

MASTER MONTHLY NETTING AND CLOSE-OUT NETTING AGREEMENT

This Master Monthly Netting and Close-Out Netting Agreement ("Agreement"), entered into on this first day of **February, 2001**, constitutes the understanding between [] and **Mirant Americas Energy Marketing, LP** (each, a "Party" and collectively, the "Parties") pertaining to certain obligations arising out of all existing and future agreements between the Parties relative to the sale, purchase, or exchange of Commodities. The Parties desire to provide a method by which any amounts due under the Contracts shall be settled by a monthly netting settlement and by which Contracts shall be terminated and liquidated under the circumstances set forth below.

1. DEFINITIONS

- (a) "Commodity" means the product identified in a Contract, or any related confirmation, having the qualities, properties and other characteristics therein specified.
- (b) "Contract" means any verbal or written agreement that pertains to the sale, purchase, or exchange of Commodities, as agreed to by the Parties.
- (c) "EFP" means Exchange for Physical, a Transaction in accordance with the exchange of futures for physical close out procedures of an applicable Commodity futures exchange.
- (d) "Firm" means with respect to any Transaction, that the only excuse for the failure to deliver a specified Commodity by Seller or the failure to receive such specified Commodity by the Buyer is Force Majeure as defined under the Contract, or the other Party's failure to perform.
- (e) "Transaction" means a particular transaction agreed to by the Parties and pertaining to certain obligations arising out of all existing and future Contracts between the Parties relative to the sale, purchase, or exchange of Commodities.

2. MONTHLY NETTING - Effective as of **February 1, 2001**, the Parties shall net any monthly payment obligations, by Commodity, but not across unlike Commodities (e.g. natural gas and electric power), arising under the Transactions. This monthly netting process shall be handled as set forth in this Section 2 for all Commodities where the existing Contract in effect between the Parties does not contain monthly netting provisions.

- (a) The Parties shall continue to issue billing statements or invoices to each other in the normal course of business. Each month, at least three (3) days prior to the "Payment Date" as defined below in Section 2(d), the Parties shall confer by telephone and compare and confirm invoice amounts and total amounts owed by and/or to each other.
- (b) If both Parties owe each other amounts pursuant to the Transactions, the Party that is owed the greater amount ("Creditor Party") shall net its obligation against the obligation of the other Party ("Debtor Party"). Specifically, the Debtor Party shall make payment of the difference, between amounts owed by the Creditor Party under the Transactions and amounts owed by the Debtor Party under the Transactions. Payment of such difference shall be made on the Payment Date. If the amounts owed by each Party to the other are equal, neither Party shall make payment. If the Payment Date falls on a Saturday, or a bank holiday other than Monday, payment shall be made on the preceding banking day. If the Payment Date falls on a Sunday or a Monday bank holiday, payment shall be made on the succeeding banking day. If the sale, purchase or exchange Contract calls for payment based upon the Seller's best estimates, where actual amounts are not available, that estimate shall be included in the monthly net settlement amount.
- (c) The Parties shall attempt to reconcile any disagreements as to items contained in any billing statement or invoice promptly and in a mutually agreeable manner. Notwithstanding the preceding sentence, neither Party may refuse to participate in the netting process under this Agreement due to a disputed billing statement or invoice. In the event of a disagreement over an amount owed, the Party disputing a charge shall nevertheless agree to the current payment of the

undisputed amount pending resolution of the dispute and shall proceed with the monthly netting process.

- (d) "Payment Date" shall be the 25th day of the month following the month of deliveries, if invoices are received by the Debtor Party on or before the 15th day of such month. For invoices received by the Debtor Party after the 15th day of such month, the Payment Date shall be ten (10) days after receipt of invoice. All payments shall be made by wire transfer.

- (1) For wire transfer payments to Mirant Americas Energy Marketing, LP:

Bank of America, N.A.
Dallas, Texas
ABA 111000012
A/C# 3751003269

- (2) For wire transfer payments to _____ :

ABA _____
A/C # _____

- 3. **CLOSE-OUT NETTING** - Without limiting any other rights that may be available to the Non-Defaulting Party (as hereinafter defined), if a Party (the "Defaulting Party"): (a) is the subject of a bankruptcy, insolvency, or similar proceeding; (b) fails to pay its debts generally as they become due; (c) makes a general assignment for the benefit of its creditors; (d) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets; (e) fails to pay or perform, when due, any obligations to the other Party ("Non-Defaulting Party") within three (3) business days of a demand for performance thereof; or (f) fails to provide adequate assurance of its ability to perform all of its outstanding obligations to the Non-Defaulting Party under one or more of the Transactions within forty-eight (48) hours of a demand therefor when the Non-Defaulting Party has reasonable grounds for insecurity, then the Non-Defaulting Party shall have the right, exercisable in its sole discretion, to liquidate all obligations arising under the Transactions, regardless of Commodity, whereupon they shall terminate, without notice or right to cure, and the monies due as a result of such terminated Transactions immediately shall be determined and netted among the Parties in the following manner:

- (a) The Non-Defaulting Party may (i) designate a date (which date shall be not less than five (5) nor more than twenty (20) business days after the Non-Defaulting Party delivers notice) (the "Early Termination Date") on which all outstanding Transactions shall terminate and (ii) withhold any payments due the Defaulting Party in respect of any Transactions; *provided, however*, if the Defaulting Party is the subject of a bankruptcy, insolvency, or similar proceeding, all outstanding Transactions shall automatically terminate, without notice or right to cure, and without any other action by either Party as if an Early Termination Date had been declared immediately prior to such event. The Non-Defaulting Party shall give notice that an Early Termination Date pursuant to this Agreement has been declared to the Defaulting Party on the business day following the declaration of the Early Termination Date, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party.
- (b) If an Early Termination Date has been designated, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs (as hereafter defined) resulting from the occurrence of the Early Termination Date. The Gains, Losses and Costs shall be determined by comparing the value of the remaining term, Contract quantities and Contract prices in respect of the terminated Transactions as if such Transactions had not been terminated, to the equivalent quantities and relevant market prices for the remaining term. To ascertain the market prices of replacement contracts, the Non-Defaulting Party may consider, among other valuations, any or all of the

settlement prices of relevant exchange-traded futures contracts, quotations from leading dealers in the relevant Base Contract market and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transportation, handling, and storage. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Settlement Amount. Any extensions of the term of the Transaction that are not binding on the Parties as of the Early Termination Date (including, but not limited to, "evergreen" provisions and options to extend) shall not be considered in determining Losses or Gains from the termination thereof. The Non-Defaulting Party shall aggregate such Gains, Losses and Costs with respect to all Transactions into a single net amount (the "Settlement Amount") and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, if any, resulting from the termination of the Transactions, the Defaulting Party shall, within five (5) business days of receipt of such notice, pay to the Non-Defaulting Party an amount equal to the Settlement Amount, plus (i) any Unpaid Amounts (as hereunder defined) owing to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid, less (ii) any Unpaid Amounts owing to the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from termination of the Transactions, the Non-Defaulting Party shall pay to the Defaulting Party an amount equal to the Settlement Amount, plus (i) any Unpaid Amounts owing to the Defaulting Party, less (ii) any Unpaid Amounts owing to the Non-Defaulting Party. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount, in whole or in part, the Defaulting Party shall promptly pay the total Settlement Amount plus all Unpaid Amounts, and within two (2) business days of receipt of Non-Defaulting Party's calculation of the Settlement Amount, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. In the event of a dispute, either Party may submit such dispute to binding arbitration as set forth in Section 4 of this agreement. If the dispute is resolved in favor of the Defaulting Party, then the disputed amount will be refunded within seven (7) business days with interest upon such amount, calculated at the Interest Rate (as hereafter defined) from the date the Settlement Amount was received until the date upon which the refund is made.

- (c) As used in subsection 3(b), above, with respect to each party: (i) "Interest Rate" shall mean the lower of the then effective prime rate published under "Money Rates" by the Wall Street Journal plus two (2) percent per annum, or the maximum applicable lawful interest rate; (ii) "Costs" shall mean brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations pursuant to a terminated EFP or Firm Transaction or entering into new arrangements which replace a terminated EFP or Firm Transaction, and reasonable attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement; (iii) "Gains" shall mean an amount equal to the present value of the economic benefit (exclusive of costs), if any, to the Non-Defaulting Party resulting from the termination of an EFP or Firm Transaction determined in a commercially reasonable manner as of the Early Termination Date; (iv) "Losses" shall mean an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of an EFP or Firm Transaction determined in a commercially reasonable manner as of the Early Termination Date; and (v) "Unpaid Amounts" shall mean any other amounts that became payable (or that would have become payable on or prior to the Early Termination Date) to a Party under the terms of this Agreement or in respect of any Transaction and which remain unpaid as of such Early Termination Date.
- (d) If a Settlement Amount is payable by the Non-Defaulting Party to the Defaulting Party under subsection 3(b) above, then, at the option of such Non-Defaulting Party and without prior notice to the Defaulting Party, such Settlement Amount may be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable by the Defaulting Party to the Non-

Defaulting Party under any other agreement(s) between Defaulting Party and the Non-Defaulting Party or instrument(s) or undertaking(s) issued or executed by the Defaulting Party to, or in favor of, the Non-Defaulting Party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). After the Non-Defaulting Party exercises such option, it shall give notice to the Defaulting Party of any set-off effected under this subsection (d). If an obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set-off in respect of that estimate, subject to such Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Nothing in this subsection (d) shall be effective to create a charge or other security interest.

4. **ARBITRATION** - Any dispute or need of interpretation arising out of this Agreement or pertaining to the calculation of a Settlement Amount or a payment required pursuant to Section 2 or 3 shall be submitted to binding arbitration by one arbitrator who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within thirty (30) days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the American Arbitration Association (the "AAA"). Such arbitration shall be held in alternating locations of the home offices of the Parties, commencing with Mirant's home office, or in any other mutually agreed upon location. The rules of the AAA shall apply to the extent not inconsistent with the rules herein specified. Either Party may initiate arbitration by written notice to the other Party and the arbitration shall be conducted according to the following: (a) not later than seven (7) days prior to the hearing date set by the arbitrator each Party shall submit a brief with a single proposal for settlement, (b) the hearing shall be conducted on a confidential basis without continuance or adjournment, (c) each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own expenses and those of its counsel and representatives and (d) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to arbitration and the cost to the Parties of their representatives and counsel shall not be permissible. Each Party understands that this Agreement contains an agreement to arbitrate with respect to any dispute. After signing this Agreement, each Party understands that it will not be able to bring a lawsuit concerning any dispute that may arise that is covered by this arbitration provision. Instead, each Party agrees to submit any such dispute to an impartial arbitrator. Any monetary award of the arbitrator may be enforced by the Party in whose favor such monetary award is made in any court of competent jurisdiction.
5. The Non-Defaulting Party's rights under this Agreement are in addition to and not in limitation or exclusion of any other rights the Non-Defaulting Party may have (whether by contract, operation of law or otherwise). Each Party reserves to itself all rights, setoffs, netting, counterclaims, and defenses which it is or may be entitled to arising from or out of the Transactions or other agreements between the Parties, at law or otherwise.
6. All agreements between the Parties, including forward and option Contracts, which contemplate the physical delivery of a Commodity shall be subject to the monthly and close-out netting mechanism herein provided. Except to the extent required for determination of the Settlement Amount in Section 3(b) herein, purely financial agreements between the Parties, including swaps and exchange traded derivatives, such as NYMEX futures, options on futures and physical deliveries where the NYMEX matches the counterparties and assumes the risk, shall not be subject to said netting mechanisms and the open interest of the Parties in any such agreements at the time of netting shall not affect the calculation of amounts to be netted.
7. The Parties agree that a Contract, as defined in this Agreement, shall constitute a "forward contract" within the meaning of the United States Bankruptcy Code.
8. This Agreement shall continue in effect for a period of one year after its effective date ("Primary Term") and from month to month thereafter. Following the expiration of the Primary Term, either Party may terminate this Agreement by giving the other Party hereto at least thirty (30) days written

notice. Notice may be given by a) certified U.S. mail b) signed facsimile or c) hand delivery. Termination will be effective on the first day of the calendar month after the effective date of the notice. Such termination shall not apply to any Transaction entered into or invoices or payments due or outstanding prior to the effective date of such notice.

9. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party; *provided, however*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an affiliate of such Party; or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; *provided, however*, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.
10. Except as set forth in Section 2, this Agreement shall have the effect of amending the provisions of all Contracts between the Parties hereto relating to the manner and method of payment (but excluding any "financial responsibility" or "creditworthiness" provisions contained therein), except as otherwise agreed to by the Parties in writing. As herein amended, such existing Contracts shall remain in effect. All future Contracts between the Parties also shall be subject to this Agreement unless otherwise agreed to by the Parties in writing.
11. This Agreement and the Parties' respective rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New York, excluding any conflict of laws rule which would apply the law of any other jurisdiction.
12. This Agreement supersedes and replaces any existing Netting Agreement in effect between the Parties.

**MIRANT AMERICAS ENERGY
MARKETING, LP, BY MIRANT
AMERICAS DEVELOPMENT,
INC., ITS GENERAL PARTNER**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____