed.

**5.4 No Compensation to Either Party During Curtailment after September 30, 2015**

After September 30, 2015, during any period of curtailment, Alcoa shall not incur any Liquidated Damages pursuant to section 21 for the amount curtailed.

**5.5 No Purchases from Third Parties During Curtailment**

During any period of curtailment, Alcoa shall not make any market purchases from third party suppliers to replace all or any portion of the amount curtailed.

**5.6 No Curtailment Following Notice of Termination**

Alcoa shall not curtail pursuant to this section 5 following a notice of termination pursuant to section 19 below.

**5.7 Curtailment Requirements**

Unless otherwise agreed between the Parties, Alcoa shall not curtail any Firm Power until it has curtailed, terminated, or resold all power purchases from other power suppliers to the Intalco Plant.

**6. RESERVES**

**6.1 Power Reserves**

Alcoa shall provide Contingency Reserves in a manner consistent with the Minimum DSI Operating Reserve – Supplemental as specified in Exhibit E.

**6.2 Additional or Alternative Arrangements for Power Reserves**

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

**7. SCHEDULING**

Alcoa shall schedule power in accordance with Exhibit D.

## **8. DELIVERY**

### **8.1 Definitions**

- 8.1.1 "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.
- 8.1.2 "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.
- 8.1.3 "Point of Delivery" means the point described in Exhibit B to which Alcoa delivers power.

### **8.2 Transmission Service**

- 8.2.1 Alcoa is responsible for making arrangement for, and payment for, delivery of Firm Power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.
- 8.2.2 Alcoa shall obtain prior BPA approval for, and shall provide at least 60 days' notice to Power Services prior to, changing Balancing Authority Areas.
- 8.2.3 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 8.2.3.1 or 8.2.3.2 below, as applicable, have been met:
  - 8.2.3.1 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:
    - 8.2.3.1.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by PS; and

8.2.3.1.2 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

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

8.2.3.2 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:

8.2.3.2.1 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

8.2.3.2.2 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.

8.2.3.3 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.

### 8.3 **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 8.2.3. 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.

**8.4 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 B.

**9. METERING**

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

**10. BILLING AND PAYMENT**

**10.1 Billing**

BPA shall bill Alcoa monthly for all products and services made available or provided during the current and 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.

**10.2 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 20<sup>th</sup> day after the Issue Date of the bill (Due Date). If the 20<sup>th</sup> 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:

10.2.1 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

10.2.2 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 20<sup>th</sup> day after the final bill's Issue Date. If the 20<sup>th</sup> day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

**10.3 Late Payments**

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

10.3.1 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

10.3.2 the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

#### **10.4 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 or unwilling to make the payments owed, then BPA may terminate this Agreement, with such termination to be effective on the date specified by BPA in its notice of termination. Termination shall not relieve Alcoa of its payment and other obligations under this Agreement. Written notices sent under this section must comply with section 14, Notices and Contact Information.

#### **10.5 Disputed Bills**

10.5.1 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 10.5.1 does not allow Alcoa to challenge the validity of any BPA rate.

10.5.2 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.

10.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 16, 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.

### **11. EMPLOYMENT LEVELS**

For the Term of the Agreement, except during any termination period in which Alcoa is not operating, Alcoa shall employ at least the number of full-time equivalent (FTE) employees specified in Exhibit F. "FTE" shall mean full-time annual equivalent employment (including part-time and partial year) for regular employees of Alcoa at the Intalco Plant and contractor employees working within Whatcom County, Washington during a calendar month.

Alcoa shall notify BPA in writing in the event that, during any calendar month, Average FTE levels, as defined in Exhibit F, are reduced by more than one percent below the applicable level specified in Exhibit F. Such notice shall be provided within five Business Days following such reduction. Such notice shall specify the date by which Alcoa anticipates Average FTE levels will equal or exceed the

applicable level specified in Exhibit F; *provided, however*, that this Agreement will be subject to termination by BPA in the event Alcoa fails to provide BPA with a written plan and to comply with such plan for meeting the applicable Average FTE levels specified in Exhibit F. Such plan shall demonstrate that Alcoa shall meet Average FTE requirements within 90 days following the end of the month during which such Average FTE levels fell below the 1 percent threshold. In order to permit BPA to determine whether Alcoa is meeting its plan to meet FTE obligations, Alcoa shall provide monthly reports to BPA demonstrating its FTE by month and showing that its Average FTE levels meet the requirements of this section 11 within 15 days following the end of the month for which it is reporting. In the event that Alcoa fails to comply with its plan for reaching Average FTE levels, BPA may provide notice of termination within 30 days following the monthly notice provided in this section 11 and the effective date of termination shall be 90 days following the date such notice is received by Alcoa.

## **12. INFORMATION EXCHANGE AND CONFIDENTIALITY**

### **12.1 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 12.1 shall be provided in a timely manner.

### **12.2 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 by BPA.

### **12.3 Meter and Billing Data**

Alcoa consents to allow Power Services to receive Alcoa's meter data and invoices from Transmission Services, BPA's metering function, or BPA's billing function required to administer or verify performance under this Agreement.

### **12.4 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 no later than 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.

### **13. CONSERVATION AND ENVIRONMENTAL ATTRIBUTES**

#### **13.1 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 Northwest Power and Conservation Council's 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.

#### **13.2 Renewable Energy Certificates and Carbon Credit Treatment**

13.2.1 "Carbon Credit" means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.

13.2.2 "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.

13.2.3 "Renewable Energy Certificates" or "RECs" means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

13.2.4 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 statutory obligation, or final court decision or order, requiring it to do so.

13.2.5 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.

**14. 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:

- 14.1 delivered in person;
- 14.2 by a nationally recognized delivery service with proof of receipt;
- 14.3 by United States Certified Mail with return receipt requested;
- 14.4 electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- 14.5 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. The Parties shall deliver notices to the following person and address:

If to Alcoa:

Alcoa Inc.  
4050 Mountain View Road  
P.O. Box 937  
Ferndale, WA 98248-0937  
Attn: [REDACTED]

Phone: [REDACTED]  
FAX: [REDACTED]  
-Mail: [REDACTED]

If to BPA:

Bonneville Power Administration  
905 NE 11<sup>th</sup> Avenue  
P.O. Box 3621  
Portland, OR 97208-3621  
Attn: [REDACTED]

Phone: [REDACTED]  
FAX: [REDACTED]  
E-Mail: [REDACTED]

**15. 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:

- 15.1 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;

- 15.2 any failure of Alcoa's production, distribution or transmission facilities that prevents Alcoa from taking Firm Power delivered to the Point of Receipt;
- 15.3 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;
- 15.4 floods, earthquakes, or other natural disasters; terrorist acts; and
- 15.5 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. Causes for termination pursuant to Section 19 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 14, Notices and Contact Information.

## **16. 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 16, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

Notwithstanding anything to the contrary in this section 16, any decision by BPA designated in this Agreement as being conclusive and binding on Alcoa shall not be subject to challenge by Alcoa.

### **16.1 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 16, 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 16, 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 16.

### **16.2 Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 16.1 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 16.2 and sections 16.3 and 16.4 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 16.2 and sections 16.3 and 16.4 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 16.1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

### **16.3 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.

**16.4 Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 16. 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.

**16.5 Finality**

16.5.1 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.

16.5.2 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.

**16.6 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.

**17. STATUTORY PROVISIONS**

**17.1 Prohibition on Resale of Firm Power**

Alcoa shall not resell Firm Power purchased from BPA under this Agreement.

**17.2 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. 104134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit C, Special Provisions.

## 18. STANDARD PROVISIONS

### 18.1 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.

### 18.2 Entire Agreement and Order of Precedence

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

### 18.3 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 the Intalco Plant, 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.

### 18.4 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.

### 18.5 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.

### 18.6 BPA Policies

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

### 18.7 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, 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 associated with any term being severed from this Agreement.

## 18.8 Credit Assurance

18.8.1 Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA with an irrevocable standby letter of credit in the amount of \$30,000,000, issued in a form and by a bank acceptable to BPA. Such letter of credit shall have an expiration date one year from its date of issuance, and BPA may require replacement letters of credit so that a letter of credit is in place on a continuous basis for the term of this Agreement. The amount of replacement letters of credit will be established by the product of: i) the then prevailing highest monthly average applicable IP rate; ii) 300 MW; iii) 103 days; and iv) 24 hours (e.g.  $\$38/\text{MWh} * 300 \text{ MW} * 103 \text{ days} * 24 \text{ hours} = \$28,180,000$  million).

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 18.8.1 and 18.8.2, then BPA may terminate this Agreement.

18.8.2 In the event that BPA requests a letter of credit pursuant to section 18.8.1, Alcoa and BPA shall confer concerning the necessity for, and terms concerning, such letter of credit for no more than the two Business Days immediately following the date of such request; *provided, however*, that BPA's determination regarding its need for a letter of credit as provided for in section 18.8.1 shall be conclusive and not subject to dispute resolution. Alcoa shall arrange for any letter of credit requested by BPA to be issued to BPA no later than three Business Days following such discussions.

18.8.3 Notwithstanding anything in section 18.8.1 or 18.8.2, should Alcoa's financial responsibility or performance viability become unsatisfactory to BPA in BPA's reasonably exercised discretion, then BPA may seek performance assurance from Alcoa in addition to that required pursuant to sections 18.8.1 and 18.8.2, consistent with law.

## 18.9 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.

## 18.10 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.

**18.11 Waiver of Damages**

In the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final order that declares or renders this Agreement, or any part thereof, void or otherwise unenforceable, neither Party shall be entitled to any damages or restitution of any nature, in law or equity, from the other Party, and each Party hereby expressly waives any right to seek such damages or restitution. For the avoidance of doubt, the Parties agree this provision shall survive the termination of this Agreement, including any termination effected through any order described herein.

**18.12 Waiver of Right to Challenge to REP Settlement and Dismissal of 9<sup>th</sup> Circuit Petition**

Alcoa agrees that it waives any challenges to the Residential Exchange Program Settlement Agreement (“REP Settlement”). Alcoa agrees further that it waives any challenges to the final decisions contained in the Residential Exchange Program Settlement Agreement Proceeding (REP-12) Administrator’s Final Record of Decision, REP-12-A-02, issued on July 26, 2011, regarding the rate treatment and distribution of the Refund Amounts and Lookback Amounts. Upon execution of this Agreement, Alcoa agrees that, within fifteen (15) business days thereof, it will file a motion in the 9<sup>th</sup> Circuit Court of Appeals dismissing its petition and withdrawing all briefs or other pleadings filed by Alcoa in the consolidated case *Alcoa Inc. v. Bonneville Power Administration*, Nos. 11-73161, 11-73178.

**19. TERMINATION**

For ease of reference, this section 19 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. Written notices sent under this section must comply with section 14, Notices and Contact Information.

**19.1 Alcoa Right to Terminate**

**19.1.1 Alcoa Right to Terminate for Any Reason**

Alcoa may provide written notice to terminate this Agreement.

Such notice shall include a Termination Effective Date that is no earlier than 12 months following the date that BPA receives such notice. Such notice shall also specify, for each month during the period prior to the Termination Effective Date, the amount of Firm Power, if any, that Alcoa shall take-and-pay for prior to the Termination Effective Date.

19.1.1.1 Except as provided in the next paragraph and in Section 19.1.4, for all Alcoa notices of termination delivered prior to September 30, 2014: Alcoa shall be liable for Liquidated Damages pursuant to section 21 for the entire period from the date of the notice of termination through September 30, 2015.

In the event that aluminum cash settlement prices as defined by the London Metal Exchange (LME) remains below \$1850.00 per metric tonne, on average, for the ninety (90) consecutive calendar days prior to the date of the notice of termination, then Alcoa shall only be liable for Liquidated Damages pursuant to section 21 for the 12 month period from the date of the notice of termination through the Termination Effective Date. Any notice of termination sent pursuant to this section 19.1.1.1 shall demonstrate that the LME requirement mentioned above has been satisfied. During this 12 month period the Parties shall meet to determine whether they can reach a mutual agreement to facilitate further operations at Alcoa's Intalco Plant.

19.1.1.2 Unless the Parties mutually agree otherwise, if Alcoa terminates this Agreement pursuant to this section 19.1.1.1 then the Intalco Plant shall not operate from the Termination Effective Date until October 1, 2015.

For all notices of termination delivered after September 30, 2014: Alcoa shall be liable for Liquidated Damages pursuant to section 21 for the 12 month period from the date of the notice of termination through the Termination Effective Date.

The employment provisions of sections 11 and Exhibit F shall apply to amounts of Firm Power, if any, Alcoa elects to take and pay for during any period following a notice of termination under this section 19.1.1.

Following the receipt by BPA of a notice to terminate pursuant to this section 19, Alcoa agrees that it shall not, prior to the end of this Agreement request any power from BPA, surplus or otherwise.

**19.1.2 Alcoa Termination During a Period of Curtailment**

If, pursuant to section 19.1.1 above, Alcoa provides BPA with a written notice to terminate during a period of curtailment, then such curtailment shall end as of the date BPA receives such notice, and during the period between the notice and the effective termination date the options described in section 19.1.1 above shall apply.

**19.1.3 Alcoa Right to Terminate if Certain Taxes or Charges are Imposed on Alcoa by BPA**

If costs directly attributable to the Alcoa Load associated with either (1) renewable energy portfolio standard obligations, or (2) costs for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges ("Environmental Costs"), are imposed on BPA directly (as opposed to being indirectly imposed on the cost of third party power acquisitions by BPA) and all such Environmental Costs have not been allocated to, and recovered by BPA through, the IP rate schedule, then BPA shall bill Alcoa for such

Environmental Costs, and Alcoa shall be obligated to pay such Environmental Costs and continue performance under this Agreement; *provided, however*, that in the event all Environmental Costs paid by Alcoa to BPA equal or exceed \$2 million, then in the event Alcoa is billed any additional Environmental Costs by BPA, Alcoa shall have the option to terminate pursuant to section 19.1.1 above, but Alcoa shall not be obligated to pay the IP rate for Firm Power not taken during the 12-month period prior to such termination.

**19.1.4 Alcoa Right to Terminate due to Changes in SO2 Compliance Requirements**

If the State of Washington or the United States Government issues a final rule or order that imposes new environmental compliance requirements related to the level of SO2 emissions at the Intalco Plant and compliance with such order is required by a date certain (“Compliance Date”), Alcoa may provide notice of termination of this Agreement to BPA if it first: (a) demonstrates to BPA the facts and data Alcoa relies upon to reach that compliance with the final rule or order by the Compliance Date will require the Intalco Plant to incur a significant increase in operating costs and/or require Alcoa to make previously unplanned capital expenditures at the Intalco Plant, provided, that BPA may audit Alcoa’s records, facts, and data relied upon by Alcoa to reach its conclusion; and (b) represents to BPA in writing that, based on the demonstration required by subsection (a) above, it has reasonably concluded that it will be more practical and economical to close the Intalco Plant on or before the Compliance Date than to comply with the final rule or order and continue operations at the Intalco Plant.

Exercise of the termination right pursuant to this subsection 19.1.4 is Subject to the following requirements:

19.1.4.1 The termination right under this subsection must be exercised no later than March 31, 2015.

19.1.4.2 For purposes of termination pursuant to this subsection, the Compliance Date shall be the date certain by which compliance with the new SO2 requirements must be accomplished as stated in the final rule or order in existence at the time notice of termination is provided.

19.1.4.3 A notice of termination pursuant to this subsection shall have a Termination Effective Date no sooner than six months after the notice is received by BPA, and state the amount of Firm Power Alcoa shall take-and-pay for on an hourly basis for each month prior to the Termination Effective Date. Any Purchase Deficiency during that period shall be subject to liquidated damages calculated pursuant to section 21.

19.1.4.4 Within thirty days of BPA's receipt of the notice of termination, Alcoa shall issue a public statement explaining that the new SO2 requirements are cost prohibitive to continued operations at the Intalco Plant, past the Compliance Date. The Parties agree to coordinate when drafting respective public statements.

19.1.4.5 If Alcoa continues to operate the Intalco Plant beyond the Compliance Date then Alcoa shall, in addition to any other liquidated damages it shall have paid or was required to pay, pay liquidated damages, pursuant to Section 21, for the period beginning on the Termination Effective Date through September 30, 2015.

19.1.4.6 Any terms and conditions of this Agreement required to enforce this subsection shall survive any termination hereunder and shall remain enforceable, or shall be reinstated, as necessary.

**19.1.5 Liabilities Remain**

Any terms and conditions of this Agreement required to enforce this section shall survive any termination hereunder and shall remain enforceable, or shall be reinstated, as necessary.

**19.2 BPA's Right to Terminate**

BPA may terminate this Agreement if:

19.2.1 Alcoa fails to take-or-pay for Firm Power made available to it under this Agreement, unless such failure is excused under this Agreement.

19.2.2 Alcoa fails to provide payment assurance satisfactory to BPA as required by section 18.8.

19.2.3 Alcoa fails to maintain employment levels as required by section 11.

19.2.4 Alcoa resells Firm Power.

19.2.5 Alcoa fails to provide BPA with any irrevocable standby letter of credit required by section 18.8.1.

19.2.6 The Ninth Circuit finds this Agreement is unlawful or otherwise prevents BPA from performing its obligations hereunder.

19.2.7 Alcoa fails to provide BPA with documentation showing that it has invested 35 million dollars or more in capital projects at the Intalco Plant between January 1, 2013 and September 30, 2019. In order to facilitate the administration of this provision, Alcoa shall provide BPA with a yearly accounting of capital project expenditures at the Intalco

Plant on September 1 of every year under this Agreement. BPA reserves the right to determine, at its own discretion, the adequacy of the documents provided by Alcoa under this section.

Termination by BPA under this section 19.2 is without prejudice to any other remedies available to BPA under law.

**20. PRIOR AGREEMENT**

The Prior Agreement, as amended, shall terminate at 2400 hours on December 31, 2012. Such termination shall not relieve either Party of any liabilities, if any, incurred under or as a consequence of the Prior Agreement.

**21. LIQUIDATED DAMAGES**

21.1 For periods of curtailment, as specified in section 5, or Termination, as specified in section 19, Alcoa shall pay PS damages equal to the amount by which the reasonable market value of such Purchase Deficiency is less than the value of the Firm Power sale at the applicable IP rate. For the purposes of the computations in this section 21, the applicable IP rate shall not include the Value of Reserves Credit. PS shall calculate the reasonable market value for each month Purchase Deficiency. Reasonable market value and calculation of damages shall be determined by the method described in either sections 21.1.1 or 21.1.2 below. If Alcoa satisfies its obligations pursuant to section 21.1.1, then the reasonable market value shall be calculated pursuant to that section, otherwise BPA shall determine the reasonable market value pursuant to section 21.1.2.

21.1.1 No later than three (3) Business Days prior to the commencement of a curtailment, or following the delivery of a notice of termination, Alcoa may obtain one or more transactable quotes for all or a portion of such Purchase Deficiency from a third party acceptable to BPA. The transactable quote(s) must match the duration, in the aggregate, of the curtailment for the Purchase Deficiency in the Firm Power to be made available at Primary Points of Receipt. Each quote shall be deemed equal to the reasonable market value of such curtailed Firm Power to which the quote applies for the purpose of calculating damages under this section 21.1.1. PS may, at its sole option, resell the curtailed Firm Power to the third party, retain the curtailed Firm Power, or dispose of the curtailed Firm Power as it may otherwise choose. Alcoa shall allow PS at least four (4) hours during normal business hours to decide whether or not to transact under such quote.

It is agreed by the Parties that BPA shall not be obligated to enter into replacement transactions in order to determine or collect damages under this section 21.1.1.

21.1.2 In the event PS does not receive a transactable quote as described in section 21.1.1, PS shall determine, by any reasonable method, the reasonable market value of the portion of each monthly Purchase

Deficiency for which Alcoa has not obtained a transactable quote. The reasonable market value shall be adjusted to reflect volume and BPA transmission costs associated with remarketing each such portion of the monthly Purchase Deficiency, regardless of whether each such portion is actually remarketed.

- 21.2 Alcoa shall compensate BPA for any Minimum DSI Operating Reserve - Supplemental not provided by Alcoa. Such compensation shall be equal to the product of: i) the Purchase Deficiency, and ii) the value of the adjustment to the prevailing IP rate provision of the Minimum DSI Operating Reserve - Supplemental.
- 21.3 BPA shall have no obligation to compensate Alcoa in any manner for any amount under this section.

## **22. ALCOA COVENANTS**

### **22.1 Alcoa Covenant Not to Challenge Validity of this Agreement**

Alcoa agrees that it shall not challenge the validity of this Agreement or any determination regarding Equivalent Benefits, in any proceeding before the Ninth Circuit or elsewhere, but Alcoa reserves the right to challenge BPA's decision to apply the Equivalent Benefits standard and to intervene in any proceeding in the Ninth Circuit in which a challenge to the validity of this Agreement, or any part thereof, has been filed.

### **22.2 Alcoa Covenant Not to Challenge BPA Sales of Surplus Firm Power to Other Customers**

Alcoa agrees not to file a petition for review in the Ninth Circuit challenging (a) any proposed or actual sale of Surplus Firm Power by BPA to any other BPA customer, whether inside or outside the Region, or (b) any rate adopted by BPA, and approved on a final basis by the Federal Energy Regulatory Commission, for the sale of Surplus Firm Power; **provided, however**, that the foregoing commitment by Alcoa will be of no force or effect in the event the Ninth Circuit issues its mandate in a case in which it has granted a petition for review challenging this Agreement and has issued an order or opinion that declares or renders this Agreement void and provided further that in the event that BPA terminates this Agreement the covenant and waivers shall not apply to the period following such termination.

**23. SIGNATURES**

The Parties have executed this Agreement as of the last date indicated below.

ALCOA INC.

By           / S / ROBERT WILT            
Name           ROBERT WILT            
*(Print / Type)*  
Title           PRESIDENT GPP-US            
Date           12/7/12          

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By           / S / STEPHEN J WRIGHT            
Name           STEPHEN J WRIGHT            
*(Print / Type)*  
Title           ADMINISTRATOR            
Date           12-7-12

**Exhibit A**  
**BILLING**

**1. INDUSTRIAL FIRM POWER ENTITLEMENTS**

1.1 The MW amount 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. The total monthly charge for energy shall be the sum of i) The product of Alcoa's HLH Energy Entitlement and the HLH Energy rate from Schedule IP-12 of the BP-12 Rate Schedule, or its successor; and ii) The product of Alcoa's LLH Energy Entitlement and the LLH Energy Rate in Schedule IP-12 of the BP-12 Rate Schedule or its successor.

1.2 The MW amount made available by BPA under this Agreement establishes Alcoa's Demand Entitlement. Alcoa's demand billing determinant shall be calculated as defined in Schedule IP-12 of the BP-12 Rate Schedule, or its successor. The monthly charge for demand shall be the product of the monthly demand billing determinant determined herein, and the appropriate Demand Rate specified in Schedule IP-12 of the BP-12 Rate Schedule, or its successor.

**2. UNAUTHORIZED INCREASE CHARGE**

Hourly Firm Power scheduled by Alcoa in excess of amounts specified in section 1 of this 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 B  
METERING**

**1. METERING**

**Directly Connected Points of Delivery**

**BPA POD Name:** Intalco 13.8-APGT  
**BPA POD Number:** 3562  
**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

**Metering:** in BPA's Intalco Substation in the 13.8 kV facilities over which such electric power flows:

- (1) **BPA Meter Point Name:** Intalco #1 Out  
**BPA Meter Point Number:** 588  
**Direction for PF Billing Purposes:** Positive  
**Manner of Service:** Direct, BPA to Alcoa
- (2) **BPA Meter Point Name:** Intalco #2 Out  
**BPA Meter Point Number:** 589  
**Direction for PF Billing Purposes:** Positive  
**Manner of Service:** Direct, BPA to Alcoa
- (3) **BPA Meter Point Name:** Intalco #3 Out  
**BPA Meter Point Number:** 590  
**Direction for PF Billing Purposes:** Positive  
**Manner of Service:** Direct, BPA to Alcoa
- (4) **BPA Meter Point Name:** Intalco #4 Out  
**BPA Meter Point Number:** 605  
**Direction for PF Billing Purposes:** Positive  
**Manner of Service:** Direct, BPA to Alcoa
- (5) **BPA Meter Point Name:** Intalco #5 Out  
**BPA Meter Point Number:** 606  
**Direction for PF Billing Purposes:** Positive  
**Manner of Service:** Direct, BPA to Alcoa

- (6) **BPA Meter Point Name:** Intalco #6 Out  
**BPA Meter Point Number:** 640  
**Direction for PF Billing Purposes:** Positive  
**Manner of Service:** Direct, BPA to Alcoa
  
- (7) **BPA Meter Point Name:** Intalco #7 Out  
**BPA Meter Point Number:** 641  
**Direction for PF Billing Purposes:** Positive  
**Manner of Service:** Direct, BPA to Alcoa

**Metering Loss Adjustment:** None

**Exception:** None

**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 C**  
**SPECIAL PROVISIONS**

**1. BPA APPROPRIATIONS REFINANCING**

In accordance with section 22.2 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--

**1.1 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--

- 1.1.1 the Administrator shall establish rates and charges on the basis that
  - 1.1.1.1 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;
  - 1.1.1.2 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;
  - 1.1.1.3 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
  - 1.1.1.4 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;
- 1.1.2 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;
- 1.1.3 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

1.1.4 the contract provisions specified in this Part do not--

1.1.4.1 preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

1.1.4.2 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--

1.1.4.2.1 allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

1.1.4.2.2 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 D 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 E**  
**POWER RESERVES**

**1. DEFINITIONS**

- 1.1 “Event” is a system condition under which PS needs additional power to meet its obligations during a system disturbance. The beginning of an Event shall be identified by alarm notice to the PS Loads Scheduler/Hydro Duty Scheduler of a system disturbance, and the Loads Scheduler will notify Alcoa that Restricted Energy is required. The end of the Event shall occur the earlier of when; a) initially established; b) Alcoa’s scheduling agent has notified Alcoa that full service has been restored; or c) 105 minutes from the beginning of the Event. An Event shall not include BPA electing not to purchase power for economic reasons, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.
- 1.2 “Event Duration” shall be the total cumulative Event Minutes of the Event.
- 1.3 “Event Minute” shall be the minutes of restriction (or any portion thereof) during an Event.
- 1.4 “Contingency Reserves” are those reserves provided by Alcoa under this Agreement for purposes of providing reserves for BPA’s firm power loads within the region, as provided for in the Northwest Power Act.
- 1.5 “Reserve Amount” shall be the kilowatt (kW) amount of Contingency Reserves available to BPA by Alcoa specified in section 2 of this Exhibit.
- 1.6 “Restricted Energy” means the requested megawatt-hour (MWh) amount of energy not made available to Alcoa hereunder because of an Event pursuant to section 2 of this Exhibit.

**2. AMOUNT AND TYPES OF RESERVES**

When necessary to provide Contingency Reserves, BPA may restrict the Reserve Amount, or the requested portion thereof, for a period of time (Restricted Energy). The Reserve Amount shall equal the amount of Minimum DSI Operating Reserve – Supplemental.

Alcoa shall provide the Restricted Energy to BPA by an interruption of its loads in an amount equal to or greater than the amount of such specified Restricted Energy, and in each case shall continue such load interruption for the duration of the Event.

The Parties recognize that with the addition of certain electronic controls at the Intalco Plant, the Intalco Load can be varied to help accommodate within-hour fluctuations on BPA’s system associated with wind power generation. The Parties agree to undertake discussions within 60 days after the execution of this Agreement to identify and implement any agreed to actions and agreements necessary to achieve such wind integration benefits.

**3. QUALITY AND CHARACTER OF RESERVES**

Contingency Reserves provided by Alcoa shall be consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards and criteria:

- 3.1 the Reserve Amount, or the requested portion thereof, must be offline within ten (10) minutes of an Event and pursuant to section 4 of this Exhibit;
- 3.2 the Reserve Amount, or the requested portion thereof, must be available to be offline for up to one-hundred five (105) minutes.

**4. NOTIFICATION**

Alcoa shall provide a contact at the Facility at the following phone number:

**Alcoa Inc.**  
[REDACTED]

Alcoa shall maintain such contact for every hour in the Term of the Agreement in which the Minimum DSI Operating Reserve – Supplemental amount is greater than zero megawatts.

The Loads Scheduler will notify Alcoa of each contingency event by means of a pre-programmed phone call or other electronic means. Within eight (8) minutes following the first such notice by the Loads Scheduler of an Event, Alcoa shall commence providing the Restricted Energy to BPA. Alcoa shall not restore its use of the Restricted Energy until the lesser of: (a) one-hundred five (105) minutes; or (b) immediately following notice from the Loads Scheduler terminating an Event. The e-Tag will not be adjusted during the hours Alcoa provides Minimum DSI Operating Reserve – Supplemental.

**5. VERIFICATION**

PS retains the right to verify Alcoa's provision of Restricted Energy by comparing the metered amounts before an Event, during an Event, and after an Event is terminated. If such verification fails to demonstrate that the Restricted Energy was made available to BPA by Alcoa for the Event Duration, then PS, in its sole discretion, may: (a) terminate the compensation specified in section 6 of this Exhibit for the undemonstrated portion of the Reserve Amount for the remaining Term of the Agreement; and, (b) notify TS of the undemonstrated portion of the Reserve Amount. Alcoa acknowledges that any undemonstrated portion of the Reserve Amount may cause its transmission supplier to take additional actions subject to the provisions of transmission service agreements Alcoa maintains with its transmission supplier that may include an assessment of the monetary penalty described in the Failure to Comply provision of the prevailing TS tariff for transmission service.

**6. COMPENSATION FOR CONTINGENCY RESERVES**

Compensation by PS to Alcoa for providing Minimum DSI Operating Reserve - Supplemental pursuant to this Agreement is through an adjustment to the IP rate

determinants applied during BPA's 7(i) rate making process, as provided for in the Northwest Power Act.

BPA will bill and Alcoa shall pay for the Restricted Energy as though actually delivered to Alcoa.

**7. RETURNED ENERGY**

BPA must make any Restricted Energy during an Event available to Alcoa within 24 hours ("Returned Energy") in mutually agreed flat hourly amounts and hours. Parties agree Returned Energy does not need to be scheduled during hours immediately following an Event and that the Returned Energy will likely be made available during Light Load Hours.

BPA will not bill Alcoa for Returned Energy.

Scheduling of Returned Energy amounts scheduled will be in addition to federal power purchased pursuant to section 4 of the body of the Agreement. Alcoa shall be responsible for creating e-Tags and transmission required for the delivery of Returned Energy.

**8. TESTING OF RESERVES**

BPA shall have the right to conduct tests of the procedure specified in this Exhibit.

**9. REVISIONS**

BPA may unilaterally revise this Exhibit E to implement changes that are applicable to Alcoa and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; and (b) 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 F  
EMPLOYMENT LEVELS**

**1. DEFINITIONS**

- 1.1 “Average Firm Power” means the average Firm Power during the term of the Agreement.
- 1.2 “Average FTE” means the average FTE, as determined pursuant to Table 1, in Section 2 below.
- 1.3 “Firm Power” shall have the meaning ascribed to it in section 2.8 of the body of this Agreement.
- 1.4 “FTE” shall have the meaning ascribed to it in section 11 of the body of this Agreement.

**2. Relationship between Firm Power and FTE**

For the avoidance of doubt, pursuant to this Exhibit F, Firm Power and FTE are proportional for the purposes of this Agreement, based on the amount of Firm Power Alcoa is consuming. As applicable and as described in Table 1 below, the proportion is 1.65 Average FTE per aMW of Average Firm Power:

**Table 1 - Proportional Relationship between Average Firm Power and Average FTE**

Average Firm Power (aMW)	Average FTE	Proportional FTE
320	528	1.65
300	495	1.65
280	462	1.65
240	396	1.65
200	330	1.65
160	264	1.65
120	198	1.65
80	132	1.65
72	120	n/a
40	120	n/a
0	120	n/a