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FORM OF CAPACITY CREDIT PURCHASE AGREEMENT

between

ENTERGY SERVICES, INC.,

as agent for

[ ],

and

[ ]

dated as of [ ]

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## SCHEDULES

Schedule A	Buyer's Required Governmental Approvals
Schedule B	Form of Confidentiality Agreement
Schedule C	Form of Parent Guaranty
Schedule 4.1	Monthly Payments
Schedule 8.1	Financial Information
Schedule 8.2	Form of Letter of Credit
Schedule 15.1	Notice Addresses and Contact Information

## CAPACITY CREDIT PURCHASE AGREEMENT

THIS CAPACITY CREDIT PURCHASE AGREEMENT is made and entered into as of [ ], by and between [ ], a [ ] organized and existing under the laws of the state of [ ] (“Seller”), and Entergy Services, Inc., a corporation organized and existing under the laws of the state of Delaware (“ESI”), as agent for [ ], a [ ] organized and existing under the laws of the state of [ ] (“Buyer”), and, for the purposes of Section 10.2, in its personal capacity. Seller and Buyer are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS, in response to the 2014 Request For Proposals for Limited-Term Capacity Credits issued by ESI on or about [ ], 2014 (the “RFP”), Seller submitted to Buyer a proposal setting forth commercial terms on which Seller would agree to sell and deliver to Buyer the Contract Quantity of Capacity Credits for each Planning Period during the Capacity Credit Term;

WHEREAS, Buyer selected Seller’s proposal as the basis for a contract with Seller; and

WHEREAS, Seller wishes to sell and deliver to Buyer the Capacity Credits included in the Contract Quantity for each Planning Period during the Capacity Credit Term, and Buyer wishes to purchase and receive such Capacity Credits, all upon and subject to the terms and conditions set forth herein;

### AGREEMENT

NOW, THEREFORE, in consideration of the representations, warranties, covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

#### ARTICLE I DEFINED TERMS AND INTERPRETATION

1.1 Defined Terms. Unless the context otherwise requires, the following terms, when used in this Agreement, shall have the meanings assigned to such terms below.

“AAA” has the meaning specified in Section 3.1(e).

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities or interests having voting power, by agreement or otherwise.

“Agreement” means this Capacity Credit Purchase Agreement, including the exhibits and schedules hereto.

“Applicable PA Amount” means \$[                    ], subject to adjustment pursuant to Section 8.2.

“Arbitration Notice” has the meaning specified in Section 3.1(e).

“Arbitration Rules” has the meaning specified in Section 3.1(e).

“Auction Clearing Price” has the meaning given to such term in the MISO Rules or, if such term is no longer defined in the MISO Rules, shall mean the market price recognized by MISO of a Capacity Credit for a given Planning Period.

“Balancing Authority” means the Person(s) responsible for integrating resource plans and maintaining load-interchange-generation balance within a Balancing Authority Area.

“Balancing Authority Area” means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (i) match, at all times, the power output of the generators within such electric power system(s) and the net power purchased from or sold to Persons outside such electric power system(s) with the load within such electric power system(s); (ii) maintain scheduled interchange with other such electric power system(s), within the limits of accepted industry practices; (iii) maintain the frequency of such electric power system(s) within reasonable limits in accordance with accepted industry practices; and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with accepted industry practices.

“Bankrupt” means, with respect to any Person, such Person (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they become due.

“Billing Month” has the meaning specified in Section 7.1.

“Business Day” means any day, except a Saturday, Sunday, or a holiday observed by Federal Reserve Banks in New York, New York.

“Buyer” has the meaning specified in the introductory paragraph of this Agreement.

“Buyer Conditions Precedent Notice” has the meaning specified in Section 2.6(a).

“Buyer’s Required Governmental Approvals” means (i) the Governmental Approvals from each of the state or local Governmental Authorities having jurisdiction over Buyer’s operations that (a) approve the Transaction and this Agreement, including approval of the full

recovery of all Buyer costs associated with this 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 this Agreement is prudent and in the public interest, and/or (b) provide any other regulatory treatment of the Transaction and this Agreement desired by Buyer and (ii) all other Governmental Approvals (including any certificate of convenience and necessity) that are necessary or prudent for Buyer to enter into this Agreement or perform its obligations hereunder, each of which Governmental Approvals described in clauses (i) and (ii) is on terms and conditions acceptable to Buyer in its sole and absolute discretion (including with respect to timing, scope and means of recovery of costs). Subject to the terms therein, all of Buyer's Required Governmental Approvals that have not been obtained or are not in effect as of the Effective Date are set forth in Schedule A.

“Capacity Credits” means ZRCs or, if ZRCs are no longer recognized by MISO, such other form of capacity credits or capacity-related benefits that replaces ZRCs and that MISO recognizes for use in the satisfaction of MISO's resource adequacy requirements.

“Capacity Credit Term” has the meaning specified in Section 2.2(a).

“Capacity Credit Term Commencement Date” means the date on which the Capacity Credit Term commences, as determined under Section 2.2(b).

“Claim” means a claim, suit, action, cause of action, proceeding, demand, or investigation.

“Commercially Reasonable Efforts” means, with respect to any action required to be made, attempted, or taken by a Party under this Agreement, such efforts as a reasonably prudent business would reasonably undertake for the protection of its own interest under the conditions affecting such action, including the amount of notice of the need to take such action, the duration and type of the action, the competitive environment in which such action occurs, the cost of such action and other material considerations.

“Confidentiality Agreement” means that certain Confidentiality Agreement, entered into and effective as of Effective Date, between [Seller] and [Buyer], in substantially the form attached hereto as Schedule B.

“Consents” means consents, authorizations, approvals, releases, waivers, estoppel certificates, and any similar agreements or approvals (other than Governmental Approvals).

“Contract Quantity” means the quantity of Capacity Credits set forth in Schedule 4.1 to be delivered by Seller to Buyer pursuant to this Agreement for a given Planning Period during the Capacity Credit Term.

“Costs” means, with respect to the Non-Defaulting Party, all (i) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by the Non-Defaulting Party in entering into new arrangements that replace this Agreement and (ii) reasonable attorneys' fees and other costs and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.



“Credit Rating” means, with respect to any Person, on the relevant date of determination, the rating then assigned to such Person’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligation by S&P or Moody’s, then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned to such Person by S&P or Moody’s.

“Defaulting Party” has the meaning specified in Section 11.1.

“Delivery Deadline” has the meaning specified in Section 3.1(b).

“Dispute” has the meaning specified in Article XIV.

“Dollars” (or “\$”) means the lawful currency of the United States of America.

“Early Termination Date” has the meaning specified in Section 11.2(a).

“Effective Date” means the date of this Agreement, as specified in the introductory paragraph of this Agreement.

“Entergy Operating Companies” means the regulated electric utilities owned, directly or indirectly, by Entergy Corporation. As of the Effective Date, the Entergy Operating Companies are, for purposes of this Agreement, Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

“ESI” has the meaning specified in the introductory paragraph of this Agreement.

“Event of Default” has the meaning specified in Section 11.1.

“FERC” means the Federal Energy Regulatory Commission.

“Governmental Approvals” means all approvals, permits, licenses, consents, waivers or other authorizations from, notifications to, or filings or registrations with, Governmental Authorities.

“Governmental Authority” means any federal, foreign, state, local, or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority (including FERC, any electric reliability organization, any market monitor, any independent coordinator of transmission, any Balancing Authority (including any independent system operator or regional transmission organization) and any other Transmission Provider) exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

“Imaged Document” has the meaning specified in Section 15.16.

“Indemnified Loss” means any loss, liability, damage, cost or expense, including legal fees and expenses, fines, penalties, and interest expenses, suffered or incurred by an Indemnitee,

including damages and liabilities for bodily injury to or death of Persons or losses of or damages to property and including those owed to third parties.

“Indemnified Party” means, in respect of a particular Claim or Indemnified Loss, the Party being indemnified (or to which the Indemnitee(s) being indemnified are related) by the Indemnifying Party pursuant to this Agreement.

“Indemnifying Party” means, in respect of a particular Claim or Indemnified Loss, the Party indemnifying the Indemnified Party or another Indemnitee pursuant to this Agreement.

“Indemnitee” means, in respect of a particular Claim or Indemnified Loss, collectively, each of the following: the Indemnified Party, its Affiliates, and their respective directors, officers, partners, members, trustees, employees, agents, and representatives.

“Interest Rate” means, for any date, the lesser of (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* on such day (or if not published on such day, on the most recent proceeding day on which such prime lending rate is published) plus two percent (2%) and (ii) the maximum rate permitted by applicable Law.

“Law” means any statute, law (including environmental law), rule, regulation, ordinance, code, or other applicable legislative or administrative action of any Governmental Authority, whether in effect as of the Effective Date or at any time in the future, or any judicial, regulatory or administrative interpretation thereof having the force or effect of the foregoing (including the common law). Laws include the policies, rules, guidelines, procedures, protocols, standards, criteria and requirements of FERC, and any market monitor, independent coordinator of transmission, Balancing Authority (including any applicable regional transmission organization or independent system operator), other Transmission Provider or electric reliability organization.

“Lender” means any Person, including any trustee or agent on behalf of such Person and any Affiliate of Seller, that provides debt or equity capital, loans, credit or credit support to, acts as a counterparty on any interest rate or currency hedging arrangements with, or provides other financing to, Seller (or to any Affiliate of Seller) in respect of Seller’s business; such term also includes any such Person that acts in the capacity of Lender in connection with any refinancing by Seller or any Affiliate of Seller of such financing.

“Letter of Credit” means an irrevocable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which U.S. commercial bank or U.S. branch has at the applicable time total assets of at least \$10,000,000,000 and a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, in substantially the form attached hereto as Schedule 8.2.

“Local Resource Zone” has the meaning given to such term in the MISO Rules.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner.

“Market Price” means the Auction Clearing Price for Capacity Credits sourced from a Planning Resource located within the Local Resource Zone associated with Buyer’s load.

“MECT” has the meaning given to the term “Module E Capacity Tracking Tool” in the MISO Rules or any successor system.

“MISO” means Midcontinent Independent System Operator, Inc.

“MISO Rules” means, collectively, (i) the Open Access Transmission and Energy Markets Tariff of MISO on file with FERC, (ii) the MISO Business Practice Manuals, and (iii) any other applicable policies, rules, guidelines, procedures, protocols, standards, criteria, instructions, directives, and requirements of MISO.

“Monthly Invoice” has the meaning specified in Section 7.1.

“Monthly Payment” means the payment to be made by Buyer to Seller pursuant to Section 4.1 in respect of Capacity Credits delivered to Buyer and payable by Buyer with respect to the relevant month.

“Moody’s” means Moody’s Investor Services, Inc.

“Non-Defaulting Party” has the meaning specified in Section 11.1(a).

“Parent Guaranty” means a guaranty in the form of Schedule C of Seller’s payment and performance under this Agreement from Seller Parent for the benefit of Buyer.

“Performance Assurance” means credit support in the form of cash held by Buyer, a Letter of Credit, or other security acceptable to Buyer in its sole and absolute discretion.

“Person” means any individual, Governmental Authority, corporation, limited liability company, partnership, limited partnership, trust, association, bank, financial institution, fund or other entity.

“Planning Period” has the meaning given to the term “Planning Year” in the MISO Rules, or, if MISO no longer utilizes a Planning Year for purposes of measuring and administering MISO’s resource adequacy requirements, such other period of time utilized by MISO for such purposes.

“Planning Resource” has the meaning given to such term in the MISO Rules.

“Potential Event of Default” means an event, circumstance or occurrence that, with notice or the passage of time (without prejudice to a right to cure) or both, would constitute an Event of Default.

“Receipt Deadline” has the meaning specified in Section 3.1(c).

“Release Date” has the meaning specified in Section 8.2.

“RFP” has the meaning specified in the first recital.

“S&P” means Standard & Poor’s Financial Services LLC.

“Seller” has the meaning specified in the introductory paragraph of this Agreement.

“Seller Parent” means [                    ].

“Settlement Amount” means, with respect to the Non-Defaulting Party, the Losses, if any, and Costs, each expressed as a positive amount in Dollars, that such Party incurs as a result of the termination of this Agreement pursuant to Section 11.1.

“Taxes” means any and all foreign, federal, state, local, and/or municipal taxes, withholdings, assessments, impositions, duties, fees or similar charges, however denominated, imposed, levied, or charged by any Governmental Authority (excluding, for this purpose, any electric reliability organization, any market monitor, any independent coordinator of transmission, any Balancing Authority (including any independent system operator or regional transmission organization) and any other Transmission Provider) with jurisdiction on any Party or item or service that is the subject of this Agreement, together with all interest, penalties or additions payable with respect thereto, including ad valorem, real and personal property, occupation, payroll, severance, production, emissions, generation, first use, conversion, processing, Btu, carbon, energy, transmission, distribution, utility, gross receipts, privilege, sales, use, excise, transfer, transaction, and stamp taxes, import duties and charges, customs broker fees and other similar costs of importation, foreign value-added and other taxes or charges, existing as of the Effective Date or imposed, levied, or charged thereafter, whether disputed or not, but excluding taxes based on net income, margin or net worth.

“Termination Payment” has the meaning specified in Section 11.2(b).

“Transaction” means the transaction (including each individual transaction) contemplated by this Agreement.

“Transmission Provider” means any Person that owns, leases, operates, controls, administers and/or coordinates transmission or distribution facilities used for the transmission or distribution of electricity, or any other Person that performs any functions supporting such functions, including the Persons that, as of the Effective Date, constitute Entergy Operating Companies, each in its capacity as the owner and/or lessee of regulated transmission and distribution functions, and any market monitor, independent coordinator of transmission or Balancing Authority (including any applicable regional transmission organization or independent system operator).

“Zonal Resource Credit” or “ZRC” has the meaning given to such term in the MISO Rules. For the avoidance of doubt, as of the Effective Date, ZRCs include any ZRCs properly generated from Demand Response Resources (as defined in the MISO Rules) and/or Load Modifying Resources (as defined in the MISO Rules).

1.2 Interpretation. In this Agreement, unless otherwise expressly provided herein:

(a) Words singular and plural in number shall be deemed to include the other, and pronouns having masculine or feminine gender shall be deemed to include the other.

(b) Subject to Section 1.2(g), any reference to any Person includes its successors and assigns and, in the case of any Governmental Authority or any organization, division, group, or department within a Party or an Affiliate thereof, any Person or organization, division, group, or department succeeding to or assuming its functions and capacities.

(c) Any reference in this Agreement to any Article, Section, Exhibit or Schedule, unless explicitly stated otherwise, means and refers to the article or section contained in, or exhibit or schedule attached to, this Agreement.

(d) Other grammatical forms of defined words or phrases have corresponding meanings.

(e) A reference to writing includes typewriting, printing, lithography, photography, and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

(f) Relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including.”

(g) A reference to a Party includes that Party’s successors and permitted assigns.

(h) A reference to a document or agreement (including this Agreement and any of the MISO Rules) and to terms defined in, and other provisions of, such document or agreement includes a reference to that document or agreement as has been, or may be, modified, amended, supplemented or restated and in effect from time to time, and a reference to any particular Law means such Law as has been, or may be, modified, amended, supplemented, codified, re-codified, or implemented, in whole or in part, and in effect from time to time, including by rules and regulations promulgated thereunder and by succession of successor statutes, rules, regulations, and orders.

(i) If any payment hereunder would occur or be due on a day that is not a Business Day, then such payment shall occur or be due on the next following Business Day.

(j) A reference to “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term.

(k) The terms “hereunder,” “hereof,” “hereto,” and words of similar import are references to this Agreement as a whole and not to any particular section or other provision hereof.

(l) In the event of any conflict that cannot reasonably be reconciled between the provisions of this Agreement and those of any schedule or exhibit, the provisions of this Agreement shall control and prevail.

(m) All indices, titles, subject headings, section titles, and similar items in this Agreement are provided for the purpose of reference and convenience only and are not intended to be inclusive or definitive or to affect the meaning of the contents or scope of this Agreement.

(n) Except as otherwise expressly provided, all calculations and computations pursuant to this Agreement shall be carried and rounded to the nearest two (2) decimal places, except that percentages that can also be expressed as decimals in accordance with this Agreement shall, if expressed as decimals, be carried and rounded to the nearest four (4) decimal places.

(o) A reference in this Agreement to “notice” shall be deemed to mean “written notice,” and the terms “written notice” and “notice” shall have no distinction for purposes of the construction of this Agreement.

(p) A reference in this Agreement to “satisfaction” or “fulfillment” (or other term of equivalent meaning) of a condition set forth in Section 2.3 (including in the lead-in to Section 2.3 and in the second sentence of Section 2.5(a)) refers to the satisfaction or fulfillment of the substance of such condition, ignoring the passage (or not) of the date specified in each applicable condition. Such dates are specified only for purposes of Section 2.6(b) and the first sentence of Section 2.5(a).

1.3 Technical Meanings. Words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

1.4 Joint Drafting. The terms of this Agreement and any document or instrument delivered pursuant hereto shall be construed without regard to the identity of the Person who drafted the same. Any rule of construction that a document shall be construed against the drafting party shall not apply either to this Agreement or to such other documents and instruments.

## ARTICLE II TERM

2.1 Contract Term. This Agreement shall be effective as of the Effective Date and shall have a term that ends upon the earlier of (a) the last hour of the last day of the [ ] Planning Period and (b) the effective time of the termination of this Agreement in accordance with its terms, including pursuant to Section 11.2, or by mutual agreement of the Parties. Neither Buyer nor Seller shall have any liability or obligation to the other hereunder subsequent to the expiration or termination of this Agreement, except for liabilities or obligations that survive termination of this Agreement under Section 15.2.

### 2.2 Capacity Credit Term.

(a) The “Capacity Credit Term” means the period of time in respect of which Seller and Buyer are obligated to sell and purchase Capacity Credits, in accordance with the terms hereof, as determined according to Section 2.1 and Section 2.2(b).

(b) Subject to the earlier termination of this Agreement in accordance with its terms, the Capacity Credit Term shall commence on the first day on which Capacity Credits may be transferred with respect to the [ ] Planning Period and end on the last day of the [ ] Planning Period.

2.3 Conditions Precedent to Commencement of Capacity Credit Term. Without limiting Section 2.2(b), the obligation of Buyer to make Monthly Payments under this Agreement and the commencement of the Capacity Credit Term shall be subject to the satisfaction of each of the following conditions, except to the extent Buyer waives the satisfaction of such conditions in accordance with the requirements of Section 15.6:

(a) on or before [ ], all of Buyer's Required Governmental Approvals shall have been obtained, shall not have been granted or issued subject to or containing any terms or conditions unsatisfactory to Buyer in its sole and absolute discretion, and shall be final and not subject to appeal or otherwise subject to challenge; and

(b) on or before the Effective Date, (i) Performance Assurance meeting the requirements of this Agreement shall have been posted by Seller and (ii) the Parent Guaranty shall have been executed by Seller Parent and delivered to Buyer.<sup>1</sup>

2.4 Seller's Obligation to Assist and Cooperate. Seller shall assist and cooperate with Buyer in connection with Buyer's fulfillment of the conditions set forth in Section 2.3, including by (a) supporting fully (including providing testimony or other information in support of) this Transaction, this Agreement, and the terms hereof at Buyer's request in any regulatory or similar proceeding, case, action, inquiry, or investigation, whenever occurring after the Effective Date, including in any hearing, discovery or filing involving a Governmental Approval of or relating to the Transaction, this Agreement, or any of the terms hereof, and (b) not taking any action or position or make any Claim in any such proceeding, case, action, inquiry, or investigation that is inconsistent with the foregoing.

2.5 Termination for Failure of Conditions.

(a) Subject to Section 2.5(d), each Party shall have the right to terminate this Agreement without liability to either Party arising out of such termination upon notice to the other if any of the conditions set forth in Section 2.3 shall not have been satisfied or waived by Buyer (in accordance with the requirements of Section 15.6) as of the date specified therein. Such termination right shall remain available until such condition is satisfied or waived.

(b) Subject to Section 2.5(d), upon or after valid delivery or receipt of a notice described in Section 2.6(b), each Party shall have the right to terminate this Agreement without liability to either Party arising out of such termination upon notice to the other. Buyer may include such notice of termination in the notice described in Section 2.6(b).

(c) Neither Party may terminate this Agreement pursuant to this Section 2.5 if such Party's failure to fulfill its obligations under Section 2.4 or otherwise under this Agreement is the principal reason that one or more of the conditions set forth in Section 2.3 have not been satisfied.

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<sup>1</sup> Note: To the extent Performance Assurance is not initially required to be posted by Seller and/or a Seller Parent Guaranty is not as part of Seller's credit support requirement determined by the CET, this Agreement will be modified accordingly prior to execution.

(d) Upon the effectiveness of any termination of this Agreement in accordance with this Section 2.5, the Parties shall have no further liabilities or obligations to each other hereunder, except liabilities or obligations that survive termination under Section 15.2; provided, however, that no Termination Payment will be due hereunder arising out of any such termination.

#### 2.6 Notice of Satisfaction or Failure of Conditions.

(a) Buyer shall provide prompt notice to Seller of the satisfaction or waiver (in accordance with the requirements of Section 15.6) of the last of the conditions set forth in Section 2.3 to be satisfied or waived (such notice, the “Buyer Conditions Precedent Notice”), but in no event shall such notice be provided later than five (5) Business Days after the occurrence of the satisfaction or waiver of the last of the conditions set forth in Section 2.3.

(b) Buyer shall give prompt notice to Seller in the event that a condition set forth in Section 2.3 cannot be satisfied and will not be waived by Buyer. Buyer shall specify in such notice the condition that cannot be satisfied and will not be waived.

(c) Buyer shall keep Seller reasonably apprised of its progress with respect to satisfaction of the conditions of Buyer hereunder.

### ARTICLE III PERFORMANCE; TITLE

#### 3.1 Purchase and Sale of Capacity Credits.

(a) Subject to the terms and conditions herein, Seller shall sell and deliver Capacity Credits to Buyer, and, in consideration thereof, Buyer shall make Monthly Payments to Seller in accordance with Section 4.1.

(b) Seller shall, at its own expense, timely execute and file all documents (including any applicable request for qualification as a capacity resource) and take all other actions (including identifying and complying with certification procedures) necessary or advisable to obtain all Capacity Credits included in the Contract Quantity for each Planning Period during the Capacity Credit Term. Seller shall transfer to Buyer custody of, and grant Buyer title to, all Capacity Credits included in the Contract Quantity for each Planning Period during the Capacity Credit Term no later than the earliest to occur of: (i) 12:00 p.m. (noon) central time on the March 1<sup>st</sup> immediately preceding the applicable Planning Period, provided that a Planning Period is the same as a Planning Year, (ii) ten (10) Business Days before any MISO deadline applicable to the filing of any MISO resource adequacy plan for such Planning Period, (iii) ten (10) Business Days before the first day of the MISO incremental capacity auction for such Planning Period, or (iv) ten (10) Business Days before any applicable MISO deadline regarding the use of Capacity Credits to satisfy MISO’s resource adequacy requirements (such earliest date, the “Delivery Deadline”). To the extent the transfer to Buyer of custody of, or the granting to Buyer of title to, Capacity Credits hereunder requires Buyer to take any action, Seller shall cooperate with Buyer and use Commercially Reasonable Efforts to assist Buyer in connection therewith.



(c) Without limiting Section 3.1(b), under the MISO Rules in effect as of the Effective Date, Seller shall accomplish delivery of the Contract Quantity for a particular Planning Period during the Capacity Credit Term by (i) submitting the appropriate transaction(s) and related data, information and documentation in MECT or as otherwise required to electronically assign and transfer such Capacity Credits to Buyer utilizing MECT counterparty code [ ] or such other code provided in written instructions sent to Seller from Buyer and (ii) ensuring that sufficient Capacity Credits are available in Seller's MECT account to allow Buyer to confirm the transaction(s) as soon as practicable, but in any event no later than the Delivery Deadline, and giving Buyer prompt written notice of such submittal. Buyer shall accomplish receipt of such Contract Quantity by confirming the appropriate transaction(s) submitted by Seller in MECT as soon as practicable, but in any event no later than ten (10) Business Days after the Delivery Deadline (the "Receipt Deadline"). The submitting and confirming of the appropriate transaction(s) in MECT shall be conducted by the Parties in accordance with the requirements of the MISO Rules. Buyer shall have no obligation to accept delivery of any Capacity Credits for a Planning Period delivered after the Delivery Deadline for such Planning Period.

(d) In the event that Section 3.1(c) does not address the actions required for the Parties to effectuate the transfer of Capacity Credits as contemplated herein, including due to any change in Law, the Parties agree to negotiate in good faith to amend this Agreement in order to address the issue in a manner that preserves the relative positions of each Party and is consistent with the allocation of risks, costs and pricing, and responsibilities hereunder, including Section 3.1(b).

(e) In the event that a Planning Period will no longer be the same as a Planning Year (as defined in the MISO Rules) (*i.e.*, MISO will replace the Planning Year with another period of time for purposes of measuring and administering MISO's resource adequacy requirements), the Parties shall amend this Agreement as soon as practicable after the Parties become or are made aware of such event in order to address the change in Planning Period in a manner that would result in the same aggregate number of Capacity Credits being transferred by Seller to Buyer hereunder at the same aggregate price as would have been the case had there not been a change in the Planning Period. If the Parties are unable to agree on such amendment to this Agreement within sixty (60) days of the initiation of such amendment process, then either Buyer or Seller shall have the right to refer the resolution of such amendment hereunder to arbitration in accordance with the terms of this Section 3.1(e). The amendment of this Agreement in accordance with this Section 3.1(e) shall be resolved by binding, self-administered arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of the arbitration (the "Arbitration Rules"), and all such proceedings shall be subject to the Federal Arbitration Act. The Parties shall continue to perform their respective obligations under this Agreement during the pendency of any such arbitration. The arbitrator shall be required to be an individual who has not previously been an employee or independent contractor of either Party and who does not have a direct or indirect interest in either Party or the subject matter of the arbitration. The arbitrator shall determine all questions of fact and law relating to the subject matter of the arbitration, including all procedural aspects of the arbitration conducted pursuant hereto. In making any determination, the arbitrator shall apply the governing law of this Agreement. All arbitration shall take place in the City of Houston, Texas, unless otherwise agreed to by the Parties. Any Party desiring arbitration

pursuant to this Section 3.1(e) shall serve on the other Party and the Houston, Texas office of AAA, in accordance with the Arbitration Rules, a notice of intent to arbitrate (“Arbitration Notice”). If the Parties cannot agree upon an arbitrator within twenty (20) days of the filing of an Arbitration Notice, then the arbitrator shall be selected in accordance with the Arbitration Rules. Not later than fifteen (15) days prior to the hearing date set by the arbitrator (which hearing date shall occur as soon as practicable, but in no event later than forty-five (45) days after the arbitrator is selected), each party shall submit a proposal regarding the amendment of this Agreement. The arbitrator shall conduct the arbitration so that a final written determination is made or rendered as soon as practicable, but in no event later than thirty (30) days after the hearing date. The decision of the arbitrator shall be final and binding on both Parties and there shall be no appeal from or reexamination of the final determination. Such decision may be enforced in any court having jurisdiction. The Parties shall each be responsible for paying one-half of the fees and expenses of the arbitrator and shall otherwise be responsible for their own costs and expenses incurred in connection with such arbitration.

### 3.2 Title.

(a) Title to Capacity Credits delivered to Buyer hereunder shall transfer to Buyer upon Seller’s delivery and Buyer’s receipt of such Capacity Credits in accordance with Section 3.1(b). Seller warrants that it will deliver to Buyer good and valid title to all such Capacity Credits delivered hereunder free and clear of all security interests, purchase rights, claims, charges, liens, and other encumbrances of any kind or any interest therein or thereto.

(b) Buyer shall have the right to use and dispose of any Capacity Credit transferred to Buyer pursuant to this Agreement, in its sole and absolute discretion, including (i) submitting such Capacity Credit in a Fixed Resource Adequacy Plan (as defined in the MISO Rules); (ii) offering such Capacity Credit into the Planning Resource Auction (as defined in the MISO Rules); and (iii) self-scheduling such Capacity Credit in the Planning Resource Auction.

## ARTICLE IV PRICING AND PAYMENTS

4.1 Payment. Subject to the other terms hereof, including Section 4.2, for each month of a given Planning Period during the Capacity Credit Term, Buyer shall pay to Seller the Monthly Payment determined in accordance with Schedule 4.1 for Capacity Credits delivered to Buyer with respect to such Planning Period up to the applicable Contract Quantity. Buyer shall make Monthly Payments monthly in arrears.

### 4.2 Price Adjustments.

(a) If any Capacity Credit sold hereunder for a particular Planning Period is sourced from a Planning Resource not located within the Local Resource Zone associated with Buyer’s load, Buyer shall be paid or credited by Seller (in the event the product calculated pursuant to this paragraph (a) is positive) and Buyer shall pay Seller (in the event the product calculated pursuant to this paragraph (a) is negative) monthly in arrears, in each case in accordance with Article VII, an amount calculated pursuant to this paragraph (a). Such payment or credit shall equal the product of (i) the difference, if any, obtained by subtracting (A) the

Auction Clearing Price for Capacity Credits sold to Buyer hereunder for such Planning Period that are sourced from a Planning Resource not located within the Local Resource Zone associated with Buyer's load from (B) the Auction Clearing Price for Capacity Credits for such Planning Period that are sourced from a Planning Resource located within the Local Resource Zone associated with Buyer's load multiplied by (ii) one-twelfth (1/12) of the quantity of such Capacity Credits sold to Buyer hereunder for such Planning Period that are sourced from a Planning Resource not located within the Local Resource Zone associated with Buyer's load.

(b) If any Capacity Credit sold to Buyer hereunder for a particular Planning Period (i) has (A) any requirement under the MISO Rules that any bid in the MISO incremental capacity auction for such Planning Period with respect to such Capacity Credit be submitted at a certain minimum price or (B) any other requirement under the MISO Rules that limits or restricts Buyer's ability to self-schedule such Capacity Credit in such capacity auction, and Buyer self-schedules such Capacity Credit in such capacity auction for such Planning Period or otherwise submits such Capacity Credit in such capacity auction for such Planning Period as a price taker, and, in either case, such Capacity Credit does not subsequently clear in such capacity auction, or (ii) has any requirement under the MISO Rules that would require Buyer to incur additional out-of-pocket costs, or otherwise limits or restricts Buyer's ability, to obtain the full benefit of such Capacity Credit for MISO resource adequacy purposes, then such Capacity Credit shall be deemed not to have been delivered from Seller to Buyer and Buyer shall not be liable for any payment to Seller with respect to such Capacity Credit (*i.e.*, Seller shall bear the risk of any such requirements under the MISO Rules, including pursuant to Section 5.1).

4.3 Set-off. Notwithstanding any provision of this Agreement to the contrary, all Monthly Payments and any other payments pursuant to this Agreement shall be subject to the rights of the Party obligated to make such payment to deduct from or set-off against such payment any and all amounts then due and owing to such Party by the other Party, whether under this Agreement or otherwise.

## ARTICLE V LIABILITY FOR NON-PERFORMANCE

5.1 Seller's Failure to Deliver. If, for any Planning Period, Seller fails to deliver the Contract Quantity by the Delivery Deadline for such Planning Period in accordance with the terms hereof, then, except to the extent provided in Section 5.2, Seller shall pay Buyer, in accordance with Section 7.2, within five (5) Business Days of Seller's receipt of an invoice therefor from Buyer:

(a) All penalties, charges and out-of-pocket costs incurred by Buyer (either directly or through contractual obligation), including those imposed by MISO, as a result of Seller's failure to deliver the Contract Quantity; and

(b) The positive difference, if any, obtained by (i) subtracting the Contract Price from the Market Price and (ii) multiplying such positive difference, if any, by the portion of the Contract Quantity that Seller failed to deliver for such Planning Period.

5.2 Buyer's Failure to Receive. If, for any Planning Period, Buyer fails to receive the Contract Quantity by the Receipt Deadline for such Planning Period due to Buyer's failure to perform in accordance with the terms hereof, then Buyer shall pay Seller, within five (5) Business Days of invoice receipt from Seller, an amount equal to the positive difference, if any, obtained by (a) subtracting the Market Price from the Contract Price and (b) multiplying (1) such positive difference, if any, by (2) the portion of the Contract Quantity that Buyer failed to receive.

## ARTICLE VI CHANGE IN LAW

6.1 General. The Parties acknowledge the possibility that a change in Law (including in the interpretation thereof) may occur that requires or will require one or both of the Parties to incur additional costs during the Capacity Credit Term beyond those projected to be incurred by such Party as of the Effective Date. Notwithstanding the foregoing, subject to Section 3.1(d), 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.

6.2 Termination Right. In the event a change in Law will result in MISO no longer requiring or recognizing Capacity Credits to meet MISO's resource adequacy requirements or if MISO no longer maintains a resource adequacy requirement, each Party shall have the right to terminate this Agreement by notifying the other Party, with such termination to be effective on the last Day of the final Planning Period for which MISO requires or recognizes Capacity Credits to meet MISO's resource adequacy requirements or with respect to which MISO maintains a resource adequacy requirement. Upon the effectiveness of any termination of this Agreement in accordance with this Section 6.2, except for the liabilities or obligations that survive termination under Section 15.2, the Parties shall have no further liabilities or obligations to each other hereunder.

## ARTICLE VII BILLING, PAYMENT AND RELATED RIGHTS AND OBLIGATIONS

7.1 Monthly Invoices. For each Planning Period during the Capacity Credit Term, beginning in July of such Planning Period and continuing through June of the subsequent Planning Period, on or before the tenth (10th) day of each month (or if the tenth (10th) day is not a Business Day, then the next Business Day), Seller shall render to Buyer a monthly statement ("Monthly Invoice") (by facsimile or other means conforming to the provisions of Section 15.1 or as otherwise agreed in writing by the Parties) in respect of the immediately preceding month ("Billing Month"). The Monthly Invoice shall set forth the Monthly Payment and any other amount owed by Buyer to Seller, or *vice versa*, under the Agreement in respect of the Billing Month and the total amount due by each Party thereunder and the net amount due thereunder. The Monthly Invoice shall include, among other things, (a) the amount of Capacity Credits that were delivered by Seller to Buyer for such Planning Period, (b) a computation and reasonably detailed itemization of any other amounts as may then be due and payable by Buyer to Seller, or *vice versa*, under the Agreement in respect of the Billing Month, including any price adjustment pursuant to Section 4.2 and any amount payable to Buyer pursuant to Section 5.1, (c) reasonably detailed descriptions of and information relating to the charges and credits contained therein, and (d) such other data, material, and information as Buyer may reasonably require.

## 7.2 Monthly Payments.

(a) Subject to Section 4.3 and Section 7.4, Buyer shall pay any net amount shown to be due and owing to Seller on the Monthly Invoice by wire transfer of immediately available funds, in Dollars, to the account specified for payments under or in accordance with Section 15.1, on or before the later of (i) the twentieth (20th) day of the month in which the Monthly Invoice is rendered to Buyer or (ii) the tenth (10th) day after Buyer's receipt of the Monthly Invoice, unless such day is not a Business Day, in which case the due date for payment shall be the next Business Day. If the Monthly Invoice shows a net amount due to Buyer from Seller, then Seller shall pay such net amount, by wire transfer of immediately available funds, in Dollars, to an account specified by Buyer under or in accordance with Section 15.1, on or before the twentieth (20th) day of the month in which the Monthly Invoice is rendered (or required to have been rendered) to Buyer, unless such day is not a Business Day, in which case the due date for payment shall be the next Business Day.

(b) Without limiting Section 7.4, Buyer shall have the right to invoice Seller for any amount owed by Seller arising out of or relating to this Agreement that has not been included by Seller in a Monthly Invoice. Subject to Section 4.3, Section 5.1 and Section 7.4, any amount invoiced by Buyer pursuant to this Section 7.2(b) shall be paid by Seller to Buyer by wire transfer of immediately available funds, in Dollars, to an account specified by Buyer under or in accordance with Section 15.1, on or before twenty (20) days (five (5) Business Days, in the case of invoices issued pursuant to Section 5.1) after receipt by Seller of an itemized invoice from Buyer, setting forth, in reasonable detail, the basis for such payment; provided, however, that, to the extent such amount should have been included in a Monthly Invoice, then, if the due date that would have applied to such amount according to Section 7.1 is earlier than the due date prescribed by this sentence, such earlier due date shall apply to such amount.

(c) All payments under this Section 7.2 shall be deemed made when the above-described wire transfer is received by Seller or Buyer, as the case may be.

7.3 Delinquent Payments. The unpaid amount of any payment due from either Party under this Agreement shall accrue interest at the Interest Rate from the first day following the date on which payment is due until the date payment is made.

7.4 Disputed Payments. If either Party, in good faith, disputes the accuracy of an invoice from the other hereunder, the disputing Party shall provide to the other Party an explanation of the basis for the dispute and shall pay to the other Party the portion of the invoice not in dispute by the due date (but shall not be required to pay the disputed portion). For the avoidance of doubt, a Party may dispute the accuracy of an invoice from the other hereunder after payment has been made in respect of such invoice. Any amount disputed by a Party pursuant to this Section 7.4 that is later conclusively determined (whether by agreement of the Parties or a final, non-appealable determination of a Governmental Authority with jurisdiction) to be properly due and payable shall be paid to the Party owed payment on or before ten (10) days after such determination, together with interest accrued at the Interest Rate from the first day following the date on which payment would have been made if not disputed until the date payment is made.

7.5 Adjustments. If any audit, inspection, or examination reveals any inaccuracy in any statement or invoice hereunder, the necessary adjustments shall be made. Inadvertent underpayments or overpayments shall be paid or returned, with interest accrued at the Interest Rate from the date originally due (or the date of such overpayment) to but excluding the date paid or returned.

7.6 Records Maintenance. The Parties acknowledge (a) their mutual desire to minimize disputes over matters related to records, costs, billing and payment hereunder and (b) that Buyer is a regulated utility whose expenditures and actions are subject to oversight, review, and possible approval or disallowance by Governmental Authorities. Each Party agrees to work together in good faith, upon the request of the other Party, to develop, establish, and improve processes and procedures designed to minimize the likelihood, frequency, cost, and scope of such disputes and to assist the other Party in its dealings with Governmental Authorities, including processes and procedures to maximize the transparency of reimbursable costs and expenses hereunder and to enable Buyer to be able to demonstrate the reasonableness of the incurrence and payment of such costs and expenses should Buyer desire or be required to do so.

7.7 Audits.

(a) Each Party shall have the right, upon reasonable prior notice, at its sole expense and during normal business hours, to examine the books and records of the other Party that relate to, and are reasonably necessary to verify (i) the accuracy of, any statement, charge or computation made pursuant to this Agreement or (ii) the other Party's performance under or compliance with the terms of this Agreement. All books, records and data, including all copies thereof, provided to a Party under this Section 7.7 shall be subject to the confidentiality requirements of this Agreement and shall be considered confidential in accordance with Section 15.11.

(b) Without limiting the provisions of Section 7.6 or Section 7.7(a), each Party commits to use Commercially Reasonable Efforts to cooperate with the other Party and its representatives with respect to any request, audit, or inspection requested by the other Party hereunder.

ARTICLE VIII  
CREDIT AND COLLATERAL REQUIREMENTS

8.1 Financial Information. Buyer may request from Seller the information specified in Schedule 8.1 to be provided by Seller, and Seller shall provide such information to Buyer within the time periods provided therefor and on the terms provided in Schedule 8.1.

8.2 Performance Assurance.

(a) Seller shall deliver (i) Performance Assurance in the Applicable PA Amount and (ii) the Parent Guaranty to Buyer on or before the Effective Date. From and after delivery of any Performance Assurance and Parent Guaranty, Seller shall maintain such Performance Assurance and Parent Guaranty until the later of (A) sixty (60) days after the termination or expiration of this Agreement or (B) the resolution of all disputes pending pursuant to, in connection with, relating to or arising out of this Agreement and any Performance

Assurance at the end of such sixty (60) day period (or thereafter arising during the pendency of any such disputes) (such later date, the “Release Date”). No later than three (3) Business Days following written notification from Buyer of any draw, Seller shall replenish the Performance Assurance to the Applicable PA Amount. If, at any time, (1) the Person issuing any Letter of Credit constituting such Performance Assurance at such time ceases to have the total assets or Credit Ratings required by the definition of “Letter of Credit” or becomes Bankrupt or does not honor a draw request that complies with the terms of the Letter of Credit or (2) any such Letter of Credit ceases to be in full force and effect, then Seller shall, within three (3) Business Days thereof, replace the affected Letter of Credit with other Performance Assurance with undrawn capacity equal to the Applicable PA Amount. In addition to the replacement Performance Assurance that may be required pursuant to the preceding sentence, Seller shall, at any time and from time to time, have the right to replace the Performance Assurance in effect at such time with other Performance Assurance having an undrawn capacity equal to the Applicable PA Amount. Any Letter of Credit provided as Performance Assurance shall have an expiration date no sooner than 364 days after issuance, and Seller shall extend or replace (with other Performance Assurance with undrawn capacity equal to the Applicable PA Amount) such Letter of Credit by the date that is thirty (30) days prior to the expiration thereof. If Seller fails to extend or replace any Letter of Credit by the date that is thirty (30) days prior to the expiration thereof or fails to replace any Letter of Credit within the time period required by the fourth sentence of this Section 8.2, Buyer shall be entitled to draw the full amount of the Letter of Credit and treat the proceeds as Performance Assurance in the form of cash.

(b) If, at any time and from time to time during the term of this Agreement, (i) Seller’s or Seller Parent’s Credit Rating is downgraded from its then-current rating, (ii) Buyer’s potential exposure to Seller with respect to this Agreement materially increases, including due to an increase, or a reasonable expectation of an increase, in the market price for Capacity Credits for any of the Planning Periods during the Capacity Credit Term, or (iii) Buyer otherwise has reasonable grounds for insecurity regarding Seller’s ability to perform its obligations under this Agreement, then (A) if at such time Seller is currently required to maintain Performance Assurance pursuant to this Agreement, the Applicable PA Amount shall be increased in an amount determined by Buyer to reasonably cover Buyer’s increased exposure to Seller with respect to this Agreement or (B) if at such time Seller is not otherwise required to maintain Performance Assurance pursuant to this Agreement, Buyer shall be entitled to establish the Applicable PA Amount in an amount determined by Buyer to reasonably cover Buyer’s increased exposure to Seller with respect to this Agreement and demand Performance Assurance from Seller in an amount equal to the Applicable PA Amount. Buyer shall provide Seller with written notice of any demand for additional Performance Assurance or new Performance Assurance pursuant to this Section 8.2(b), and Seller shall provide any such additional or new Performance Assurance within three (3) Business Days of receipt of Buyer’s notice.<sup>2</sup>

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<sup>2</sup> This provision will be modified prior to execution depending on whether Seller will provide Performance Assurance and/or a Parent Guaranty upon execution of this Agreement.

### 8.3 Cash Collateral.

(a) To the extent that Seller provides to Buyer cash as Performance Assurance, Buyer may apply such cash to reduce Seller's obligations under this Agreement upon the same terms and conditions that would have permitted drawing under a Letter of Credit provided by Seller as Performance Assurance. In addition, Buyer shall have the right to pledge, re-hypothecate, assign, invest, commingle or otherwise use cash Performance Assurance, provided that Buyer returns such cash Performance Assurance when and as required by this Agreement (less any amounts applied according to the preceding sentence).

(b) To secure its obligations under this Agreement, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral (including any proceeds of a Letter of Credit drawn pursuant to the last sentence of Section 8.2) and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

8.4 Remedies. In addition to and without limiting Buyer's rights under Section 4.3, Section 8.2 or Section 8.3(a), or the terms of any Letter of Credit or Parent Guaranty, upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all such collateral and any and all proceeds resulting therefrom or from the liquidation thereof, including any such rights and remedies under applicable Law then in effect; (b) exercise its rights of setoff against any and all property of Seller in the possession of Buyer or its agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (with Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE IX TAXES

9.1 General. Seller and Buyer each shall use Commercially Reasonable Efforts to implement the provisions of and to administer this Agreement in accordance with their mutual intent to minimize Taxes. If a Party is exempt from any Tax or any other charges of any Governmental Authority that would otherwise be payable under or in connection with this Agreement, such Party shall provide to the other Party upon request a certificate of exemption or other reasonably satisfactory evidence of exemption. Each Party shall use Commercially Reasonable Efforts to obtain, and shall cooperate with the other Party in its efforts to obtain or maintain, any exemption from or reduction of any such Tax or charge. Nothing herein shall



obligate or cause a Party to pay or be liable to pay any Tax or other charge of any Governmental Authority for which it is exempt under applicable Law.

9.2 Buyer Taxes. Buyer shall be responsible for all Taxes imposed on or with respect to Capacity Credits or the sale, transfer, or transmission thereof pursuant to this Agreement, in each case at or after title transfer pursuant to Section 3.2(a).

9.3 Seller Taxes. Seller shall be responsible for all Taxes that are imposed on or payable by Seller in connection with the performance of its obligations hereunder, except those Taxes for which Buyer is responsible under Section 9.2.

9.4 Tax Indemnity. The Indemnifying Party shall defend, indemnify, and hold harmless the Indemnitees from and against any and all Claims and Indemnified Losses for any Tax imposed or assessed by any Government Authority that is the responsibility of the Indemnifying Party pursuant to this Article IX. The Indemnified Party shall give the Indemnifying Party notice, to the extent practicable, of any proposed or actual adjustment or assessment of Taxes within such time as will allow the Indemnifying Party a reasonable period in which to evaluate and timely respond to the underlying adjustment or assessment of Taxes; provided, however, that failure to do so shall not affect the Indemnitees' rights hereunder except to the extent the Indemnifying Party is actually prejudiced thereby. The Indemnifying Party shall be entitled, at the Indemnifying Party's expense, to participate in and, to the extent the Indemnifying Party desires, assume and control the defense of Claims directly relating to such Taxes, provided that the Indemnifying Party shall have acknowledged its obligation to fully indemnify the Indemnified Party in respect of such Taxes, and in the good faith opinion of the Indemnitee and its counsel, such Claim does not involve the potential imposition on such Indemnitee of criminal liability or injunctive or other equitable relief. If the Indemnifying Party shall have assumed and be controlling the defense of Claims directly relating to Taxes in accordance with the foregoing, the Indemnified Party's involvement shall be limited to monitoring the progress of such defense, which shall include (a) receiving copies of all correspondence between the Indemnifying Party and any Governmental Authority imposing or assessing the Taxes; and (b) attending and observing meetings between the Indemnifying Party and said Governmental Authority related to such defense; provided, however, that any costs associated with the Indemnitees' involvement shall be at the Indemnitees' own expense. The Indemnified Party shall supply the Indemnifying Party with such information and documents from the Indemnitees as the Indemnifying Party may reasonably request. For purposes of this Section 9.4, the Indemnifying Party's obligation to indemnify the Indemnitees for Taxes shall include any reasonable costs to defend such Taxes incurred or paid by the Indemnitees so long as such costs were incurred or paid after the Indemnified Party has provided the Indemnifying Party with the notice of proposed or actual adjustment required under this Section 9.4 and prior to the time when the Indemnifying Party has assumed control of the defense of such Taxes.

9.5 Tax Treatment of Agreement. For, *inter alia*, income tax purposes, the Parties shall report any transactions arising under this Agreement consistent with a purchase and sale of capacity credits, and shall not treat this Agreement as establishing a partnership between the Parties.

ARTICLE X  
REPRESENTATIONS AND WARRANTIES

10.1 Representations of the Parties. As of the Effective Date and as of the Capacity Credit Term Commencement Date, each Party represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and all other jurisdictions, if any, in which it is engaged in business and the failure to so qualify would have a material adverse effect upon the performance of its obligations hereunder;

(b) the execution, delivery, and performance of this Agreement and the transactions contemplated hereunder are within its powers, have been duly authorized by all necessary [ ] (in the case of Buyer) or [ ] (in the case of Seller) action, and, assuming Buyer obtains the Buyer's Required Governmental Approvals, do not:

(i) violate, conflict with or result in a breach of any provision of its organizational or governing documents;

(ii) result in a default (or give rise to any right, including any right of termination, purchase, first refusal, cancellation, acceleration or guaranteed payment, or a loss of rights) under, or conflict with, or result in a breach of any of the terms, conditions, or provisions of any note, bond, mortgage, loan agreement, deed of trust, indenture, license, agreement, or any other instrument or obligation to which it is a party or by which it or any of its assets or properties is bound that, individually or in the aggregate, could reasonably be expected to have a material adverse effect upon the performance of its obligations hereunder;

(iii) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or any other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of its assets or properties;

(iv) violate, conflict with or result in a breach of any applicable Law, including any order, writ, judgment, injunction, decree, determination, or award, or any Governmental Approval having applicability to it or its assets or properties that, individually or in the aggregate, could reasonably be expected to have a material adverse effect upon the performance of its obligations hereunder; or

(v) require the Consent of, or the declaration, filing or registration with or notice to, or an order from any Person;

(c) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, or other Laws affecting creditors' rights generally and, with regard to equitable remedies, the discretion of the Governmental Authority before which proceedings to obtain same may be pending;

(d) it has obtained all Consents and Governmental Approvals necessary for it to enter into and to perform, in compliance with all applicable Laws, its obligations under this Agreement, except, with respect to Buyer, the Buyer's Required Governmental Approvals identified on Schedule A, and all such Consents and Governmental Approvals are in effect;

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it that would result in it being or becoming Bankrupt;

(f) there is no pending or, to its knowledge, threatened action or proceeding before any Governmental Authority or arbitrator against it or any of its Affiliates that could reasonably be expected to materially and adversely affect its ability to perform its obligations under this Agreement or that purports to affect the legality, validity, or enforceability of this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, has had complete discretion in seeking and obtaining the advice and counsel of experts relating to specialized subject matter of this Agreement, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(i) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

10.2 Representations of ESI and Buyer. ESI and Buyer represent to Seller that as of the Effective Date ESI is acting as agent for Buyer and has full power and authority to execute and deliver this Agreement as agent for Buyer and to bind Buyer hereto.

## ARTICLE XI EVENTS OF DEFAULT; REMEDIES

11.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure by the Defaulting Party to make when due any payment to the other Party ("Non-Defaulting Party") under this Agreement, to the extent not disputed by the Defaulting Party in good faith pursuant to Section 7.4, and such failure has not been remedied on or before five (5) Business Days after the Defaulting Party's receipt of notice thereof delivered by or on behalf of the Non-Defaulting Party;

(b) any of the representations and warranties herein made by the Defaulting Party is false or inaccurate in any material respect as of the date made or repeated and has not

been remedied by the Defaulting Party on or before thirty (30) days after the Defaulting Party's receipt of notice thereof delivered by or on behalf of the Non-Defaulting Party, it being understood that such default may be remedied by correcting the condition that caused the representation to be false or inaccurate;

(c) in the case of Seller as the Defaulting Party, Seller's failure to perform its obligations in accordance with Article VIII, including the failure to provide or maintain the Performance Assurance and/or Parent Guaranty;

(d) in the case of Seller as the Defaulting Party, (i) Seller Parent (A) becomes Bankrupt or (B) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of its obligations under, the Parent Guaranty, (ii) the Parent Guaranty ceases to be in full force and effect, (iii) any of the representations and warranties made by Seller Parent in the Parent Guaranty is false or inaccurate in any material respect as of the date made or repeated and has not been remedied by Seller Parent on or before three (3) Business Days after Seller Parent's receipt of notice thereof delivered by or on behalf of Buyer, it being understood that such default may be remedied by correcting the condition that caused the representation to be false or inaccurate or (iv) any material breach by Seller Parent of the covenants or other obligations of Seller Parent set forth in the Parent Guaranty that is not remedied by Seller Parent on or before three (3) Business Days after Seller Parent's receipt of notice thereof delivered by or on behalf of Buyer;

(e) the assignment or transfer by the Defaulting Party of this Agreement in whole or in part other than as permitted under Article XV, unless remedied on or before thirty (30) days after the Defaulting Party's receipt of notice thereof delivered by or on behalf of the Non-Defaulting Party;

(f) any material breach by the Defaulting Party of the covenants or other obligations of the Defaulting Party set forth in this Agreement (other than any failure listed individually as a separate Event of Default in this Section 11.1) that is not remedied by the Defaulting Party on or before thirty (30) days after the Defaulting Party's receipt of notice thereof delivered by or on behalf of the Non-Defaulting Party;

(g) the Defaulting Party becomes Bankrupt;

(h) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

## 11.2 Remedies.

(a) If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (the "Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all obligations under this

Agreement, (ii) withhold any payment due to the Defaulting Party under this Agreement and (iii) suspend its performance under this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner and consistent with the terms of this Agreement (including Section 13.1), a Settlement Amount as of the Early Termination Date.

(b) The “Termination Payment” shall be equal to (i) if the Settlement Amount is positive, the Settlement Amount or (ii) otherwise, zero (0). The Termination Payment shall be due and payable by the Defaulting Party to the Non-Defaulting Party if the Termination Payment is positive, but, if zero (0), shall not be due or payable from the Non-Defaulting Party to the Defaulting Party. The Termination Payment is the Non-Defaulting Party’s exclusive remedy for the early termination of this Agreement (including any loss of the benefit of the bargain or “cover damages” during the unfulfilled term of this Agreement). For the avoidance of doubt, the amount or payment of the Termination Payment shall not discharge or otherwise affect any undischarged liabilities described in Section 15.2 (including undischarged liabilities that are not the “cover” damages contemplated by the Termination Payment), which undischarged liabilities shall be separately due and payable pursuant to the terms thereof.

(c) As soon as practicable after a liquidation and termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party, including the amount, if any, of the Termination Payment and a statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be payable on or before two (2) Business Days after such notice is effective.

(d) If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall provide to the Non-Defaulting Party, on or before two (2) Business Days after receipt of the Non-Defaulting Party’s calculation of the Termination Payment, a detailed explanation of the basis for such dispute.

(e) Notwithstanding anything to the contrary, except for the rights to terminate and suspend expressly set forth in this Agreement, neither Party shall have any right to terminate this Agreement or suspend its performance for any reason. Whether or not this Agreement is terminated, either Party shall have any remedies available to it under this Agreement or at law or in equity in the event of a breach or default by the other Party, except as expressly limited in this Agreement.

11.3 Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon notice to the Defaulting Party, shall have the right to suspend performance under this Agreement; provided, however, that in no event shall any such suspension continue longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof given pursuant to Section 11.2.

## ARTICLE XII INDEMNITY

12.1 Indemnification. Subject to Article XIII (Limitations on Liability), Section 9.4 (Tax Indemnity), and the other terms of this Agreement, the Indemnifying Party shall defend,

indemnify and hold harmless the Indemnitees from and against any and all Claims made, instituted, or threatened by any Person against, and any and all Indemnified Losses suffered or incurred by, the Indemnitees, to the extent arising out of, in connection with, or resulting from:

(a) the inaccuracy or breach of any of the representations or warranties made herein by the Indemnifying Party,

(b) the Indemnifying Party's or its agents' or representatives' negligence, gross negligence, fraud, willful misconduct or breach of any of the Indemnifying Party's obligations under this Agreement,

(c) in the case of Buyer as the Indemnifying Party, except to the extent Seller is obligated to indemnify therefor pursuant to clause (a) or (b) above or Section 13.3(b), Buyer's possession or control of Capacity Credits delivered to and purchased by Buyer pursuant to this Agreement to the extent related to, arising out of or with respect to any event, fact, circumstance, or occurrence first occurring at any time after delivery of such Capacity Credits to Buyer,

(d) in the case of Seller as the Indemnifying Party, Seller's (or any other Person's) receipt, possession or control of (i) Capacity Credits to the extent related to, arising out of or with respect to any event, fact, circumstance, or occurrence first occurring at any time at or prior to delivery of such Capacity Credits to Buyer and (ii) at all times, (A) Seller's (or any other Person's) failure to properly register the Planning Resource(s) from which the Capacity Credits originate, or (B) Seller's (or any other Person's) failure to meet and perform, or cause a third party to meet and perform, all of the obligations set forth in the MISO Rules associated with such Planning Resource(s);

provided, however, that the Indemnifying Party shall have no indemnification obligation hereunder in respect of any Claim or any loss, liability, damage, cost or expense that would otherwise constitute an Indemnified Loss to the extent caused by the gross negligence, fraud, or willful misconduct of the Indemnitees.

12.2 Indemnity Notice. The Indemnified Party shall notify the Indemnifying Party promptly, but in no event later than thirty (30) days, after receipt of notice of the commencement of any Claim against the Indemnified Party with respect to which the indemnity set forth in Section 12.1 may apply. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that (a) if the defendants in or a party to any such Claim include both an Indemnitee and the Indemnifying Party and the Indemnitee reasonably concludes that there may be legal defenses available to it that are different from or additional to those available to the Indemnifying Party, then each such Indemnitee shall have the right (at the Indemnifying Party's expense) to select separate counsel to assert such legal defenses and to otherwise participate in the defense of the Claim on behalf of such Indemnitee; (b) if the Claim cannot by its nature be defended solely by the Indemnifying Party, the Indemnitee shall use Commercially Reasonable Efforts to cooperate with the Indemnifying Party in its contest of the Claim and to make available all information and assistance as the Indemnifying Party may reasonably request at the expense of the Indemnifying Party; (c) the Indemnifying Party shall not be entitled to assume and control the defense of any such Claim without the prior Consent of the

Indemnatee if and to the extent such Claim involves the potential imposition of criminal liability on the Indemnatee or may subject the Indemnatee to new or additional regulation; and (d) the Indemnifying Party shall not, without the prior Consent of the Indemnatee, consent to the entry of any judgment against such Indemnatee or enter into any settlement or compromise that does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnatee a release, in form and substance satisfactory to Indemnatee, from all liability in respect of such Claim, except the payment of money that will be paid by the Indemnifying Party.

12.3 Defense Not Assumed. If an Indemnified Party shall be entitled to indemnification under this Article XII as a result of a Claim by a third party and the Indemnifying Party fails to assume the defense thereof, such Indemnatee may at the expense of the Indemnifying Party, contest (or, with the prior consent of the Indemnifying Party, which shall not be unreasonably withheld, conditioned, or delayed, settle) such Claim; provided, however, that no such contest need be made, and settlement or full payment of any such Claim may be made, without the consent of the Indemnifying Party (with the Indemnifying Party remaining obligated to indemnify such Indemnatee under this Article XII) if an Event of Default as to the Indemnifying Party has occurred and is continuing.

### ARTICLE XIII LIMITATIONS ON LIABILITY

13.1 Consequential Damages Exclusion; Express Negligence. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOST PROFITS (EXCEPT TO THE EXTENT THAT ANY DIRECT DAMAGES INCLUDE AN ELEMENT OF PROFIT), LOST SALES OR REVENUES, AND ALL BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT (a) TO THE EXTENT THAT AN INDEMNIFYING PARTY, PURSUANT TO THE PROVISIONS OF SECTION 9.4 OR SECTION 13.3 OR ARTICLE XII, IS OBLIGATED TO INDEMNIFY AN INDEMNITEE AGAINST THIRD PARTY CLAIMS OR (b) AN EXPRESS MEASURE OF DAMAGES HEREIN INCLUDES CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OR (c) IN THE CASE OF A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR INTENTIONAL, BAD FAITH BREACH). THE PARTIES INTEND AND AGREE THAT (i) THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES AND, EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN THE PROVISIO TO SECTION 12.1, THE INDEMNITIES IN SECTION 12.1(d) BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF THE BENEFICIARY THEREOF, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE AND (ii) "COVER" DAMAGES REASONABLY INCURRED BY A NON-DEFAULTING PARTY DO NOT CONSTITUTE CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES FOR PURPOSES OF THIS AGREEMENT. WITH RESPECT TO THE INDEMNITIES IN SECTION 12.1(a) AND SECTION 12.1(b), IT IS THE INTENT OF THE PARTIES THAT WHERE, AS BETWEEN THE PARTIES, FAULT IS DETERMINED TO HAVE BEEN JOINT OR CONTRIBUTORY, PRINCIPLES OF COMPARATIVE FAULT

WILL BE FOLLOWED AND EACH PARTY SHALL BEAR THE PROPORTIONATE DAMAGE CAUSED BY THAT PARTY'S FAULT.

13.2 ESI and Buyer Liability. SELLER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ELSEWHERE, ESI IS ENTERING INTO, AND IS A PARTY TO, THIS AGREEMENT STRICTLY AS AGENT FOR BUYER, AND SHALL HAVE NO LIABILITY OF ANY KIND HEREUNDER OR IN RELATION TO ANY OF THE TRANSACTIONS OR ACTIVITIES CONTEMPLATED HEREUNDER EXCEPT IN RESPECT OF ANY BREACH OF ITS REPRESENTATION IN SECTION 10.2.

13.3 Government Fines.

(a) Any fine, penalty or other cost incurred by either Party or such Party's employees, agents or representatives (including their employees, agents or representatives) for non-compliance by such Party, its agents, or employees with the requirements of any applicable Law shall not be reimbursed by the other Party but, as between the Parties, shall be the sole responsibility of such non-complying Party; provided, however, that this Article XIII shall not apply, and Article XII shall apply, to the extent of any non-compliance arising out of, in connection with, or resulting from the matters described in clauses (a), (b) and (d) of Section 12.1 (to the extent of the other Party's indemnification obligations under Article XII).

(b) If such fines, penalties or other costs are assessed against an Indemnitee by any Governmental Authority or court of competent jurisdiction due to the non-compliance by the Indemnifying Party or its employees, agents or representatives (including their employees, agents or representatives) with any applicable Law, the Indemnifying Party shall indemnify and hold harmless the Indemnitee from and against any and all Claims made, instituted or threatened against, and any and all Indemnified Losses suffered or incurred by, the Indemnitee, to the extent arising out of, in connection with, or resulting from, such non-compliance.

ARTICLE XIV  
DISPUTE RESOLUTION

In the event of any Claim or dispute between the Parties arising out of or relating to this Agreement (each, a "Dispute"), even if such Dispute is extra contractual in nature, sounds in contract, tort or otherwise or arises under Law, either Party may, by delivering a notice thereof to the other Party, refer the Dispute to senior executives of the Parties in accordance with this Article XIV. The Parties agree that, on or before three (3) Business Days after receipt of any such notice from Seller to Buyer or vice versa, Seller shall designate a senior executive of Seller or his or her designee to represent Seller and Buyer shall designate a senior executive of Buyer or his or her designee to represent Buyer to attempt to resolve the Dispute. The Parties shall then cause the two designated senior executives or their respective designees to meet at least once and negotiate in good faith until the end of fifteen (15) days after receipt of the notice of referral of the Dispute to senior executives from Seller to Buyer or vice versa, in the effort to resolve the Dispute. Following (and only following) the conclusion of such fifteen (15)-day period (whether or not such good faith negotiations have occurred), and subject to the other terms hereof, the



Parties may pursue all of their respective rights and remedies under this Agreement and any applicable Law with respect to the Dispute.

## ARTICLE XV MISCELLANEOUS

15.1 Notices. Any notice, request, demand, statement, invoice, Consent, explanation, agreement, report, or other communication required under or contemplated by this Agreement shall be (a) made or given in writing by personal delivery, third-party courier, facsimile or certified or registered mail, return receipt requested, postage prepaid, unless otherwise specified herein, (b) addressed as indicated on Schedule 15.1 (subject to the following sentence), and (c) deemed received by the other Party (i) if delivered in person or by a third party courier, on the date so delivered, (ii) if sent by facsimile with confirmation of transmission, on the date sent, or (iii) if sent by certified or registered mail, return receipt requested, postage prepaid, to the proper address of the recipient party, on the third (3rd) Business Day after the date mailed. A Party may change or supplement any of its address particulars upon notice delivered by such Party to the other Party reasonably in advance of the date on which such change or supplement shall become effective. If more than one method for sending a communication under this Section 15.1 is used, the earliest notice date of delivery shall control.

15.2 Survival. The provisions of Article I (Defined Terms and Interpretation), Article VII (Billing, Payment and Related Rights and Obligations), Article VIII (Credit and Collateral Requirements), Article IX (Taxes), including Section 9.4 (Tax Indemnity), Article XI (Events of Default; Remedies), Article XII (Indemnity), Article XIII (Limitations on Liability), Article XIV (Dispute Resolution) and Article XV (Miscellaneous), Section 4.3 (Set-off), and Section 8.4 (Remedies), including the rights and obligations of the Parties therein provided, and a Party's liability for a breach of this Agreement, shall survive the termination or expiration of this Agreement.

15.3 Expenses. Each Party shall pay its own costs and expenses incurred in connection with the negotiation and execution of this Agreement. Each Party shall reimburse the other for the reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred in connection with such other Party's review, negotiation, execution and delivery of any instruments, agreements or documents that may be necessary or appropriate in connection with any assignment or consent (including any consent for the benefit of any Lender of Seller) requested by a Party, its lender or any other Person providing financing to such Party.

### 15.4 Assignment.

(a) Subject to the other terms of this Section 15.4, neither Party may assign this Agreement or its rights hereunder without the other Party's prior consent, which shall not be unreasonably withheld, conditioned, or delayed.

(b) Either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), collaterally assign, mortgage, hypothecate, pledge, or otherwise encumber all or any portion of its interest in and to this Agreement in favor of a Lender or other Person providing financing to either Party or any of its Affiliates.

(c) Subject to Section 15.4(d)(i), Buyer may, without the consent of Seller, transfer or assign its rights, liabilities, and interests in and under this Agreement to (i) an Affiliate of Buyer that is an Included Entergy Operating Company (or more than one of such Included Entergy Operating Companies), (ii) any Person succeeding to all or substantially all of the assets of Buyer, provided that the assignee (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's or (B) has a creditworthiness equal to or higher than that of Buyer as of immediately prior to the assignment or (iii) if all or part of Buyer's obligation to serve retail load is transferred to another Person pursuant to a change in Law (including implementing rules and regulations), such Person. For the avoidance of doubt, in the case of a transfer under sub-clause (i) or (iii) of the preceding sentence, a partial transfer of this Agreement to such transferee is permitted.

(d) (i) In order for a transfer or assignment permitted under Section 15.4(c)(i) to be effective, the assignee must be bound by the terms of this Agreement, and have assumed all of Buyer's obligations under this Agreement, relating to the period from and after the date of assignment (whether pursuant to an agreement reasonably satisfactory to Seller and consistent with the provisions hereof or by operation of law); provided, however, that if there are assignments of Buyer's rights, liabilities and interests in and to this Agreement to multiple assignees pursuant to Section 15.4(c)(i), the liability of each assignee for the liabilities of Buyer hereunder shall be several (but not joint) in proportion to its share of the Capacity Credits allocated to such assignee. Upon an assignment effectuated in accordance with Section 15.4(c)(i) and made in compliance with this Section 15.4(d)(i), Buyer shall be released from any and all obligations and liabilities hereunder relating to the period from and after the date of assignment in proportion to its share of the Capacity Credits allocated or assigned to the assignee (and any other obligations and liabilities assumed by the assignee) and Seller shall be deemed to have waived any right of recourse against Buyer with respect to such obligations and liabilities.

(ii) In order for a transfer or assignment permitted under Section 15.4(c)(ii) to be effective, the assignee must be bound by the terms of this Agreement, and have assumed all of the obligations of Seller under this Agreement, relating to the period from and after the date of assignment (whether pursuant to an agreement reasonably satisfactory to Buyer and consistent with the provisions hereof or by operation of law). Upon any assignment effectuated in accordance with Section 15.4(c)(ii) and made in compliance with this Section 15.4(e), Seller be released from any and all obligations and liabilities hereunder relating to the period from and after the date of assignment (and any other obligations and liabilities assumed by the assignee) and Buyer shall be deemed to have waived any right of recourse against Seller with respect to such obligations and liabilities.

15.5 No Third-Party Beneficiaries. Except for the rights and remedies specifically conferred upon Indemnitees under the indemnity provisions hereof, this Agreement is solely between and for the benefit of the Parties and is not intended to, and does not, confer any rights or remedies hereunder upon any Person other than the Parties and their respective successors and permitted assigns.

15.6 Waiver. Without limiting Section 15.14, no waiver by a Party of any duty, obligation or liability of the other Party under or arising out of or in connection with this Agreement shall be effective unless in writing signed by an authorized representative of the waiving Party and designated as a waiver, and shall be limited to its express terms. At any time a Party may waive any right, including with respect to any default, Potential Event of Default or Event of Default, under or arising out of or in connection with this Agreement without the requirement of a writing signed by an authorized representative of the waiving Party. No waiver as described in the previous two sentences shall be deemed a continuing waiver, or a waiver with respect to any other matter, except to the extent expressly set forth in a writing signed by an authorized representative of the waiving Party and designated as a waiver. For the avoidance of doubt, (a) any delay in asserting or enforcing any right under or arising out of or in connection with this Agreement shall not be deemed a waiver of such right, and (b) a failure of a Party to enforce, or to require performance by the other Party of, any provision of this Agreement shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of such Party thereafter to enforce each and every provision hereof.

15.7 Choice of Law. This Agreement shall be governed by and construed and interpreted in accordance with the Laws of the State of New York without giving effect to principles of conflicts of laws that would require or permit the application of the laws of any other jurisdiction.

15.8 Submission to Jurisdiction; Waiver of Jury Trial. Each of the Parties hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment or award in respect thereof, to the exclusive general jurisdiction of the courts of the United States located in the [County/Parish] of [ ], State of [ ], and appellate courts from any thereof;

(b) CONSENTS AND AGREES THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN AND ONLY IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM OR ANY SIMILAR OBJECTION AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the other Party at its address indicated on Schedule 15.1 or at such other address of which the other Party shall have been notified pursuant thereto, and agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by applicable Law; and

(d) EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT;

provided, however, that, to the extent that a Party cannot obtain, or can obtain but cannot enforce, a decision from the courts specified in clause (a) above because, even after giving effect to the submission to jurisdiction and waiver of objection to venue in this Section 15.8, no such court has jurisdiction over the other Party or its assets or the subject matter or no such court has the jurisdiction or power to grant the remedy or enforcement sought, the Party may pursue or enforce (as applicable) its remedies in another court.

15.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Buyer and Seller and their respective successors and permitted assigns.

15.10 Counterparts. This Agreement may be executed in separate counterparts by the Parties, including facsimile counterparts, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

15.11 Confidentiality. Neither Party shall disclose, or permit the disclosure by any of its Representatives (as defined in the Confidentiality Agreement) of, the terms or conditions of this Agreement, or any confidential information of the other Party disclosed by such other Party to such Party, directly or indirectly, in connection with the exercise of its rights or the performance of its obligations hereunder, to a third party (including in connection with the issuance of any media or press release or other form of public announcement), other than as permitted under the Confidentiality Agreement. Notwithstanding anything to the contrary herein or in the Confidentiality Agreement, Buyer shall be entitled to disclose to any Governmental Authority as a matter of right, without seeking any confidential treatment therefor, Seller's name, the Capacity Credit Term, the type, nature, and a general description of the Transaction, and amount and type of capacity credits under contract pursuant to this Agreement.

15.12 Entire Agreement. This Agreement and the Confidentiality Agreement contain the entire agreement between the Parties with respect to the matters contained herein and therein, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the Effective Date, written or oral (including the letter of intent, dated [ ], between Seller and ESI (as agent for Buyer), and any agreement, promise, understanding or commitment based upon or made in any term sheet, contract or principal terms summary, bid package or other document prepared or made available by or on behalf of either Party or any communication or correspondence of any kind in connection with the RFP, and each Party confirms that it is not relying upon any inducement, promise, commitment, representation or warranty of the other Party relating to this Transaction, except as specifically set forth herein, in the Confidentiality Agreement, or incorporated by reference herein or therein.

15.13 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable by a Governmental Authority with jurisdiction, such provision shall be (i) invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof and (ii) revised or reformed, to the maximum extent permitted under applicable Law, in a manner resulting in rights, duties and obligations most closely representing the intention of the Parties as expressed herein.

15.14 Amendment. This Agreement may not be amended or otherwise modified except by and as set forth in a written instrument signed by duly authorized representatives of each of the Parties.

15.15 No Challenge. Neither Party shall directly or indirectly challenge the equity, fairness, reasonableness or lawfulness of any prices, fees, rates, terms or conditions set forth in or established according to this Agreement, as those prices, fees, rates, terms or conditions may be at issue before any Governmental Authority or arbitrator, if the successful result of such challenge would be to preclude or excuse the performance of this Agreement in accordance with its terms by either Party or to prospectively or retroactively revise such prices, fees, rates, terms or conditions. To the extent that either Party may be called upon by any Governmental Authority to do so, each Party shall support and defend the effectiveness of this Agreement before such Governmental Authority when the substance, validity or enforceability of all or any part of this Agreement is challenged or called into question before such Governmental Authority. Without limiting the foregoing, neither Party shall seek (directly or indirectly), nor support any third party in seeking, to revise the prices, fees, rates, terms or conditions set forth in or established according to this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act or otherwise. Further, the standard of review for changes to the prices, fees, rates, terms or conditions set forth in or established according to this Agreement proposed by a Party (to the extent that any waiver in this Section 15.15 is unenforceable or ineffective as to such Party), a non-Party or the FERC acting *sua sponte* shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

15.16 Imaged Documents. Any original or copy of a writing may be digitally copied, photocopied, or stored on computer tapes, disks, drives, and other electronic media (“Imaged Document”). An Imaged Document, if introduced as evidence in printed format in any judicial, arbitration, mediation or administrative proceedings, shall be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Imaged Document on the basis that the same was not originated or maintained in documentary form; provided, however, that nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

15.17 Independent Contractors. Neither Party is a partner, joint venturer, agent or representative of or with the other Party in connection with this Agreement or any of the undertakings set forth herein or transactions contemplated hereby. Nothing in this Agreement is intended or shall be deemed to create an association, trust, joint venture, partnership, or relationship of principal and agent between the Parties or to impose upon either Party any fiduciary, trust, partnership, or similar obligation or liability on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

15.18 Further Assurances. The Parties shall execute all such other documents and do all such other things as may be reasonably required in order to effectuate, evidence, and/or confirm the intended purposes of this Agreement.

15.19 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Power Purchase Agreement to be executed by their duly authorized representatives as of the Effective Date.

ENTERGY SERVICES, INC., as agent for  
[ ]

By: \_\_\_\_\_  
Name:  
Title: Vice President, System Planning

[ ]

By: \_\_\_\_\_  
Name:  
Title:

**Schedule A**

**Buyer's Required Governmental Approvals (Outstanding)**



## **Schedule B**

### **Form of Confidentiality Agreement**

#### CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”), entered into effective as of [ ], 201[ ] (the “Effective Date”), is by and between [Buyer] (“[Buyer]”), a [ ] [corporate form], and [Seller] (“[Seller]”), a [ ] [corporate form]. [Buyer] and [Seller] are sometimes hereinafter referred to individually as a “Party” and collectively as “Parties.”

#### RECITALS:

A. [Buyer] and [Seller] have entered into that certain Capacity Credit Purchase Agreement, dated as of [ ] (the “Purchase Agreement”).

B. The terms of the Purchase Agreement are confidential and the Parties expect to disclose Confidential Information (defined below) to each other and the other’s Representatives (defined below) from time to time in connection with the Purchase Agreement.

C. The Parties desire to define in this Agreement their respective rights, obligations, and liabilities with respect to Confidential Information in connection with the Purchase Agreement.

#### AGREEMENT:

In consideration of the premises and mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties, intending to be bound, agree as follows:

1. Definitions. As used herein, “Confidential Information” means, subject to Section 2 below, all data, analyses, documents, materials and other information furnished by the Party disclosing the same (the “Disclosing Party”) or any of its Representatives to the Party receiving the same (the “Receiving Party”) or any of its Representatives in connection with the Purchase Agreement, whether prior to, on or after the Effective Date, and any and all written reproductions, summaries, notes, analyses, compilations, studies, documents, and materials prepared by or for the Receiving Party or any of its Representatives to the extent containing, reflecting or based upon, in whole or in part, such data, analyses, documents, materials or other Confidential Information of the Disclosing Party disclosed pursuant hereto. Confidential Information may be in any form whatsoever, including, without limitation, writings, computer code or programs, logic diagrams, component specifications, drawings, or other media, and may be written or oral. For the avoidance of doubt, Confidential Information includes all data, analyses, documents and other information relating to any negotiation of the Purchase Agreement prior to execution of the Purchase Agreement, including, without limitation, any draft of the Purchase Agreement or proposal submission agreement (or portion thereof), issues list, contract proposal or agreement, request for proposals offer or proposal, or letter of intent (or

amendment thereof). “Representative” means, with respect to a Party, any affiliate of such Party, and any shareholder, member, manager, partner, trustee, director, officer, employee, agent, contractor, lender or potential lender, or representative, including, without limitation, legal counsel, financial advisors, ratings agency advisors, and accountants, of such Party or such affiliate.

2. Exceptions.

(a) Notwithstanding the provisions of Section 1 above, the term “Confidential Information” shall not include information that:

- (i) was, prior to disclosure, either known by or within the possession of the Receiving Party without an obligation of confidentiality binding upon the Receiving Party or otherwise in the public domain;
- (ii) is or becomes, at the time of or following disclosure, available to the Receiving Party on a non-confidential basis from a source that is not prohibited, to the Receiving Party’s knowledge, from disclosing such information by any contractual, fiduciary or other legal obligation of non-disclosure, or otherwise is or becomes part of the public domain (including pursuant to any permitted public disclosure under Section 3(a)(i) of this Agreement) other than as a result of a disclosure by the Receiving Party or any of its Representatives that is not permitted by this Agreement; or
- (iii) is independently developed by the Receiving Party or any of its Representatives without breaching any of its disclosure or use obligations under this Agreement or any other agreement.

3. Limitations on Disclosure.

(a) The Receiving Party and its Representatives may not disclose any Confidential Information received hereunder to any other person, including, without limitation, a governmental authority, except that, subject to Section 3(b) below, the Receiving Party and its Representatives may disclose Confidential Information (i) to any third party to whom the Receiving Party or its Representatives is requested or required by any judicial, regulatory or other governmental authority with jurisdiction to disclose Confidential Information (e.g., by order, deposition, interrogatory, civil investigative demand, request for documents, subpoena, or similar process or rule of procedure, or by statute, rule, or regulation, or other legal requirement), or if the Receiving Party or any Representative thereof is compelled by applicable securities laws or a stock exchange listing agreement to disclose Confidential Information, but in either case only to the extent disclosure is requested or required; (ii) to any of its Representatives who are directly involved in and require access to such information in connection with the administration, management, or performance of the Purchase Agreement; (iii) to the limited extent authorized in writing by the Disclosing Party; and (iv) with respect to [Seller’s] Confidential Information, as provided in Section 3(c). The Receiving Party agrees that any of its Representatives to whom Confidential Information is disclosed will be informed of the confidential or proprietary nature

thereof and that, as between the Parties, the Receiving Party shall be responsible for any prohibited or unauthorized use or disclosure of Confidential Information by the Receiving Party or any of its Representatives that is not authorized hereunder. The term “person,” as used in this Agreement, shall be broadly interpreted to include the media (including the social media) and any individual, corporation, partnership, fund, limited liability company, trust, association, joint venture, unincorporated organization, group, governmental entity or any department, agency or political subdivision thereof, or other entity.

(b) If the Receiving Party or any of its Representatives is requested or required to disclose Confidential Information or any portion thereof under Section 3(a)(i) above, the Receiving Party shall give, to the extent practical and legally permissible, reasonably prompt written notice of the existence and circumstances surrounding such requested or required disclosure to the Disclosing Party so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other relief in the appropriate forum and/or waive compliance by the Receiving Party with the terms of this Agreement applicable to the Confidential Information requested or required to be disclosed. If the Disclosing Party determines to seek a protective order or other relief, the Receiving Party shall use good faith efforts, at the sole cost and expense of the Disclosing Party, to cooperate with the Disclosing Party in such undertaking. If, despite the Receiving Party’s compliance with its obligations hereunder, such protective order or other relief is not obtained by the time at which the Receiving Party or any of its Representatives is, upon the advice of its legal counsel (including in-house legal counsel), legally compelled to make such disclosure, or the Disclosing Party waives in writing compliance with the provisions hereof, the Receiving Party or its Representatives may disclose Confidential Information without liability to the Disclosing Party hereunder, provided that the Receiving Party agrees to furnish, and to require its Representatives to furnish, only that portion of the Confidential Information legally required to be disclosed upon the advice of such legal counsel (including in-house legal counsel).

(c) [Seller] acknowledges that the Confidential Information it or any of its Representatives discloses to [Buyer] or its Representatives hereunder may be subject to review by regulatory bodies having jurisdiction over the retail rates and services provided by [Buyer], including, without limitation, the [Louisiana Public Service Commission/the Council of the City of New Orleans, Louisiana/the Public Utility Commission of Texas], or by the staffs thereof, and may be subject to formal or informal discovery by any such regulatory body or staff. In addition, [Seller] acknowledges that all such Confidential Information may be subject to review by a district or appellate court in a proceeding involving [Buyer] or any of the Included Entergy Operating Companies (as defined in Section 11). [Seller] agrees that, notwithstanding anything herein to the contrary, [Buyer] and its Representatives may, without notice to [Seller], use and disclose such Confidential Information in testimony, applications, pleadings, evidence or in response to formal or informal discovery in any proceeding or in any non-public communication or discussion seeking or relating to approval or review by any such regulatory body or district or appellate court of the Purchase Agreement or any other regulatory or judicial proceeding to which the Purchase Agreement may be relevant, and in any such case, [Buyer] will make reasonable efforts to obtain confidential treatment for such Confidential Information, including, without limitation, providing such information to the regulatory body and/or its staff under the confidentiality protections permitted by the governing rules and order of such commission. [Seller] acknowledges and agrees that [Buyer] and its Representatives hereunder shall be entitled

to disclose to any governmental authority as a matter of right, and without seeking any confidential treatment therefor or providing notice thereof to [Seller], the names of the parties to the Purchase Agreement; the term of the Purchase Agreement; the nature and type and general descriptions of the Purchase Agreement and the transactions thereunder; the amount of capacity credits under contract pursuant to the Purchase Agreement; and terms of the Purchase Agreement that [Buyer], in its good faith judgment, believes are reasonable and appropriate to include in its public application for or other public filing(s) seeking approval of the Purchase Agreement by a governmental authority.

(d) For purposes of Section 3(a)(iii) above, each Party hereby consents to the disclosure by the other Party and its Representatives of Confidential Information of the Disclosing Party to any market monitor, independent coordinator of transmission, balancing authority (including, without limitation, any applicable regional transmission organization (such as Midcontinent Independent System Operator, Inc.) or independent system operator), other transmission provider or electric reliability organization if and to the extent such person requires or requests such information. The Disclosing Party shall make reasonable efforts to obtain confidential treatment for such Confidential Information from such person.

4. Limitations on Use. Absent the express written consent of the Disclosing Party, Confidential Information disclosed hereunder may be utilized by the Receiving Party and its Representatives only for the purpose of fulfilling the terms of the Purchase Agreement and for no other purpose. For the avoidance of doubt, nothing herein shall be construed to prohibit either Party from exercising any right, or discharging any obligation, it may have under the Purchase Agreement.

5. Reservation of Rights. The Parties agree that: (i) all rights in or to Confidential Information disclosed pursuant to this Agreement are reserved to the Disclosing Party; (ii) subject to the express obligations of each Party set forth in this Agreement, nothing in this Agreement shall diminish or restrict in any way the rights that each Party has to market, lease, sell, or otherwise make available its products and services to any customer or third party; and (iii) no license or conveyance of any rights under any information, discoveries, inventions, or patents is granted or implied by either Party to the other under this Agreement.

6. Term. This Agreement shall commence on the Effective Date and shall continue in effect for a period of two (2) years from the expiration or earlier termination of the Purchase Agreement (the "Term"), and all obligations hereunder (other than undischarged obligations arising out of any breach of this Agreement) shall terminate at the end of the Term; provided, however, that with respect to each disclosure by the Disclosing Party or its Representatives to the Receiving Party or its Representatives (regardless of the manner of disclosure), the obligations hereunder of non-disclosure and non-use by the Receiving Party or its Representatives applicable to the Confidential Information disclosed in such disclosure shall terminate upon the earlier of (i) the fifth (5<sup>th</sup>) anniversary of such disclosure or (ii) the termination of this Agreement. For the avoidance of doubt, the terms of the Purchase Agreement and any agreement between or among the Parties or their affiliates directly related thereto, including, without limitation, this Agreement, and any amendment, supplement, waiver or modification thereof, shall be considered Confidential Information throughout the entire term of this Agreement (subject to the other terms hereof), and the obligations of non-disclosure and non-use hereunder with respect to

such terms shall apply to each Party throughout the entire term of this Agreement. In addition, the Confidential Information described in the preceding sentence shall be considered Confidential Information that is jointly held by the Parties and, subject to Section 2 and Section 3 of this Agreement, may not be disclosed by a Party to any persons other than Representatives of such Party without the prior written consent of the other Party, it being understood and agreed that, since such Confidential Information is jointly held, it cannot be “disclosed” by a Party or any of its Representatives to the other Party or any of its Representatives.

7. No Obligation to Disclose. This Agreement does not and shall not be construed to obligate either Party to disclose Confidential Information to the other Party. Disclosure of Confidential Information shall be at the sole discretion of the Disclosing Party, subject to the terms of the Purchase Agreement or any other separate binding written agreement entered into between the Parties.

8. No Warranties. Except as provided in Section 16 below or to the extent expressly set forth in the Purchase Agreement or other written agreement, instrument or other document binding upon the Disclosing Party or its Representatives (as applicable), neither the Disclosing Party nor any of its Representatives (i) makes or shall be deemed to have made any representation or warranty of any kind or character as to any of its Confidential Information, including, without limitation, accuracy or completeness (and no representation or warranty as to the Confidential Information shall be deemed made or exist), or (ii) shall have any liability to the Receiving Party or any other person on any basis (including, without limitation, in contract, tort, under federal or state securities laws or otherwise) resulting from the use of Confidential Information by the Receiving Party or any of its Representatives.

9. Return of Confidential Information.

(a) While this Agreement remains in effect, the Receiving Party, upon the Disclosing Party's written request, shall return to the Disclosing Party as promptly as practicable, but in no event later than thirty (30) days from the date such request is received, all Confidential Information provided to the Receiving Party and in its possession or the possession of its Representatives. In lieu of returning the information as provided herein, the Receiving Party may destroy all Confidential Information provided by, and shall certify in writing such destruction to, the Disclosing Party. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party shall continue to be bound by its obligations hereunder for the duration of the term of confidentiality hereof. Counsel for the Receiving Party may retain one (1) copy of Confidential Information (in whole or in part) for its files; provided, however, that any such Confidential Information so retained shall be subject to the terms of this Agreement.

(b) Notwithstanding Section 9(a) above, (i) the Receiving Party and its Representatives shall not be obligated to return or destroy any Confidential Information that the Receiving Party is retaining pursuant to a document retention hold established in connection with any actual or anticipated civil or criminal investigation or litigation, in which event the Confidential Information shall be retained by the Receiving Party or its Representatives until such time as the document retention hold is no longer in effect, at which time the Confidential

Information shall be returned to the Disclosing Party or destroyed as aforesaid; (ii) to the extent that the Receiving Party's or any of its Representative's computer back-up procedures create copies of the Confidential Information, the Receiving Party or such Representative may retain such copies in its archival or back-up computer storage for the period the Receiving Party or such Representative normally archives backed-up computer records; (iii) each of the Receiving Party and its Representatives may retain those materials containing the Disclosing Party's Confidential Information that are distributed to or created by its board of directors or senior management in connection with the Purchase Agreement, including, without limitation, any amendment or proposed amendment thereto and any internal approval or contract update or review required by its board of directors or senior management; and (iv) the Receiving Party and its affiliates shall not be required to return or destroy any filing or other document or material provided to, or document or material created or held by, any governmental authorities in connection with the Purchase Agreement.

(c) Any Confidential Information not returned or destroyed pursuant to this Section 9 shall be retained subject to the terms this Agreement until it is returned, destroyed or erased.

10. Integration Clause. This Agreement embodies all of the understandings, and merges all other or prior agreements, understandings or arrangements between the Parties concerning the subject matter hereof.

11. Assignment. This Agreement may not be assigned by a Party without the other Party's prior written consent (which shall not be unreasonably withheld, delayed or conditioned), except (i) by [Buyer] to [as applicable, Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy New Orleans, Inc. or Entergy Texas, Inc.] (together with [Buyer], the "Included Entergy Operating Companies"), (ii) by any Party in connection with the sale or bona fide transfer of all or substantially all of the business or assets of the assigning Party, or (iii) to the permitted assign(s) of such Party in connection with the permitted assignment of the Purchase Agreement by such Party to such permitted assign(s), provided in each case that the assignee agrees in writing to be bound by the terms and conditions hereof and promptly notifies the other Party in writing of such agreement. Upon any assignment made in compliance with this Section 11, this Agreement shall inure to and be binding upon each assignee of the assigning Party. All assignments in breach of this Agreement shall be null and void.

12. Equitable Relief. The Parties agree that the restrictions contained herein are fair and reasonable and necessary to protect the legitimate interests of the Disclosing Party, and that the Disclosing Party may suffer irreparable injury if the Receiving Party or any of its Representatives were to violate any provision of this Agreement. The Receiving Party acknowledges and agrees that, without prejudice to any other right and remedy available to the Disclosing Party at law or in equity, the Disclosing Party shall be entitled to (i) seek injunctive relief and specific performance of the terms hereunder and (ii) recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, expert witness fees and other out-of-pocket costs, from the Receiving Party if there is a breach or threatened breach of any of the provisions of this Agreement by the Receiving Party.

13. Governing Law; Jury Waiver. This Agreement, and all claims hereunder, shall be governed by and construed in accordance with the laws of the state of New York, without giving effect to the principles of conflict of laws that would require or permit the application of the laws of any other jurisdiction. EACH PARTY HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN ANY OF THEM ARISING UNDER THIS AGREEMENT.

14. Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any executed counterpart transmitted by facsimile, electronic communication in portable document format (.pdf), or similar transmission by any Party shall be deemed an original and shall be binding upon such Party.

15. Amendments. No amendment, modification, waiver, or other change to this Agreement shall be enforceable, except as specifically provided for in this Agreement, unless reduced to writing and executed by both Parties (or with respect to a waiver, by the waiving Party).

16. Disclosure Rights. The Disclosing Party represents and warrants to the Receiving Party that it may disclose or make available all Confidential Information disclosed to the Receiving Party hereunder without violating or being in breach of any contractual, fiduciary, or other obligation of non-disclosure existing at the time of such disclosure. The Disclosing Party shall indemnify, defend and hold harmless the Receiving Party and its Representatives from and against, and shall pay to the Receiving Party and its Representatives the amount of, any and all reasonable out-of-pocket expenditures in respect of any and all losses, damages, liabilities, obligations, penalties, fines, charges, costs, expenses and disbursements (including interest payable as a part thereof, reasonable legal and accountants' fees and expenses relating thereto, and other out-of-pocket expenses incurred in investigating, preparing or settling any action, cause of action, arbitration, claim, demand, suit or proceeding of any nature, in law or in equity, by or before any governmental authority or arbitrator) incurred by or assessed against the Receiving Party or its Representatives in respect of, resulting from, arising out of or caused by any third-party claims relating to any violation or breach of the representation and warranty made by the Disclosing Party in the preceding sentence.

17. No Waiver. Subject to applicable statutes of limitation, no failure or delay, in whole or in part, by the Disclosing Party in exercising any right or power hereunder shall operate as a waiver, full or partial, of such right or power.

18. No Joint Venture. This Agreement does not create and is not evidence of a joint venture, partnership, agency or other similar relationship between the Parties. The Parties acknowledge and agree that (i) they and their respective affiliates are involved in the same or similar businesses, (ii) subject to the express obligations of each Party set forth in this Agreement, nothing herein or otherwise will restrict either Party or its affiliates from competing with the other Party and its affiliates, (iii) there is no fiduciary relationship or other implied obligation of either Party or any of their affiliates to the other Party with respect to the subject matter hereof or

based on any course of dealing, the Parties' respective obligations being solely those expressly set forth herein, and (iv) nothing in this Agreement creates any exclusive dealing arrangement between the Parties and their affiliates with respect to the Confidential Information.

19. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Any unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

20. No Consequential or Punitive Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND OR CHARACTER, EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY, PURSUANT TO THE PROVISIONS OF SECTION 16 HEREOF, IS OBLIGATED TO INDEMNIFY AN INDEMNITEE AGAINST THIRD PARTY CLAIMS.

21. Notices. Any notice or other communications required or permitted to be given pursuant to this Agreement shall be confirmed in writing and shall be deemed properly given when hand delivered, sent by overnight mail service, mailed certified mail, return receipt requested, or transmitted by facsimile with date and sending Party identified to the following addresses:

If to [Buyer]:                    [Buyer]  
  c/o Entergy Services, Inc.  
  Attn: Vice President, System Planning  
  10055 Grogans Mill Road, Suite 300  
  The Woodlands, TX 77380

with a copy to:

Entergy Services, Inc.  
Attn: Assistant General Counsel  
10055 Grogans Mill Rd., Suite 300  
The Woodlands, TX 77380.

If to [Seller]:                    [Seller]  
  Attn: [                    ]  
  [Address]  
  [Address]  
  Facsimile: [                    ]

*[Signature page follows]*



IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the Effective Date.

[BUYER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SELLER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Schedule C

### Form of Parent Guaranty

THIS GUARANTY, dated as of \_\_\_\_\_, 2014, is made by [Guarantor], a [jurisdiction of formation] [type of legal entity] (“Guarantor”), in favor of Entergy Services, Inc., a Delaware corporation, as agent for [Buyer] (“Creditor”).

WHEREAS, Creditor and [Seller], [a direct/an indirect/] [wholly-owned] subsidiary of Guarantor (“Debtor”), have entered into that certain Capacity Credit Purchase Agreement, dated as of \_\_\_\_\_, 2014 (as may be amended or modified from time to time, the “Purchase Agreement”); and

WHEREAS, to induce Creditor to extend or to continue to extend credit to Debtor pursuant to the Purchase Agreement, Guarantor has agreed to provide to Creditor this Guaranty;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which Guarantor acknowledges, Guarantor hereby agrees as follows:

1. Guaranty. Subject to the provisions hereof, Guarantor hereby absolutely, irrevocably and unconditionally guarantees, as primary obligor and not as surety, the timely payment of all financial obligations that are now due and payable or become due and payable by Debtor to Creditor under or in connection with the Purchase Agreement (collectively, the “Obligations” and individually, an “Obligation”), together with any and all reasonable expenses, including, without limitation, reasonable attorneys’ fees and costs, incurred by Creditor in collecting or otherwise enforcing Creditor’s rights and/or Guarantor’s obligations under this Guaranty, all without regard to any counterclaim, set-off, deduction or defense of any kind that Debtor or Guarantor may have or assert, and without abatement, suspension, deferment or diminution on account of any event or condition whatsoever; provided, however, that Guarantor reserves to itself, and its obligations under this Guaranty shall be subject to, Debtor’s defenses and rights to set-off, counterclaim or withhold payment as provided in the Purchase Agreement, except such defenses and rights arising out of any of the events described in subsection 3(a) hereof or waived hereunder. Guarantor shall make any payment due hereunder (or cause such payment to be made) to Creditor within three (3) business days after Guarantor receives written notice of the default by Debtor in the payment of any Obligation of Debtor or that payment hereunder is due. This Guaranty is a guaranty of payment and not of collection.

2. Creditor Actions. Creditor (and/or, if applicable, Debtor) may, at any time and from time to time, without the consent of or notice to Guarantor, and without impairing or releasing any right of Creditor or obligation of Guarantor hereunder:

(a) change the manner, place, time, or terms of payment of, or (if applicable) interest rate on, or renew, extend or alter, any or all of the Obligations, including, without limitation, the time, place, or manner of performance thereof;

(b) amend, waive, terminate, supplement, or otherwise modify the Purchase Agreement or any other document, instrument or agreement relating to any Obligation;

(c) release Debtor or any other person liable in any manner for payment of any or all of the Obligations;

(d) exercise or refrain from exercising any right against Debtor or any other person or otherwise act or refrain from acting or otherwise fail to be diligent; and

(e) take, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

3. Effect of Certain Events. Guarantor agrees that Guarantor's obligations and liability hereunder are subject only to those defenses to which the Debtor may be entitled under the Purchase Agreement and will not be released, suspended, reduced, impaired, or otherwise affected by any circumstance or occurrence whatsoever, including, without limitation, the occurrence of any of the following events:

(a) the liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment or other similar proceeding affecting the status, composition, identity, existence, assets or obligations of Debtor, or the disaffirmance or termination of any of the Obligations or the Purchase Agreement in or as a result of any such proceeding;

(b) the renewal, consolidation, extension, modification or amendment from time to time of the Purchase Agreement or any document, instrument or agreement relating to any Obligation;

(c) the failure, delay, waiver or refusal by Creditor to exercise, in whole or in part, any right or remedy held by Creditor with respect to the Purchase Agreement or any of the Obligations thereunder;

(d) the sale, encumbrance, transfer or other modification of the ownership of Debtor or Creditor or any change in the name, identity, business, structure, composition, financial condition or management (including, without limitation, by reason of a merger, dissolution, consolidation or reorganization) of Debtor or Creditor;

(e) the release, exchange, substitution, surrender, nonperfection or invalidity of any security or other credit support or right of offset with respect thereto; or

(f) any other circumstance or occurrence that might otherwise constitute a legal or equitable discharge of a surety or guarantor.

4. Waivers. Except as otherwise expressly provided in this Guaranty, Guarantor waives, to the maximum extent permitted by applicable law:

(a) notice of acceptance of this Guaranty by Debtor or any other person, of the creation or existence of the Purchase Agreement or any Obligation thereunder, and of any action by Creditor in reliance hereon or in connection herewith and any other notice that may be necessary to preserve intact the rights of Creditor against Guarantor;

(b) promptness, diligence, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest with respect to any Obligation; and

(c) any requirement that suit be brought against, or any claim be made or other action by Creditor be taken against, Debtor or any other person as a condition to Guarantor's obligations under this Guaranty or as a condition to enforcement of this Guaranty against Guarantor.

5. Continuing Guaranty; Termination Reinstatement. This Guaranty is an absolute and continuing guaranty and shall continue in full force and effect and shall not be discharged until such time as all of the Obligations are fully and finally paid, performed or discharged in accordance with the terms of the Purchase Agreement. Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time, either before or after the termination hereof, payment of the Obligations guaranteed pursuant to this Guaranty, or any part thereof, is rescinded or must otherwise be returned by Creditor upon the insolvency, bankruptcy or reorganization of Debtor, all as though such payment had not been made.

6. Representations and Warranties. Guarantor represents and warrants to Creditor as follows:

(a) Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has full corporate power to execute, deliver and perform this Guaranty.

(b) The execution, delivery and performance of this Guaranty by Guarantor have been and remain duly authorized by all necessary corporate action on the part of Guarantor and do not contravene any provision of law or of Guarantor's certificate or agreement of incorporation or any contractual restriction binding on Guarantor or any of its assets.

(c) All consents, authorizations and approvals of, and registrations and declarations with, each and every governmental authority necessary for the due execution, delivery and performance of this Guaranty by Guarantor have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority by Guarantor is required in connection with the execution, delivery or performance by Guarantor of this Guaranty.

(d) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles.

(e) This Guaranty reasonably may be expected to benefit, directly or indirectly, Guarantor.

7. Subrogation. Until all amounts that may be or become payable under the Purchase Agreement have been irrevocably and indefeasibly paid in full, Guarantor shall not be entitled to exercise, by virtue of this Guaranty, any right to be subrogated to any right of Creditor or claim in competition with Debtor against Creditor in connection with any matter relating to or arising from the Obligations or this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time before all of the Obligations have been irrevocably paid in full, such amounts shall be held in trust for the benefit of Debtor and shall promptly be paid to Debtor to be applied to the Obligations.

8. Primary Liability of Guarantor. The Guarantor agrees that Creditor may enforce this Guaranty without the necessity at any time of resorting to, foreclosing upon or exhausting any other security or collateral and regardless of whether Creditor has taken any steps to enforce or pursue any right or remedy against the Debtor or any other person.

9. Miscellaneous.

(a) Notice. Any notice or other communication given hereunder by either Guarantor or Creditor to the other (“Notice”) shall be in writing and delivered personally or mailed by registered or certified mail, postage prepaid and return receipt requested, or by facsimile, as follows:

(i) if to Guarantor:

[Guarantor]  
[Address]  
[Address]  
Attention:  
Telephone:  
Facsimile No.:

(ii) if to Creditor:

Entergy Services, Inc.  
639 Loyola Ave., 15th Floor  
New Orleans, LA 70113  
Attention: Treasurer  
Facsimile: (504) 576-4455

With a copy to:

[Buyer]  
c/o Entergy Services, Inc.  
2001 Timberloch Place, 2<sup>nd</sup> Floor South

The Woodlands, Texas 77381  
Attention: Manager, Credit  
Telephone: (281) 297-5432  
Facsimile No.: \_\_\_\_\_

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving Notice as provided above of such change of address. All amounts becoming payable by Guarantor to Creditor under this Guaranty shall be payable at Creditor's offices located at its address for purposes of Notice, or such other place as Creditor may from time to time designate.

(b) Amendments; Waivers; Remedies. No other amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and Creditor. No waiver of any provision of this Guaranty or consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by Creditor. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No failure on the part of Creditor to exercise, and no delay in exercising, and no course of dealing with respect to, any right, power or privilege of Creditor hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof or the exercise of any other right, power or privilege operate as such a waiver. No right, power or remedy of Creditor under this Guaranty or the Purchase Agreement shall be exclusive of any other right, power or remedy, but shall be cumulative and in addition to any other right, power or remedy thereunder or now or hereafter existing by law or in equity.

(c) Severability. If any provision of this Guaranty or the application thereof to any party or circumstance shall be invalid or unenforceable, then (i) the remaining provisions or the application of such provision to parties or circumstances, other than those as to which it is invalid or unenforceable, shall continue to be valid and enforceable and (ii) any invalid or unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of Guarantor and Creditor as expressed herein.

(d) Assignment by Creditor. This Guaranty is for the benefit of Creditor and its successors and assigns in the event of a permitted assignment of, and under the terms of, the Purchase Agreement, or any part thereof, and the rights and benefits hereunder, to the extent applicable to the Purchase Agreement so assigned, may be transferred with the guaranty of such Obligations hereunder. Creditor shall provide notice of any transfer or assignment of the Purchase Agreement, or any part thereof, to Guarantor; provided, however, that Creditor's failure to give such notice will not affect the guaranty of Obligations hereunder unless such failure to provide notice precludes Guarantor from performing its obligations under this Guaranty.

(e) Assignment by Guarantor. Guarantor may not assign its rights or obligations under this Guaranty without Creditor's prior written consent. Any purported assignment or delegation of this Guaranty by Guarantor not effectuated in accordance with this Section 9(e) shall be deemed void.

(f) Governing Law; Waiver of Jury Trial. THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, ENFORCED UNDER AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. GUARANTOR AND CREDITOR, THROUGH ACCEPTANCE OF THIS GUARANTY, WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OR RELATING TO THIS GUARANTY.

(g) Headings. The headings of the sections and subsections of this Guaranty are for convenience only, and shall not limit or otherwise affect the meaning hereof.

(h) Construction of Guaranty. Unless the context of this Guaranty clearly requires otherwise, (i) pronouns, wherever used herein and of whatever gender, shall include natural persons, corporations, and associations of every kind and character, (ii) the gender of all words used in this Guaranty shall include the masculine, feminine and neuter, (iii) the words "includes" or "including" shall mean "including without limitation", and (iv) the words "hereof", "herein", "hereunder" and similar terms in this Guaranty shall refer to this Guaranty as a whole and not any particular section or subsection in which such words appear.

(i) Interpretation and Reliance. No presumption will apply in favor of any party hereto in the interpretation of this Guaranty or in the resolution of any ambiguity of any provision hereof.

(j) Time. TIME IS OF THE ESSENCE IN THIS GUARANTY, AND THE TERMS HEREIN SHALL BE SO CONSTRUED.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed effective as of the date first above written.

[GUARANTOR]

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 4.1**

**Monthly Payments**

$$P_m = (CC / 12) * CP$$

where:

- $P_m$  = Monthly Payment for the applicable month;
- $CC$  = The Capacity Credits delivered to Buyer with respect to the Planning Period in which the applicable month falls up to the applicable Contract Quantity for such Planning Period (set forth in the table below); and
- $CP$  = The Contract Price for the Planning Period in which the applicable month falls (determined in accordance with the table below).

<b><u>Planning Period</u></b>	<b><u>Contract Quantity (# of Capacity Credits)</u></b>	<b><u>Contract Price (\$ per Capacity Credit)</u></b>



## **Schedule 8.1**

### **Financial Information**

During the period beginning on the Effective Date and ending at the conclusion of the Capacity Credit Term, Seller shall deliver to Buyer:

(a) a copy of any default, breach or non-compliance notice given or received by Seller with respect to any actual or alleged default, breach or non-compliance with any financial covenant or financial representation or warranty under any financing document;

(b) a copy of any notice of restriction of Seller's payment distributions to its equity owners given or received by Seller under any financing document; and

(c) upon written request by Buyer, a copy of Seller's unaudited consolidated financial statements for the prior fiscal year.

**Schedule 8.2**

**Form of Letter of Credit**

Irrevocable Standby Letter of Credit No. [L/C NUMBER]

Date: [L/C ISSUANCE DATE]

**BENEFICIARY:**

ENTERGY SERVICES, INC.

AS AGENT FOR [\_\_\_\_\_] AND ITS SUCCESSORS AND  
PERMITTED ASSIGNS

10055 GROGANS MILL RD, SUITE 300  
THE WOODLANDS, TEXAS 77380

**APPLICANT:**

[INSERT NAME]

[ON BEHALF OF [\_\_\_\_\_]]

[INSERT ADDRESS]

[INSERT CITY/STATE/ZIP CODE]

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF [INSERT NAME OF APPLICANT] (THE "APPLICANT"), [INSERT ADDRESS OF APPLICANT], [AND ON BEHALF OF [INSERT NAME OF ACCOUNT PARTY] (THE "ACCOUNT PARTY")], WE, [INSERT NAME OF BANK] (THE "ISSUER"), HEREBY ESTABLISH, EFFECTIVE IMMEDIATELY, IN FAVOR OF ENERGY SERVICES, INC. (THE "BENEFICIARY"), OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. [L/C NUMBER] IN THE AGGREGATE AMOUNT OF [INSERT AMOUNT REQUIRED PURSUANT TO THE AGREEMENT (DEFINED BELOW)] UNITED STATES DOLLARS (U.S. \$\_\_\_\_\_) (AS SUCH AMOUNT MAY BE REDUCED FROM TIME TO TIME BY PARTIAL DRAWS HEREUNDER, THE "STATED AMOUNT").

WE ARE INFORMED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS BEING ISSUED PURSUANT TO THAT CERTAIN CAPACITY CREDIT PURCHASE AGREEMENT, DATED AS OF [INSERT DATE], BETWEEN THE [APPLICANT/ACCOUNT PARTY] AND THE BENEFICIARY, AS AGENT FOR [\_\_\_\_\_] (TOGETHER WITH ITS SUCCESSORS AND PERMITTED ASSIGNS, "BUYER") (SUCH CAPACITY CREDIT PURCHASE AGREEMENT, AS MAY BE AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "AGREEMENT") AND THAT THIS LETTER OF CREDIT IS BEING ISSUED IN FAVOR OF THE BENEFICIARY FOR THE BENEFIT OF BUYER.

THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT OUR OFFICE LOCATED AT [*INSERT PHYSICAL ADDRESS OF BANK'S COUNTERS*] AND, EXCEPT AS PROVIDED BELOW, EXPIRES WITH OUR CLOSE OF BUSINESS ON [*INSERT DATE THAT IS AT LEAST 364 DAYS AFTER THE EFFECTIVE DATE OF L/C*] (AS MAY BE EXTENDED AS PROVIDED BELOW, THE "EXPIRATION DATE").

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENT FOR PERIODS OF ONE (1) YEAR FROM THE INITIAL EXPIRATION DATE, AND THEREAFTER FOR ONE YEAR FROM EACH FUTURE EXPIRATION DATE, UNLESS, AT LEAST SIXTY (60) DAYS PRIOR TO THE THEN APPLICABLE EXPIRATION DATE, WE NOTIFY YOU IN WRITING BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR COURIER SERVICE THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED BEYOND THE THEN APPLICABLE EXPIRATION DATE.

THIS LETTER OF CREDIT SHALL FINALLY EXPIRE ON [*INSERT DATE THAT IS AT LEAST ONE YEAR AFTER THE INITIAL EXPIRATION DATE OF L/C*], IF IT HAS NOT PREVIOUSLY EXPIRED IN ACCORDANCE WITH THE PRECEDING PARAGRAPH.

FUNDS IN PAYMENT OF A DRAWING UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO THE BENEFICIARY BY PAYMENT AT SIGHT AGAINST PRESENTATION AT OUR OFFICE STIPULATED HEREIN ABOVE OF THE BENEFICIARY'S APPROPRIATELY COMPLETED SIGHT DRAFT(S) IN THE FORM OF EXHIBIT 1 ATTACHED HERETO AND DRAWING CERTIFICATE(S) IN THE FORM OF EXHIBIT 2 ATTACHED HERETO, EACH PURPORTEDLY BEARING THE SIGNATURE OF AN AUTHORIZED PERSON FOR THE BENEFICIARY (COLLECTIVELY, THE "DRAWING DOCUMENTS").

WE SHALL HAVE A REASONABLE AMOUNT OF TIME, NOT TO EXCEED TWO (2) BUSINESS DAYS FOLLOWING THE DATE OF OUR RECEIPT OF THE DRAWING DOCUMENTS, TO EXAMINE SUCH DRAWING DOCUMENTS AND DETERMINE WHETHER TO HONOR OR DISHONOR SUCH DRAWING DOCUMENTS AND TO INFORM YOU ACCORDINGLY. WE MAY DISHONOR SUCH DRAWING DOCUMENTS ONLY IF THEY DO NOT COMPLY WITH THE TERMS OF THIS LETTER OF CREDIT. WE HAVE NO DUTY OR RIGHT TO INQUIRE INTO THE VALIDITY OF, OR THE BASIS FOR, ANY DRAW. ANY NOTICE OF DISHONOR SHALL STATE ALL DISCREPANCIES UPON WHICH OUR DISHONOR IS BASED.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED HEREUNDER. ANY DRAWING HONORED HEREUNDER BY THE ISSUER SHALL REDUCE THE STATED AMOUNT AVAILABLE FOR DRAWINGS BY THE AMOUNT OF ANY DRAWING HONORED BY THE ISSUER. PRESENTATION OF DEMANDS FOR AMOUNTS IN EXCESS OF THE AMOUNT OF THIS LETTER OF CREDIT ARE ACCEPTABLE AND NOT DISCREPANT FOR THAT REASON; HOWEVER, THE AMOUNT PAYABLE ON ANY SUCH DEMAND WILL NOT EXCEED THE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT.

WE HEREBY ENGAGE WITH YOU THAT ALL DOCUMENTS PRESENTED IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED IF DRAWN AND PRESENTED FOR PAYMENT ON OR BEFORE THE EXPIRATION DATE.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE EXCEPT AS SET FORTH IN THIS PARAGRAPH. THIS LETTER OF CREDIT (INCLUDING THE DRAWING RIGHTS HEREUNDER) IS TRANSFERABLE BY THE BENEFICIARY, INCLUDING AS COLLATERAL FOR INDEBTEDNESS OF THE BUYER OUTSTANDING FROM TIME TO TIME, AND MAY BE SUCCESSIVELY TRANSFERRED. BY OUR EXECUTION AND DELIVERY OF THIS LETTER OF CREDIT, WE ALSO HEREBY ACKNOWLEDGE AND CONSENT, WITHOUT FURTHER CONDITIONS, TO YOUR PRESENT OR FUTURE ASSIGNMENT OF THE PROCEEDS OF ANY DRAWING UNDER THIS LETTER OF CREDIT. TRANSFER OF THIS LETTER OF CREDIT (INCLUDING THE DRAWING RIGHTS HEREUNDER), OR AN ASSIGNMENT OF THE PROCEEDS OF ANY DRAWING HEREUNDER, TO A TRANSFEREE SHALL BE EFFECTED, WITH NO OTHER CONDITIONS, BY THE PRESENTATION TO US OF AN APPROPRIATELY COMPLETED CERTIFICATE SUBSTANTIALLY IN THE FORM OF EXHIBIT 3 ATTACHED HERETO PURPORTEDLY BEARING THE SIGNATURE OF AN AUTHORIZED PERSON FOR THE BENEFICIARY. UPON RECEIPT OF ANY SUCH CERTIFICATE, WE UNDERTAKE TO PROMPTLY EXECUTE THE CONFIRMATION SET FORTH AT THE END OF SUCH CERTIFICATE AND FORWARD THE SAME DIRECTLY TO THE TRANSFEREE (PROVIDED THAT SUCH CONFIRMATION SHALL NOT BE A CONDITION TO THE TRANSFER). WE HAVE NO DUTY OR RIGHT TO INQUIRE INTO WHETHER ANY TRANSFEREE OF THIS LETTER OF CREDIT (INCLUDING THE DRAWING RIGHTS HEREUNDER) IS BUYER'S PERMITTED ASSIGNEE UNDER THE AGREEMENT AND MAY RELY EXCLUSIVELY ON YOUR CERTIFICATE.

ALL BANKING CHARGES ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

AS USED HEREIN, "BUSINESS DAY" MEANS (I) ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKS IN THE STATE OF NEW YORK ARE AUTHORIZED OR REQUIRED TO BE CLOSED, AND (II) ANY DAY ON WHICH PAYMENTS CAN BE EFFECTED ON THE FEDWIRE SYSTEM.

THIS LETTER OF CREDIT IS GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES, INTERNATIONAL CHAMBER OF COMMERCE (ICC) PUBLICATION NO. 590 ("ISP98"), EXCEPT TO THE EXTENT THAT THE TERMS OF THIS LETTER OF CREDIT ARE INCONSISTENT WITH THE PROVISIONS OF THE ISP98, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. AS TO MATTERS NOT ADDRESSED BY THE ISP98, AND TO THE EXTENT NOT INCONSISTENT WITH THE ISP98 OR THE TERMS OF THIS LETTER OF CREDIT, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, ARTICLE 5 OF THE

UNIFORM COMMERCIAL CODE OF THE STATE OF NEW YORK) AND APPLICABLE U.S. FEDERAL LAW.

THIS LETTER OF CREDIT, INCLUDING THE EXHIBITS HERETO, SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REASON OF OUR REFERENCE TO ANY AGREEMENTS OR INSTRUMENT REFERRED TO OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO. ANY SUCH AGREEMENTS OR INSTRUMENT SHALL NOT BE DEEMED INCORPORATED HEREIN BY REFERENCE.

SINCERELY,

\_\_\_\_\_  
[ISSUING BANK]

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT 1**

**[BENEFICIARY LETTERHEAD]**

**SIGHT DRAFT**

*[DATE]*

*[BANK NAME AND ADDRESS]*

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_

FOR THE VALUE RECEIVED, PAY TO THE ORDER OF \_\_\_\_\_ BY WIRE  
TRANSFER OF IMMEDIATELY AVAILABLE FUNDS TO THE FOLLOWING ACCOUNT:

[NAME OF ACCOUNT]

[ACCOUNT NUMBER]

[NAME AND ADDRESS OF BANK AT WHICH ACCOUNT IS MAINTAINED]

[ABA NUMBER]

[REFERENCE]

THE FOLLOWING AMOUNT:

[INSERT NUMBER OF DOLLARS IN WRITING] UNITED STATES DOLLARS  
(US\$ [INSERT NUMBER OF DOLLARS IN FIGURES])

DRAWN UPON YOUR LETTER OF CREDIT NO. \_\_\_\_\_ DATED  
[\_\_\_\_\_].

*[INSERT NAME OF THE BENEFICIARY]*

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT 2**

**DRAWING CERTIFICATE**

[DATE]

[BANK NAME AND ADDRESS]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_

LADIES AND GENTLEMEN:

THE UNDERSIGNED, A DULY AUTHORIZED OFFICER OF [\_\_\_\_\_] (THE “BENEFICIARY”), AS THE BENEFICIARY OF THE ABOVE-REFERENCED LETTER OF CREDIT (THE “LETTER OF CREDIT”), HEREBY CERTIFIES TO [\_\_\_\_\_] (THE “ISSUER”) WITH RESPECT TO THE LETTER OF CREDIT (THE TERMS DEFINED THEREIN AND NOT OTHERWISE DEFINED HEREIN BEING USED HEREIN AS THEREIN DEFINED) THAT:

1. THE [APPLICANT/ACCOUNT PARTY] AND THE BENEFICIARY ARE PARTIES TO THAT CERTAIN CAPACITY CREDIT PURCHASE AGREEMENT, DATED AS OF [\_\_\_\_\_] (AS AMENDED, MODIFIED OR OTHERWISE SUPPLEMENTED FROM TIME TO TIME, THE “CAPACITY CREDIT PURCHASE AGREEMENT”).

[PICK ONE OF THE FOLLOWING ALTERNATIVES FOR PARAGRAPH 2]

[2. AN EVENT OF DEFAULT (AS DEFINED IN THE CAPACITY CREDIT PURCHASE AGREEMENT) HAS OCCURRED AND IS CONTINUING UNDER THE CAPACITY CREDIT PURCHASE AGREEMENT WITH RESPECT TO THE APPLICANT.] OR

[2. AN EARLY TERMINATION DATE (AS DEFINED IN THE CAPACITY CREDIT PURCHASE AGREEMENT) HAS OCCURRED AND IS CONTINUING UNDER THE CAPACITY CREDIT PURCHASE AGREEMENT.] OR

[2. THE APPLICANT IS REQUIRED TO REPLACE THE LETTER OF CREDIT PURSUANT TO THE FOURTH SENTENCE OF SECTION 8.2 OF THE CAPACITY CREDIT PURCHASE AGREEMENT AND HAS FAILED TO DELIVER A REPLACEMENT ACCORDING TO SUCH PROVISION WITHIN THE TIME PERIOD REQUIRED BY SUCH PROVISION.] OR

[2. THE LETTER OF CREDIT WILL EXPIRE WITHIN THIRTY (30) DAYS OR LESS FROM THE DATE OF THIS CERTIFICATE AND THE APPLICANT HAS FAILED TO DELIVER TO BENEFICIARY A REPLACEMENT LETTER OF CREDIT OR EXTEND THE LETTER OF CREDIT IN ACCORDANCE WITH THE CAPACITY CREDIT PURCHASE

AGREEMENT AND SECURITY IS STILL REQUIRED UNDER THE CAPACITY CREDIT PURCHASE AGREEMENT.]

3. THE BENEFICIARY IS ENTITLED TO MAKE A DRAWING UNDER THE LETTER OF CREDIT IN THE AMOUNT OF \$\_\_\_\_\_ (THE "DRAW AMOUNT") [*INSERT BRACKETED LANGUAGE IF THE BENEFICIARY IS NOT THE SAME AS BUYER*] [, AND THE BENEFICIARY IS MAKING SUCH DRAWING FOR THE BENEFIT OF BUYER].

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS DRAWING CERTIFICATE AS OF THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_.

*[INSERT NAME OF THE BENEFICIARY]*

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



**EXHIBIT 3**

**FORM OF TRANSFER NOTICE**

[DATE]

[BANK NAME AND ADDRESS]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_

LADIES AND GENTLEMEN:

REFERENCE IS MADE TO THAT CERTAIN IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_ (THE "LETTER OF CREDIT") ISSUED BY YOU IN FAVOR OF \_\_\_\_\_ (THE "BENEFICIARY") ON BEHALF OF \_\_\_\_\_ ("APPLICANT"). THIS TRANSFER NOTICE IS PRESENTED UNDER THE LETTER OF CREDIT. CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS TRANSFER NOTICE HAVE THE MEANINGS GIVEN TO THEM IN THE LETTER OF CREDIT.

FOR VALUE RECEIVED, THE BENEFICIARY HEREBY IRREVOCABLY ASSIGNS TO:

NAME OF TRANSFEREE:

ADDRESS:

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY [*PICK FIRST ALTERNATIVE FOR FULL ASSIGNMENT AND SECOND ALTERNATIVE FOR ASSIGNMENT OF PROCEEDS*] [UNDER THE LETTER OF CREDIT IN ITS ENTIRETY] [TO THE PROCEEDS OF ANY DRAWINGS UNDER THE LETTER OF CREDIT, WHICH SHALL BE PAYABLE AS FOLLOWS: [*INSERT ANY APPLICABLE PAYMENT INSTRUCTIONS*]].

THIS ASSIGNMENT SHALL BE EFFECTIVE AS OF \_\_\_\_\_.

[*INSERT ONLY FOR FULL ASSIGNMENT*] [BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY UNDER SUCH LETTER OF CREDIT ARE ASSIGNED TO THE TRANSFEREE AND THE TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.]

WE ASK YOU TO EXECUTE THE CONFIRMATION SET FORTH BELOW, AND FORWARD IT DIRECTLY TO THE TRANSFEREE.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS TRANSFER NOTICE AS OF THE \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.

*[INSERT NAME OF THE BENEFICIARY]*

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS TRANSFER NOTICE AS OF THE \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_, AND HEREBY CONFIRMS THE ASSIGNMENT OF THE LETTER OF CREDIT TO THE TRANSFEREE REFERENCED ABOVE.

*[INSERT BANK NAME]*

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Schedule 15.1**

**Notice Addresses and Contact Information**

If to Seller to:  
Street:  
City:                                  Zip:  
Attn:  
Phone:  
Facsimile:  
Duns:  
Federal Tax ID Number:

If to Buyer to:  
Street:                                  Zip:  
City:  
Attn  
Phone:  
Facsimile:  
Duns:  
Federal Tax ID Number:

Invoices:  
Attn:  
Phone:  
Facsimile:

Invoices:  
Attn:  
Phone:  
Facsimile:

Payments:  
Attn:  
Phone:  
Facsimile:

Payments:  
Attn:  
Phone:  
Facsimile:

Wire Transfer:  
BNK:  
ABA:  
ACCT:

Wire Transfer:  
BNK:  
ABA:  
ACCT:

Credit and Collections:  
Attn:  
Phone:  
Facsimile:

Credit and Collections:  
Attn:  
Phone:  
Facsimile:

**With additional Notices of an Event of Default or Potential Event of Default to:**

Attn:  
Phone:  
Facsimile:

**With additional Notices of an Event of Default or Potential Event of Default to:**

Attn:  
Phone:  
Facsimile: