



Appendix B-2

Term Sheet for Tolling Agreements

For

2015 Request For Proposals For Long-Term Developmental and Existing Capacity and Energy Resources

Entergy Services, Inc.
September 29, 2015

Term Sheet for Tolling Product

The following bid submission term sheet (this “**Term Sheet**”) describes certain terms and conditions of a potential agreement between Buyer (as defined in item 2 below) and the seller of power proposed by the applicable bidder (“**Bidder**”) in Bidder’s proposal submitted in the RFP (“**Seller**” and, together with Buyer (defined below), the “**Parties**”) for the purchase by Buyer of long-term capacity, capacity-related benefits, energy, environmental attributes, other electric products, and fuel-conversion services from a combined-cycle (“**CCGT**”), stand-alone combustion turbine (“**CT**”) or stand-alone steam turbine (“**ST**”), gas-fired technology resource capable of meeting the requirements of this product (the “**Facility**”) in connection with the RFP. The terms set forth in this Term Sheet will establish the basis for the negotiation and execution of a definitive agreement between Buyer and any Seller whose proposal is selected by Entergy Services, Inc. (“**ESI**”) for contract negotiations in connection with the RFP (the “**Definitive Agreement**”), with necessary changes to accurately reflect any special considerations set forth in Bidder’s proposal that are accepted by Buyer in its sole and absolute discretion. Buyer will provide the initial draft of the Definitive Agreement to the selected third-party Bidder (if any) at the beginning of contract negotiations.

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 or a power purchase agreement in which Seller retains control over and responsibility for providing fuel), Bidder should indicate in the “Special Considerations” section of its Proposal Package (i) the terms and conditions to which Bidder takes exception, describing with specificity any terms and conditions that Bidder proposes in substitution therefor, and/or (ii) the additional terms and conditions that Bidder proposes as a supplement to the terms and conditions in this Term Sheet. Bidder is advised to refer to Section 2.2 in the Main Body for additional information pertaining to Special Considerations.

	Proposal Term	Description of Proposal Term
1	Product Description:	The product described in this Term Sheet is designated as the “ RFP Tolling Product. ” This product provides for generation capacity of (i) for Developmental Resources, not less than 650 MW (Summer Conditions, at full load, including duct-firing) and not more than 1,000 MW of nameplate capacity (Summer Conditions, at full load, including duct-firing) from the Facility or (ii) for existing resources, not less than 250 MW (Summer Conditions, at full load, including, if applicable, duct-firing) and not more than 1,000 MW of nameplate capacity (Summer Conditions, at full load, including, if applicable, duct-firing) from the Facility. Buyer will be entitled to all capacity, capacity-related benefits, energy, environmental attributes, 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 in increments of whole integrated generating units, the corresponding portion thereof).
2	Buyer:	Entergy Gulf States Louisiana, L.L.C. (“ EGSL ”) and Entergy Louisiana, LLC (“ ELL ”) anticipate completing the combination of their businesses into

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		<p>a single company to be known as Entergy Louisiana Power, LLC (“ELP”) on or about October 1, 2015. As part of the business combination transaction, ELL will transfer the rights to its name to ELP, and upon closing, ELP will assume the name “Entergy Louisiana, LLC.” If, as expected, the business combination closes prior to execution of the Definitive Agreement, ELP (as Entergy Louisiana, LLC) would be the “Buyer”; otherwise, it is expected that EGSL would be the Buyer. For purposes of the RFP and the Definitive Agreement, Buyer will be considered an entity entirely separate and distinct from any Entergy transmission organization, and, without limiting the foregoing, the acts and omissions of any Entergy transmission organization will not be deemed to be acts and omissions of Buyer for any purpose arising out of or relating to the RFP or the Definitive Agreement.</p>
3	Seller:	<p>“Seller” will be the party specified by Bidder in the applicable proposal.</p>
4	Facility:	<p>The “Facility,” including the nameplate capacity and major equipment, will be as specified by Bidder in the applicable proposal.</p>
5	Electric Interconnection Point; Interconnection CP Node; Financial Settlement CP Node:	<p>The “Electric Interconnection Point” will be the point located in the Louisiana portion of WOTAB (in the case of Developmental Resources) or in MISO South (in the case of existing resources) as specified by Bidder in the applicable proposal where the Facility interconnects to the host utility (and represented by a CP Node).</p> <p>For existing resources located outside the Load Zone (as defined in the MISO Rules) for ELL’s or EGSL’s load (“External Resources”), (i) the “Interconnection CP Node” will be the Electric Interconnection Point and (ii) the “Financial Settlement CP Node” will be the CP Node for Buyer’s load (EES.ELILD, if ELP or ELL is Buyer, or EES.EGILD, if EGSL is Buyer).</p> <p>For resources other than External Resources, the point at which capacity and associated capacity-related benefits will be made available, and energy and other electric products (to the extent capable of being physically delivered) will be delivered, to Buyer will be as specified by Bidder in the applicable proposal.</p> <p>For purposes of this Term Sheet, the term “Entergy Transmission System” means the interconnected group of transmission lines and substations that, as of the date of this Term Sheet, are owned, leased, or controlled by EGSL, ELL and the other Entergy Operating Companies, each in its capacity as the owner and/or lessee of regulated transmission and distribution functions, and/or its successor(s) in such capacity, that are used to transfer bulk electricity between supply and delivery points, notwithstanding that there</p>

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		may be a Balancing Authority (including any regional transmission organization (“ RTO ”) or independent system operator (“ ISO ”)) applicable thereto that covers a system broader than such interconnected group of transmission lines and substations.
6	Electric Inter-connection; Transmission; ARRs and FTRs:	<p>Seller will be responsible for (and bear the full costs and risks of) the arrangement, procurement, receipt and maintenance prior to and throughout the Delivery Term of the interconnection, deliverability, and transmission service required for the Facility, including (i) the electric interconnection of the Facility to the host utility and establishment of the Electric Interconnection Point and (ii) the transfer and delivery of capacity, energy, and other electric products to, and the injection of energy and other electric products at, the Electric Interconnection Point, and, with respect to External Resources, the financial settlement of power dispatched by or for Buyer under the Definitive Agreement at the Financial Settlement CP Node. Without limiting the foregoing, Seller will bear (a) all related interconnection, deliverability, or transmission request, application, study, registration, and comparable fees, charges, or costs, (b) all upgrade, improvement, and other fees, charges, and costs arising out of the requested interconnection, deliverability, or transmission service, except to the extent stated to be the exclusive responsibility and cost of the host utility or an applicable transmission provider, transmission owner, or Balancing Authority under the applicable tariffs, rules, regulations, or requirements of, or generator interconnection or other agreements with, the host utility or such transmission provider, transmission owner, or Balancing Authority), (c) the fees, charges, and costs to receive interconnection, deliverability, transmission, or, if applicable, financial settlement service, (d) all transformer, line, energy, capacity, and other losses or costs related to the interconnection, deliverability, transmission, or, if applicable, financial settlement service with respect to the Facility (including, without limitation, with respect to External Resources, any basis differential and associated costs between the Interconnection CP Node and the Financial Settlement CP Node with respect to any power dispatched by or for Buyer under the Definitive Agreement), and (e) all costs assigned or allocated to Seller or, if applicable, to a financially settling party under the applicable tariffs, rules, regulations, or requirements of, or agreements with, the host utility, transmission provider, transmission owner, or any applicable Balancing Authority.</p> <p>For the avoidance of doubt, with respect to External Resources, if Seller is the market participant or representative for the Facility (or portion thereof allocated to Buyer) before MISO or other applicable Balancing Authority(ies) pursuant to item 16 below and Seller is required to deliver energy and/or other electric products to Buyer over any settlement interval on an operating day pursuant to the terms of the Definitive Agreement, the</p>

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		<p>Parties will reflect in the financial schedule (under the current MISO Rules, through designation of the Financial Settlement CP Node as both the sink point and the internal delivery point and the Interconnection CP Node as the source point in such financial schedule) or comparable documentation submitted to MISO or other applicable Balancing Authority(ies) for such settlement interval of such operating day any basis differential between the Interconnection CP Node and the Financial Settlement CP Node over such settlement interval of such operating day. If Seller is not the market participant or other representative of the Facility (or portion thereof allocated to Buyer) before MISO or other applicable Balancing Authority(ies), the basis differential and associated costs will be reflected in the applicable monthly invoice covering the applicable settlement interval through a dollar-for-dollar adjustment for such settlement interval. Any Auction Revenue Right (as defined in the MISO Rules) (“ARR”) and/or Financial Transmission Right (as defined in the MISO Rules) (“FTR”) revenues or charges allocated to Buyer will be used to offset any basis differential; <u>provided, however</u>, that, for the avoidance of doubt, Seller (if the MISO settlement price is greater at the Financial Settlement CP Node) or Buyer (if the MISO settlement price is greater at the Interconnection CP Node) will remain responsible for any portion of the basis differential that is not offset by any such ARR and/or FTR revenues or charges; <u>provided, further</u>, that if any applicable ARR and/or FTR charges have the effect of increasing the basis differential, Seller (if the MISO settlement price is greater at the Financial Settlement CP Node) or Buyer (if the MISO settlement price is greater at the Interconnection CP Node) will be responsible for such increased basis differential.</p> <p>As part of its responsibilities under this item 6, Seller will be required to obtain and maintain energy resource interconnection service (“ERIS”) and network resource interconnection service (“NRIS”) from MISO as required herein under the MISO Tariff (or the equivalent service in the event MISO discontinues or modifies the nature of ERIS or NRIS or both, as applicable) in a quantity (a) with respect to ERIS, equal to the winter capacity rating that corresponds to the required amount of NRIS set forth in clause (b) below and (b) with respect to NRIS, (x) sufficient to allow the Facility to receive the maximum capacity credits a resource of its capacity size can receive under the MISO rules or (y) to be allocated and prioritized such that the NRIS level associated with the capacity of the Facility (or portion thereof allocated to Buyer) under contract to Buyer cannot limit the amount of MISO capacity credits Buyer receives for any planning period during the Delivery Term.</p> <p>Without limiting Seller’s responsibilities set forth in this item 6, at a time deemed appropriate by Buyer after execution of the Definitive Agreement with Seller, Buyer will seek to qualify the Facility (or the portion thereof allocated to Buyer) as, or have the Facility (or the portion thereof allocated</p>
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	<p>to Buyer) recognized as, a firm designated network resource of Buyer in the applicable Balancing Authority(ies) for the Delivery Term. Seller will be responsible and reimburse Buyer upon demand for all out-of-pocket costs incurred by Buyer in connection with Buyer obtaining, or attempting to obtain, such qualification or recognition.</p> <p>Notwithstanding anything to the contrary, and without limiting item 13 below, all allocations of ARRs and, if applicable, FTRs and similar rights by any Balancing Authority(ies) applicable to the Electric Interconnection Point or arising out of the Definitive Agreement that are associated with the capacity, capacity-related benefits, energy, and/or other electric products to be provided under the Definitive Agreement during the Delivery Term, including, for the avoidance of doubt, ARR and FTR allocations based on data, performance, or periods prior to the Delivery Term (or are associated with any transmission service or usage or physical, financial, or other transfer with respect to any of the same), and all FTRs and other entitlements derived therefrom or otherwise related thereto, will exclusively and solely accrue to and be owned by Buyer, including after termination of the Definitive Agreement. Buyer will use reasonable efforts to obtain such ARRs and/or FTRs to offset any basis differential during the Delivery Term; <u>provided, however</u>, that Buyer will not be required to prioritize any request for such ARRs and/or FTRs over any other requests Buyer may make for other ARRs and/or FTRs. Subject to and to the extent permitted by MISO Rules, Seller will have the right at any time prior to or during the Delivery Term to pay for any transmission upgrade to enable Buyer to obtain an ARR and/or FTR entitlement to be used to offset any basis differential during the Delivery Term. Subject to Buyer's rights under item 16 below and any Buyer's instruction to the contrary in whole or in part, Seller will, at its own expense, timely execute and file all documents and take all other actions necessary or advisable to cause (1) the Facility (or portion thereof allocated to Buyer) to be qualified and/or recognized by the applicable Balancing Authority(ies) as a firm designated network resource, with full deliverability in MISO, for the Delivery Term in the applicable Balancing Authority(ies) and to maintain such status throughout the Delivery Term, (2) the Facility (or portion thereof allocated to Buyer) to be qualified and/or recognized by the applicable Balancing Authority(ies) as a firm designated network resource of Buyer, with full deliverability in MISO, for the Delivery Term in the applicable Balancing Authority(ies) and to maintain such status throughout the Delivery Term, and (3) Buyer to obtain directly (or, if not possible for Buyer to obtain directly, to obtain and transfer to Buyer, subject to Buyer's direction) all ARR entitlements and, if applicable, FTR and other similar entitlements and rights. Subject to Buyer's obligation to use reasonable efforts to obtain ARRs and/or FTRs to offset any basis differential during the Delivery Term described above, Buyer will have the right to exercise, in its</p>
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		sole and absolute discretion, any and all rights with respect to any such entitlement or similar right, including the right to nominate (or not nominate) the same. Without limiting the foregoing, Seller will support fully, and not take any action or position to oppose, Buyer's receipt of such firm designated network resource status or such allocations, entitlements, or rights or its exercise of its rights with respect thereto.
7	Delivery Term:	<p>The Delivery Term (including any Buyer option to extend the Delivery Term beyond the initial Delivery Term) is expected to be as specified by Bidder in the applicable proposal. Subject to the final paragraph of this item 7, the Delivery Term will commence at the start of the hour ending 0100 BA Time on the first day of (i) the first month following the month in which the last of the conditions to the commencement of the Delivery Term (see item 35) has been satisfied or waived if notice of such satisfaction or waiver is provided by the satisfying or waiving party to the other on or before the first ten (10) days of such month or (ii) the second month following the month in which the last of the conditions to the commencement of the Delivery Term has been satisfied or waived if notice of such satisfaction or waiver is provided by the satisfying or waiving party to the other after the first ten (10) days and before the end of such month. The Delivery Term will continue until the end of the hour ending 2400 BA Time on the day prior to the specified anniversary of such start date (taking into account any exercise of Buyer's option to extend the Delivery Term, if applicable); <u>provided, however</u>, that if such anniversary day falls on a day other than the first day of the planning period for the applicable Balancing Authority, Buyer may elect, in its sole and absolute discretion, upon notice to Seller given at least one (1) year before the date on which, without such notice, the Delivery Term would expire, to have the Delivery Term continue until the last day of such planning period.</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, (i) the Facility is experiencing an outage or other limitation, including a Force Majeure (as defined in item 30 below), that reduces the amount of Dependable Capacity Allocated To Buyer (as defined in item 10 below) that is actually available at the Electric Interconnection Point by ten percent (10%) or more below the Dependable Capacity Allocated To Buyer or (ii) 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.</p> <p>If the Facility supports a bilateral PPA or Toll with a third party that ends after May 31, 2020, but no later than May 31, 2022, the Delivery Term will include any short-term "bridge" agreement to supply Buyer with the unavailable amount of capacity, or capacity and energy, starting no later than</p>

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		June 1, 2020 and ending upon the termination of such bilateral PPA or Toll, as specified by Bidder in the applicable proposal.
8	Pricing:	<p>Pricing will consist of:</p> <ul style="list-style-type: none"> • a Capacity Rate, expressed in \$/kW-year, as specified in item 11 below; • a Variable O&M Rate, expressed in \$/MWh, as specified in item 18 below; and • {<i>Excluding any baseload portion of a ST resource</i>} a Start-up Charge, expressed in \$ per Completed Start, as specified in item 19 below. <p>Except to the extent otherwise expressly provided in this Term Sheet, Buyer will not be required to pay any amount to Seller other than:</p> <ul style="list-style-type: none"> • the Capacity Payment (equal to the Capacity Rate multiplied by the UCAP Rating (as defined in item 11 below) for the Dependable Capacity Allocated To Buyer); • the Variable Payment (equal to the Variable O&M Rate multiplied by the energy that is dispatched by or for and delivered to Buyer at the Electric Interconnection Point as provided herein and, with respect to External Resources, settled at the Financial Settlement CP Node); and • {<i>Excluding any baseload portion of a ST resource</i>} the Start-up Payment (equal to the Start-up Charge multiplied by the number of Completed Starts). <p>All payments will be monthly in arrears.</p>
9	Nameplate Capacity Allocated to Buyer:	The nameplate capacity of the Facility allocated to Buyer (expressed in MW) is expected to be as specified by Bidder in the applicable proposal. Other provisions will apply in the event Bidder has proposed to allocate to Buyer less than the entire nameplate capacity of the Facility to Buyer.
10	Dependable Capacity:	<p>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 in increments of whole integrated generating units, the corresponding portion thereof) is capable of delivering reliably to Buyer at the Electric Interconnection Point at reference conditions of 97° Fahrenheit and 56% relative humidity, as established and adjusted as follows:</p> <p>The Dependable Capacity Allocated To Buyer will be established and adjusted according to (i) a capacity demonstration test conducted shortly before the Commercial Operation Date {<i>For Developmental Resources</i>} and (ii) capacity demonstration tests conducted at the request and discretion of Buyer from time to time. Each capacity demonstration test will be performed in accordance with accepted electrical practices and testing protocols to be set forth in the Definitive Agreement. All costs of any</p>

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		capacity demonstration test will be borne by Seller except the reasonable costs of any capacity demonstration test requested by Buyer pursuant to clause (ii) above, which will be borne by Buyer. Buyer will not be obligated, but will have the option, to purchase the power delivered from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) pursuant to any capacity demonstration test performed pursuant to clause (i) above. Buyer will purchase the power delivered from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) pursuant to any capacity demonstration test performed pursuant to clause (ii) above.																										
11	Capacity Rate:	<p>The Capacity Rate (expressed in \$/kW-year) for each year is expected to be the capacity rate specified by Bidder in the applicable proposal. The Capacity Rate, expressed in \$/kW-year, will be allocated to each month according to the schedule below. The Capacity Payment will equal (i) the Capacity Rate for the applicable month, multiplied by (ii) the UCAP Rating for the Dependable Capacity Allocated To Buyer and will be payable monthly in arrears.</p> <table><tr><td><u>Month</u></td><td><u>% of Annual Capacity Rate</u></td></tr><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></table> <p>For this purpose, “UCAP Rating” means, at any time, the amount of capacity (expressed in MW) on an “unforced capacity” (commonly referred to as “UCAP”) basis accredited at such time by the applicable Balancing Authority for the Dependable Capacity Allocated To Buyer (currently represented in MISO by “Zonal Resource Credits”) that is transferred (or the benefit of which is transferred) by Seller to Buyer according to item 13 below and may be applied by Buyer toward the resource adequacy (or equivalent) requirements applicable to Buyer at the Electric Interconnection</p>	<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%.
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		<p>Point; <u>provided, however</u>, that in no event will the UCAP Rating, for purposes of the Capacity Payment, exceed the expected Dependable Capacity Allocated To Buyer for the applicable year of the Delivery Term specified by Bidder below (as may be re-sized according to item 36 below, if applicable) (the “Maximum Dependable Capacity”).</p> <p>For the Summer Season, Bidder expects that the Dependable Capacity Allocated To Buyer will be as specified by Bidder in the applicable proposal.</p>
12	Monthly Availability Requirement; Capacity Payment Discounts:	<p>The “Monthly Availability Requirement” will be (i) for CCGT resources, 98% for each Summer Month of the Delivery Term (June through August) and each Winter Month of the Delivery Term (December through February) and 96% for each other month of the Delivery Term, (ii) for CT resources, 99% for each month of the Delivery Term, and (iii) for ST resources, 95% for each month of the Delivery Term.</p> <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>MA_m= Monthly Availability for the applicable month;</p> <p>n = total number of hours in the applicable month that occur during the Delivery Term;</p> <p>i = each hour in the applicable month that occurs during the Delivery Term;</p> <p>AC_i = the lowest of:</p> <ul style="list-style-type: none"> (i) the amount of Dependable Capacity Allocated To Buyer actually available during hour <i>i</i> (which, for the avoidance of doubt, means taken over the course of the entire hour <i>i</i> as a whole) at the Electric Interconnection Point (whether or not scheduled or dispatched by Buyer); (ii) the amount of Dependable Capacity Allocated To Buyer set forth, or deemed to be set forth, as available in the availability notice for hour <i>i</i> provided by Seller to Buyer (but excluding any increase in availability notified to Buyer after the day-ahead availability notice provided by Seller, unless Buyer dispatches the energy associated with the increased capacity); and (iii) DC_i for hour <i>i</i>;

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		<p><u>provided, however</u>, that:</p> <p>(a) if the amount in clause (i) or (ii) 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 (i) or (ii) above will be deemed to be the Dependable Capacity Allocated To Buyer actually available during hour <i>i</i> at the Electric Interconnection Point, <u>excluding</u> such configuration(s); and</p> <p>(b) if, during hour <i>i</i>, Seller is entitled to receive capacity availability credit for replacement capacity provided to Buyer in such hour pursuant to item 31 below, the availability of the Dependable Capacity Allocated To Buyer in such hour will be increased accordingly.</p> <p>For the avoidance of doubt, capacity will be considered unavailable to the extent it is unavailable due to Force Majeure or any curtailment or other limitation or shortcoming on, or other circumstance relating to, electric transmission, energy deliverability, or fuel delivery or as a result of any order, directive, or other communication from a Balancing Authority or other governmental authority (without limiting the treatment of such unavailable capacity as Affected Capacity (as defined below) to the extent provided in the definition of Affected Capacity), including in the event that generation from such capacity is limited by MISO as a result of Seller's failure to meet the ramp rates, set points, or other operational or dispatch requirements of MISO; and</p> <p>DC_i = 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>; <u>provided, however</u>, that the Affected Capacity resulting from Planned Maintenance (as defined in item 29 below) will be disregarded to the extent the Equivalent Planned Maintenance Hours (as defined in item 29 below) in the applicable contract year in which the applicable month occurs constitute Excess Equivalent Planned Maintenance Hours (as defined in item 29 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 (i) Planned Maintenance, (ii) a lack of available transmission or deliverability service occurring beyond the Electric Interconnection Point within MISO or other applicable Balancing Authority, or (iii) an interruption of gas transportation, except to the extent the lack of available transmission or deliverability service or interruption of gas transportation is due to Force Majeure or an act or omission of Seller or its affiliates or its subcontractors or any of</p>
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		<p>their respective agents or representatives (including any failure to comply with MISO directives or operational requirements and other applicable rules and laws, accepted electrical practices, any project document (including any gas interconnection agreement), or the Definitive Agreement).</p> <p>If the Monthly Availability for a month is below the applicable Monthly Availability Requirement, a discount will apply to the payments from Buyer to Seller in respect of such month (the “Capacity Payment Discount”). The Capacity Payment Discount will be (i) for resources other than CT resources, two percent (2%) of the Capacity Payment for the applicable month for each one percent (1%) shortfall to the Monthly Availability Requirement and (ii) for CT resources, ten percent (10%) of the Capacity Payment for the applicable month for each one percent (1%) shortfall to the Monthly Availability Requirement; <u>provided, however</u>, that in either case (a) to the extent of unavailability due solely to Force Majeure, the Capacity Payment Discount will be one percent (1%) of the Capacity Payment for the applicable month for each one percent (1%) shortfall to the Monthly Availability Requirement and (b) in no event will the Capacity Payment Discount exceed one hundred percent (100%) of the Capacity Payment for the applicable month.</p>
13	Capacity-Related Benefits, Environmental Attributes, and Other Electric Products:	<p>Buyer’s purchase of capacity under the Definitive Agreement will include the purchase of all capacity-related benefits (including any capacity credit or similar right or benefit), environmental attributes, and other electric products (including quick start, regulation, and contingency response capability) associated with the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) or its capacity, energy, or operation. The Capacity Payment includes all compensation to Seller for such purchase, and no other or further amount will be payable by Buyer in connection with the acquisition, provision, or delivery of such capacity-related benefits, environmental attributes, and other electric products. Throughout the Delivery Term, Buyer will have the right to dispatch such products, and Seller will (at its own expense) generate and deliver to Buyer at the Electric Interconnection Point, and, with respect to External Resources, financially settle with Buyer at the Financial Settlement CP Node, any products so dispatched by or for Buyer. In the case of any such product that is not physical in nature (such as capacity credits and other intangible products), Seller will, without the requirement of any dispatch or other notice from Buyer and at Seller’s own expense, (i) cause to be issued any and all such products for which the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) is eligible and (ii) to the extent not issued</p>

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		<p>directly to Buyer, obtain and transfer to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer) all such products.</p> <p>Without limiting the foregoing, Seller will (at its own expense) (a) timely execute and file all documents, including any applicable requests for qualification or registration of the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) for or to provide (as applicable) each of such products for which it is eligible (including capacity credits and other capacity-related benefits), and (b) take all other actions, including identifying and complying with any applicable certification procedures and operating requirements (including required testing and outage reporting) necessary or advisable to register and qualify the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) for or to provide (as applicable) all such products for which it is eligible and otherwise meet its obligations above, including, if applicable, for Buyer to be able to obtain and, if applicable (see item 16), schedule, offer, bid, and settle such products with the applicable Balancing Authority(ies).</p> <p>In the event that, for any planning period (or portion thereof) applicable to Buyer under the resource adequacy (or equivalent) laws applicable to Buyer that occurs during the Delivery Term, the UCAP Rating (defined in item 11 above) for the Dependable Capacity Allocated To Buyer is less than the Minimum UCAP Requirement and/or Seller does not obtain and provide to Buyer, for such planning period (or portion thereof), the capacity credits and other capacity-related benefits that could have been provided to Buyer if such UCAP Rating met or exceeded the Minimum UCAP Requirement, Seller will pay to Buyer, for such planning period (or portion thereof) in which there is a shortfall from the Minimum UCAP Requirement, an amount equal to (i) the greater of (a) the revenues per MW that would have been obtained at the MISO capacity auction for the Local Resource Zone (as defined in the MISO Rules) that includes Buyer's service territory for the applicable planning period (or portion thereof) for the shortfall capacity-related benefits, measured at the auction clearing price that would have been applicable to such capacity-related benefits under such auction, or (b) if the resource adequacy (or equivalent) laws applicable to Buyer establish a "capacity deficiency charge" or equivalent concept, the "capacity deficiency charge" per MW for the Local Resource Zone that includes Buyer's service territory (or equivalent concept) for the applicable planning period (or portion thereof), as established under the resource adequacy (or equivalent) laws applicable to Buyer, multiplied by (ii) the amount of the shortfall (expressed in MW). For purposes of this item 13, the "Minimum UCAP Requirement" is (i) for CCGT resources, 96% of the Dependable Capacity</p>
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		<p>Allocated To Buyer, (ii) for CT resources, 94% of the Dependable Capacity Allocated to Buyer, and (iii) for ST resources, 92% of the Dependable Capacity Allocated to Buyer.</p> <p>In the event any capacity credit or other capacity-related benefit is sourced from a resource not located within the Local Resource Zone that includes Buyer's service territory, (i) if the auction clearing price for such capacity credit or capacity-related benefit ("Out-of-Zone ACP") is greater than the auction clearing price for a capacity credit or capacity-related benefit sourced from a resource located within the Local Resource Zone that includes Buyer's service territory ("In-Zone ACP"), Buyer will pay Seller the positive difference between the Out-of-Zone ACP and the In-Zone ACP and (ii) if the In-Zone ACP is greater than the Out-of-Zone ACP, Seller will pay Buyer the positive difference between the In-Zone ACP and the Out-of-Zone ACP.</p>
14	Additional Testing/ Required Data:	<p>Without limiting item 13 above, to the extent Buyer is required by applicable laws (including Balancing Authority rules) to demonstrate the capability of, or otherwise test, the Facility (or portion thereof allocated to Buyer) for purposes of capacity qualification or for any other purpose (including to meet requirements imposed by Buyer's participation in a reliability group or Balancing Authority (including any ISO or RTO) or in any marketplace administered by any Balancing Authority (including any ISO or RTO)) beyond the capacity demonstration tests contemplated by item 10 above, Seller will perform such tests (including any deliverability tests and capability tests) according to applicable requirements at Seller's expense. In such event, Buyer will not be obligated, but will have the option, to purchase the power delivered from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, from the corresponding portion thereof) at the Electric Interconnection Point according to such tests. In addition, Seller will provide to Buyer (in the form and time frame reasonably requested by Buyer) all data and other information relating to the Facility, or the delivery of capacity, capacity-related benefits, energy, environmental attributes, and other electric products under the Definitive Agreement, necessary or advisable for Buyer to (i) participate fully in any market (including any marketplace administered by any Balancing Authority) in which Buyer is participating or otherwise realize the benefits of the capacity, capacity-related benefits, energy, environmental attributes, and other electric products provided under the Definitive Agreement and (ii) otherwise comply with applicable laws or its obligations (including those set forth in item 6 above) or exercise its rights (including those set forth in item 16 below) under the Definitive Agreement, including, if Seller is the Market Participant, by providing Buyer with unrestricted "view" access to the MISO web portal for the Facility or portion thereof allocated to Buyer (or if</p>

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		<p>unrestricted “view” access is no longer recognized in such portal, the most equivalent access then available in such portal). In addition, to the extent that, in Buyer’s good faith judgment, any of the matters described in clauses (i) or (ii) of the preceding sentence require modification or amendment of the Definitive Agreement or the development or implementation of, or agreement upon, protocols, procedures, processes, or terms and Buyer so requests, the Parties will make such modifications or amendments, and/or will develop, agree upon, and implement such protocols, procedures, processes, or terms, as expeditiously as practicable.</p>
15	Dispatch Rights & Exclusivity:	<p>Throughout the Delivery Term, Buyer will have the right to dispatch the capacity, capacity-related benefits, energy, environmental attributes, 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 in increments of whole integrated generating units, the corresponding portion thereof), including modifying any existing dispatch notice, from time to time as it deems appropriate in its sole and absolute discretion, subject to Buyer’s observance of the Operating Restrictions (as defined below) and according to the following:</p> <ul style="list-style-type: none"> • Buyer may provide the initial dispatch notice or modify an existing dispatch notice for any day on a “day-ahead” basis until fifteen (15) minutes prior to the applicable deadline for submitting schedules or offers to the applicable Balancing Authority for day-ahead energy or other electric products; and • 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 such intra-day dispatch notice complies with the maximum applicable ramp rates and start times pursuant to the Operating Restrictions. The use of this intra-day dispatch flexibility by Buyer (and any “day-ahead” dispatch notice submitted by Buyer to Seller without the corresponding purchase by Buyer of gas in the “day-ahead” gas market) may result in a different gas price for purposes of the settlement of gas re-sale gains or losses as described in item 27 below. <p>For the avoidance of doubt, if Seller is the market participant or other representative of the Facility (or portion thereof allocated to Buyer) before the applicable Balancing Authority(ies), a direction or instruction by Buyer to Seller to submit a schedule, offer, or bid to a Balancing Authority pursuant to item 16 below is not a dispatch notice to Seller as contemplated by this Term Sheet and, standing alone, does not trigger any obligation on the part of Seller to dispatch the Facility (or portion thereof allocated to Buyer).</p> <p>“Operating Restrictions” are expected to be the operating restrictions specified by Bidder in the applicable proposal (which may include, for</p>

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	<p>example, minimum permitted dispatch levels at reference conditions for the summer, shoulder, and winter months, minimum run time and downtime, maximum number of Completed Starts, minimum start times, minimum start notification lead times, maximum ramp rates) that are substantially equivalent to the operating restrictions that would apply to an owner of the Facility (or portion thereof allocated to Buyer); <u>provided, however</u>, that, to the extent that, notwithstanding such operating restrictions, (i) MISO or other applicable Balancing Authority operational requirements, or other applicable rules and laws, including standards and determinations established or relied upon by the market monitor, require the Facility (or portion thereof allocated to Buyer) to perform with or be subject to capabilities better than such operating restrictions, Seller will be required to cause, to the extent not inconsistent with Seller's obligation to operate and maintain the Facility (or portion thereof allocated to Buyer) safely and otherwise in accordance with accepted electrical practices and applicable interconnection agreements, permits, consents, governmental authorizations, and laws, the Facility (or portion thereof allocated to Buyer) to provide such excess capabilities and the Operating Restrictions will be deemed automatically reduced to reflect such excess capabilities and (ii) the Facility is otherwise capable, from time to time, of reduced Operating Restrictions and, as a result, Seller could allow Buyer greater scheduling flexibility, Seller will be required to promptly notify Buyer and make such increased capability available to Buyer, in which event the Operating Restrictions will be deemed automatically reduced to reflect such capabilities. Without limiting the foregoing or the other terms of this Term Sheet, Seller will be responsible for any and all penalties, charges, and other costs assessed or imposed by MISO (including through a market monitor determination) or any other applicable Balancing Authority for the inability or failure of the Facility (or portion thereof allocated to Buyer) to perform with capabilities better than any contractually agreed operating restriction or failure to follow any set point required by or other dispatch requirement of MISO or other applicable Balancing Authority, notwithstanding any contractually agreed operating restriction set forth in the Definitive Agreement to the contrary.</p> <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 in increments of whole integrated generating units, the corresponding portion thereof) and will deliver to Buyer all associated capacity-related benefits, energy, environmental attributes, and other electric products from the Facility at the Electric Interconnection Point and, with respect to External Resources, financially settle with Buyer at the Financial Settlement CP Node in accordance with Buyer's dispatch notices. Without limiting the foregoing, Seller will be required to make available to Buyer, for delivery to Buyer at the Electric Interconnection Point, any capacity of the</p>
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		<p>Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, 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 Electric Interconnection Point at any time, and, to the extent dispatched by Buyer (in its sole and absolute discretion), Seller will deliver to Buyer at the Electric Interconnection Point the capacity-related benefits, energy, environmental attributes, and other electric products associated with such excess capacity and, with respect to External Resources, settle with Buyer therefor at the Financial Settlement CP Node as provided in this Term Sheet. 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 benefit, energy, environmental attribute, or other electric product, even if Seller is otherwise above the availability requirements of the Definitive Agreement.</p> <p>Buyer's rights to the capacity, capacity-related benefits, energy, environmental attributes, 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 in increments of whole integrated generating units, the corresponding portion thereof) are exclusive, and Seller may not offer, sell, deliver, or make available for any delivery period during the Delivery Term any of such capacity, capacity-related benefits, energy, environmental attributes, or other electric products for the benefit of any person other than Buyer (whether or not Buyer dispatches the same).</p>
16	Market Functions and Revenues:	<p>Subject to certain limitations, throughout the term of the Definitive Agreement, Buyer will have the right to determine from time to time whether Buyer (or a designee of Buyer) or Seller will serve as the market participant or other representative for the Facility (or, if applicable, the portion thereof allocated to Buyer) before MISO or, in the event Buyer is not subject to the MISO Balancing Authority, the largest Balancing Authority to which Buyer is then subject with respect to any planning period of MISO or such other Balancing Authority during the Delivery Term (defined below).</p> <p>Buyer will be entitled to (and, to the extent required by the rules, procedures, and protocols of the applicable Balancing Authority or other applicable laws, Buyer will), on an exclusive basis:</p> <p>(i) schedule, offer, and/or bid the capacity, capacity-related benefits, energy, environmental attributes, and other electric products contracted to Buyer under the Definitive Agreement, for delivery at the Electric Interconnection Point, with the Balancing Authority(ies) applicable to such point (and any downstream Balancing Authority(ies)) in its sole and absolute discretion, provided that Buyer schedules and dispatches from Seller any</p>

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	<p>capacity, capacity-related benefits, energy, environmental attributes, and other electric products that are expressly scheduled, offered, and/or bid by Buyer in a manner that complies with any requirements of such Balancing Authority(ies) to generate (or not generate), or settle, each such product that are triggered solely by Buyer's schedules, offers, and/or bids (except to the extent Buyer's schedule and dispatch from Seller of such products is limited by an availability notice from Seller provided after the applicable schedule, offer and/or bid was submitted);</p> <p>(ii) settle any such schedules, offers, and/or bids with the applicable Balancing Authority(ies), subject to re-allocation of associated amounts, if applicable, according to the Definitive Agreement (including item 28 below and certain paragraphs of this item 16); and</p> <p>(iii) select the type of resource designation that would apply to the Facility or portion thereof allocated to Buyer (<i>e.g.</i>, capacity resource, behind-the-meter resource, intermediate resource, or other type of resource recognized by the applicable Balancing Authority) in such Balancing Authority(ies), provided that any such resource designation is a designation for which the Facility is eligible, in Buyer's good faith judgment, at the time Buyer selects such designation;</p> <p><u>provided, however</u>, that if Seller is the market participant or other representative for the Facility (or portion thereof allocated to Buyer) before the applicable Balancing Authority, then, notwithstanding clause (i) or (ii) immediately above, Seller will (a) schedule, offer, and/or bid the capacity, capacity-related benefits, energy, environmental attributes, and other electric products contracted to Buyer under the Definitive Agreement, at the Electric Interconnection Point, with the Balancing Authority applicable to such point) as directed by Buyer, provided that Buyer's scheduling, offering, and bidding instructions, when given effect by Seller through submission to the Balancing Authority(ies) applicable to such point, will result in a schedule, offer, or bid that complies with any requirements of such Balancing Authority(ies) to generate (or not generate), or settle, each such product that are triggered solely by Buyer's instructions and Seller's scheduling, offering, or bidding in accordance therewith, subject to the remainder of this paragraph and item 16 and (b) settle with the applicable Balancing Authority(ies) as provided in clause (ii) immediately above. If Buyer's directions do not comply with applicable rules, procedures, protocols, or other rules of the applicable Balancing Authority, Seller shall promptly notify Buyer of such non-compliance and afford Buyer a reasonable opportunity to modify its directions to Seller to conform to such rules before the required time for submission to the applicable Balancing Authority(ies) of such schedule, offer, or bid pursuant to such directions. If Buyer fails to timely modify its directions to Seller with respect to any schedule, offer, or</p>
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	<p>bid into a must-offer day-ahead or intra-day market, Buyer will be deemed to have requested for all purposes, and Seller will timely submit to the applicable Balancing Authority, a day-ahead or intra-day (as applicable) offer or bid in compliance with such rules, with pricing based on (1) the heat rate set forth in the Definitive Agreement applicable to the delivery of the offered or bid energy in each settlement interval, (2) Seller's reasonable best estimate of the gas price for such energy for such interval (updated from time to time in accordance with prudent scheduling, offering, and bidding and risk management practices and consistent with the applicable Balancing Authority rules and other laws), (3) the variable operation and maintenance rate for such energy under the Definitive Agreement in such interval, and (4) if the applicable Balancing Authority's acceptance of the offer or bid would necessitate one or more "starts" under the Definitive Agreement, the start-up and start fuel (if applicable) costs applicable to such start under the Definitive Agreement.</p> <p>If Buyer is the market participant or other representative for the Facility (or portion thereof allocated to Buyer) before the applicable Balancing Authority, then, to the extent that, under applicable Balancing Authority rules, the functions described in clauses (i)-(iii) above are performed by a market participant or other representative for the Facility (or portion thereof allocated to Buyer) before the applicable Balancing Authority, 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 or its designee will) exclusively serve such function. In such event, Seller will cause each applicable Balancing Authority to (A) qualify and recognize Buyer or its designee as the exclusive market participant or other representative for the Facility (or portion thereof allocated to Buyer) as of the start of the Delivery Term (or such later date as of which such concept is applicable or Buyer has specified to Seller) and maintain such qualification and recognition throughout the remainder of the Delivery Term (or the period(s) specified by Buyer) and (B) terminate such qualification and recognition as of the end of the Delivery Term, except to the extent required for transactions under the Definitive Agreement occurring prior to the end of the Delivery Term. If Seller is the market participant or other representative for the Facility (or portion thereof allocated to Buyer) before the applicable Balancing Authority, then, to the extent that, under applicable Balancing Authority rules, the functions described in clauses (i)-(iii) above are performed by a market participant or other representative for the Facility (or portion thereof allocated to Buyer) before the applicable Balancing Authority, Seller will exclusively serve such function, subject to Buyer's direction. In such event, Seller will cause each applicable Balancing Authority to qualify and recognize Seller as the exclusive market participant or other representative for the Facility (or portion thereof allocated to Buyer) as of the start of the</p>
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		<p>Delivery Term (or such later date as of which such concept is applicable or Buyer has specified to Seller) and maintain such qualification and recognition throughout the remainder of the Delivery Term (or the period(s) specified by Buyer).</p> <p>If Buyer is the market participant or other representative for the Facility (or portion thereof allocated to Buyer) before the applicable Balancing Authority, then, to the maximum extent permitted by applicable Balancing Authority rules, Seller will continue to perform all other functions with respect to the Facility (and the provision and/or delivery of capacity, capacity-related benefits, energy, environmental attributes, and other electric products) before each applicable Balancing Authority, including, to the extent applicable, transmitting to the applicable Balancing Authority operational data or information (including derating and outage notices) and coordinating outages; <u>provided, however</u>, that, to the extent that, under applicable Balancing Authority rules, procedures, protocols, and other laws, such functions cannot be performed by a different person than the person that performs the functions described in clauses (i)-(iii) above, Buyer will perform such functions at Seller's expense and with full release and indemnification from Seller.</p> <p>Seller will cause, at all times during the Delivery Term, the local Balancing Authority applicable to the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) to be the smallest Balancing Authority that, as of such time, includes the portion of the Entergy Transmission System where the Electric Interconnection Point is located ("Interconnection Portion"). Further, Seller will ensure that at all times the Balancing Authority(ies) applicable to the portion of the Entergy Transmission System where the Facility is electrically interconnected recognize the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) as a separate generating resource and the Electric Interconnection Point as a separate CP Node for settlement purposes (including that such Balancing Authority(ies) determine separately for settlement purposes the amount of energy actually delivered specifically from the Facility (or portion thereof allocated to Buyer) to the Electric Interconnection Point and, if applicable, recognize the Facility (or portion thereof allocated to Buyer) as a separate generating resource for tagging, scheduling, offering, and bidding purposes). To the extent that the arrangements contemplated by this paragraph require an agreement on any "behind-the-fence" metering or other methodology, Seller will keep Buyer reasonably apprised of the progress and will obtain Buyer's approval (not to be unreasonably withheld, conditioned, or delayed) prior to entering into (or</p>
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		<p>modifying) such arrangements.</p> <p>Except as the parties may otherwise agree, Buyer will be entitled to (i) all payments and credits from any Balancing Authority or other person for (and will be responsible for any settlement at negative prices of) the capacity, capacity-related benefits, energy, environmental attributes, and other electric products provided under the Definitive Agreement, including, without limitation, with respect to any Forced Dispatch Products, and (ii) all other payments and credits from any applicable Balancing Authority in respect of the Facility or portion thereof allocated to Buyer (including the curtailment thereof). If Seller receives any such payment or credit due Buyer, Seller will promptly pay (or cause to be paid) to Buyer all amounts so received. In addition, Seller will pay to Buyer any shortfall in the payments or credits received for or relating to the capacity and capacity-related benefits, energy, environmental attributes, and other electric products provided under the Definitive Agreement, to the extent resulting from Seller's breach of the Definitive Agreement. For the avoidance of doubt, as used in this paragraph, the terms "payment" and "credit" do not include any "payment" or "credit" at negative prices or other amount that is effectively a charge; such amounts are addressed expressly in the parenthetical to clause (i) above and elsewhere in this Term Sheet (including item 28 below and the immediately following paragraph). Further, clause (i) of this paragraph does not include settlement at negative prices of, and other imbalance charges for, positive imbalance energy, which settlement and other imbalance charges will be allocated between the Parties according to item 28 below.</p> <p>"Forced Dispatch Products" means capacity, capacity-related benefits, energy, environmental attributes, and other electric products required by any Balancing Authority or other governmental authority or the interconnection agreement(s) or applicable law to be provided from the Facility (or portion thereof allocated to Buyer), excluding any such products that are (a) expressly scheduled, offered, and/or bid by Buyer (or, if Seller is the market participant for the Facility (or portion thereof allocated to Buyer), by Seller at Buyer's instruction) and (b) required to be provided from the Facility (or portion thereof allocated to Buyer) by the applicable Balancing Authority solely as a result of such schedules, offers, and/or bids.</p>
17	Guaranteed Heat Rate:	<p>The "Guaranteed Heat Rate" means, with respect to any hour of energy delivery, the heat rate (expressed in \$/MMBtu (HHV)) (which is expected to be based on the Guaranteed Heat Rate curve specified by Bidder in the applicable proposal and to be included in a schedule) corresponding to Buyer's dispatch level during such hour; <u>provided, however</u>, that if, as a result of a unit contingency or other limitation, Buyer's dispatch level was limited during such hour and such limitation resulted in a higher applicable heat rate, the Guaranteed Heat Rate will be the heat rate corresponding to</p>

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		<p>Buyer's dispatch that would have occurred during such hour absent such limitation; <u>provided</u>, <u>further</u>, that if, during such hour, the energy actually generated by the Facility (or portion thereof allocated to Buyer) and delivered at the Electric Interconnection Point is less than or more than Buyer's dispatch level during such hour and the heat rate corresponding to the amount of energy actually generated by the Facility (or portion thereof allocated to Buyer) and delivered at the Electric Interconnection Point during such hour (if such amount had been Buyer's dispatch level during such hour) is lower than the heat rate corresponding to Buyer's dispatch level during such hour, the Guaranteed Heat Rate will be the heat rate corresponding to the amount of energy actually generated by the Facility (or portion thereof allocated to Buyer) and delivered at the Electric Interconnection Point during such hour.</p> <p>If, in any hour, the Facility's (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof's) actual operating performance in such hour with respect to the energy deliveries at the Electric Interconnection Point during such hour, expressed in actual MMBtu of gas consumed per MWh of delivered energy (HHV) at the Electric Interconnection Point, is at a heat rate that is:</p> <ul style="list-style-type: none"> • greater than 103.00% of the Guaranteed Heat Rate, Seller will pay to Buyer an amount equal to the product of (i) the quantity of gas (expressed in MMBtu) consumed in such hour as a result of the operation of the Facility (or allocated portion) at a heat rate above 103.00% of the Guaranteed Heat Rate and (ii) the Daily Price of Gas (as defined below) for the gas day in which such hour occurs plus applicable transportation, taxes, and related costs; or • lower than 97.00% of the Guaranteed Heat Rate, Buyer will pay to Seller an amount equal to the product of (i) the quantity of gas (expressed in MMBtu) not consumed in such hour as a result of the operation of the Facility (or allocated portion) at a heat rate below 97.00% of the Guaranteed Heat Rate and (ii) the Daily Price of Gas for the gas day in which such hour occurs. <p>"Daily Price of Gas" means, in respect of each gas day, the index published by Platts <i>Gas Daily</i> (in the internet publication currently accessed through www.platts.com) in the table entitled "Daily Price Survey" under the column heading "Midpoint" for gas to flow at the gas flow point for Henry Hub or East Texas – Houston Ship Channel (as specified by Bidder in the applicable proposal) on the gas day of delivery of the applicable energy (expressed in \$/MMBtu).</p>
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18	Variable O&M Rate:	For each MWh of energy dispatched by Buyer and delivered to Buyer from the Facility (or portion thereof allocated to Buyer) at the Electric Interconnection Point, Buyer will pay the “ Variable O&M Rate. ” The Variable O&M Rate (expressed in \$/MWh) for each year of the Delivery Term is expected to be the Variable O&M Rate specified by Bidder for such year in the applicable proposal. Notwithstanding the foregoing, the Variable O&M Rate will not apply to ramp energy delivered by Seller to Buyer during any start-up or shutdown. For External Resources, the Variable O&M Rate will include an adjustment to reflect, for any hour in which energy or other electric products are delivered to and payable by Buyer under the Definitive Agreement, the financial settlement of such deliveries at the Financial Settlement CP Node as provided herein.
19	Start-up Charge:	{ <i>Excluding any baseload portion of a ST resource</i> } For each Completed Start, Buyer will pay the “ Start-up Charge. ” The Start-up Charge (expressed in \$/Completed Start) for each year of the Delivery Term is expected to be the Start-up Charge specified by Bidder for such year in the applicable proposal. “ Completed Start ” means a start-up of a combustion turbine at the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) (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) Seller is not required to terminate the start-up as a result of exceeding the maximum allowed start-up time, (b) an output level to Buyer at the Electric Interconnection Point equal to the minimum permitted dispatch level for the dispatched operating configuration is achieved for a reasonably sustained continuous period, and (c) the Facility is released unconditionally for ramping to, and the attainment of, any higher output level dispatched by Buyer, but excluding 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). For purposes of applying the exclusion at the end of the preceding sentence, no start-up that occurs after (whether directly after or after one or more intervening shutdowns scheduled by Buyer) one or more unscheduled shutdowns will be a Completed Start until the number of completed re-starts (<i>i.e.</i> , start-ups that would have been Completed Starts, solely but for the exclusion at the end of the preceding sentence) that occur after such unscheduled shutdown(s) equals the number of such unscheduled shutdown(s).

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20	Start Fuel:	{ <i>Excluding any baseload portion of a ST resource</i> } The amount of gas required to achieve a completed start (measured from the mechanical commencement of such completed start until achieved) for each type of start is expected to be based on the amount specified by Bidder in the applicable proposal.
21	Operating Range:	<p>{<i>Excluding any baseload portion of a ST resource</i>} For any month, the minimum permitted dispatch level(s) (expressed in MW delivered to Buyer at the Electric Interconnection Point) for the operating configuration(s) corresponding to the capacity allocated to Buyer in each year are expected to be as specified by Bidder in the applicable proposal. 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>For any month, the maximum MW capable of being delivered to Buyer at the Electric Interconnection 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 are expected to be as specified by Bidder in the applicable proposal.</p>
22	Maximum Completed Starts:	{ <i>Excluding any baseload portion of a ST resource</i> } If Bidder's proposal includes a maximum number of Completed Starts, then, subject to the provisos to the definition of "Operating Restrictions" and related provisions of item 15 above, Buyer will have (i) a maximum number of Completed Starts per day that is expected to be as specified by Bidder in the applicable proposal multiplied by the number of combustion turbines included in the capacity of the Facility allocated to Buyer and (ii) a maximum number of Completed Starts per contract year that is expected to be as specified by Bidder in the applicable proposal multiplied by the number of combustion turbines included in the capacity of the Facility allocated to Buyer.
23	Minimum Run Time:	{ <i>Excluding any baseload portion of a ST resource</i> } If Bidder's proposal includes a minimum run time for combustion turbines following a Completed Start, then, subject to the provisos to the definition of "Operating Restrictions" and related provisions of item 15 above, Buyer may require achievement of a scheduled shutdown of a combustion turbine (<i>i.e.</i> , for such combustion turbine to be at 0 MW) following a Completed Start of such combustion turbine only upon and after the expiration of the agreed minimum number of run hours since completion of the start-up time for such Completed Start (which minimum run hours are expected to be as specified by Bidder in the applicable proposal).

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Term Sheet for Tolling Product

24	Minimum Down Time:	{ <i>Excluding any baseload portion of a ST resource</i> } If Bidder's proposal includes a minimum down time for a combustion turbine following a shutdown of such turbine, then, subject to the provisos to the definition of "Operating Restrictions" and related provisions of item 15 above, Buyer may require a combustion turbine to achieve a Completed Start (<i>i.e.</i> , to start the first hour after the start-up time of a Completed Start) following a shutdown of such combustion turbine scheduled by Buyer only upon and after the expiration of the agreed minimum number of idle hours from and including the hour in which Buyer has scheduled for the scheduled shutdown to be achieved (which minimum idle hours are expected to be as specified by Bidder in the applicable proposal).
25	Maximum Start-up Time:	{ <i>Excluding any baseload portion of a ST resource</i> } The " Maximum Start-up Time " is the maximum amount of time Seller will be permitted to achieve a start. The Maximum Start-up Time for a start will be measured from the later of (i) Seller's receipt of a dispatch notice from Buyer requiring such start or (ii) the point in time that is the Maximum Start-Up Time before the point in the first hour following such start during which Seller is requested to generate (in the aggregate over the entire course of such hour) output equal to at least the level set forth in clause (ii)(b) of the definition of "Completed Start" in item 19 above, multiplied by one (1) hour. Subject to the proviso to the definition of "Operating Restrictions" above, the Maximum Start-up Time for each type of start is expected to be as specified by Bidder in the applicable proposal. Subject to the provisos to the definition of "Operating Restrictions" and related provisions of item 15 above, Buyer may not give a dispatch notice requiring a Completed Start less than the Maximum Start-up Time before the point in the first hour following such start during which Seller is requested to generate (in the aggregate over the entire course of such hour) output equal to at least the level set forth in clause (ii)(b) of the definition of "Completed Start", multiplied by one (1) hour.
26	Maximum Ramp Rates:	{ <i>Excluding any baseload portion of a ST resource</i> } Subject to the provisos to the definition of "Operating Restrictions" and related provisions of item 15 above, the maximum ramp rate in each operating configuration corresponding to the capacity allocated to Buyer is expected to be the ramp rate specified by Bidder for such operating configuration in the applicable proposal. These maximum ramp rates apply only after the start-up period of a start and before the ramp-down period of a shutdown.
27	Fuel Supply and Transport:	Subject to the following paragraph and the other terms of this Term Sheet, Buyer will have sole responsibility for and bear the full costs (including any applicable fuel taxes) of the arrangement, procurement, transportation, nomination, delivery, and storage of fuel, up to each Gas Delivery Point, for the performance of fuel-conversion services by Seller under the Definitive

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		<p>Agreement (“Contract Gas”). The Gas Delivery Point(s) will be as specified by Bidder for such operating configuration in the applicable proposal.</p> <p>The supplier(s) and transporter(s) of Contract Gas and other persons providing services with respect to Contract Gas will be selected by Buyer, and the terms of service with such supplier(s), transporter(s), or persons will be as agreed to by Buyer, in each case, in its sole and absolute discretion. Contract Gas will be delivered by Buyer to each Gas Delivery Point at the pressure then in effect in the pipeline of the transporter immediately upstream of or at such Gas Delivery Point.</p> <p>Seller will (i) cooperate and timely provide all materials and information requested by Buyer to facilitate Buyer’s ability to make timely arrangements for and to arrange, procure, transport, nominate, and deliver Contract Gas to the Gas Delivery Point(s) in connection with the Definitive Agreement, (ii) operate and maintain the gas interconnection facilities in accordance with the requirements of the Facility’s gas interconnection arrangements, and (iii) otherwise comply with Seller’s obligations under the gas interconnection arrangements.</p> <p>Seller will be responsible for and bear the full costs of (i) the transportation and delivery of Contract Gas from and after each Gas Delivery Point to the generating units at the Facility and (ii) the procurement, transportation, storage, use, loss, or disposition of gas other than Contract Gas. Seller will covenant that, throughout the Delivery Term, all Contract Gas delivered to each Gas Delivery Point will be used and consumed exclusively by the Facility (or portion thereof allocated to Buyer) and as provided in this Term Sheet.</p> <p>Buyer’s sole and exclusive liability to Seller for any failure of Buyer to deliver Contract Gas to the Gas Delivery Point(s) as required by the Definitive Agreement will be the payment of related imbalance charges to the extent provided in item 28 below.</p>
28	Operation and Maintenance Costs/ Imbalances:	<p>Without limiting Buyer’s Capacity Payment, Variable Payment, and Start-up Payment (if applicable) 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, whether now in effect or at any time in the future coming into effect, arising out of or in connection with (i) the ownership, leasing, financing, insuring, development, engineering, procurement of equipment for, design, construction, installation, operation, maintenance, management, replacement, repair, studying, testing, or other use of the Facility (or any part thereof), including the real property interests related thereto, (ii) the conduct of business by Seller, (iii) Seller’s or Buyer’s functions pursuant to item 16 above, or (iv)</p>

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	<p>the provision or delivery (or scheduling, offering, and bidding into the applicable Balancing Authority) of capacity, capacity-related benefits, energy, environmental attributes, and other electric products, or the performance of Seller's other obligations, under the Definitive Agreement (collectively, the "Seller Cost Scope"), including:</p> <ul style="list-style-type: none"> • any Balancing Authority (including applicable RTO or ISO) or other transmission provider membership, transaction, or other fees, costs, or charges, including costs and charges associated with (a) any schedule, offer, or bid made by or for Buyer at the Electric Interconnection Point pursuant to item 16 above, (b) any settlement with respect to such or arising out of any schedule, offer, or bid, including, if applicable, settlement through financial schedules or similar financial arrangements or transfers to the Financial Settlement CP Node for the purpose of settlement between Buyer and Seller, or (c) otherwise with Seller's or Buyer's functions pursuant to item 16 above; • any penalties, fees, assessments, or other costs or charges for failure to satisfy any policy, rule, guideline, procedure, protocol, standard, criterion, or requirement of any market monitor, independent coordinator of transmission, Balancing Authority (including any applicable RTO or ISO), or other transmission provider ("BA Penalties"), including any penalties, fees, reductions in payment, assessments, or other costs, debits, or charges arising out of (1) any mitigation action taken by, any disallowance by, or other limitation on the recovery or payment of a cost, charge, expense, or credit imposed by any market monitor or MISO in connection with such failure or (2) any failure to meet the ramp rates, set points, or other operational directives, instructions, or requirements of MISO or other applicable Balancing Authority (including imbalance penalties); • gas and electric imbalance charges and penalties (including any revenue sufficiency guarantee and similar charges, the cost of purchasing imbalance or real-time energy to settle under-generated energy and the cost of settlement at negative prices of over-generated energy), integration charges, the cost of any ancillary services and other Balancing Authority (including any applicable RTO or ISO) or other transmission provider or fuel supplier services (including regulation, operating reserve, transmission study and upgrade costs, transmission congestion costs, transmission losses, and other transmission service costs); and • similar fees, costs, and charges arising out of or in connection with the Seller Cost Scope, regardless of whether imposed or assessed against Seller or Buyer (including in its role pursuant to item 16 above). <p>Notwithstanding the foregoing, and subject to and without limiting the terms</p>
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		<p>of the third paragraph in item 15 (relating to Operating Restrictions), Buyer will be responsible for (A) the settlements at negative prices assigned to Buyer in the second-to-last paragraph of item 16 above, (B) BA Penalties incurred solely as a result of compliance by Seller with a dispatch notice issued by Buyer that requires Seller to violate (only if Buyer is serving as market participant pursuant to item 16 above) either a directive or other instruction communicated by the Balancing Authority to Buyer in its role as market participant that has not been communicated to Seller or a Balancing Authority requirement to generate (or not generate) a product expressly scheduled, offered, and/or bid by Buyer pursuant to item 16 above that is triggered solely by Buyer's schedules, offers, and/or bids and (C) BA Penalties (other than imbalance charges) incurred solely as a result of Buyer scheduling, offering, and/or bidding the capacity and capacity-related benefits, energy, environmental attributes, and other electric products in a manner that violates Balancing Authority requirements for schedules, offers, and/or bids, except to the extent arising out of, in connection with, or resulting from a unit contingency, an Operating Restriction, or other limitation or an act or omission of Seller or its affiliates or its subcontractors or any of their respective agents or representatives.</p>
29	Planned Maintenance:	<p>“Planned Maintenance” means maintenance of the Facility that (i) is scheduled in advance with Buyer in accordance with the terms of the Definitive Agreement and included in an agreed Planned Maintenance schedule and has a predetermined start date and expected duration (<i>e.g.</i>, annual overhaul, inspections, testing) and (ii) includes a reduction in the availability of the capacity of the Facility allocated to Buyer.</p> <p>All maintenance of the Facility (or any portion thereof) that has a pre-determined start date and duration and includes a reduction in the availability of the capacity of the Facility allocated to Buyer 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 the months of March and April and the months of October and November.</p> <p>During the Delivery Term, Seller will deliver to Buyer its proposed schedule for Planned Maintenance on or before, in respect of the March/April maintenance period, September 1 of the preceding year, and in respect of the October/November maintenance period, February 1 of the calendar year in which such maintenance period will begin. The Parties will then finalize a mutually acceptable schedule for Planned Maintenance.</p> <p>As set forth in item 12 above, Affected Capacity resulting from Planned Maintenance will be excluded in determining DC_i for purposes of calculating Monthly Availability, except to the extent the Equivalent Planned Maintenance Hours for the contract year exceed a maximum number of</p>

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		<p>Equivalent Planned Maintenance Hours permitted per contract year (“Excess Equivalent Planned Maintenance Hours”).</p> <p>“Equivalent Planned Maintenance Hours,” or “EPMH,” means (i) the product of (a) the amount of the Dependable Capacity Allocated To Buyer that is unavailable or limited due to Planned Maintenance, expressed in MW, multiplied by (b) the period for which such Dependable Capacity Allocated to Buyer is so unavailable or limited, expressed in hours (or any portion thereof), divided by (ii) the Dependable Capacity Allocated To Buyer.</p> <p>The permitted number of Equivalent Planned Maintenance Hours in each contract year will be as follows:</p> <p>(i) {<i>Excluding ST resources</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 for up to [____] Equivalent Planned Maintenance Hours for each inspection; <u>provided, however</u>, that this clause (i) will not apply during multiples of run hours when clause (ii) or clause (iii) below applies;</p> <p>(ii) {<i>Excluding ST resources</i>} 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 for up to [____] Equivalent Planned Maintenance Hours for each inspection; <u>provided, however</u>, that this clause (ii) will not apply during multiples of run hours when clause (iii) below applies;</p> <p>(iii) {<i>Excluding ST resources</i>} 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 for up to [____] Equivalent Planned Maintenance Hours for each inspection;</p> <p>(iv) {<i>Excluding CT resources</i>} one “minor” inspection may be performed for each steam turbine providing the Dependable Capacity Allocated To Buyer after every [____] run hours of such steam turbine for up to [____] Equivalent Planned Maintenance Hours for each “minor” inspection; <u>provided, however</u>, that this clause (iv) will not apply during multiples of run hours when clause (v) below applies; and</p> <p>(v) {<i>Excluding CT resources</i>} one “major” inspection may be performed for each steam turbine providing the Dependable Capacity Allocated To Buyer after every [____] run hours of such steam turbine for up to [____] Equivalent Planned Maintenance Hours for each “major” inspection;¹</p>
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¹The blanks in clauses (i) through (v) are expected to be filled in with the appropriate run hours or EPMH specified by Bidder in the applicable proposal submission template.

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		<p><u>provided, however</u>, that if the number of run hours indicated above would reasonably be expected to occur during periods other than the March/April maintenance period or October/November maintenance period, Seller will schedule as Planned Maintenance any performance of the applicable inspection during the March/April maintenance period or October/November maintenance period immediately preceding their occurrence; <u>provided, further</u>, that, in the event two or more of the foregoing inspections would reasonably be 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. Notwithstanding the foregoing, each of the two immediately preceding provisos will not apply if the result of giving effect to such proviso would be the acceleration of maintenance that would otherwise be performed by or for Seller after the expiration of the Delivery Term to a date during the Delivery Term, unless Buyer has an option or agreement to purchase the Facility or portion thereof after the expiration of the Delivery Term and Buyer has not waived its rights to have Seller perform such Planned Maintenance after the expiration of the Delivery Term. Seller will be required to provide and certify the applicable run hours of the generating unit(s) providing the Dependable Capacity Allocated to Buyer (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 commencement of the Delivery Term and at periodic intervals thereafter.</p>
30	Force Majeure:	<p>“Force Majeure” means any event that meets all of the following criteria: (i) the event occurs after the effective date 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 subcontractors); (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 subcontractors); (iv) the event and its effects do not result from the negligence or fault of the Party claiming Force Majeure (including any breach by such Party of the Definitive Agreement) or the negligence or fault of its subcontractors; and (v) the event causes the Party claiming Force Majeure, despite such Party’s (including its subcontractors) 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).</p> <p>Provided the event meets all of the criteria described above, Force Majeure will include: natural disasters; landslides; droughts; fires; floods; earthquakes; hurricanes; tornados; tsunamis; hail and ice and ice storms that</p>

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	<p>are abnormally severe for the period of time when, and the area where, such weather event or condition occurs; epidemics; wars (whether declared or undeclared) or other armed conflicts; riots; explosions; civil disturbances; 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 that is not the direct or proximate result of, subject to clauses (d) and (f) of this sentence, acts of God (which acts of God will include floods, earthquakes, hurricanes, and tornadoes), epidemics, wars, riots, civil disturbances, or, subject to clause (b) of this sentence, sabotage; (b) sabotage by employees, agents, representatives, or subcontractors (including their employees, agents, and representatives) of the Party claiming Force Majeure; (c) delay in obtaining, or failure to obtain or revocation of, a governmental approval; (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 subcontractors (including their employees, agents and representatives) of the Party claiming Force Majeure (including the failure of a subcontractor to furnish machinery, spare parts, materials, consumables (including fuel), labor, equipment, or services in accordance with its contractual obligations) or any other 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 electric transmission or fuel transportation), unless (1) the Party claiming Force Majeure has a firm contract for the applicable service or item (provided that this clause (1) will apply with respect to electric transmission only to the extent the concept of a firm contract for electric transmission exists in the relevant context), (2) in the case of gas transportation, the transportation curtailed is primary, in-path firm transportation, and (3) (A) in any case other than interruption or curtailment of electric transmission or gas transportation, the provider, if it were a party hereto, would be entitled to Force Majeure protection as an affected party or (B) in any case of interruption or curtailment of electric transmission or gas transportation, the interruption or curtailment is due to “force majeure” or “uncontrollable force” or similar term as defined under the applicable transmission provider’s or gas transporter’s tariff; (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, capacity-related benefits, environmental attributes, 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 the Seller Cost Scope or changes in market conditions affecting the</p>
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		<p>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; <u>provided, however</u>, that the existence of one or more of the factors listed in the exceptions to clauses (a), (e), and (f) will not be sufficient to conclusively or presumptively prove the existence of a Force Majeure if the event does not meet the criteria described in the first paragraph of this definition.</p> <p>If Buyer is the Party claiming Force Majeure and does not overcome the Force Majeure for a reasonably sustained period of time and resume performance of its obligations under the Definitive Agreement within (i) twelve (12) months after the inception of such 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 without liability to either Party arising out of such termination.</p>
31	Replacement Products:	<p>If Seller is not capable of providing the full availability of capacity, capacity-related benefits, energy, environmental attributes, 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 in increments of whole integrated generating units, the corresponding portion thereof), Seller will have no right and will not be permitted to provide replacement capacity, capacity-related benefits, energy, environmental attributes, and/or other electric products without the prior written consent of Buyer in its sole and absolute discretion. Notwithstanding the foregoing, Seller may make a proposal or offer to Buyer to provide such replacement products. In such event, Buyer may accept or reject, in its sole and absolute discretion, any such proposal or offer from Seller. If Buyer receives such a proposal or offer and Buyer, in its sole and absolute discretion, accepts such proposal or offer in writing, such replacement products will constitute, for the period for which Buyer has agreed that Seller may provide such replacement products and subject to the other terms of such agreement, replacement products for all purposes under the Definitive Agreement, and, except to the extent the Parties have agreed otherwise in writing, Seller will be obligated to provide such replacement products in accordance with the terms of the Definitive Agreement at no additional cost to Buyer. Replacement capacity so provided as a replacement product will be treated as Dependable Capacity</p>

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		<p>for all purposes under the Definitive Agreement, including availability calculations.</p> <p>Notwithstanding the foregoing, if the applicable Balancing Authority considers a quantity of energy or other electric products to have been delivered to or for the account of Buyer at the Electric Interconnection Point for settlement purposes (and credits Buyer therefor) even though such energy or other electric products were actually imbalance or real-time energy or other electric products that were directly or indirectly provided by such Balancing Authority, rather than being actually generated by the Facility (or portion thereof allocated to Buyer), then, to the extent Seller pays the imbalances charges, penalties, and all other costs associated with such replacement energy or other electric products, such replacement energy and other electric products will automatically be treated as energy and other electric products provided by the Facility (or portion thereof allocated to Buyer) for all purposes and the associated capacity will be treated as available for any purpose under this Term Sheet, including Monthly Availability calculations.</p>
32	No QF Put:	<p>Notwithstanding any other provision of the Definitive Agreement, Seller will waive any and all rights 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 in increments of whole integrated generating units, 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 in increments of whole integrated generating units, the corresponding portion thereof) to the host utility at any time during the Delivery Term.</p>
33	Change in Law:	<p>The Parties 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 expressly provided in the Definitive Agreement, including with respect to items 34 and 46 below.</p>
34	Disallowance:	<p>[Reserved. Please see Section 2.5 of the Main Body for additional information.]</p>
35	Conditions Precedent:	<p>Without limiting item 37, Buyer’s obligations under the Definitive Agreement will be conditioned upon the fulfillment or express waiver, by</p>

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	<p>Buyer, of numerous conditions, including the following:</p> <ol style="list-style-type: none"> 1. Buyer has obtained all approvals, permits, licenses, consents, waivers, and other authorizations from, notifications to, and filings and registrations with, governmental authorities deemed necessary or advisable by Buyer (i) that (a) approve the Definitive Agreement and the transactions thereunder or contemplated thereby, including approval of the full recovery of all Buyer costs associated with the Definitive Agreement and all related agreements and transactions (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 foregoing is prudent and in the public interest, or (b) provide any other regulatory treatment desired by Buyer of the Definitive Agreement and transactions thereunder or contemplated thereby, and/or (ii) in order for Buyer to enter into the Definitive Agreement and/or perform its obligations thereunder, each of which is on terms and conditions acceptable to Buyer in its sole and absolute discretion and is final and not subject to appeal or otherwise subject to challenge; 2. Buyer has obtained all third-party consents, approvals, and authorizations (to the extent not covered by clause 1 above) deemed necessary or advisable by Buyer to enter into the Definitive Agreement and/or perform its obligations thereunder, each of which is on terms and conditions acceptable to Buyer in its sole and absolute discretion; 3. the Facility (or the portion thereof allocated to Buyer) has qualified as and is or will be registered and recognized as, as of the start of the Delivery Term commencement date, a firm designated network resource of Buyer, with deliverability on a firm network resource basis throughout the largest Balancing Authority applicable to the Electric Interconnection Point, pursuant to, to the extent such Balancing Authority is MISO, ERIS and NRIS as required herein under the MISO Tariff (or the equivalent service in the event MISO discontinues or modifies the nature of NRIS); 4. if required, credit support meeting the requirements of the Definitive Agreement has been posted by Seller and remains in full force and effect; 5. certificates of insurance evidencing the coverages required by the Definitive Agreement have been obtained and submitted to Buyer and the insurance required by the Definitive Agreement remains in full force and effect; 6. the local Balancing Authority area applicable to the Facility is the smallest Balancing Authority that, as of such time, includes the
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		<p>Interconnection Portion;</p> <ol style="list-style-type: none"> 7. the Balancing Authority(ies) applicable to the Interconnection Portion recognize the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility in increments of whole integrated generating units, the corresponding portion thereof) as a separate generating resource and separate CP Node at the Electric Interconnection Point for settlement purposes (including that such Balancing Authority(ies) determine separately for settlement purposes the amount of energy actually delivered specifically from the Facility or portion thereof allocated to Buyer to the Electric Interconnection Point and, if applicable, recognize the Facility or portion thereof allocated to Buyer as a separate generating resource for tagging, scheduling, offering and bidding purposes); 8. Seller or, if applicable, Buyer (or an Affiliate designated to Seller by Buyer) has been designated as the exclusive representative of the Facility before each Balancing Authority applicable to the Interconnection Portion (including any applicable RTO or ISO) for purposes of the functions described in item 16 above (with effect, if Buyer or its Affiliate is such representative, as of the start of the Delivery Term or the deadline for Buyer to registered as such representative under the applicable rules of the Balancing Authority); 9. Seller will deliver to Buyer a certification from Seller's Principal Accounting Officer (as defined by the rules of the Securities and Exchange Commission) that, to the best of the Principal Accounting Officer's knowledge, the Definitive Agreement and the transactions thereunder or contemplated thereby do not and will not result in, under the accounting standards existing at the time of the certification or that will be in effect during the term of the Definitive Agreement, the recognition of a long-term liability by Buyer or any of its Affiliates on its or any of its Affiliates' books and addressing any other accounting-related risks relating to the Definitive Agreement deemed necessary or advisable by Buyer in its sole and absolute discretion; 10. {<i>For Developmental Resources</i>} the COD has occurred; and 11. if applicable, Seller has satisfied the condition precedent referenced in item 41 below. <p>Buyer conditions precedent in addition to those specified above may be required as a result of operational aspects of the specific proposed generating units, diligence conducted by or for Buyer, the status of applicable laws, rules, and regulations, and other factors as Buyer deems relevant in its sole and absolute discretion. Buyer will have a defined period of time from the effective date of the Definitive Agreement to satisfy its conditions to</p>
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		commencement of the Delivery Term.
36	Completion:	<p><i>{For Developmental Resources only}</i> The date by which the COD must occur is expected to be the date specified as such by Bidder in the proposal (as such date may be extended on a day-for-day basis, up to a maximum of 180 days in the aggregate, to the extent that the COD is delayed as a result of Force Majeure, the “Guaranteed COD”). The “Commercial Operation Date,” or “COD,” will be the date all of the following conditions have been satisfied or expressly waived by Buyer:</p> <ul style="list-style-type: none"> (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 a nameplate capacity equal to that specified in item 4 above and studies and testing of the Facility required pursuant to its interconnection agreement(s), financing documents, or permits, authorizations, or other project documents for the commencement of commercial operation will have been successfully performed and completed; (b) the Facility (i) has successfully completed its initial capacity demonstration test at a capacity equal to at least 95% of the full nameplate capacity specified by Bidder in the applicable proposal, (ii) has successfully achieved tested heat rates equal to or less than the corresponding maximum Guaranteed Heat Rates without producing emissions in excess of the levels set forth in the following clause (iii) in a single heat rate demonstration test, (iii) has successfully completed an emission demonstration test at emissions levels and rates below the levels and rates (A) set forth in a schedule to the Definitive Agreement for the emissions set forth in such schedule and (B) the lesser of those permitted under (1) air permit(s) for the Facility or (2) applicable laws for emissions not included in such schedule but required by such air permit(s) or applicable laws, with successful completion for all tested emissions occurring simultaneously, (iv) has achieved initial synchronization with the grid, (v) is available for normal and continuous operation and fully capable of reliably producing the capacity, capacity-related benefits, environmental attributes, energy, and other electric products and delivering the same at the Electric Interconnection Point at the full nameplate capacity specified by Bidder in the applicable proposal, and (vi) is in compliance with the applicable interconnection agreements and applicable laws;

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		<p>(c) the required quantities of ERIS and NRIS have been received and the interconnection, deliverability, and transmission agreements have been executed and are effective and the interconnection, deliverability, and transmission upgrades required by such agreements for the Facility (i) have been completed, (ii) have been tested in accordance with such agreements, (iii) are available for normal and continuous operation and fully capable of reliably transmitting and delivering the capacity, energy, and other electric products to Buyer at the Electric Interconnection Point at the full Dependable Capacity Allocated To Buyer, and (iv) are in compliance with such agreements and applicable laws;</p> <p>(d) the communications and telemetry equipment required by the Definitive 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;</p> <p>(e) Seller is in compliance in all material respects with the Definitive Agreement 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 and deliver the capacity, capacity-related benefits, environmental attributes, energy, and other electric products, including delivery of energy, at the Electric Interconnection Point at the full nameplate capacity specified by Bidder in the applicable proposal and otherwise perform its obligations according to the Definitive Agreement; such permits and authorizations, agreements, arrangements, 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, capacity, energy, or environmental attributes, as applicable, are certified for any program or system that becomes an applicable environmental attribute program as of the COD;</p> <p>(h) (i) Seller is otherwise qualified for, and has all necessary accounts to obtain and transfer to Buyer, the environmental attributes corresponding to such applicable environmental attribute programs, (ii) all documents have been executed and filed and all other actions have been taken that are necessary or advisable to obtain all capacity-related benefits for which the capacity or the Facility is eligible and to transfer to Buyer</p>
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	<p>custody of, and give effect to and evidence the title of Buyer in, all such capacity-related benefits, in accordance with the Definitive Agreement and (iii) all documents have been executed and filed and all other actions have been taken that are necessary or advisable to qualify to provide, and sell and deliver to Buyer at the Electric Interconnection Point, all other electric products (including for Buyer or Seller, as applicable, to be able to schedule, offer, bid, and settle the other electric products into the Balancing Authority(ies) applicable to the Interconnection Portion), in accordance with the Definitive Agreement;</p> <p>(i) without limiting clause (f) above, Seller has caused the local Balancing Authority applicable to the Facility to be the smallest Balancing Authority that, as of such date, includes the Interconnection Portion;</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;</p> <p>(k) certificates of insurance evidencing the coverages required by the Definitive Agreement at the COD have been obtained and submitted to Buyer;</p> <p>(l) Seller has provided to Buyer copies of the major design drawings and electrical specifications relating to the Facility;</p> <p>(m) any additional credit support required at the COD pursuant to the Definitive Agreement has been posted by Seller in accordance with the requirements of the Definitive Agreement; and</p> <p>(n) staffing and training of Seller's personnel for the operation, maintenance, and asset management of the Facility has been completed, to Seller's reasonable satisfaction.</p> <p>Seller will notify Buyer immediately when the COD has occurred, including in such notice reasonable evidence to Buyer 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. The Definitive Agreement will require Seller to provide periodic progress reports to Buyer and will grant to Buyer inspection and other rights applicable during the pre-commercial operation phase of the Definitive Agreement.</p> <p>If the COD does not occur on or before the Guaranteed COD specified by Bidder, Seller will pay to Buyer liquidated damages, for each day after the Guaranteed COD until the COD. The liquidated damages payable by Seller for such delays will be designed to address potential costs, charges, and</p>
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		<p>losses of Buyer in the markets of MISO or any other applicable Balancing Authority (including capacity and energy markets) arising out of Seller's failure to meet the Guaranteed COD and, accordingly, may not have a uniform value for each day of delay. Seller's aggregate liability for liquidated damages pursuant to this paragraph will be limited to a finite number negotiated by the Parties.</p> <p>If the COD does not occur on or before the date after the Guaranteed COD on which the delay liquidated damages cap is reached [180 days if the liquidated damages are constant day-for-day]:</p> <p>(i) Buyer will have the right, at any time thereafter until the COD 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 COD other than conditions (b)(i) and (b)(v), require Seller to re-size (and, if so required to re-size, Seller will 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 30 days after obtaining such right pursuant to clause (i) above, (b) Seller has satisfied all of the conditions to the COD other than conditions (b)(i) and (b)(v), and (c) Seller demonstrates to Buyer's reasonable satisfaction that it is not possible to achieve a tested 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 until the COD occurs, 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 (a) a \$/MW figure to be negotiated by the Parties multiplied by (b) the difference between (1) the full expected Dependable Capacity Allocated To Buyer as specified by Bidder in item 10 above and (2) the re-sized Maximum Dependable Capacity. Upon such payment, conditions (b)(i) and (b)(v) to the COD will be deemed achieved.</p>
37	Management Approval:	<p>The Definitive Agreement is subject to review and concurrence or approval, as applicable, by the corporate risk office of Entergy Corporation, the board of directors of Buyer, the executive and senior management of Entergy Corporation and Buyer, and such other approvals of Entergy Corporation and its affiliates as Buyer deems necessary or prudent in its sole and absolute discretion to enter into the Definitive Agreement and perform its obligations thereunder (on the terms set forth therein). Buyer will not execute or deliver the Definitive Agreement without such review and concurrence or approval,</p>

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		as applicable, and such approval or concurrence may be granted or denied in such bodies' sole and absolute discretion.
38	Select Contract Terms and Conditions:	<p>The Definitive Agreement will also include, among other things, the following covenants, terms, and/or conditions:</p> <ul style="list-style-type: none"> • Seller will insure, develop, engineer, procure equipment for, design, construct, install, operate, maintain, manage, replace, repair, study, test, and otherwise use the Facility in accordance with (i) Seller's obligations in the Definitive Agreement, the Facility's interconnection agreements, and the other project documents, (ii) accepted electrical practices, and (iii) all applicable laws (including environmental laws), consents, and governmental approvals, including all applicable standards and guidelines adopted from time to time by governmental authorities (including NERC, SERC Reliability Corporation, any RTO and any comparable third party with the right to impose on the Facility or Seller conditions or obligations having the effect of an applicable law or other binding legal requirement); • Seller will maintain adequate reserves for, and schedule and perform according to the Definitive Agreement, required maintenance; and • 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.
39	Events of Default:	<p>The Definitive Agreement will include the following events of default of Seller:</p> <ul style="list-style-type: none"> • failure to pay amounts due; • breach of representations and warranties; • failure to provide or maintain required credit support; • breach of covenants; • assignment by Seller of the Definitive Agreement or sale or transfer of the Facility, directly or indirectly, except as permitted by the Definitive Agreement; • bankruptcy, dissolution, or liquidation of Seller; • default of Seller under any agreements relating to indebtedness for borrowed money in excess of a specified aggregate amount; • Seller makes any material intentional misrepresentation or omission in any metering report, invoice, estimate of intra-day gas cost, or availability notice required to be made or furnished by Seller pursuant to the Definitive Agreement or Seller's actual fraud, tampering with

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		<p>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"> • Except as expressly provided by the Definitive Agreement, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the capacity, capacity-related benefits, energy, environmental attributes, or other electric products that are subject to the Definitive Agreement, or any portion thereof, to any person other than Buyer; • the average of the Monthly Availabilities during any Rolling 12 Month Period is less than the Rolling 12 Month Availability Requirement of (i) for CCGT and ST resources, eighty-five percent (85%), and (ii) for CT resources, ninety percent (90%), 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, except that, during the first contract year, the measurement of the Rolling 12 Month Period will begin at the end of the sixth (6th) full 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 period then elapsed in the Delivery Term; • default of Seller under, or failure to maintain in effect, any project document (including the gas and electric interconnection agreements and any gas or transmission or deliverability service-related agreement); • Seller’s abandonment of construction or operation of the Facility (or any portion thereof affecting its obligations under the Definitive Agreement); • the commencement of the Delivery Term is delayed for a period of 180 days or more from the date that the Delivery Term would have commenced as a result of the occurrence of a unit contingency or other limitation, including a Force Majeure, that, individually or collectively, reduces the amount of available capacity to ten percent (10%) or more below the Dependable Capacity Allocated To Buyer; • Seller fails to maintain in effect any agreement or arrangement required to deliver capacity, capacity-related benefits, energy, environmental attributes, and other electric products to the Electric Interconnection Point; • 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;
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		<ul style="list-style-type: none"> • <i>{For Developmental Resources}</i> the Commercial Operation Date has not occurred within 180 days after the Guaranteed Commercial Operation Date; and • the failure to maintain any necessary qualification for, or any necessary account to obtain and transfer to Buyer, any capacity-related benefits, environmental attributes, or other electric products for which the Facility or its capacity or energy is eligible. <p>Other events of default will be included in the Definitive Agreement as appropriate.</p>
40	Termination Rights:	<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}</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 waiver of the conditions set forth in item 35 above, except for the achievement of Commercial Operation. 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 actual, direct out-of-pocket costs.</p>
41	Audit Rights:	<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. Such records will include (i) actual generating records for the Facility, (ii) the records required to be kept according to the Definitive Agreement and in the immediately following sentence and (iii) copies of contracts evidencing fuel interconnection, supply, transportation, and settlement arrangements relating to the Facility, 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</p>

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		provisions of the Definitive Agreement or (b) Seller's performance under or compliance with the terms of the Definitive Agreement. Seller will be responsible for ensuring that all subcontractors 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 Agreement. All books, records, and data, including all copies thereof, provided to Buyer under this paragraph will be subject to the confidentiality requirements 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.
42	Seller's Use of Information:	Seller will limit the availability and disclosure of information with respect to scheduling, dispatch, outages, unit contingencies, and other limitations relating to the Facility or the Definitive Agreement exclusively to the scheduling, operations, and asset management personnel designated by Seller to Buyer in writing from time to time who are primarily responsible for the day-to-day operation and/or management of the Facility. Seller and such personnel may use all such information only for the limited purpose of operating and scheduling and dispatching the Facility as contemplated hereunder and performing their respective directly related duties under the Definitive Agreement. Without limiting the generality of the foregoing, Seller and its designees will be expressly forbidden from using, directly or indirectly, any such information, or knowledge thereof, (i) in connection with any activity in which Buyer and Seller (or, if it does not employ its designees, the employer(s) of such designees) compete or where the knowledge or possession of such information would provide, or would reasonably be expected to provide, Seller (or such employer(s)) with a competitive advantage or (ii) in contravention, violation, or breach of any applicable law, code of conduct, or binding agreement, including any confidentiality agreement. Seller will be responsible for any unauthorized disclosure or use by personnel designated by Seller or performing work for or on behalf of Seller or any of its Affiliates of any of the information protected under the Definitive Agreement.
43	Right of First Refusal:	Seller will not (and will not permit any direct or indirect parent or affiliate of Seller to) sell or transfer the Facility or any portion thereof or any undivided interest therein (or any direct or indirect equity interests in Seller), including by merger, consolidation, or sale of all or substantially all of its assets, unless prior to such sale or transfer, Seller provides written notice of such sale or transfer to Buyer that includes a copy of the definitive agreement for such sale or transfer. Upon Buyer's receipt of such notice, Buyer will have the right, for 120 days, to enter into (or cause a nominee to enter into) a purchase

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		<p>agreement on substantially the same terms and conditions set forth in the definitive agreement included in Seller's notice, provided that (i) if such definitive agreement specifies any non-cash consideration, Buyer (or its nominee) may pay the cash equivalent of such non-cash consideration, or (ii) if any governmental or regulatory approvals or other consents or authorizations are required for Buyer to consummate the transaction, Buyer will have a reasonable period of time to seek and obtain all necessary approvals, consents or authorizations (with times and on terms consistent with those applicable to Buyer's approvals, consents and authorizations under the Definitive Agreement). Seller will provide, in a timely manner, information regarding the Facility that is reasonable or customary to allow Buyer to perform due diligence and to otherwise evaluate in good faith the purchase of the Facility.</p> <p>In the event that Buyer does not exercise its right to purchase, then, subject to item 44 below, Seller (or any direct or indirect parent or affiliate of Seller) will have the right to consummate the sale or transfer according to the definitive agreement included in Seller's notice to Buyer (excluding any amendments thereto that make such definitive agreement more favorable to the purchaser), provided that such sale or transfer is consummated within 180 days after the date that Buyer elects not to exercise its right to purchase (or such right to purchase expires). If Seller does not consummate the sale or transfer in accordance with the preceding sentence within such 180 days, 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), unless prior to such sale or transfer, Seller provides a new written notice of such sale or transfer to Buyer and these provisions are applied with respect to such new written notice.</p>
44	Other Transfer Restrictions:	<p>Except as expressly permitted in the following paragraph, Seller will not (and will not permit any affiliate to) sell or transfer all or a material portion of, or an undivided interest in, the Facility (or such affiliate's 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 of Buyer, 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 or, in the case of a transfer of the direct or indirect equity interest in Seller (or portion thereof), Seller's affiliate effecting such transaction, (c) the proposed transferee is (i) a load-serving entity (or an affiliate of a load-serving entity) recognized by an applicable governmental authority or (ii) owns or controls (or an affiliate thereof owns or controls) 1,000 MW or more of electric generation capacity, (d) the proposed transferee is, or during the period commencing four (4) years prior to the date of Seller's notice requesting consent to the transfer</p>

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	<p>until the date of the transfer has been, involved in Adverse Litigation, (e) any credit support provided by Seller prior to such sale or transfer would not remain in effect (or would not continue to be drawable against all obligations of “Seller” hereunder, whether relating to the period before, on or after the date of the transfer) or be substituted with credit support acceptable to Buyer in its sole and absolute discretion, or (f) in the case of a transfer of the Facility (including an undivided interest therein) or portion thereof, Seller does not concurrently assign its rights and obligations under the Definitive Agreement to the transferee of the Facility according to the assignment provisions thereof on terms acceptable to Buyer in its sole and absolute discretion.</p> <p>Seller will have the right to (a) permit any affiliate to transfer (direct or indirect) control of, or all of its direct or indirect equity interests in, Seller, including by merger, consolidation or sale of all or substantially all of its assets, and (b) transfer the Facility, in each case to an affiliate of Seller, provided that (i) at least sixty (60) days prior to such transfer, Seller provides notice to Buyer thereof, (ii) the proposed transferee is a qualified operator, (iii) the proposed transferee has a creditworthiness equal to or better than that of the transferor, (iv) any credit support provided by Seller prior to such sale or transfer remains in effect (and continues to be drawable against all obligations of “Seller” hereunder, whether relating to the period before, on or after the date of the transfer) or is substituted with credit support acceptable to Buyer in its sole and absolute discretion and (v) in the case of a transfer of the Facility (including an undivided interest therein) or portion thereof, Seller concurrently assigns its rights and obligations under the Definitive Agreement to the proposed transferee according to the assignment provisions thereof on terms acceptable to Buyer in its sole and absolute discretion.</p> <p>“Adverse Litigation” will mean litigation or arbitration that is adverse to Buyer or any affiliate thereof that involves or involved, as the case may be, (i) the potential imposition of criminal liability on Buyer or any affiliate thereof (or their respective directors, officers, partners, members, trustees, employees, agents, or representatives), (ii) the potential imposition on Buyer or any regulated affiliate thereof of new or additional adverse regulation, (iii) claims against Buyer or any affiliate thereof (or their respective directors, officers, partners, members, trustees, employees, agents, or representatives) for slander, libel, defamation, damage to reputation, or other similar legal claims, or (iv) an amount in controversy exceeding (a) \$1,500,000, if the time such litigation or arbitration is being evaluated for purposes of determining qualification under the definition hereof occurs prior to the seventh (7th) anniversary of the Delivery Term commencement date set forth in item 7 and (b) an amount escalating by \$1,000,000 on every seventh (7th) anniversary of the Delivery Term commencement date set forth in item 7.</p>
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45	Credit Support:	Seller will be expected to meet the credit support requirements detailed in the RFP, including Appendix F, and other credit-related terms, which for Tolls may include Seller's posting of additional security to cover costs that may arise from any gas transportation agreement entered into by Buyer or any of its Affiliates to support the Facility in the event of Seller's default, all of which will be more fully developed in the Definitive Agreement.
46	Accounting:	Seller will be required to make representations, warranties, and covenants that fully protect Buyer against the accounting treatment described in clause (9) of item 35 above. In connection therewith, each contract year Seller will provide a bring-down certification from Seller's Principal Accounting Officer affirming the statements made in the certification described in clause (9) of item 35 above as of the time such bring-down certification is provided. Without limiting the foregoing, Seller will be required to provide to Buyer any information requested by Buyer in order to assess those risks and, if any such risks materialize, for Buyer or Seller (or, in each case, any of its affiliates) to comply with the associated accounting requirements. Further, if any such risk materializes prior to the inception or during the term of the Definitive Agreement, Seller must promptly notify Buyer and Buyer will have the right, but not the obligation, (i) to require Seller to modify or amend the Definitive Agreement or enter into alternative arrangements as necessary or advisable for Buyer to avoid, minimize or mitigate such risk (in which event the Parties will make such modifications or amendments or enter into such arrangements as expeditiously as practicable) and/or (ii) to terminate the Definitive Agreement upon notice to Seller, with a termination payment due to Buyer if the termination is due to the materialization of a risk that, under terms to be negotiated and specified in the Definitive Agreement, constitute an event of default of Seller.
47	Confidentiality:	Each Party will be required to keep the terms and provisions of the Definitive Agreement confidential and prohibited from disclosing such terms to any third party, subject to certain limited exceptions specified in the Definitive Agreement.

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