



***Appendix C***  
***Product Package C***

***Flexible PPA Product***

***For***

***2011 Western Region***  
***Request For Proposals***  
***For***  
***Long-Term Supply-Side Resources***

Entergy Services, Inc.  
December 9, 2011

The statements contained in this Product Package are made subject to the Reservation of Rights set forth in Appendix D of the RFP and the terms and acknowledgements set forth in the Proposal Submission Agreement.

### Term Sheet for Flexible PPA Product

This Term Sheet describes certain key terms and conditions of a potential Definitive Agreement between ESI, as agent for Buyer (as defined in item 2 below), and the seller of power proposed by Bidder in its proposal (“Seller” and, together with Buyer, the “Parties”) for the purchase by Buyer of long-term capacity and other capacity-related benefits, energy and Other Electric Products. The terms and conditions set forth in this Term Sheet will be binding on Bidder (but not ESI or Buyer) and establish the basis for the negotiation and execution of an agreement between Buyer and each Seller whose proposal is selected by ESI (the “Definitive Agreement”), with necessary changes to accurately reflect any exceptions set forth in Bidder’s proposal that are accepted by Buyer. If Bidder is unable or unwilling to accept one or more of the terms and conditions set forth in this Term Sheet or wishes to propose any alternate or additional terms or conditions (such as a buy-out option at some point during the term of the Definitive Agreement), Bidder should indicate in the “Special Considerations” section of its proposal (i) the terms and conditions to which Bidder takes exception, describing with specificity any terms and conditions that Bidder proposes in substitution therefor, or (ii) the new terms and conditions that Bidder proposes as a supplement to the terms and conditions herein. Bidder is advised to refer to Section 2.2 in the Main Body for additional information pertaining to Special Considerations.

ID	Proposal Term	Description of Proposal Term
1	<b>Product Description:</b>	The Product described in this Term Sheet is designated as the “ <b>Flexible PPA Product.</b> ” This Product provides for unit-specific schedulable Flexible Capacity of not less than 275 MW and not more than 375 MW of nameplate capacity from a combined-cycle, gas-fired technology (CCGT) generating resource capable of meeting the requirements of this Product (the “Facility”) <sup>1</sup> . Buyer will be entitled to all Capacity and other capacity-related benefits, energy and Other Electric Products from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof).

<sup>1</sup> This Term Sheet is generally based upon the purchase of power from a CCGT resource. If a resource selected for negotiation of a Definitive Agreement under Product Package C is based upon a technology other than a CCGT resource, the terms of this Term Sheet applicable to the selected resource (and resulting Definitive Agreement) will be adjusted and revised as necessary to reflect, in a manner consistent with the approach taken in this Term Sheet when possible and appropriate, the differences attributable to or arising out of the selection of a technology other than CCGT..

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<b>2</b>	<b>Buyer:</b>	Entergy Texas, Inc. (“Entergy Texas”) or its designee(s) in connection with any financing of the Transaction by Entergy Texas. <sup>2</sup> For purposes of this RFP and the Definitive Agreement, Buyer will be considered an entity entirely separate and distinct from the Entergy transmission organization.
<b>3</b>	<b>Seller:</b>	The “Seller” will be as specified by Bidder in the applicable proposal.
<b>4</b>	<b>Facility:</b>	The Facility will be as specified by Bidder in the applicable proposal.
<b>5</b>	<b>Energy Delivery Point:</b>	The Energy Delivery Point, which must be located on the Entergy Transmission System, will be as specified by Bidder in the applicable proposal.
<b>6</b>	<b>Electric Interconnection and Transmission:</b>	<p>Seller will be responsible for the interconnection of the Facility and the transmission or transfer of power dispatched by Buyer to the Energy Delivery Point located on the Entergy Transmission System. Without limiting the foregoing, (i) all costs assigned to the interconnection customer under the interconnection agreement for the Facility and all costs of any transmission service and of any transmission system additions or modifications required for the interconnection of the Facility or the transmission or transfer of power to the Energy Delivery Point will be borne by Seller and (ii) if the Energy Delivery Point is not the Facility’s point of interconnection, then, to the extent applicable, Seller will be responsible for any basis differential between the Facility’s point of interconnection and the Energy Delivery Point. All proposals involving Facilities that are not (or will not be) directly interconnected to the Entergy Transmission System must provide for the firm transmission or transfer of power to the Energy Delivery Point.</p> <p>Buyer will be responsible for the transmission or transfer beyond the Energy Delivery Point of any power dispatched by Buyer and delivered to Buyer from the Facility at the Energy Delivery Point (<i>i.e.</i>, after Buyer’s receipt on the Entergy Transmission System). In this regard,</p>

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<sup>2</sup> See footnote 5 in the Main Body.

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		<p>Buyer will be responsible for the costs of transmission system additions and/or modifications beyond the Energy Delivery Point that are required solely to obtain firm transmission or transfer of such power beyond the Energy Delivery Point (<i>i.e.</i>, excluding those that are required to allow the Facility to interconnect or for the firm transmission or transfer of power to the Energy Delivery Point).</p>
7	<b>Delivery Term:</b>	<p>{<i>For existing resources</i>} Subject to item 36 below and the last paragraph of this item 7, the Delivery Term will be as specified by Bidder in the applicable proposal, and will commence at the start of hour ending 0100 CPT on the first day of the Delivery Term and continue through the end of hour ending 2400 CPT on the last day of the Delivery Term.</p> <p>{<i>For Developmental Resources</i>} Subject to item 36 below and the last paragraph of this item 7, the Delivery Term will be from the start of hour ending 0100 CPT on the later of (i) the second day after Buyer’s receipt of notice of the Commercial Operation Date (as defined in item 37 below) or (ii) the Expected Commercial Operation Date through the end of hour ending 2400 CPT on the day prior to the anniversary of such later date as specified by Bidder in the applicable proposal. The Expected Commercial Operation Date will be as specified by Bidder in the applicable proposal. [The Expected Commercial Operation Date must be no earlier than one hundred twenty (120) days before the Guaranteed Commercial Operation Date.] Buyer will consider proposals to purchase, and to the extent Buyer and Seller have agreed on the terms of purchase will purchase in accordance with such agreement, energy delivered after the Commercial Operation Date but prior to the Expected Commercial Operation Date. Buyer will not purchase test energy or any other energy deliveries prior to the Commercial Operation Date.</p> <p>Notwithstanding the foregoing, unless Buyer otherwise elects, the Delivery Term will not commence at the time it would otherwise commence if, at such time, (1) the Facility is experiencing an outage or other limitation, including a Force Majeure (as defined in item 31 below), that reduces the amount of capacity allocated to Buyer actually available at the Energy Delivery Point by ten percent (10%) or more</p>

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		below the Dependable Capacity allocated to Buyer (as defined in item 10 below) or (2) there exists a default (or event or circumstance that with the passage of time or the giving of notice or both would constitute a default) of Seller under the Definitive Agreement (in either case, a “Delivery Delay Condition”).
<b>8</b>	<b>Pricing:</b>	Pricing for this Product will be composed of (i) a Capacity Rate expressed in \$/kW-year specified in item 11 below; (ii) an Energy Price expressed in \$/MWh specified in item 18 below; (iii) a Variable O&M Rate expressed in \$/MWh specified in item 19 below; (iv) a Start-up Charge expressed in \$ per Completed Start specified in item 21 below; and (v) if applicable, a Start Fuel Charge expressed in \$ per Completed Start specified in item 22 below. Except to the extent otherwise expressly provided in this Term Sheet, Buyer will not be required to pay any amounts to Seller other than the Capacity Payment (equal to the Capacity Rate multiplied by the Dependable Capacity allocated to Buyer), the Energy Payment (equal to the sum of the Energy Price and the Variable O&M Rate, multiplied by the energy that is dispatched by Buyer and delivered to Buyer from the Facility at the Energy Delivery Point), the Start-up Payment (equal to the Start-up Charge multiplied by the number of Completed Starts) and, if applicable, the Start Fuel Payment (equal to the applicable Start Fuel Charge multiplied by the number of Completed Starts). All payments will be monthly in arrears.
<b>9</b>	<b>Nameplate Capacity Allocated to Buyer:</b>	The nameplate capacity of the Facility allocated to Buyer (expressed in MW) will be as specified by Bidder in the applicable proposal. ESI prefers proposals that offer a constant amount of nameplate capacity over the Delivery Term, but will consider proposals offering amounts that vary by year of the Delivery Term.
<b>10</b>	<b>Dependable Capacity:</b>	Capacity Payments and availability calculations will use the Dependable Capacity allocated to Buyer. The “Dependable Capacity allocated to Buyer” means the net MW that the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) is capable of delivering reliably to Buyer at the Energy Delivery Point at reference conditions of

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		<p>97° Fahrenheit and 56% relative humidity, as established and adjusted according to the following paragraph:</p> <p>The Dependable Capacity allocated to Buyer will be established and adjusted according to (i) capacity demonstration tests conducted (unless waived by Buyer) semi-annually or as part of, or shortly after, the completion of extraordinary repairs to the Facility, at Seller’s expense for the independent tester, and (ii) additional capacity demonstration tests conducted at the request of Buyer from time to time, at Buyer’s expense for the independent tester; provided, however, that in no event will the Dependable Capacity allocated to Buyer be increased above the expected Dependable Capacity allocated to Buyer for the applicable year of the Delivery Term specified by Bidder below (the “Maximum Dependable Capacity”). The semi-annual capacity demonstration tests will occur during the months of December or January and June or July of each year, except to the extent waived by Buyer. Each capacity demonstration test will be performed in accordance with standard industry practices and testing protocols to be set forth in the Definitive Agreement. Buyer will purchase the power delivered pursuant to any capacity demonstration tests.</p> <p>Based on the operating history of the Facility (if any) and Bidder’s knowledge of and, if applicable, experience with the Facility, Bidder expects that the Dependable Capacity allocated to Buyer (<i>i.e.</i>, the net MW that the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) is capable of delivering reliably to Buyer at the Energy Delivery Point at reference conditions of 97° Fahrenheit and 56% relative humidity) will be, for each contract year, as specified by Bidder in the applicable proposal.</p>
11	<b>Capacity Rate:</b>	<p>The Capacity Rate (expressed in \$/kW-year) for the Dependable Capacity allocated to Buyer in each year of the Delivery Term will be based upon the rate specified by Bidder in the applicable proposal. If Bidder has proposed, for all or a portion of the Capacity Rate, (i) a base rate expressed as \$/kW-year applicable to the entire Delivery Term and</p>

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		<p>(ii) an annual escalator (either CPI or PPI) applied on each anniversary of the start of the Delivery Term, the Capacity Rate (or the applicable portion thereof) will be the base rate multiplied by the percentage change in the escalator from the start of the Delivery Term through the applicable anniversary of the start of the Delivery Term on which the annual escalator is applied.</p> <p>The Capacity Rate, expressed in \$/kW-year, will be allocated to each month according to the schedule below, and the Capacity Payment (equal to the Capacity Rate for the applicable month multiplied by the Dependable Capacity allocated to Buyer as determined according to item 10 above) will be payable monthly in arrears, provided that such payment will be subject to a Capacity Payment discount based on Monthly Availability as described in item 12 below.</p> <table border="0"> <thead> <tr> <th><u>Month</u></th> <th><u>% of annual Capacity Rate</u></th> </tr> </thead> <tbody> <tr><td>January</td><td>7%</td></tr> <tr><td>February</td><td>7%</td></tr> <tr><td>March</td><td>4%</td></tr> <tr><td>April</td><td>4%</td></tr> <tr><td>May</td><td>9%</td></tr> <tr><td>June</td><td>15%</td></tr> <tr><td>July</td><td>15%</td></tr> <tr><td>August</td><td>15%</td></tr> <tr><td>September</td><td>9%</td></tr> <tr><td>October</td><td>4%</td></tr> <tr><td>November</td><td>4%</td></tr> <tr><td>December</td><td>7%.</td></tr> </tbody> </table>	<u>Month</u>	<u>% of annual Capacity Rate</u>	January	7%	February	7%	March	4%	April	4%	May	9%	June	15%	July	15%	August	15%	September	9%	October	4%	November	4%	December	7%.
<u>Month</u>	<u>% of annual Capacity Rate</u>																											
January	7%																											
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August	15%																											
September	9%																											
October	4%																											
November	4%																											
December	7%.																											
<b>12</b>	<b>Monthly Availability Requirement:</b>	The “Monthly Availability Requirement” will be 98% for each summer month (June through August) and each winter month (December through February) and 96% for each other month of the Delivery Term.																										

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		<p>The “Monthly Availability” will be calculated for each month as follows:</p> $MA_m = \frac{\sum_{i=1}^n AC_i}{\sum_{i=1}^n DC_i}$ <p>where:</p> <p><math>MA_m</math> = Monthly Availability for the applicable month;</p> <p><math>n</math> = total number of hours in the applicable month;</p> <p><math>i</math> = each hour in the applicable month;</p> <p><math>AC_i</math> = the lowest of:</p> <ul style="list-style-type: none"> <li>(a) the amount of capacity actually available during hour <math>i</math> (which, for the avoidance of doubt, means taken over the course of the entire hour <math>i</math> as a whole) at the Energy Delivery Point (whether or not dispatched by Buyer);</li> <li>(b) the amount of capacity set forth, or deemed to be set forth, as available in the availability notice for hour <math>i</math> provided by Seller to Buyer (but excluding any increases in availability of the Facility notified to Buyer after the day-ahead availability notice provided by Seller, unless Buyer dispatches the energy associated with the increased capacity); or</li> <li>(c) <math>DC_i</math> for hour <math>i</math>;</li> </ul> <p>provided that, (i) if the amount in clause (a) above would otherwise be less than the minimum permitted dispatch level for any of the operating configuration(s) of the Dependable Capacity allocated to Buyer, the amount in clause (a) above will be deemed to be the Dependable Capacity allocated to Buyer</p>
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		<p>actually available during hour <i>i</i> at the Energy Delivery Point <u>excluding</u> such configuration(s), and (ii) if, during hour <i>i</i>, the Facility is not capable of going down to the minimum permitted dispatch level for the Dependable Capacity allocated to Buyer specified by Bidder in item 20 below (even if it can achieve higher dispatch levels and whether or not dispatched by Buyer), <math>AC_i</math> will be deemed to be 0 MW for hour <i>i</i>; for the avoidance of doubt, capacity will be considered unavailable to the extent it is unavailable due to Force Majeure or to any curtailment or other limitation or shortcoming on, or other circumstance relating to, electric transmission occurring outside of the Energy Transmission System or otherwise at or before the Energy Delivery Point; and</p> <p><math>DC_i</math> = the Dependable Capacity allocated to Buyer during hour <i>i</i> <u>minus</u> the Affected Capacity (as defined below) during hour <i>i</i>; provided that the Affected Capacity resulting from Planned Maintenance (as defined in item 30 below) will be disregarded to the extent the Equivalent Planned Maintenance Hours (as defined in item 30 below) in the applicable contract year constitute Excess Equivalent Planned Maintenance Hours (as defined in item 30 below). “Affected Capacity” means the portion of the Dependable Capacity allocated to Buyer, if any, that is unavailable or limited during any hour due solely to Planned Maintenance or to a lack of available transmission service occurring beyond the Energy Delivery Point within the Energy Transmission System, except to the extent the lack of available transmission service is due to Force Majeure or an act or omission of Seller or its Affiliates or its direct and indirect contractors, subcontractors and suppliers or any of their respective agents or representatives (including any failure to comply with applicable laws, Accepted Electrical Practices, the interconnection agreement, any other project documents or the Definitive Agreement).</p>
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		<p>If the Monthly Availability for a month is below the applicable Monthly Availability Requirement, a Capacity Payment discount will apply to the Capacity Payment. The Capacity Payment discount will be two percent (2%) for each one percent (1%) shortfall to the Monthly Availability Requirement; provided, however, that (a) to the extent of unavailability due solely to Force Majeure, the Capacity Payment discount will be one percent (1%) for each one percent (1%) shortfall to the Monthly Availability Requirement and (b) in no event will the Capacity Payment be reduced below zero (0).</p>
<p><b>13</b></p>	<p><b>Capacity-Related Benefits and Environmental Attributes:</b></p>	<p>Any benefit associated with the capacity of the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof), including any capacity credit or similar right or benefit, will exclusively and solely accrue to and be owned by Buyer. Seller will be required, at its own expense, to timely execute and file all documents (including any applicable request for qualification as a capacity resource) and take all other actions necessary to obtain and transfer to Buyer capacity-related benefits, provided that Seller will not be required to pay for any system additions and/or modifications beyond the Energy Delivery Point that are required solely to obtain such capacity-related benefits (<i>e.g.</i>, that would not otherwise be required to allow the Facility to interconnect or for the firm transmission or transfer of power from the Facility to the Energy Delivery Point). Except as otherwise provided in the foregoing proviso, all costs required for any capacity qualification or otherwise to obtain and transfer to Buyer capacity-related benefits will be borne by Seller and should be considered in the Capacity Rate offered by Bidder.</p> <p>Any and all current or future environmental attributes associated with the capacity of the Facility allocated to Buyer or the generation of energy from such capacity, including any environmental attributes related to the avoidance of the emission of any gas, chemical, or other substance into the environment, will accrue exclusively to and be owned by Buyer. Seller will be required, at its own expense, to timely execute and file all</p>

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		documents (including any applicable request for qualification as a capacity resource) and take all other actions necessary to obtain and transfer to Buyer environmental attributes. For the avoidance of doubt, Buyer will not be required to pay any amounts for such environmental attributes; all consideration for environmental attributes associated with the capacity of the Facility allocated to Buyer is included in the Capacity Rate, and all consideration for environmental attributes associated with the generation of energy from such capacity is included in the Energy Price and Variable O&M Rate.
<b>14</b>	<b>Additional Testing/ Required Data:</b>	Without limiting item 13 above, to the extent Buyer is required by applicable laws (including Balancing Authority rules) to demonstrate the capability of the Facility for purposes of capacity qualification or otherwise test the Facility (including to meet requirements imposed by Buyer's participation in a reliability group or RTO) beyond the capacity demonstration tests contemplated by item 10 above, Seller will perform such tests according to applicable requirements. In such event, Buyer will purchase the power delivered pursuant to any such tests. In addition, Seller will provide to Buyer (in the form and timeframe reasonably requested by Buyer) all data and other information relating to the Facility, or the delivery of capacity and other capacity-related benefits, energy, and Other Electric Products under the Definitive Agreement, necessary or advisable for Buyer to participate fully in any markets (including any marketplace administered by the Balancing Authority) in which Buyer is participating, otherwise exercise its rights or perform its obligations set forth in item 6 above and item 17 below or otherwise comply with applicable laws.
<b>15</b>	<b>Other Electric Products:</b>	Seller will be required to qualify the Facility for, and (upon Buyer's dispatch pursuant to the Definitive Agreement) provide for Buyer's account at Seller's own expense, any Other Electric Products, including quick start, regulation or contingency response capability, capable of being provided by the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) at the applicable time. All costs required

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		to provide any Other Electric Products dispatched by Buyer will be borne by Seller.
16	<b>Dispatch Rights:</b>	<p>Throughout the Delivery Term, Buyer will have the right to dispatch the capacity and other capacity-related benefits, energy and Other Electric Products from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof), including modifying any existing dispatch notice, from time to time as it deems appropriate in its sole and absolute discretion on a day-ahead and intra-day basis, subject to Buyer’s observance of any operating restrictions (<i>i.e.</i>, minimum permitted dispatch levels, minimum run time and downtime, maximum number of Completed Starts, start times and ramp rates) set forth in this Term Sheet and according to the following:</p> <ul style="list-style-type: none"> <li>• Buyer may provide the initial dispatch notice or modify an existing dispatch notice for any day on a “day-ahead basis” until 8:30 a.m. CPT on the business day immediately prior to such day; and</li> <li>• Buyer may provide the initial dispatch notice or modify an existing dispatch notice after the day-ahead dispatch deadline for any day (<i>i.e.</i>, on an “intra-day basis”), provided that such intra-day dispatch notice complies with the maximum ramp rates and start times set forth in this Term Sheet. The use of this intra-day dispatch flexibility by Buyer may result in a different gas price applicable to Intra-Day Energy for purposes of the Energy Payment to be made by Buyer as described in item 18 below or in a settlement of gas resale gains or losses as described in item 28 below.</li> </ul> <p>Seller will make available to Buyer all capacity of the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) and will deliver to Buyer all associated capacity-related benefits, energy and Other Electric Products at the Energy Delivery Point in accordance with Buyer’s dispatch notices. Without limiting the foregoing, Seller will be</p>

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		<p>required to make available to Buyer, for delivery to Buyer at the Energy Delivery Point, any capacity of the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) in excess of the Dependable Capacity allocated to Buyer that the Facility is capable of delivering (as a result of prevailing ambient conditions or otherwise) to the Energy Delivery Point at any time, and, to the extent dispatched by Buyer (in its sole and absolute discretion), Seller will deliver to Buyer at the Energy Delivery Point the capacity-related benefits, energy and Other Electric Products associated with such excess capacity. Except to the extent required by a unit contingency, Seller will not interrupt, curtail or otherwise reduce the availability or deliveries of the capacity allocated to Buyer or any associated capacity-related benefits, energy and Other Electric Products, even if Seller is otherwise above the availability requirements of the Definitive Agreement. In addition, to the extent the Facility is capable, from time to time, of reduced operating restrictions (including reduced minimum permitted dispatch levels and start times and increased ramp rates) and, as a result, allows Buyer greater dispatch flexibility, Seller will make available such capability to Buyer.</p> <p>Buyer’s rights to the capacity and other capacity-related benefits, energy and Other Electric Products from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) are exclusive, and Seller may not offer, sell, deliver or make available during the Delivery Term any of such capacity, other capacity-related benefits, energy or Other Electric Products to any person other than Buyer (whether or not Buyer dispatches the same).</p>
17	<b>Tagging:</b>	<p>If (a) the Balancing Authority Area that includes the Energy Delivery Point becomes subject to an RTO or ISO or (b) “tagging,” scheduling, offering and/or bidding of capacity or capacity-related benefits, energy or Other Electric Products with the Balancing Authority (including into a marketplace administered by the Balancing Authority) is otherwise permitted or required, then:</p>

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		<ul style="list-style-type: none"><li>• Buyer will be entitled to (and, to the extent required by the rules, procedures and protocols of such Balancing Authority or other applicable Laws, Buyer will) “tag,” schedule, offer and/or bid (on an exclusive basis) the capacity and capacity-related benefits, energy and Other Electric Products at the Energy Delivery Point in its sole and absolute discretion, provided that Buyer dispatches the capacity and capacity-related benefits, energy and Other Electric Products that are expressly “tagged,” scheduled, offered and/or bid by Buyer in a manner that complies with any Balancing Authority requirement to generate (or not generate) each such product that is triggered solely by Buyer’s “tags,” schedules, offers and/or bids; and</li><li>• to the maximum extent permitted by applicable Balancing Authority rules, procedures and protocols and other laws, Seller will continue to perform all other functions with respect to the Facility before the applicable Balancing Authority (including any applicable RTO or ISO), including, to the extent applicable, transmitting to the applicable Balancing Authority (including any applicable RTO or ISO) operational data or information and coordinating outages and, if the Energy Delivery Point is not the Facility’s point of interconnection, “tagging,” scheduling, offering and/or bidding the capacity and capacity-related benefits, energy and Other Electric Products at the Electrical Interconnection Point for purposes of meeting Buyer’s dispatch; provided, however, that, to the extent that, under applicable Balancing Authority rules, procedures and protocols and other laws, such functions cannot be performed by a different Person than the Person that performs the functions described in the first bullet point above, Buyer will perform such functions at Seller’s expense and with full release and indemnification from Seller.</li></ul> <p>Buyer will be entitled to any payments from the Balancing Authority or any other person for capacity and capacity-related benefits, energy and Other Electric Products and to any other payments from the Balancing Authority in respect of the Facility (including the curtailment thereof),</p>
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		<p>and, if any such payments are received by Seller, Seller will promptly pay (or cause to be paid) to Buyer all such amounts so received. Notwithstanding the foregoing, Seller will be entitled to any payments for (and will be responsible for any settlement at negative prices of or other settlement charge for) capacity and capacity-related benefits, energy and Other Electric Products (i) required by the Balancing Authority or other Governmental Authority or the electric interconnection agreement or applicable law to be provided from the Facility that were not dispatched by Buyer or both expressly “tagged,” scheduled, offered and/or bid by Buyer pursuant to this item 17 and dispatched by the Balancing Authority solely as a result of such “tags,” schedules, offers and/or bids or (ii) to the extent applicable, if the Energy Delivery Point is not the Facility’s point of interconnection, “tagged,” scheduled, offered and/or bid by Seller at the Facility’s point of interconnection for purposes of meeting Buyer’s dispatch, provided that, in furtherance of Seller’s obligations pursuant to item 6 above, if the Balancing Authority at the Energy Delivery Point does not recognize physical delivery at the Energy Delivery Point (<i>e.g.</i>, because there is neither a generation resource nor a point of importation into such Balancing Authority at the Energy Delivery Point), Seller will be required to pay to Buyer the real-time price at the Energy Delivery Point for each MWh dispatched by Buyer. For the avoidance of doubt, any settlement at negative prices of, and other imbalance charges for, positive imbalance energy will be allocated according to item 29 below.</p>
18	<b>Energy Price:</b>	<p><i>[If Bidder has proposed a fixed Energy Price]</i> For each MWh of energy dispatched by Buyer and delivered to Buyer from the Facility at the Energy Delivery Point, Buyer will pay the “Energy Price” for the applicable year of the Delivery Term (expressed in \$/MWh) equal to, for each contract year, an amount based upon the amount specified by Bidder in the applicable proposal for such contract year.</p> <p><i>[If Bidder has proposed a floating Energy Price]</i> If Bidder has proposed a floating Energy Price, for each MWh of energy dispatched by Buyer and delivered to Buyer from the Facility at the Energy Delivery Point</p>

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		<p>during the Delivery Term, the “Energy Price” will be the Guaranteed Heat Rate (expressed in MMBtu/MWh) multiplied by the applicable fuel price (expressed in \$/MMBtu).</p> <p>The “Guaranteed Heat Rate” will be based upon the heat rate corresponding to Buyer’s dispatch level specified by Bidder in the applicable proposal for the season in which such dispatch occurs, provided that if, as a result of a unit contingency or other limitation, Buyer’s dispatch level was limited and such limitation would result in a higher applicable heat rate, the applicable heat rate will be the heat rate set forth in the table below corresponding to Buyer’s dispatch that would have occurred absent such limitation. The applicable heat rate is a blended heat rate for all MW included in the corresponding dispatch level. For example, if, for a dispatch level of 300 MW, the first 250 MW have a marginal Heat Rate<sup>3</sup> of 7.000 MMBtu/MWh and the other 50 MW have a Marginal Heat Rate of 10.000 MMBtu/MWh, the “applicable heat rate” for the dispatch level of 300 MW is 7.500 MMBtu/MWh = <math>[(250 \times 7.000) + (50 \times 10.000)] / (250 + 50)</math>, and the Energy Price will be based on a total of 2,250 MMBtu of gas = <math>300 \times 7.500</math>.</p> <p>The applicable fuel price (expressed in \$/MMBtu) will be the first-of-month gas price of gas (expressed in \$/MMBtu) published by Platts <i>Inside FERC’s Gas Market Report</i> (in the internet publication currently accessed through <i>www.platts.com</i>) in the table entitled “Market Center Spot-Gas Prices” under the column heading “Index” for gas to flow at the flow point specified by Bidder in the applicable proposal (either Henry Hub or Houston Ship Channel) on the first gas day of the month of delivery of the applicable energy [plus the “Gas Adder” (expressed in \$/MMBtu)] <i>{include bracketed language only if Bidder included a Gas Adder; incorporate the mechanism/formula for determination of, or the</i></p>
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<sup>3</sup>The “Marginal Heat Rate” is the heat rate associated with the incremental MW added to the next lower dispatch level. For example, if, for a dispatch level of 300 MW, the Guaranteed Heat Rate is 7.000 MMBtu/MWh and, for a dispatch level of 301 MW, the Guaranteed Heat Rate is 7.012 MMBtu/MWh, the Marginal Heat Rate for a dispatch level of 301 MW is 10.612 MMBtu/MWh =  $(301 \times 7.012) - (300 \times 7.000)$ , meaning that 10.612 MMBtu is the guaranteed level of additional gas consumption in each hour for the 301st MW when compared to a 300 MW dispatch level.

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		<p><i>fixed amount of, the Gas Adder</i>}, provided that, in the case of Intra-Day Energy (as defined below), the applicable fuel price will be the average purchase price (excluding any sales and use taxes and the cost of transportation and delivery, except to the extent included in the Gas Adder) incurred by Seller for gas used to generate such Intra-Day Energy (not to exceed any estimate therefor provided by Seller to Buyer upon Buyer’s request). For this purpose, “Intra-Day Energy” means, for any gas day, <u>any amount of</u> (a) the total energy dispatched by Buyer for delivery during such gas day after giving effect to any dispatch notices given by Buyer after the day-ahead dispatch deadline, but excluding any increases after the day-ahead dispatch deadline resulting from increased availability of the Facility notified to Buyer after the day-ahead availability notice deadline, <u>that is more than</u> (b) the Gas Flexibility Amount over the total amount of energy that was dispatched by Buyer for delivery during such gas day by the day-ahead dispatch deadline, where “Gas Flexibility Amount” refers to the quantity of energy corresponding to any tolerance on gas imbalances available to Seller under applicable gas interconnection arrangements.</p> <p>The applicable fuel price will include, if and to the extent provided in Bidder’s proposal, the actual amount (expressed in \$ per MMBtu) incurred by Seller for (i) sales or use taxes on its purchase of gas used to generate the energy dispatched by Buyer and/or (ii) third-party transportation and delivery of such gas to Seller (each a “Gas Adder”). The Gas Adder, if any, will be applied to the fuel price consistent with the mechanism/formula for inclusion of the Gas Adder specified by Bidder, if any, provided the mechanism/formula results in additions to the fuel price that are transparent and capable of verification by Buyer and do not exceed the actual costs incurred by Seller of the items described in clauses (i) and (ii) above. If Bidder does not include any mechanism/formula, the Gas Adder will not be applied to the fuel price.</p> <p>The Energy Price will not apply to ramp energy delivered by Seller to Buyer during any start-up.</p>
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19	<b>Variable O&amp;M Rate:</b>	<p>For each MWh of energy dispatched by Buyer and delivered to Buyer from the Facility at the Energy Delivery Point, Buyer will pay the “Variable O&amp;M Rate.” The Variable O&amp;M Rate (expressed in \$/MWh) for each year of the Delivery Term will be based upon the amount specified by Bidder in the applicable proposal. If Bidder has proposed, for all or a portion of the Variable O&amp;M Rate, (i) a base rate expressed as \$/kW-year applicable to the entire Delivery Term and (ii) an annual escalator (either CPI or PPI) applied on each anniversary of the start of the Delivery Term, the Variable O&amp;M Rate (or the applicable portion thereof) will be the base rate multiplied by the percentage change in the escalator from the start of the Delivery Term through the applicable anniversary of the start of the Delivery Term on which the annual escalator is applied. The Variable O&amp;M Rate will not apply to ramp energy delivered by Seller to Buyer during any start-up.</p>
20	<b>Operating Range:</b>	<p>The minimum permitted dispatch level(s) (expressed in MW delivered to Buyer at the Energy Delivery Point) for the operating configuration(s) corresponding to the capacity allocated to Buyer in each year are as specified by Bidder in the applicable proposal.</p> <p>For the avoidance of doubt, the minimum permitted dispatch level(s) referenced above apply only if Buyer elects, in its sole and absolute discretion, to dispatch the capacity allocated to Buyer. Buyer may elect, in its sole and absolute discretion, not to dispatch any of the capacity allocated to Buyer (<i>i.e.</i>, 0 MW).</p> <p>Based on the operating history of the Facility and Bidder’s experience with the Facility, the maximum MW capable of being delivered to Buyer at the Energy Delivery Point (<i>i.e.</i>, upper end of the operating range) for the operating configuration(s) corresponding to the capacity allocated to Buyer in each year of the Delivery Term during each of the seasons at the reference conditions corresponding to each such season is as specified by Bidder in the applicable proposal.</p>
21	<b>Start-up</b>	<p>For each Completed Start, Buyer will pay the “Start-up Charge.” The Start-up Charge (expressed in \$ per Completed Start) for each year of the</p>

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	<b>Charge:</b>	<p>Delivery Term will be based upon the amount specified by Bidder in the applicable proposal.</p> <p>If Bidder has proposed (i) a base Start-up Charge expressed as \$ per Completed Start applicable to the entire Delivery Term and (ii) an annual escalator (either CPI or PPI) applied on each anniversary of the start of the Delivery Term, the Start-up Charge will be the base Start-up Charge multiplied by the percentage change in the escalator from the start of the Delivery Term through the applicable anniversary of the start of the Delivery Term on which the annual escalator is applied.</p> <p>“Completed Start” means a start-up of a combustion turbine at the Facility (i) required to be undertaken solely as a result of an increase in dispatch by Buyer either from 0 MW to positive MW or from less than the minimum permitted dispatch level for a multiple combustion turbine operating configuration to greater than or equal to the minimum permitted dispatch level for such multiple combustion turbine operating configuration and (ii) during which (a) an output level to Buyer at the Energy Delivery Point equal to the minimum permitted dispatch level for the dispatched operating configuration is achieved for at least thirty (30) consecutive minutes and (b) the Facility is released unconditionally for ramping to, and the attainment of, any higher output level dispatched by Buyer, <u>but excluding</u> any such start-up that follows any shutdown that is not scheduled by Buyer (such as a shutdown resulting from the occurrence of a unit contingency or other limitation on the availability of the capacity of the Facility).</p>
22	<b>Start Fuel Charge:</b>	<p>To the extent specified by Bidder in the applicable proposal, for each Completed Start, Buyer will pay the “Start Fuel Charge” equal to the applicable gas price (expressed in \$/MMBtu) multiplied by the applicable start fuel amount (expressed in MMBtu), which gas price and start fuel amount will be based upon the amount specified by Bidder in the applicable proposal.</p>
23	<b>Maximum Completed</b>	<p>Buyer will have (a) a maximum number of Completed Starts per day equal to [ ] [<i>a number based on the maximum number of Completed</i></p>

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	<b>Starts:</b>	<i>Starts per combustion turbine per day specified by Bidder in the applicable proposal will be used</i> ] multiplied by the number of combustion turbines included in the capacity of the Facility allocated to Buyer and (b) a maximum number of Completed Starts per contract year equal to [ ] <i>[a number based on the maximum number of Completed Starts per combustion turbine per contract year specified by Bidder in the applicable proposal will be used]</i> multiplied by the number of combustion turbines included in the capacity of the Facility allocated to Buyer.
24	<b>Minimum Run Time:</b>	Buyer may schedule a shutdown of a combustion turbine following a Completed Start of such combustion turbine only after such combustion turbine has run at least [ ] hours (excluding start-up time) since such Completed Start <i>[a number based on the number of run hours specified by Bidder in the applicable proposal will be used]</i> .
25	<b>Minimum Downtime:</b>	Buyer may schedule a Completed Start of a combustion turbine following a shutdown of such combustion turbine scheduled by Buyer only after such combustion turbine has been down at least [ ] hours since such scheduled shutdown <i>[a number based on the number of hours since a scheduled shutdown specified by Bidder in the applicable proposal will be used]</i> .
26	<b>Start-up Times:</b>	The amount of time required to achieve a Completed Start (measured from the mechanical commencement of such Completed Start until achieved) for each type of start will be based upon the amount of time specified by Bidder in the applicable proposal.
27	<b>Maximum Ramp Rates:</b>	The maximum ramp rate in each operating configuration corresponding to the capacity allocated to Buyer will be based upon the maximum ramp rate specified by Bidder in the applicable proposal for such operating configurations.  These maximum ramp rates apply after the minimum permitted dispatch level for the applicable operating configuration has been achieved ( <i>i.e.</i> , after the start-up period).

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<p><b>28</b></p>	<p><b>Fuel Supply and Transport:</b></p>	<p>Subject to the terms of item 29, Seller will have sole responsibility for and bear the full costs (including any applicable gas taxes) of the arrangement, procurement, transportation, nomination, delivery, storage, use, loss and disposition of fuel for the Facility. Without limiting the foregoing, Seller will bear all risk associated with any decision not to procure firm fuel supply and transportation. If the capacity allocated to Buyer is or will be unavailable as a result of Seller’s failure to procure firm fuel supply or transportation, Buyer will have the right, but not the obligation, to obtain replacement capacity or to start-up or increase the output of its own generating resources to replace any portion of the capacity that is not or will not be provided by Seller. In such event, Seller will pay to Buyer the positive difference, if any, obtained by subtracting (i) any amount that would have been paid by Buyer under the Definitive Agreement for the equivalent output from the Facility that is not paid by Buyer from (ii) the sum of all costs incurred by Buyer in connection with or relating to the provision or purchase, and use (including incremental transmission costs), of the replacement capacity and associated capacity-related benefits, energy and/or Other Electric Products that would not have been incurred if the capacity and associated capacity-related benefits, energy and/or Other Electric Products had been provided by Seller according to the Definitive Agreement.</p> <p>If, for any gas day, (a) the total energy dispatched by Buyer for delivery during such gas day after giving effect to any dispatch notices given by Buyer after the day-ahead dispatch deadline, but excluding any reductions after the day-ahead dispatch deadline resulting from reduced availability of the Facility notified to Buyer after the day-ahead availability notice deadline, <u>is more than the Gas Flexibility Amount less than</u> (b) the total amount of energy that was dispatched by Buyer for delivery during such gas day by the day-ahead dispatch deadline, then, to the extent (and only to the extent) that, solely as a result of such reduction in dispatch, Seller was required to resell (and actually resold) gas, Buyer will reimburse Seller for any gas resale losses actually incurred by Seller as a result of such resales, and Seller will pay to Buyer any gas resale gains actually realized by Seller as a result of such resales.</p>
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		<p>For this purpose, “Gas Flexibility Amount” has the same meaning as specified in item 18 above.</p>
<p><b>29</b></p>	<p><b>Operation and Maintenance Costs/ Imbalances:</b></p>	<p>Without limiting Buyer’s Capacity Payment, Energy Payment, Start-up Payment and, if applicable, Start Fuel Payment obligations provided in this Term Sheet and except to the extent otherwise expressly provided in this Term Sheet, Seller will bear all costs and expenses of any kind or character incurred in connection with the ownership, leasing, financing, operation, maintenance, use, testing, repair or replacement of the Facility (or any part thereof), including the real property interests related thereto, or the conduct of business by Seller, including the provision or delivery of capacity and capacity-related benefits, energy and Other Electric Products under the Definitive Agreement. Without limiting the foregoing, Seller will be responsible for:</p> <ul style="list-style-type: none"> <li>• any Balancing Authority (including applicable RTO or ISO) membership, transaction or other fees or charges;</li> <li>• penalties, fees, assessments or other costs or charges for failure to satisfy any policy, rule, guideline, procedure, protocol, standard, criterion or requirement of the transmission provider, any market monitor, the ICT or the Balancing Authority (including any applicable RTO or ISO) (“BA Penalties”);</li> <li>• fuel and electric imbalance charges; integration charges; Other Electric Products and other Balancing Authority (including any applicable RTO or ISO) services (including regulation); and</li> <li>• similar costs and charges associated with the ownership, leasing, financing, operation, maintenance, use, testing, repair or replacement of the Facility (or any part thereof), including the real property interests related thereto, or the conduct of business by Seller, including the provision or delivery of capacity and capacity-related benefits, energy and Other Electric Products under the Definitive Agreement (including costs or charges associated with any offer or bid made by Buyer at the Energy</li> </ul>

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		<p>Delivery Point and, if the Balancing Authority at the Energy Delivery Point does not recognize physical delivery at the Energy Delivery Point (<i>e.g.</i>, because there is neither a generation resource nor a point of importation into such Balancing Authority at the Energy Delivery Point), costs or charges associated with any virtual offer or bid made by Buyer at the Energy Delivery Point to synthetically create such physical delivery), in each case as now or in the future assessed (including, if applicable, after the Balancing Authority Area that includes the Energy Delivery Point becomes subject to an RTO or ISO or any other implementation of a marketplace),</p> <p>but in each case excluding imbalance charges payable by Buyer pursuant to the immediately following paragraph and BA Penalties incurred by Seller solely as a result of (i) compliance by Seller with a dispatch notice issued by Buyer that requires Seller to violate (a) a directive or other instruction communicated by the Balancing Authority to Buyer in its role as market participant pursuant to item 17 above that has not been communicated to Seller or (b) a Balancing Authority requirement to generate (or not generate) a product expressly “tagged,” scheduled, offered and/or bid by Buyer pursuant to item 17 above that is triggered solely by Buyer’s “tags,” schedules, offers and/or bids or (ii) Buyer “tagging,” scheduling, offering and/or bidding the capacity and capacity-related benefits, energy and Other Electric Products in a manner that violates Balancing Authority requirements. If Buyer is invoiced for or otherwise assessed any amounts that are the responsibility of Seller under this or the following paragraph, Seller will promptly pay such amounts to Buyer.</p> <p>Without limiting the immediately preceding paragraph, Seller will be responsible and pay for all fuel and electric imbalance charges (regardless of whether assessed against Seller or Buyer) arising out of or in connection with the Definitive Agreement, except that Buyer will be responsible for any electric imbalance charges resulting solely from Buyer submitting a “tag” or schedule to the Balancing Authority</p>
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		pursuant to item 17 above that is inconsistent with Buyer’s dispatch notice to Seller.
30	<b>Planned Maintenance:</b>	<p>“Planned Maintenance” refers to maintenance of the Facility (or any portion thereof) that (i) is scheduled in advance with Buyer in accordance with the terms of the Definitive Agreement and has a predetermined start date and duration (<i>e.g.</i>, annual overhaul, inspections, testing) and (ii) includes a reduction in the availability of the capacity or operation of the Facility.</p> <p>All maintenance of the Facility (or any portion thereof) that has a predetermined start date and duration and includes a reduction in the availability of the capacity or operation of the Facility is required to be coordinated and scheduled in accordance with the Definitive Agreement as Planned Maintenance. Seller will have the right to schedule and conduct Planned Maintenance only during a March/April maintenance period and an October/November maintenance period.</p> <p>During the Delivery Term, Seller will deliver to Buyer its proposed schedule for Planned Maintenance on or before (i) in respect of the March/April maintenance period, September 1 of the preceding year, and (ii) in respect of the October/November maintenance period, February 1 of the calendar year in which such maintenance period will occur. The Parties will then finalize a mutually acceptable schedule for Planned Maintenance.</p> <p>Affected Capacity resulting from Planned Maintenance will be excluded in determining <math>DC_i</math> for purposes of the calculating Monthly Availability, except to the extent of Equivalent Planned Maintenance Hours exceeding a maximum number of Equivalent Planned Maintenance Hours per contract year (“Excess Equivalent Planned Maintenance Hours”), all as set forth in item 12 above.</p> <p>“Equivalent Planned Maintenance Hours” means (i) the product of (a) the Dependable Capacity allocated to Buyer that is unavailable or limited due to Planned Maintenance, expressed in MW, multiplied by (b) the</p>

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		<p>period of such Planned Maintenance, expressed in hours (or any portion thereof), divided by (ii) the Dependable Capacity allocated to Buyer.</p> <p>The maximum number of Equivalent Planned Maintenance Hours in each contract year will be calculated as follows for purposes of determining Excess Equivalent Planned Maintenance Hours:</p> <p>(i) one combustion inspection may be performed for each combustion turbine providing the Dependable Capacity allocated to Buyer after every [_____] run hours of such combustion turbine [<i>a number based on the run hours specified by Bidder in the applicable proposal will be used</i>] for up to [_____] Equivalent Planned Maintenance Hours for each inspection [<i>a number based on the EPMH specified by Bidder in the applicable proposal will be used</i>]; provided, however, that this clause (i) will not apply during multipliers of run hours when clause (ii) or clause (iii) below applies;</p> <p>(ii) one hot gas inspection may be performed for each combustion turbine providing the Dependable Capacity allocated to Buyer after every [_____] run hours of such combustion turbine [<i>a number based on the run hours specified by Bidder in the applicable proposal will be used</i>] for up to [_____] Equivalent Planned Maintenance Hours for each inspection [<i>a number based on the EPMH specified by Bidder in the applicable proposal will be used</i>]; provided, however, that this clause (ii) will not apply during multipliers of run hours when clause (iii) below applies;</p> <p>(iii) one “major” inspection may be performed for each combustion turbine providing the Dependable Capacity allocated to Buyer after every [_____] run hours of such combustion turbine [<i>a number based on the run hours specified by Bidder in the applicable proposal will be used</i>] for up to [_____] Equivalent Planned Maintenance Hours for each inspection [<i>a number based on the EPMH specified by Bidder in the applicable proposal will be used</i>];</p> <p>(iv) a steam turbine “minor” inspection may be performed for each</p>
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		<p>steam turbine providing the Dependable Capacity allocated to Buyer after every [_____] run hours of such steam turbine [<i>a number based on the run hours specified by Bidder in the applicable proposal will be used</i>] for up to [_____] Equivalent Planned Maintenance Hours for each “minor” inspection [<i>a number based on the EPMH specified by Bidder in the applicable proposal will be used</i>]; provided, however, that this clause (iv) will not apply during multipliers of run hours when clause (v) below applies; and</p> <p>(v) a steam turbine “major” inspection may be performed for each steam turbine providing the Dependable Capacity allocated to Buyer after every [_____] run hours of such steam turbine [<i>a number based on the run hours specified by Bidder in the applicable proposal will be used</i>] for up to [_____] Equivalent Planned Maintenance Hours for each “major” inspection [<i>a number based on the EPMH specified by Bidder in the applicable proposal will be used</i>].</p> <p>Notwithstanding the foregoing limitations, if the number of run hours indicated above are expected by Seller to occur during periods other than the March/April maintenance period or October/November maintenance period, Seller will schedule any performance of the applicable inspection during the March/April maintenance period or October/November maintenance period immediately preceding their occurrence. Further, in the event that two or more of a major inspection under clause (iii) above or a steam turbine “minor” inspection or “major” inspection under clause (iv) or clause (v) above are expected to occur within the same twelve (12)-month period according to the parameters set forth above, Seller will use commercially reasonable efforts to schedule the outages related thereto to occur during the same period, and, in order to do so, may perform the affected outages earlier than would apply according to the foregoing limitations. For the avoidance of doubt, the obligations of Seller described in the previous two sentences will not apply if the result of giving effect to such obligations would be the acceleration of maintenance to be performed by or for Seller after the expiration of the Delivery Term. For existing Facilities, Seller will be required to provide</p>
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		<p>and certify the applicable run hours of the generating unit(s) providing the Dependable Capacity (since first operation of such generating unit and since the most recent inspection of each applicable type described in clauses (i)-(v) above) as of the execution of any Definitive Agreement arising herefrom, the commencement of the Delivery Term and at periodic intervals thereafter.</p>
<p><b>31</b></p>	<p><b>Force Majeure:</b></p>	<p>“Force Majeure” means any event that meets all of the following criteria: (i) the event occurs after the execution of the Definitive Agreement; (ii) the event and its effects are not within the reasonable control, directly or indirectly, of the Party claiming Force Majeure (including its direct and indirect contractors, subcontractors and suppliers); (iii) the event and its effects are unavoidable or could not be prevented, overcome or removed by the reasonable efforts and diligence of the Party claiming Force Majeure (including its direct and indirect contractors, subcontractors and suppliers); (iv) the event and its effects do not result from such Party’s negligence or fault (including any breach by such Party of the Definitive Agreement) or the negligence or fault of its direct or indirect contractors, subcontractors or suppliers; and (v) the event causes the Party claiming Force Majeure, despite such Party’s (including its direct and indirect contractors, subcontractors and suppliers) use of reasonable efforts and diligence, to be actually delayed in performing, or unable to perform, its obligations under the Definitive Agreement, in whole or in part (for reasons other than economic hardship, including lack of money). Provided the event meets all of the criteria described above, Force Majeure will include: natural disasters; landslides; drought; fire; flood; earthquake; hurricanes; tornados; tsunamis; hail and ice and ice storms that are abnormally severe for the period of time when, and the area where, such weather event or condition occurs; epidemic; war (whether declared or undeclared) or other armed conflict; riot; explosions; civil disturbance; sabotage; vandalism; terrorism; documented threats of terrorism; and blockades.</p> <p>Force Majeure will not include: (a) mechanical failure or other breakdown, flaw, defect, or failure of equipment or systems not the</p>

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		<p>direct or proximate result of acts of God (which acts of God will include floods, earthquakes, hurricanes, tornadoes and lightning); epidemics; war; riots; civil disturbances; and, subject to clause (b) of this sentence, sabotage; (b) sabotage by employees, agents, representatives, or direct or indirect contractors, subcontractors or suppliers of the Party claiming Force Majeure; (c) delay in obtaining, or failure to obtain or revocation of, a permit, consent, license or other authorization; (d) any event stated in the technical specifications of the Facility to be within the tolerance of the Facility; (e) the failure or other act or omission of employees, agents, representatives, or direct or indirect contractors, subcontractors or suppliers of the Party claiming Force Majeure (including the failure of a direct or indirect contractor, subcontractor or supplier to furnish machinery, spare parts, materials, consumables (including fuel), labor, equipment or services in accordance with its contractual obligations) or any non-delivery, delayed delivery, shortages or other unavailability of machinery, spare parts, materials, consumables (including fuel), labor, equipment or services (including any interruption or curtailment of fuel transportation or electric transmission), unless (1) the Party claiming Force Majeure has a firm contract for the applicable service or item and (2) the provider, if it were a party to the Definitive Agreement, would be able to claim Force Majeure for the same; (f) any weather event or condition that is not abnormally severe for the period of time when, and the area where, such weather event or condition occurs; (g) Seller's ability to sell the capacity and capacity-related benefits, energy and/or Other Electric Products at a price greater than provided for in the Definitive Agreement; (h) a Party's financial inability to perform; (i) events that affect the cost of equipment or materials or other costs of owning, operating, or maintaining the Facility or changes in market conditions affecting the economics of either party (including a change in commodity prices or increased inflation) or any other economic hardship (including lack of money); or (j) labor strikes, slowdowns or stoppages.</p> <p>If Buyer is the Party claiming Force Majeure and does not overcome the Force Majeure and resume performance of its obligations under this Agreement within (i) twelve (12) months after the inception of such</p>
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		<p>Force Majeure if the Force Majeure commences within the first third of the Delivery Term (rounded to the nearest contract year), (ii) nine (9) months after the inception of such Force Majeure if the Force Majeure commences within the second third of the Delivery Term (rounded to the nearest contract year) or (iii) six (6) months after the inception of such Force Majeure if the Force Majeure commences within the final third of the Delivery Term, then Buyer may, at any time following the end of such twelve (12), nine (9), or six (6)-month period, as applicable, and for so long as performance continues to be delayed or prevented by Force Majeure, terminate the Definitive Agreement upon notice to Seller. Neither Party will have any liability arising out of a termination effectuated in accordance with this paragraph.</p>
32	<b>Replacement Products:</b>	<p>When Seller is not capable of providing the full availability of capacity and capacity-related benefits, energy and/or Other Electric Products from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof), Seller may, but will not be obligated to, offer to provide and deliver replacement capacity and capacity-related benefits, energy and/or Other Electric Products. In such event, Buyer will, in its sole and absolute discretion, have the right to accept or reject the offer of replacement. If Buyer receives such an offer and Buyer, in its sole and absolute discretion, accepts such offer in writing, such replacement product(s) will be treated the same as if Seller provided the product(s) from the Facility for the period for which Buyer has agreed that Seller may provide such replacement product(s), except to the extent the parties have agreed otherwise in writing (including in the agreement(s) permitting Seller to provide such replacement product(s)). Without limiting and subject to the foregoing, replacement capacity will be treated as Dependable Capacity for all purposes under the Definitive Agreement, including the availability calculations.</p>
33	<b>No QF Put:</b>	<p>Notwithstanding any other provision of the Definitive Agreement, Seller waives any and all rights to deliver “qualifying facility” energy from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion</p>

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		<p>of the nameplate capacity of the Facility, the corresponding portion thereof) to the host utility at any time during the Delivery Term and expressly agrees not to deliver “qualifying facility” energy from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) to the host utility at any time during the Delivery Term.</p>
<p><b>34</b></p>	<p><b>Change in Law:</b></p>	<p>Seller and Buyer acknowledge the possibility that a change in law may occur that requires or will require one or both of the Parties to incur additional costs (including environmental costs) during the Delivery Term beyond those projected to be incurred by such Party as of the date of execution of the Definitive Agreement. Notwithstanding the foregoing, if such a change in law occurs, the other Party will not be required to share in, reimburse or otherwise pay all or any portion of such additional costs except as otherwise expressly provided below.</p> <p>For purposes of this item 34, “Environmental Change in Law” means (i) the enactment, promulgation, issuance or adoption by a Governmental Authority with jurisdiction of new environmental legislation, rules or regulations or (ii) the amendment by a Governmental Authority with jurisdiction of existing environmental legislation, rules or regulations, in the case of each of clause (i) and (ii), that occurs after the date of execution of the Definitive Agreement, is binding upon Seller, applies to or in respect of the Facility, modifies the requirements in respect of the Facility with respect to Carbon Matters, and is of general applicability to electric power generation facilities located in the state where the Facility is located (or the owners thereof). “Environmental Change In Law” excludes, without limitation, any enactment, promulgation, issuance, adoption, or amendment described in clause (i) or (ii) above that (A) results from any action or omission of (1) Seller, its Affiliates, or any of their respective contractors or subcontractors of any tier (including the operator of the Facility), employees, agents or representatives or (2) any steam host or other customer (other than Buyer) of the Facility, including any violation of law or permit or modification of the Facility by any such person, (B) was not beyond the reasonable control of any such person or,</p>

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		<p>with the exercise of due diligence, could reasonably have been prevented, avoided, overcome or removed by such person, or (C) was enacted, promulgated, issued, adopted, or amended, or was pending or officially proposed, as of the date of execution of the Definitive Agreement but takes effect after the date of execution of the Definitive Agreement.</p> <p>Also for purposes of this item 34, “Carbon Matters” means (i) taxes imposed by a Governmental Authority with jurisdiction the payment of which is based specifically on the carbon content of the fuel for, or of emissions into the atmosphere from, an electric power generation facility, (ii) allowances required by a Governmental Authority with jurisdiction under a mandatory federal, regional or state cap and trade program to emit up to a specific quantity of CO or CO<sub>2</sub> during a specified period, and (iii) those matters resulting from an Environmental Change In Law the principal objective of which is the reduction or regulation of carbon-based emissions and that directly affects the cost for Seller to provide power to Buyer from the Facility (<i>e.g.</i>, any matter resulting from the Cooling Water Intake Structure Rule (proposed rule under Section 316(b) of the Clean Water Act), were it to become law and eligible to be an Environmental Change In Law (which it is not), would not be a Carbon Matter). For the avoidance of doubt, “Carbon Matters” excludes the implementation by rule or regulation or in a permit, license, or other authorization issued or otherwise given by a Governmental Authority of a best available control technology standard, any other technology standard, or a new source performance standard (except to the extent provided in clause (ii) of this paragraph).</p> <p>On and subject to the other terms herein and in the Definitive Agreement, Buyer will pay the net increase or decrease (as the case may be) in the reasonable, actual, direct, and verifiable out-of-pocket costs, without mark-up, that Seller incurs in the provision to Buyer of, and only to the extent incurred in the provision to Buyer of, dependable capacity allocated to Buyer (in the case of capital costs) or associated energy and Other Electric Products (in the case of variable costs) as a direct and</p>
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		<p>proximate result of, and only to the extent required by, the Environmental Change In Law (“ECIL Costs”). ECIL Costs exclude, without limitation, any costs that would not have been incurred but for other uses of the Facility. If more than one commercially reasonable option is available to comply with an Environmental Change In Law, the least cost option will serve as and establish the basis for determining the ECIL Costs payable by Buyer irrespective of the option actually selected. Buyer will have at least 180 days after the receipt of a prescribed notice from Seller of an Environmental Change In Law to diligence the proposed Environmental Change In Law and associated ECIL Costs. Seller will be required to cooperate with Buyer during the diligence phase. If the Parties are unable to agree on an ECIL Cost, either Party may refer the matter to specialists for resolution of the dispute.</p> <p>ECIL Costs may be either amortized (capital) or unamortized (expensed). The calculation of Buyer’s share of amortized ECIL Costs for each amortized item will be based on (i) the item’s total net cost amortized on a levelized basis over the item’s useful economic life at a rate of 6.5%, (ii) Buyer’s share (using Dependable Capacity) of the total capability of the Facility (whether or not used), including, if applicable, thermal capability, but in no event greater than such share at the conclusion of Buyer’s diligence of the Environmental Change In Law, and (iii) a ratio determined by dividing the balance of the Delivery Term at the time of permanent placement into service (after installation and testing) of the capital item by the item’s useful economic life. (Useful economic life will be determined without regard to the ownership of the item, the terms of the Definitive Agreement (including the Delivery Term), or any other term or condition of any lease, financing, or other agreement affecting the Facility.) Unamortized ECIL costs will be based on Buyer’s share of total consumption (electric and thermal) from the Facility. ECIL Costs (whether capital or expensed, amortized or unamortized) payable by Buyer will be rolled into Buyer’s monthly energy payment and segregated according to Environmental Change In Law event. Buyer will have the right to audit all ECIL Costs passed through to Buyer, including the right to verify the amount of ECIL Costs</p>
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		<p>allocated to the Facility's other customers, including steam hosts.</p> <p>For ECIL Costs otherwise payable by Buyer, Seller will bear the first \$[ ] million in the aggregate. If and when the Seller deductible for a particular ECIL Cost is exceeded, then, and only then, Buyer will bear, subject to the other terms hereof, its share of future ECIL Costs until its share of such costs equals (i) for amortized costs, \$[ ] million in the aggregate, (ii) for unamortized costs, \$[ ] million in the aggregate, or (iii) for any combination of amortized and unamortized costs, \$[ ] million in the aggregate.<sup>4</sup> Thereafter, subject to the other terms hereof, Seller will bear all ECIL Costs with respect to any Environmental Change In Law.</p> <p>Once any of the ECIL Cost caps are reached, or Buyer reasonably expects and so notifies Seller, at any point during the Delivery Term, that any of the ECIL Cost caps will be reached, Seller will have a period of sixty (60) days to elect to terminate the Definitive Agreement and notify Buyer of such election. If Buyer does not receive such notice within such sixty (60)-day period, Seller will be deemed to have waived such termination right with respect to all Environmental Changes In Law to date. If Buyer receives such notice within such sixty (60)-day period, Buyer will have a period of thirty (30) days thereafter to elect to pre-empt such termination by agreeing to pay its share of ECIL Costs incurred after Buyer's notice with respect to all Environmental Changes In Law to date (excluding all Environmental Changes in Law with respect to which Seller has previously waived its termination rights). If Buyer has elected to pre-empt termination, Buyer will have the right to terminate the Definitive Agreement on a rolling basis, upon three (3) months' prior notice to Seller.</p> <p>If compliance with an Environmental Change In Law involves covered</p>
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<sup>4</sup> Bidders will be required to specify proposed amounts for the Seller deductible and the Buyer caps in its proposal. Without limiting the other terms of this RFP, including Appendix D, the deductible and cap amounts specified by Bidder in its proposal will not be binding on Buyer and Buyer will have no obligation whatsoever to accept such proposed terms in any Definitive Agreement arising out of such proposal.

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		<p>emission allowances, Buyer and Seller will use commercially reasonable efforts to develop and agree upon a written plan to govern the procurement, disposition, transfer, use, and market price determinations (including applicable indices) of, and accounting and billing for, such allowances required for the production of energy from Dependable Capacity for the applicable time period (as modified from time to time hereunder, "Emission Allowance Plan") or, if an Emission Allowance Plan is already in place, appropriate modifications to such plan. The Emission Allowance Plan will include terms and provisions with respect to sales, procurement, deposits, surrenders, transfers, records, and reports of covered emission allowances, including amounts, pricing, timing and sourcing and such other matters that the Parties agree to include in the plan. To the extent that, despite the use of commercially reasonable efforts and compliance with the terms hereof, the Parties do not agree upon a term of the Emission Allowance Plan or any modification thereof, Buyer will determine the terms of such Emission Allowance Plan or modification thereof in its sole discretion, provided that (i) any such terms determined by Buyer may not prevent Seller from complying with the requirements of applicable laws or cause Seller to be in breach of its obligations hereunder or, if and to the extent applicable, to a steam host of the Facility and (y) if Buyer does not determine and notify Seller of the terms of an Emission Allowance Plan or a modification thereof, as applicable, at least five (5) Business Days prior to the date on which Seller must begin to incur ECIL Costs under the applicable Environmental Change In Law, then Seller will determine the terms of the Emission Allowance Plan or modification thereof, as applicable, in its reasonable discretion, subject to Buyer's rights herein to supersede or modify such Emission Allowance Plan. Any Emission Allowance Plan or modification thereof shall remain in effect until superseded by another Emission Allowance Plan or modification thereof agreed upon by the Parties in accordance with the terms hereof. Seller will procure, allocate, and manage the procurement of covered emission allowances for the Facility in conformity with the Emission Allowance Plan and, to the extent not modified by the Emission Allowance Plan, the requirements of</p>
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		the Definitive Agreement and Accepted Electrical Practices. Seller will be responsible for timely making available to Buyer hereunder, at no cost to Buyer, Buyer's pro rata share (calculated using the ratio used to calculated unamortized ECIL costs) of any covered emission allowance granted or allocated by a Governmental Authority in respect of the Facility relating to any period during the Delivery Term. Costs not incurred in accordance with the Emission Allowance Plan may not be included as ECIL Costs payable by Buyer.
<b>35</b>	<b>Credit Support:</b>	Seller will be expected to meet the credit support requirements detailed in this RFP, including Appendix E, all of which will be more fully developed in the Definitive Agreement.
<b>36</b>	<b>Conditions Precedent:</b>	<p>Buyer's obligations under the Definitive Agreement will be conditioned upon the fulfillment or express waiver, by Buyer, of all of the following conditions:</p> <ol style="list-style-type: none"> <li>1. Buyer has obtained from FERC and/or each of the state or local governmental authorities having jurisdiction over Buyer or Buyer's operations (i) regulatory approval of the Definitive Agreement and the transaction thereunder or contemplated thereby, including approval of the full recovery of all Buyer costs associated with the Definitive Agreement (through base rates, fuel adjustment charges, and/or such other rates or charges as may be applied pursuant to a rider or otherwise) pursuant to a finding that the participation by Buyer in the Definitive Agreement is prudent and in the public interest, and (ii) any other regulatory treatment in connection with the Definitive Agreement and any transaction contemplated thereby, including with respect to timing, scope, means of recovery, and any certificate of convenience and necessity, which approvals are, in each case, final and non-appealable and on terms and conditions acceptable to Buyer in its sole and absolute discretion;</li> <li>2. Buyer has obtained the governmental approvals and other third-party consents necessary or prudent for Buyer to enter into the Definitive Agreement or to perform its obligations thereunder, which approvals and consents are, in each case, on terms and</li> </ol>

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		<p>conditions acceptable to Buyer in its sole and absolute discretion;</p> <ol style="list-style-type: none"><li>3. [Buyer has obtained the consents, approvals and authorizations contemplated by item 38 below on terms and conditions acceptable to Buyer in its sole and absolute discretion;]</li><li>4. the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) has qualified as a firm network resource with deliverability on a firm network resource basis to Buyer's load served from the Entergy Transmission System and specifically from the Western Region, and Buyer has otherwise obtained transmission service from the Energy Delivery Point in respect of the capacity and capacity-related benefits, energy and Other Electric Products to be provided under the Definitive Agreement on terms and conditions acceptable to Buyer in its sole and absolute discretion, including terms and conditions (i) concerning the timing, installation, location, cost, or cost recovery of transmission upgrades or other transmission improvements, (ii) relating to deliverability, re-dispatch or outages of any generation resource of any of the Entergy operating companies (including any resource under contract), or (iii) that may, if accepted or given effect, adversely affect reliability or operation of the Entergy Transmission System or resources therein;</li><li>5. if the Facility is not directly interconnected to the Entergy Transmission System (or otherwise has an Energy Delivery Point that is beyond the Facility's point of interconnection), Seller has obtained firm transmission service to the Energy Delivery Point in respect of the capacity and capacity-related benefits, energy and Other Electric Products to be provided under the Definitive Agreement;</li><li>6. if required, credit support meeting the requirements of the Definitive Agreement has been posted by Seller; and</li></ol>
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		<p>7. certificates of insurance evidencing the coverages required by the Definitive Agreement have been obtained and submitted to Seller.</p> <p>In addition, other Buyer conditions precedent may be required, depending on the transmission path, operational aspects of the specific proposed generating units, the results of diligence, the status of applicable laws, rules and regulations, and other factors as Buyer deems relevant in its sole and absolute discretion.</p> <p>{<i>For existing resources</i>} Buyer will have at least 38 months from the effective date of the Definitive Agreement to satisfy its conditions to commencement of the Delivery Term.</p> <p>{<i>For Developmental Resources</i>} Buyer will have at least 16 months from the effective date of the Definitive Agreement to satisfy its conditions to commencement of the Delivery Term.</p>
37	<p><i>{This item 37 applies only to Developmental Resources.}</i></p> <p><b>Completion</b></p>	<p>The “Guaranteed Commercial Operation Date” will be as specified by Bidder in the applicable proposal.</p> <p>The “Commercial Operation Date” will be the date all of the following conditions have been satisfied or expressly waived by Buyer:</p> <p>(a) the Facility has achieved “Substantial Completion” (or equivalent term meaning completion in all material respects, except punch list items that do not materially adversely affect the ability of the Facility to operate as intended) under its engineering, procurement and construction contract (or, if the Facility does not have a single engineering, procurement and construction contract, under each of the subcontracts that together aggregate the scope of an engineering, procurement and construction contract) at the full nameplate capacity specified by Bidder in the applicable proposal and any testing of the Facility required pursuant to its interconnection agreement(s), financing documents or permits and other authorizations for the commencement of commercial operation will have been successfully completed;</p>

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		<p>(b) the Facility (i) has successfully completed its initial capacity demonstration test at a Dependable Capacity equal to at least 95% of the full nameplate capacity of the Facility specified by Bidder in the applicable proposal, (ii) has successfully completed its heat rate demonstration test at a heat rate for each generating unit or mode of operation equal to no more than 103% of the “Guaranteed Test Heat Rate” for such generating unit or mode of operation specified by Bidder in the applicable proposal, (iii) has successfully completed its emission demonstration test for CO, CO<sub>2</sub>, NO<sub>x</sub>, SO<sub>2</sub>, PM, and any other emission regulated by the air permit(s) for the Facility or applicable laws at emissions levels and rates at or below the levels and rates specified by Bidder in the applicable proposal (which must be below the levels and rates allowed under the air permit(s) for the Facility and applicable laws and not adversely affect operation of the Facility or Buyer’s scheduling and dispatch rights under the Definitive Agreement), (iv) has achieved initial synchronization with the grid, (v) is available for normal and continuous operation and fully capable of reliably producing the energy and other products to be provided to Buyer and delivering such products to Buyer at the Electrical Interconnection Point at the full nameplate capacity specified by Bidder in the applicable proposal and (vi) is in compliance with the electrical interconnection agreement and applicable laws, including, without limitation, all permits and other authorizations, <u>provided that</u>, for the avoidance of doubt, the results of any capacity, heat rate, or other performance demonstration test shall in no way modify or otherwise affect the Dependable Capacity (subject to the capacity buy-down provisions below), Guaranteed Heat Rates, or other performance requirements herein, <u>or how they are applied for purposes of this Agreement</u>;</p> <p>(c) the interconnection upgrades required by the interconnection agreement(s) for the Facility (i) have been completed, (ii) have been tested in accordance with the applicable interconnection agreement(s), (iii) are available for normal and continuous operation and fully capable of reliably transmitting and delivering to the</p>
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		<p>Electrical Interconnection Point at the full contract capacity to be purchased by Buyer and (iv) are in compliance with the applicable interconnection agreement(s) and applicable laws;</p> <p>(d) the communications and telemetry equipment required by the Definitive Agreement or any Ancillary Agreement has been programmed, installed, commissioned and tested and has demonstrated that it is fully capable of reliably transmitting real-time data to Buyer according to the Definitive Agreement or Ancillary Agreement, as applicable;</p> <p>(e) Seller is in compliance in all material respects with the Definitive Agreement and Ancillary Agreements, and there are no defaults (or events or circumstances that with the passage of time or the giving of notice or both would constitute a default) of Seller thereunder that have occurred and are continuing;</p> <p>(f) Seller has obtained all material permits and other authorizations, entered into all agreements and made all other arrangements and acquired all other tangible and intangible rights required to construct the Facility and produce the energy and other products to be provided to Buyer, deliver such products to the point of interconnection between the Facility and the host utility and otherwise perform its obligations according to the Definitive Agreement; such permits and authorizations, agreements, arrangement and other rights are in full force and effect and not subject to conditions precedent; and no party thereto is in default thereunder, and no event or circumstance will have occurred and be continuing that with the passage of time or the giving of notice or both would constitute a default by a party thereunder;</p> <p>(g) the Facility is qualified for, and has all necessary accounts to obtain and transfer to Buyer, any environmental attributes for which the Facility becomes eligible prior to the Commercial Operation Date;</p> <p>(h) any additional credit support required at the Commercial Operation Date pursuant to the Definitive Agreement or any Ancillary Agreement has been posted by Seller in accordance with the</p>
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		<p>requirements of the Definitive Agreement or such Ancillary Agreement;<sup>5</sup></p> <p>(i) certificates of insurance evidencing the coverages required by the Definitive Agreement or any Ancillary Agreement at the Commercial Operation Date have been obtained and submitted to Buyer;</p> <p>(j) without limiting clause (f) above, all arrangements for the supply of required electric services to the Facility, including the supply of turbine unit start-up and shutdown power, house power and maintenance power, have been completed by Seller separately from the Definitive Agreement, are in effect, and are available for the supply of such electric services to the Facility; and</p> <p>(k) staffing and required training of Seller’s personnel for the operation, maintenance and asset management of the Facility has been completed.</p> <p>Seller will be required to notify Buyer immediately when the Commercial Operation Date has occurred, which notice will include reasonable evidence of the satisfaction of all of the conditions set forth above and a certification to that effect by an officer of Seller familiar with the Facility after due inquiry of Seller. In addition, the Definitive Agreement will require Seller to provide periodic progress reports and grant to Buyer inspection and other rights during development of the Developmental Resource.</p> <p>If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date specified by Bidder (as such date may be extended on a day-for-day basis to the extent that the Commercial Operation Date is delayed as a result of Force Majeure, up to a maximum of 180 days in the aggregate), Seller will pay to Buyer liquidated damages, for each day after the Guaranteed Commercial Operation Date</p>
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<sup>5</sup> This condition will be deleted if Seller is not required to provide a step-up in credit support at Commercial Operation (i.e., Seller has the same level of credit support during the construction and operating phases or a greater level of credit support during the construction phase).

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		<p>until the Commercial Operation Date, in an amount equal to (A) the number of MW equal to the full Dependable Capacity allocated to Buyer multiplied by (B) \$300/MW. Seller’s aggregate liability for liquidated damages pursuant to this paragraph will be limited to (1) the number of MW equal to the full Dependable Capacity allocated to Buyer multiplied by (2) \$54,000/MW.</p> <p>If the Commercial Operation Date does not occur on or before six (6) months after the Guaranteed Commercial Operation Date, <u>then</u>:</p> <p>(i) Buyer will have the right, at any time thereafter until the Commercial Operation Date occurs, to (a) terminate the Definitive Agreement upon notice to Seller (and to receive termination damages arising out of any such termination) or (b) if Seller has satisfied all of the conditions to the Commercial Operation Date other than condition (b)(i), require Seller to re-size the Maximum Dependable Capacity to the then-tested Dependable Capacity allocated to Buyer; and</p> <p>(ii) If (a) Buyer’s right to terminate set forth in clause (i) above applies and Buyer has not elected to terminate within seven (7) months after the Guaranteed Commercial Operation Date, (b) Seller has satisfied all of the conditions to the Commercial Operation Date other than condition (b)(i) and (c) Seller demonstrates to Buyer’s reasonable satisfaction that it is not possible to achieve a tested Dependable Capacity equal to at least 95% of the full nameplate capacity specified by Bidder in the applicable proposal, Seller will have the right, at any time thereafter, to re-size the Maximum Dependable Capacity to the then-tested Dependable Capacity allocated to Buyer.</p> <p>If Buyer requires Seller to, or Seller elects to, re-size the Maximum Dependable Capacity according to clause (i) or (ii) above, Seller will pay to Buyer an amount equal to (i) \$[            ]/kW<sup>6</sup> multiplied by (ii) the</p>
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<sup>6</sup> The capacity buy-down variable will be the \$/kW value of the Facility (at the full nameplate capacity as proposed by Bidder) established by the Purchase Price, prior to any adjustments, plus a \$/kW premium based upon an estimated incremental cost for Buyer to obtain the capacity not provided by Seller from a comparable new build resource (subject to pro rata adjustment if the proposed Delivery Term is less than 30 years).

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		number of MW by which (A) the then-tested Dependable Capacity allocated to Buyer <u>is below</u> (B) the full expected Dependable Capacity allocated to Buyer as specified by Bidder in item 10 above. Upon such payment, or, if both such payments are made, both such payments, condition (b)(i) to the Commercial Operation Date will be deemed achieved; provided, however, that thereafter, in no event will the Dependable Capacity allocated to Buyer be increased (by further capacity testing or otherwise) above the then-tested Dependable Capacity allocated to Buyer referenced in clause (ii)(A) above.
<b>38</b>	<b>Management Approval:</b>	The Definitive Agreement is subject to review and approval by the Entergy Operating Committee, the Entergy Corporate Risk office, the Board of Directors and other governing bodies. Buyer will not execute or deliver the Definitive Agreement without such review and approval, and such approval may be granted or denied in such bodies' sole and absolute discretion.
<b>39</b>	<b>Select Contract Terms and Conditions:</b>	The Definitive Agreement will also include, among others, the following covenants, terms and/or conditions: <ul style="list-style-type: none"> <li>• Seller will construct (if applicable), operate, maintain, replace, repair and test the Facility in accordance with (i) Accepted Electrical Practices, (ii) applicable permits, consents and laws, (iii) the interconnection agreement(s), gas interconnection arrangements and other project documents and (iv) the Definitive Agreement;</li> <li>• Seller will maintain adequate reserves for, and schedule and perform according to the Definitive Agreement, required maintenance; and</li> <li>• Seller will insure against all insurable risks with coverage in an amount not less than full replacement cost and on terms specified in the Definitive Agreement.</li> </ul>
<b>40</b>	<b>Events of Default:</b>	The Definitive Agreement will include the following events of default of Seller: <ul style="list-style-type: none"> <li>• failure to pay amounts due;</li> </ul>

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		<ul style="list-style-type: none"><li>• breach of representations and warranties;</li><li>• breach of covenants;</li><li>• the average of the Monthly Availabilities during any Rolling 12 Month Period is less than the Rolling 12 Month Availability Requirement of eighty-five percent (85%), where “Rolling 12 Month Period” means, as of the end of any month during the Delivery Term, the twelve (12)-month period that includes such month and the preceding eleven (11) months that occurred during the Delivery Term, provided that, for the first contract year, the measurement of the Rolling 12 Month Period will begin at the end of the sixth (6th) month of such contract year, at which time and thereafter for the remainder of the first contract year, the Rolling 12 Month Period will be determined using the months then elapsed in the Delivery Term;</li><li>• bankruptcy, dissolution or liquidation of Seller;</li><li>• failure to provide or maintain required credit support;</li><li>• failure of the resulting, surviving or transferee entity in a merger or sale of all or substantially all of the assets of Seller to assume such party’s obligations under the Definitive Agreement;</li><li>• assignment by Seller of the Definitive Agreement or sale or transfer of the Facility (or the direct or indirect equity interests in Seller) by Seller (or any direct or indirect parent or Affiliate of Seller), including by merger, consolidation or sale of all or substantially all of its assets, except as permitted by the Definitive Agreement;</li><li>• Seller sells, assigns or otherwise transfers, or commits to sell, assign or otherwise transfer, the capacity, capacity-related benefits, energy or Other Electric Products that are subject to the Definitive Agreement, or any portion thereof, to any person other than Buyer;</li><li>• Seller makes any material misrepresentation or material omission in any availability report, metering report or invoice required to be made or furnished by Seller pursuant to the Definitive Agreement or</li></ul>
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		<p>Seller’s actual fraud, tampering with Buyer-owned facilities or material intentional misrepresentation or misconduct in connection with the Definitive Agreement or operation of the Facility;</p> <ul style="list-style-type: none"> <li>• default of Seller under any agreements relating to indebtedness for borrowed money in excess of a specified aggregate amount;</li> <li>• default of Seller under, or failure to maintain in effect, any project document (including the interconnection agreement(s), any transmission service agreement and the gas interconnection arrangements);</li> <li>• Seller’s abandonment of construction (if applicable) or operation of the Facility (or any portion thereof affecting its obligations under the Definitive Agreement);</li> <li>• if applicable, Seller’s failure to maintain any necessary qualification for, or any necessary account to obtain and transfer to Buyer, any environmental attributes for which the Facility is eligible;</li> <li>• the commencement of the Delivery Term is delayed as a result of the occurrence of one or more Delivery Delay Conditions for a period of six (6) months or more from the date that the Delivery Term would have commenced without the occurrence thereof; and</li> <li>• Seller’s failure to maintain in effect any agreement required to deliver energy to the Energy Delivery Point.</li> </ul>
<p><b>41</b></p>	<p><b>Termination Rights:</b></p>	<p>The Definitive Agreement will contain provisions entitling a Party the right to terminate the Definitive Agreement upon the occurrence and continuation of an event of default by the other Party and to calculate termination damages based on the costs, gains or losses incurred by the non-defaulting Party arising out of termination of the Definitive Agreement. If the termination damages are negative, the non-defaulting Party will not be obligated to pay such amount to the defaulting Party.</p> <p><i>[For Developmental Resources only]</i> The Definitive Agreement will include rights in favor of Buyer to terminate the Definitive Agreement for convenience, in its sole and absolute discretion, after the satisfaction or</p>

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		<p>waiver of the conditions set forth in item 36 above. If Buyer terminates the Definitive Agreement pursuant to such rights, as Seller’s sole remedy arising out of such termination, Buyer will be required to pay to Seller a pre-agreed amount to be set forth in a schedule to the Definitive Agreement to be negotiated between Buyer and Seller. The amounts set forth in such schedule will vary according to when such termination occurs and will not exceed the actual, direct out-of-pocket costs reasonably incurred by Seller to terminate construction (or, if lesser, to complete construction and make alternate use) of the Facility (or portion thereof allocated to Buyer) at such time. Seller will be required to use commercially reasonable efforts to minimize any such reasonable actual, direct out-of-pocket costs.</p> <p><i>[If the Definitive Agreement contemplates an Ownership Acquisition Product]</i> Without limiting the generality of the foregoing, the Definitive Agreement (with respect to Product C) will terminate immediately upon the Closing of the acquisition of the Purchased Assets (as such terms are defined in the Term Sheet for Product D).</p>
<p><b>42</b></p>	<p><b>Audit Rights:</b></p>	<p>Buyer will have the right to examine the books and records of Seller and any Affiliates of Seller involved, directly or indirectly, in the transactions or actions contemplated by the Definitive Agreement, including the records for the Facility (<i>e.g.</i>, (i) actual generating records for the Facility and (ii) copies of contracts evidencing Seller’s fuel supply, transportation and (if applicable) interconnection arrangements, in each case to the extent reasonably necessary or appropriate to verify, among other things, (a) the accuracy of any statement, charge or computation made pursuant to the provisions of the Definitive Agreement or (b) Seller’s performance under or compliance with the terms and provisions of the Definitive Agreement. Seller will be responsible for ensuring that all first-tier and lower-tier suppliers, vendors, agents, contractors and representatives of Seller or its Affiliates performing work or providing services relating to the Facility (and, to the extent that Seller is not the owner of the Facility, the owner(s)) commit to supply to Seller, and allow Seller to freely provide to Buyer, the records supporting any cost or charge paid by Seller and passed on to Buyer according to the terms of the Definitive</p>

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		<p>Agreement. Any information obtained by Buyer under its audit rights will be required to be kept confidential pursuant to the confidentiality section of the Definitive Agreement. As a condition precedent to the Definitive Agreement becoming effective, to the extent that Seller is not the owner of the Facility, Seller will provide to Buyer evidence satisfactory to Buyer of its ability and rights to facilitate Buyer's access to the books and records of such owner pursuant to the provisions of the audit section of the Definitive Agreement.</p>
<b>43</b>	<b>Seller's Use of Real-time Information:</b>	<p>Seller will limit the availability of real-time generation, dispatch and outage information related to the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) to its designated asset management personnel primarily responsible for operation and management of the Facility. Seller and such personnel may use all such real-time information only for the limited purpose of operating the Facility and otherwise performing its obligations under the Definitive Agreement. Seller and such personnel will not use such real-time generation, dispatch and outage information to enable Seller to engage in any other activity.</p>
<b>44</b>	<b>Transfer Restrictions</b>	<p>Seller will not (and will not permit any direct or indirect parent or Affiliate of Seller to) sell or transfer the Facility (or its direct or indirect equity interests in Seller), including by merger, consolidation or sale of all or substantially all of its assets, without Buyer's prior written consent, which will not be unreasonably withheld or delayed, provided that it will be deemed reasonable for Buyer to withhold its consent if (a) the proposed transferee is not a qualified operator, (b) the proposed transferee has a creditworthiness below that of Seller, (c) any credit support provided by Seller prior to such sale or transfer would not remain in effect or be substituted with credit support acceptable to Buyer or (d) in the case of a direct transfer of the Facility, Seller does not concurrently assign its rights and obligations under the Definitive Agreement according to the assignment provisions thereof.</p>
<b>45</b>	<b>Confidentiality:</b>	<p>Each Party will be required to keep the terms and provisions of the Definitive Agreement confidential and will be prohibited from disclosing</p>

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Term Sheet for Proposals in response to the  
2011 Western Region Request for Proposals for Long-Term Supply-Side Resources

**Term Sheet for Flexible PPA Product**

		such terms to any third party, subject to certain limited exceptions specified in the Definitive Agreement.
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