

CAPACITY SALE AND TOLLING AGREEMENT

between

ENTERGY SERVICES, INC.,

as Agent for the

ENTERGY OPERATING COMPANIES,

and

[SELLER]

dated as of _____, 200_

Notice to Bidders: Please see Sections 1.5.2 and 1.5.4 of the Main Body of the Fall 2006 RFP and the expression therein of the types of proposals Buyer seeks.

This Model Capacity Sale and Tolling Agreement has been prepared assuming that the Purchased Capacity is the entire Capacity of a generating ~~“Unit.”/Facility~~. If ~~at~~ the Facility includes more than one Unit, and the Bidder shall propose an amount of Purchased Capacity not constituting the entire output of a Unit proposes a toll involving all or shall propose, if the Facility include more than one “Unit,” a toll involving more than one or all other “of the Units.” at the Facility, appropriate adjustments to the Agreement will be made.

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CAPACITY SALE AND TOLLING AGREEMENT

THIS CAPACITY SALE AND TOLLING AGREEMENT (together with the Schedules hereto, and as may be amended from time to time, this "Agreement"), is made and entered into this ___ day of _____ 200_, by and between [Seller], 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, as agent for _____, a _____ organized and existing under the laws of the State of _____ ("Buyer"). Each of Seller and Buyer are hereinafter sometimes referred to as a "Party" and sometimes collectively referred to as the "Parties").

ARTICLE I DEFINITIONS

For purposes of this Agreement, the following definitions shall apply unless the context otherwise requires. All capitalized terms used in this Agreement that are not defined in this Article [I] shall have the definitions contained elsewhere herein, including the Schedules hereto.

1.1 *Accepted Electrical Practices* means those practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment and in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric utility industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

1.2 *Affected Capacity* means any portion of the Purchased Capacity that is unavailable or limited due to ~~a-Force Majeure event~~ or Planned Maintenance.

1.3 *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, by agreement or otherwise.

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1.4 *AGC* means automatic generation control.

1.5 *Allocation Cutoff Date* has the meaning specified in Section [24.13].

1.6 *Allocation Ratio* has the meaning specified in Section [24.13].

1.7 *Approval Entity* has the meaning specified in Section [7.1(c)(ii)(v)].

1.8 *Approvals* means all approvals, permits, licenses, consents, waivers or other authorizations from, notifications to, or filings or registrations with, Governmental Authorities or other third parties.

1.9 *Availability* means, in any hour and expressed as a percentage or decimal, as applicable, the Purchased Capacity that is actually available in such hour (not to exceed the lower of (i) the Summer Dependable Capacity for the Summer Capacity Season and the Winter Dependable Capacity for the Winter Capacity Season and (ii) the amount of available Capacity set forth or deemed to be set forth in the Availability Notice applicable to such hour), regardless of whether or not Scheduled and Dispatched by Buyer, divided by the Summer Dependable Capacity or the Winter Dependable Capacity (as the case may be) minus the Affected Capacity.

1.10 *Availability Notice* means a Notice delivered in accordance with and meeting the requirements of Section [4.2].

1.11 *Availability Requirement* means, in respect of each Month, the Monthly Availability specified in Section [4.1], expressed as a percentage or decimal, as applicable.

1.12 *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 fall due.

1.13 *Beginning Requested Dispatch Hour* means the first clock hour, or portion of a clock hour, during which the Unit is Scheduled to deliver energy or Other Associated Electric Products or both to Buyer during a Dispatch Period.

1.14 *Btu* means the quantity of heat required to raise the temperature of one pound of pure water from 59°F. to 60°F. at a constant pressure of 14.73 psia.

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1.15 *Business Day* means any day except a Saturday, Sunday or a holiday as defined by NERC or any successor organization thereto. For purposes of Article [XXII], a Business Day shall commence at 8:00 a.m. and end at 5:00 p.m. CPT.

1.16 *Buyer* has the meaning set forth in the introductory paragraph of this Agreement.

1.17 *Capacity* means the megawatt output level that the Unit is capable, as of a given moment, of continuously producing and making available at the Delivery Point, taking into account the operating condition of the equipment at that time, the auxiliary loads, and other relevant factors.

1.18 *Capacity Demonstration Test* means a demonstration of the Unit's maximum output over a period of four (4) consecutive hours, adjusted to Reference Conditions.

1.19 *Capacity Payment* means the payment to be made by Buyer to Seller in respect of the Purchased Capacity pursuant to Section [5.1].

1.20 *Capacity Payment Discount* means, in respect of each Month, if the Monthly Availability shall be less than the Availability Requirement, the amount computed in accordance with the formula therefor set forth in Schedule [5.5].

1.21 *Cold Start* means a Start-up of a Unit after its breaker(s) has been open for at least [] hours.

~~1.22 *Contract Year* [means the twelve months beginning on [September 1], 2007 and ending on [August 30], 2008 [means, as applicable, each period of twelve months beginning on [September 1], 2007, [September 1], 2008, and [September 1], 2009, and ending on [August 30], 2008, [August 30], 2009, and [August 30], 2010, respectively.] [Select applicable periods.]]~~

1.22 *Contract Year* [means a period of twelve consecutive Months, including the last Day of the final Month in such period. The initial Contract Year shall begin on [September 1], 2007 and ending on [August 31], 2008.]

1.23 *Control Area* means an electric power system or combination of electric power systems to which a common AGC scheme is applied in order to: (i) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from Persons outside the electric power system(s), with the load within the electric power system(s); (ii) maintain scheduled interchange with other Control Areas, within the limits of Accepted Electrical Practices; (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Accepted Electrical Practices; and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Accepted Electrical Practices.

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1.24 *Control Area Operator* means the Person(s) in control of the physical operation of and responsible for fulfilling the duties necessary to operate a Control Area.

1.25 *Costs* means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

1.26 *CPT or Central Prevailing Time* means the local time in New Orleans, Louisiana.

1.27 *Day or day* means a period of twenty-four (24) consecutive hours, beginning at 12:01 a.m., local time, at the Delivery Point; provided, however, that on the Day on which Central Daylight Time becomes effective, the period shall be twenty-three (23) consecutive hours, and on the Day on which Central Standard Time becomes effective, the period shall be twenty-five (25) consecutive hours; and provided, further, that if FERC or any other Governmental Authority having jurisdiction should modify the beginning time for a day, the beginning and ending time for a Day under this Agreement shall be revised to correspond to the time established by FERC or such Governmental Authority, as the case may be.

1.28 *Day-~~Ahead~~ahead Schedule and Dispatch* has the meaning specified in Section [7.1(c)(i)(A)].

1.29 *Debt Service* means, for any period, the sum that must be paid for such period pursuant to the applicable financing documents for (a) principal payments on the loans made pursuant to such financing documents, (b) interest payments on such loans (net of payments under any interest rate protection agreements), (c) withholding taxes and breakage costs, and (d) fees and all other charges or costs required to be paid to Lenders pursuant to such financing documents.

1.30 *Deliverability Evaluation* means the process performed by SPO personnel after the execution of this Agreement, detailed in Section 4 of the Fall 2006 RFP, to identify and characterize transmission issues that could materially impact the expected total delivered cost of a resource over the term of its availability to the Entergy System, and to assess whether cost impacts associated with potential transmission issues could materially limit ESI's ability to realize the expected reliability and/or cost benefits of the proposed generation resource.

1.31 [*Delivery Anniversary Date* means [September] 1, 2007, and each anniversary thereafter.]

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1.32 *Delivery Point* means each of the physical point(s) set forth on Schedule [B], as the same may be amended or supplemented from time to time, at which Capacity, energy, Other Associated Electric Products, Gas, fuel oil or other fuel is, or is deemed to be, delivered or provided and measured, as required by the context.

1.33 *Delivery Term* ~~means~~ has the ~~term~~ meaning set forth in Article [3].

1.34 *Dispatch* or the correlative term *Dispatched* means the dispatch of energy or Other Associated Electric Products or both associated with the Purchased Capacity.

1.35 *Dispatch Period* means a period of time during which Buyer has requested delivery of energy or Other Associated Electric Products starting with a Beginning Requested Dispatch Hour and concluding with an Ending Requested Dispatch Hour. A Dispatch Period may continue for more than one calendar day.

1.36 *Dollars* or \$ means United States dollars.

1.37 *Early Termination Date* has the meaning set forth in Section [19.2(a)].

1.38 *Effective Date* means the date of this Agreement, as set forth in the initial paragraph of this Agreement.

1.39 *Electric Metering Equipment* means electric meters and associated equipment, including, without limitation, metering transformers, telemetric devices and meters, for measuring kilowatt-hours and reactive volt-ampere hours, including check meters, if any, utilized in determining the amount of energy or Other Associated Electric Products delivered or provided by Seller at the Delivery Point, but shall not include any check meters that Buyer may install, own and maintain.

1.40 *Ending Requested Dispatch Hour* means the last clock hour, or portion of a clock hour, during which the Unit is Scheduled to deliver energy or Other Associated Electric Products or both to Buyer during a Dispatch Period.

1.41 *Entergy Operating Companies* means Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy Gulf States, Inc., and Entergy New Orleans, Inc.

1.42 *Entergy System* means the interconnected, coordinated electric utility systems of the Entergy Operating Companies that provide retail electric service to their customers.

1.43 *Entergy Transmission Business Unit* means the ESI organization that plans, constructs, and operates the Entergy Transmission System, or any successor organization.

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1.44 *Entergy Transmission System* means the interconnected transmission facilities owned by the Entergy Operating Companies.

1.45 *Equivalent Force Majeure Hours* means, ~~for any hour,~~ (i) the product of (a) the Affected Capacity unavailable or limited due to ~~a Force Majeure event,~~ expressed in MW, and (b) the period for which such Affected Capacity is unavailable or limited, expressed in hours (or any portion thereof), (ii) divided by the Purchased Capacity.

1.46 *Equivalent Planned Maintenance Hours* means, ~~for any hour,~~ (i) the product of (a) the Affected Capacity unavailable or limited due to Planned Maintenance, expressed in MW, and (b) the period for which such Affected Capacity is unavailable or limited, expressed in hours (or any portion thereof), (ii) divided by the Purchased Capacity.

1.47 *ESI* has the meaning set forth in the introductory paragraph of this Agreement.

1.48 *Facility* means the electric generating facility described on Schedule [A], including all associated Interconnection Facilities and Protective Apparatus.

1.49 [*Facility Requirements* means *[provide a summary description of applicable station/internal usage requirements, if any, that would have priority over deliveries of Purchased Capacity and associated energy.]*]

1.50 *Fall 2006 RFP* means ESI's Fall 2006 Request for Proposals for Limited-Term Supply-Side Resources, dated August 31, 2006, and posted on the RFP Website.

1.51 *FERC* means the Federal Energy Regulatory Commission or any successor agency thereto.

1.52 *Force Majeure* means an event or circumstance which prevents a Party (the "Affected Party") from performing its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the Effective Date, which is not within the reasonable control of or the result of the fault or negligence of the Affected Party, and which, by the exercise of due diligence, the Affected Party is unable to overcome or avoid or cause to be avoided (including, without limitation, using commercially reasonable efforts to procure fuel supply and transportation services from alternative sources). Notwithstanding the foregoing, a claim of Force Majeure may not be based, in whole or in part, on (a) Seller's increased costs of operating the Unit or the Facility, (b) Seller's ability to sell the Purchased Capacity, associated energy or Other Associated Electric Products or Fuel Conversion Services at a price greater than the price provided for in the Agreement, (c) curtailment by a Transmission Provider or Transmission Operator, unless (i) the Affected Party has contracted for firm transmission with a Transmission Provider for the Purchased Capacity to be delivered to or received at the Delivery

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Point and firm transmission has been curtailed and (ii) such curtailment of firm transmission is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff, or (d) failure or breakage of, or damage to, Seller’s facilities or equipment not the direct or proximate result of acts of God, which acts of God shall include, but not be limited to, flood, earthquake, hurricane, tornado or lightning; epidemic; war; riot; civil disturbance; or sabotage; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence above has occurred.

1.53 *Fuel Conversion Services* means operation of the Unit by Seller to combust Gas and/or other fuel in order to generate and deliver energy at the Delivery Point.

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

1.55 *Gas* or *gas* means natural gas that meets or exceeds the specifications set forth in the relevant Transporter’s tariff.

1.56 *Gas Metering Equipment* means Gas meters and associated equipment, including check meters, if any, utilized in determining the amount of Gas consumed by the Unit, but shall not include any check meters that Buyer may install, own and maintain.

1.57 *Governmental Authority* means any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

1.58 *Guaranteed Heat Rate Curve* means the curve plotting the guaranteed heat rates, expressed in MMBtu of Gas consumed per MWh of energy delivered, of athe Unit at various operating conditions, as set forth in Schedule [~~6-1~~].

1.59 [*Guarantor* means _____.]

1.60 [*Guaranty* means a Guaranty in the form attached hereto as Schedule [20].]

1.61 *Hot Start* means a Start-up of athe Unit after its breaker(s) has been open for at least [____] -hours.

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1.62 *Hourly Price of Gas* means, in respect of each hour of a Day, the price, expressed in \$ per MMBtu of Gas, published in *Platts Gas Daily* in its “Daily Price Survey” under the column heading “Midpoint” for Gas to flow at [*Henry Hub*” or *Houston Ship Channel*” (*select one*)] for the applicable Day.

1.63 *ICT* shall have the meaning specified in Section [10.1].

1.64 *Imbalance Charges* means any penalties, fees or charges assessed by (i) a Transmission Provider or a Control Area Operator for failure to satisfy requirements for balancing of electric energy receipts and deliveries or loads and generation, including, without limitation, any amounts payable by Seller pursuant to the Generator Imbalance Agreement relating to the Facility or (ii) a Transporter for failure to satisfy the Transporter’s balance and/or nomination requirements.

1.65 *Initial Allocation Ratio* has the meaning set forth in Section [24.13].

1.66 *Interconnection Facilities* means all structures, facilities, equipment, auxiliary equipment, devices and apparatus directly or indirectly required and installed to interconnect and deliver energy from the Facility to the Delivery Point, as the same may be defined in the relevant Interconnection Agreement, and including, but not limited to, electric transmission and/or distribution lines, transformation, switching, Electric Metering Equipment, any other metering equipment, communications, and safety equipment, including, but not limited to, equipment required to protect (i) the electrical system to which the Facility is connected and its customers from faults occurring at the Facility, and (ii) the Facility from faults occurring on the electrical system to which the Facility is connected or on other electrical systems to which such electrical system is directly or indirectly connected.

1.67 *Interest Rate* means for any date, the lesser of (a) 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* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the maximum rate permitted by applicable Law.

1.68 *Intra-day Schedule and Dispatch* has the meaning specified in Section [7.1(c)(i)(B)].

1.69 *kW* means kilowatt.

1.70 *kWh* means kilowatt-hour.

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1.71 *Law* means any statute, law, ordinance, code, rule or regulation, or other applicable legislative or administrative action of any Governmental Authority, or any judicial, regulatory or administrative interpretation thereof.

1.72 *Lender* means any Person which 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 in respect of the acquisition or construction of the Facility; such term also includes any such Person which acts in the capacity of Lender in connection with any refinancing by Seller of such financing.

1.73 *Letter(s) of Credit* means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.74 *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.

1.75 *MMBtu* means one million Btus.

1.76 *Month* or *month* means the period beginning at 12:01 a.m., local time, on the first Day of each calendar month and ending at the same hour on the first Day of the next succeeding calendar month.

1.77 *Monthly Availability* means, with respect to any Month, and expressed as a percentage or decimal, as applicable, the average of the hourly Availabilities for such Month; provided, however, that Affected Capacity resulting from (i) Force Majeure shall not be disregarded to the extent that Equivalent Force Majeure Hours in the Rolling 12 Month Period exceed [____]/~~as up to the maximum hours specified in the applicable Product Package, not to exceed 360 or 600 per period for the one and three year MUCPA products, respectively]~~ or (ii) Planned Maintenance shall not be disregarded to the extent that Equivalent Planned Maintenance Hours in any Contract Year exceed [____]/~~as up to the maximum hours specified in the applicable Product Package, not to exceed 360 or 600 per year for the one and three year MUCPA products, respectively]~~.

1.78 *MW* means megawatt.

1.79 *MWh* means megawatt-hour.

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1.80 *NERC* means the North American Electric Reliability Council, or its successor agency.

1.81 *Network Integration Transmission Service* means the transmission service provided under Part III of the Transmission Provider's transmission tariff.

1.82 *Non-Defaulting Party* has the meaning specified in Section **[19.1(a)]**.

1.83 *Notice* means a communication from one Party to the other Party conforming to the requirements of Article **[XXII]**.

1.84 *Oil Metering Equipment* means all meters and associated equipment, including check meters, if any, utilized in determining the amount of fuel oil utilized by the Unit, but shall not include any check meters that Buyer may install, own and maintain.

1.85 *Operation and Maintenance Costs* means, for any period, any and all costs and expenses incurred to own, lease, operate or maintain the Facility and provide and deliver the Purchased Capacity and associated energy, Other Associated Electric Products and Fuel Conversion Services, including, but not limited to, (i) payments due under any of the Project Documents, (ii) salaries, employee compensation and other labor costs, (iii) costs for procurement, storage or other costs of materials, fuel, parts, equipment, supplies, inventories, consumables, utility services and emission credits, (iv) premiums for insurance and other insurance-related costs, (v) Taxes, (vi) costs of defending, prosecuting, or settling, ~~or~~ and other costs incurred or payments made in respect of, any ~~of~~ pending or threatened investigation, suit, proceeding or claim related to the Facility, including, without limitation, fines, judgments and legal expenses, (vii) maintenance, operation, repair and replacement costs, (viii) capital expenditures, including, without limitation, all costs of major inspections, unscheduled or scheduled major maintenance of the Facility and all work on account of equipment failures and contingencies (including overhaul costs), (ix) payments under operating leases, (x) legal, accounting and other professional fees, (xi) costs and fees incurred to obtain and maintain all Approvals, (xii) payments with respect to Debt Service and (xiii) amounts deposited in any reserve account in respect of the foregoing.

1.86 *Other Associated Electric Products* means all of the capabilities and products associated with the Purchased Capacity and energy which Buyer is entitled to hereunder, as it specifically relates to Buyer's ability to utilize the Purchased Capacity and/or energy in accordance with the Scheduling and Dispatch rights as detailed in Article **[VII]** to provide load following, reserves or other similar products.

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1.87 *Outages* means ~~interruption~~interruptions, curtailments or ~~reduction~~reductions in the operation of the Unit, whether due to maintenance (planned or unplanned), the curtailment of transmission service, any order or directive of the Transmission Operator or otherwise.

1.88 [*Party A Independent Amount* means the amount, if any, specified in Schedule ~~[12].~~]

1.89 [*Party B Independent Amount* means the amount, if any, specified in Schedule ~~[12].~~]

1.90 [*Performance Assurance* means collateral in the form of either cash, letter(s) of credit, or other security reasonably acceptable to the requesting Party.]

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

1.92 *Planned Maintenance* means the removal of one or more Units or the Facility from service (i) to perform work on specific components and (ii) that is scheduled in advance with Buyer in accordance with Section [10.10] and has a predetermined start date and duration (e.g., annual overhaul, inspections, testing).

1.93 *Point(s) of Delivery* means the point(s) of interconnection on the Transmission Provider's transmission system where Capacity, associated energy and Other Associated Electric Products transmitted by the Transmission Provider will be made available to Buyer under Part II of the Transmission Provider's transmission tariff. The Point(s) of Delivery shall be specified in the agreement for transmission service.

1.94 *Point(s) of Receipt* means the point(s) of interconnection on the Transmission Provider's transmission system where Capacity, associated energy and Other Associated Electric Products will be made available to the Transmission Provider by Seller under Part II of the Transmission Provider's transmission tariff. The Point(s) of Receipt shall be specified in the agreement for transmission service. For purposes of this Agreement, the Point(s) of Receipt shall be the same as the Delivery Point specified herein for Capacity, associated energy, Other Associated Electric Products and Excess Energy.

1.95 *Point-To-Point Transmission Service* means transmission service under the Transmission Provider's transmission tariff that is reserved and/or scheduled between specified Points of Receipt and Points of Delivery pursuant to Part II of the Transmission Provider's transmission tariff.

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1.96 *Potential Event of Default* means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.97 *Project Documents* means all agreements, instruments and other documents to which Seller or an Affiliate thereof is a party or by which it or any of its Affiliates is bound relating to the development, procurement, construction, installation, ownership, use, leasing, operation, maintenance or financing of the Facility, in whole or in part.

1.98 *Protective Apparatus* means such equipment and apparatus, including, but not limited to, protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the electrical system to which ~~they are~~it is connected consistent with Accepted Electrical Practices.

1.99 *Purchased Capacity* means all of the Capacity of the Unit, less the Facility Requirements, if any, as provided or delivered pursuant to Section [2.1], expressed in MW.

1.100 *Purchasing-Selling Entity* means a Person that is eligible to purchase or sell Capacity or energy or Other Associated Electric Products and reserve transmission services under the Transaction Information System.

1.101 *QF Put Energy* means energy delivered and sold, or that can as a matter of right be delivered and sold, by a QF to the host electric utility on an hourly, as-available basis, without notice to the utility, pursuant to PURPA and the applicable state Governmental Authority. A *QF* means a cogeneration or small power production facility that meets certain requirements under PURPA.

1.102 *Ratio Adjustment Event* has the meaning specified in Section [24.13].

1.103 *Reference Conditions* means (i) with respect to the Summer Dependable Capacity, ninety-two degrees (92°) Fahrenheit and 56% relative humidity and (ii) with respect to the Winter Dependable Capacity, sixty-eight degrees (68°) Fahrenheit and 74% relative humidity, in each case, at one hundred percent (100%) full load conditions.

1.104 *Remaining Term* has the meaning specified in Section [15.3(b)].

1.105 *RFP Website* means the internet website <https://emo-web.no.entergy.com/ENTRFP/index.htm>.

1.106 *Rolling 12 Month Availability* means, as of the end of any Month, the average of the Monthly Availabilities from and including the first Month in the twelve (12) consecutive Months during the Delivery Term ending with such Month to and including such Month; provided, however, that the Availability during any Month not within the Delivery Term shall be

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disregarded for this purpose, and for the first Contract Year there shall be no measurement of the Rolling 12 Month Availability until the end of the sixth (6th) Month of such Contract Year, at which time and thereafter for the remainder of the first Contract Year, the average shall be determined based on the actual number of Months then elapsed during the Delivery Term.

1.107 *Rolling 12 Month Period* means, as of the end of any Month, the period from and including the first Month in the twelve (12) consecutive Months during the Delivery Term ending with such Month to and including such Month; provided, however, that any Month not within the Delivery Term shall be disregarded, and for the first Contract Year such period shall be based on the actual number of Months elapsed during the Delivery Term.

1.108 *RTO* shall have the meaning specified in Section [10.1].

1.109 *Schedule* or the correlative terms *Scheduled* or *Scheduling* means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of the Capacity and associated energy or Other Associated Electric Products to be delivered on any given day or days (or in any given hour or hours) during the Delivery Term at a specified Delivery Point.

1.110 *Scheduling and Dispatch Notice* means a Notice delivered to Seller by or on behalf of Buyer in accordance with and meeting the requirements of Section [7.1(c)].

1.111 *Seller* has the meaning set forth in the introductory paragraph of this Agreement.

1.112 *Settlement Amount* means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the termination of this Agreement pursuant to Article [XIX].

1.113 *Shutdown* means the actual shutdown of ~~a the~~ Unit to zero (0) MW after the Ending Requested Dispatch Hour when Buyer has ~~scheduled~~Scheduled zero (0) MW of the Purchased Capacity pursuant to a Scheduling and Dispatch Notice and required Tag.

1.114 *Specified Tag Agent* means Open Access Technology International, Inc. or any other Tag Agent, as designated by Buyer in its sole and absolute discretion.

1.115 *SPO* means Entergy's System Planning and Operations organization.

1.116 *Start-up or Start* means the action ramping of actually bringing one or more Units from a Shutdown to synchronization and the unconditional release of such Unit(s) for ramping to, and the attainment of, the Scheduled Capacity level after a Shutdown pursuant to a Scheduling and Dispatch Notice and Tag. The Scheduled Capacity level shall be deemed to have

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been attained after a Shutdown upon the initial sustained delivery by Seller to Buyer of the full amount of energy associated with the Purchased Capacity required by the applicable Scheduling and Dispatch Notice and Tag.

1.117 *Start-up Notification Lead Time* means the time period required by Seller to permit Start-up of the Unit as Scheduled for a Dispatch Period under normal equipment conditions as set forth on Schedule [5.3].

1.118 *Start-up Payment* means a payment to Seller pursuant to Section [5.3] in respect of each Cold Start or Hot Start of ~~each~~ the Unit.

1.119 *Summer Capacity Season* means, ~~for any given year,~~ the Months of April, May, June, July, August and September.

1.120 *Summer Dependable Capacity* means capacity rating based on ambient conditions of 92 degrees Fahrenheit, 56% relative humidity, as it may be adjusted pursuant to Section [15.5].

1.121 *Summer Season* means, ~~for any given year,~~ the Months of June, July and August.

1.122 *System Agreement* means that certain System Agreement, dated as of January 1, 1994, by and among ESI and the Entergy Operating Companies, as amended from time to time.

1.123 *System Impact Study* means an assessment by the Entergy Transmission Business Unit of (i) the adequacy of the Entergy Transmission System to accommodate a request for either firm Point-To-Point Transmission Service or Network Integration Transmission Service and (ii) whether any additional costs may be incurred in order to provide transmission service.

1.124 *Tag* means the collection of information in the electronic request for an energy Schedule and subsequent responses utilized in the Transaction Information System implemented by NERC.

1.125 *Tag Agent* means a provider of Tag Agent Service authorized under the Transaction Information System.

1.126 *Tag Agent Service* means the software component of Tag processing that is used by a Purchasing-Selling Entity to generate and submit Tags to a Tag Authority Service.

1.127 *Tag Approval Service* means the software component used to indicate individual path approvals by the Approval Entity when requested by the Tag Authority Service.

1.128 *Tag Author* has the meaning specified in Section [7.1(c)(ii)(y)].

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1.129 *Tag Authority Service* means the software component of Tag processing that receives Tag Agent submissions and forwards them to the appropriate Tag Approval Services.

1.130 *Taxes* means any and all foreign, federal, state, local, and/or municipal taxes, including, but not limited to, ad valorem, property, occupation, severance, emissions, generation, first use, conversion, processing, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, excise, transaction, import duties and charges, customs broker fees and other costs of importation, non-U.S. value-added taxes, other non-U.S. taxes or charges, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases in any of the foregoing, now existing or otherwise applicable, including any interest, penalty, or addition thereto, whether disputed or not, on any item that is the subject of this Agreement, other than taxes based on net income or net worth.

1.131 *Termination Payment* has the meaning set forth in Section [19.2(b)].

1.132 *Transaction* means the transactions contemplated by this Agreement.

~~1.132~~ 1.133 *Transaction Information System* means a process implemented by NERC to allow the electronic communication of a request for, and securing the approval and recording of, an energy transaction via the Internet.

~~1.133~~ 1.134 *Transmission Operator* means any transmission owner, independent system operator, RTO, or other transmission operator or any successor entity from time to time having authority to control the transmission Control Area to which the Facility is interconnected or any other relevant Control Area.

~~1.134~~ 1.135 *Transmission Provider* means any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

~~1.135~~ 1.136 *Transmission Service Evaluation Deadline* has the meaning specified in Section [15.3(b)].

~~1.136~~ 1.137 *Transmission Service Request Deadline* has the meaning specified in Section [15.3(b)].

~~1.137~~ 1.138 *Transmission Service Study Results* has the meaning specified in Section [15.3(b)].

~~1.138~~ 1.139 *Transporter* means any pipeline on which any Gas is transported under this Agreement to the Unit or the Facility.

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1.1391.140 *Unit* means [the generating unit comprising part of the Facility described on Schedule [A].]

1.1401.141 *Unit Contingent* or reference to *Unit Contingency* means that the Purchased Capacity, associated energy and Other Associated Electric Products are intended to be supplied from the Unit and Seller's failure to deliver is excused to the extent the Unit (including all transmission-related facilities on Seller's side of the Delivery Point) shall not, for any reason other than fraud or willful misconduct (including, without limitation, the intentional withholding of Capacity or availability), be available to produce and deliver the Purchased Capacity, associated energy and Other Associated Electric Products at the Delivery Point.

1.1411.142 *Variable Payment* means the payment to be made by Buyer to Seller in respect of energy Scheduled and Dispatched by Buyer and delivered during the relevant Month pursuant to Section [5.2].

1.1421.143 *Winter Capacity Season* means, ~~for any given year,~~ the Months of October, November, December, January, February and March.

1.1431.144 *Winter Dependable Capacity* means capacity rating based on ambient conditions of 68 degrees Fahrenheit, 74% relative humidity, as it may be adjusted pursuant to Section [15.5].

1.1441.145 *Winter Season* means, ~~for any given year,~~ the Months of December, January, and February.

ARTICLE II PURCHASE AND SALE OF CAPACITY AND ENERGY

2.1 Capacity. Subject to the terms and conditions herein, including, without limitation, Section [2.4], during the Delivery Term Seller shall sell and make available to Buyer on an exclusive basis, and Buyer shall purchase and pay for, the Purchased Capacity.

2.2 Fuel Conversion Services. Subject to the terms and conditions herein, including, without limitation, Section [2.4], during the Delivery Term Seller shall perform for Buyer, on an exclusive basis, and Buyer shall purchase and pay for, Fuel Conversion Services.

2.3 Other Associated Electric Products. If at any time during the Delivery Term there shall occur a change in market structure, including, without limitation, the designation of an independent system operator or formation of an RTO, and as a result thereof there shall exist a market for Other Associated Electric Products, then Buyer shall have the right, upon notice to Seller, to purchase all Other Associated Electric Products related to the Purchased Capacity.

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The compensation to Seller for such sale of Other Associated Electric Products, if elected or required by Buyer, is included in the Capacity Payment and no other or further amount shall be payable by Buyer to Seller in connection with the sale, provision or delivery of Other Associated Electric Products hereunder.

2.4 Priority and Unit Contingent Nature of Transaction. (a) The relationship between Buyer and Seller with respect to the Purchased Capacity and associated energy and Other Associated Electric Products and the performance of Fuel Conversion Services is exclusive. Seller shall not offer, sell or make available any Purchased Capacity, associated energy or Other Associated Electric Products, perform Fuel Conversion Services, or Schedule and Dispatch any of the Purchased Capacity, associated energy or Other Associated Electric Products to or for any Person other than Buyer or its successors or permitted assigns. Seller agrees that, notwithstanding the Unit Contingent nature of the sale of the Purchased Capacity, associated energy, Other Associated Electric Products and the performance of Fuel Conversion Services under this Agreement, it will not curtail or otherwise reduce deliveries of the Purchased Capacity, associated energy, Other Associated Electric Products or the performance of the Fuel Conversion Services in order to make other sales or uses of or perform other transactions involving the Purchased Capacity or the Unit, energy associated therewith or Other Associated Electric Products or to perform other Fuel Conversion Services for any third party, except to the extent necessary to satisfy the Facility Requirements.

(b) Seller's obligation to sell and make available to Buyer the Purchased Capacity, associated energy and Other Associated Electric Products and to perform the Fuel Conversion Services shall be on a Unit Contingent basis. The burden of establishing the existence and extent of any Unit Contingency shall be on Seller.

ARTICLE III DELIVERY TERM

This Agreement shall be effective as of the Effective Date. The "*Delivery Term*" of this Agreement shall commence on [September 1, 2007 and continue until August 31], 20[___] [*Fill in with appropriate Delivery Term*]. This Agreement shall terminate automatically at the end of the Delivery Term, unless otherwise agreed by the Parties, and neither Buyer nor Seller shall have any further liability or obligation to the other hereunder, except for obligations or duties that accrued prior to such termination or obligations that survive termination in accordance with Section [24.1].

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ARTICLE IV
AVAILABILITY

4.1 Availability Requirement. (a) The Availability Requirement during each of the Summer Season, Winter Season and other Months shall be ~~98~~_.00%, ~~98~~_.00% and ~~95~~_.00%, respectively. *[as specified in the applicable MUCPA Product Package]*

(b) ~~Subject to Section [5.5], the~~The Monthly Availability for any Month shall not be less than the Availability Requirement applicable for such Month.

(c) Notwithstanding anything to the contrary contained herein, during the Delivery Term the Rolling 12 Month Availability for the Purchased Capacity shall be at least ~~85~~_.00%. *[as specified in the applicable MUCPA Product Package]*

4.2 Availability Notice. Seller shall furnish to Buyer an Availability Notice substantially in the form of Schedule [4.2] setting forth, with respect to the period or periods to which the Availability Notice relates, (i) the Purchased Capacity per hour, (ii) the actual amount of the Purchased Capacity available per hour from the Unit, expressed in MW, not to exceed the Purchased Capacity for such hour, and not to be less than the minimum load on AGC, to the extent applicable, and (iii) if the available Purchased Capacity in an hour is less than the Purchased Capacity for such hour, the reason(s) therefor. Seller shall furnish a new, superseding Availability Notice to Buyer if there is or would be an Outage, Force Majeure event, derating or other event, occurrence, circumstance or action, singularly or in combination, that reduces or interrupts or would reduce or interrupt any Schedule and Dispatch of energy or Other Associated Electric Products to Buyer or otherwise results or would result in the actual availability of the Purchased Capacity being less than the Purchased Capacity or causes or would cause the controlling Availability Notice to be inaccurate in any material respect. Such new Availability Notice shall fully reflect the changed circumstances since the submission of the prior Availability Notice and shall include a statement of the reason(s) for each modification to the prior Availability Notice. Availability Notices shall be furnished by electronic mail or other electronic transmission acceptable to Buyer in its reasonable discretion, ~~in the case of~~ clause (i), at or before [8:00] a.m. CPT on the Business Day immediately prior to the first Day to which such Availability Notice relates (“Availability Notice Initial Submission Deadline”). If Seller is required to furnish a new, superseding Availability Notice as provided above, such Availability Notice shall be furnished promptly after the occurrence of (or, to the extent it has prior knowledge thereof, promptly after it has knowledge of) the event, occurrence, circumstance or action described therein; provided, however, that, regardless of the actual availability of the Purchased Capacity, Seller may not increase in an Availability Notice furnished after the Availability Notice Initial Submission Deadline the amount of Purchased Capacity available in an hour from that set forth in the Availability Notice then in effect for such hour unless Buyer has consented to such increase, which may be provided in advance in a

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Schedule and Dispatch Notice delivered to the Tag Author. ~~Such An~~ Availability Notice shall be effective until delivery of a ~~subsequent new, superseding~~ Availability Notice. ~~Solely for the purpose of determining Availability hereunder, if~~ If the actual availability of the Purchased Capacity is less than the Purchased Capacity at the time of Dispatch of energy associated therewith, then, regardless whether Seller has furnished a new, superseding Availability Notice as provided above, the Availability Notice in effect shall be deemed to set forth and include the actual availability of the Purchased Capacity at such time.

ARTICLE V PRICING

5.1 Capacity Payment. For each Month during the Contract Year, Buyer shall pay Seller the Capacity Payment set forth in Schedule [5.1], subject to the terms hereof. Buyer shall pay the Capacity Payments monthly in arrears.

5.2 Variable Payment. For each Month during the Contract Year, Buyer shall pay Seller the Variable Payment set forth ~~on~~ in Schedule [5.2], subject to the other terms hereof. Buyer shall pay the Variable Payment monthly in arrears.

5.3 Start-up Payment. In respect of each Cold Start and Hot Start of the Unit following a Shutdown, Buyer shall pay the applicable Start-up Payment set forth in Schedule [5.3], provided the Unit attains definitional criteria for a Start-up (specified in the Capacity level as required in the applicable Schedule and Dispatch Notice definition thereof) have been satisfied. All costs in respect of any Start-up not following such a Shutdown or in which the ~~Capacity level is~~ definitional criteria for a Start-up have not attained as required been satisfied shall be exclusively for Seller's account. Buyer shall make the payments pursuant to this Section [5.3] monthly in arrears.

5.4 All Payments Subject to Set-off. All Capacity Payments, Variable Payments, Start-up Payments and any other payments pursuant to this Agreement shall be, notwithstanding any provision of this Agreement to the contrary, subject to the rights of set-off provided for in Section [19.2].

5.5 Capacity Payment Discount. Notwithstanding that the Purchased Capacity, associated energy, and Other Associated Electric Products supplied from the Unit and the performance of Fuel Conversion Services by Seller are subject to Unit Contingency, if the Monthly Availability shall have been, in any Month, less than the Availability Requirement for such Month, the Capacity Payment payable by Buyer in respect of such Month shall be adjusted downward by the Capacity Payment Discount, as calculated in respect of such Month as set forth in Schedule [5.5]. If the Capacity Payment Discount in respect of any Month exceeds the

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Capacity Payment for such Month, there shall be no Capacity Payment in respect of such Month, and Buyer shall be entitled to no other adjustment as a result of such Availability shortfall.

ARTICLE VI GUARANTEED HEAT RATE CURVE

Schedule [6.1] sets forth the Guaranteed Heat Rate Curve applicable, on a temperature adjusted basis, during all hours of Dispatch Periods. In the event that in any hour the Unit's actual operating performance, expressed in actual MMBtus of Gas consumed per MWh of delivered energy, shall be at a heat rate (a) greater than the highest heat rate in the heat rate band derived from the Guaranteed Heat Rate Curve set forth in respect of such Unit in Schedule [6.1] (adjusted to the Reference Conditions), then Seller shall pay Buyer an amount equivalent to the product of (i) the quantity of Gas (expressed in MMBtus) consumed in such hour as a result of operation at a heat rate level above the highest heat rate in the heat rate band derived from the Guaranteed Heat Rate Curve (adjusted to Reference Conditions) and (ii) the Hourly Price of Gas at the beginning of such hour; or (b) lower than the lowest heat rate in such heat rate band, then Buyer shall pay Seller an amount equal to the product of (i) the quantity of Gas (expressed in MMBtus) not consumed in such hour as a result of operation at a heat rate level below the lowest heat rate in the heat rate band derived from the Guaranteed Heat Rate Curve (adjusted to the Reference Conditions) and (ii) the Hourly Price of Gas at the beginning of such hour. To the extent any Unit shall be Dispatched at a Capacity level lower than the maximum set forth in an Availability Notice, the heat rate for such Dispatch Periods shall be the heat rate applicable to the actual Capacity level at which such Unit is Scheduled and Dispatched by Buyer. All payments pursuant to this Article [VI] shall be paid monthly in arrears, subject to the rights of set off provided for in Section [19.2].

ARTICLE VII SCHEDULING AND DISPATCH

7.1 Scheduling and Dispatch Rights. (a) Buyer shall have the exclusive right (i) at all times during the Delivery Term to Schedule and Dispatch all or a portion of the Purchased Capacity and associated energy or Other Associated Electric Products and the performance of the Fuel Conversion Services, subject to the availability of the Purchased Capacity and any applicable Minimum Dispatch Level or any another operational dispatch limitation set forth in this Section [7.1] or Schedule [7.1(f)], and (ii) to sell and/or transfer to any Person or to use/utilize for any purpose or both, as it deems appropriate in its sole and absolute discretion, the Purchased Capacity, the associated energy and Other Associated Electric Products. To the extent Buyer does not Schedule and Dispatch the Purchased Capacity and associated energy and

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Other Associated Electric Products to the full extent of ~~its~~their availability, Seller may not sell or transfer such undischarged Capacity ~~or~~, energy or Other Associated Electric Products to any Person.

(b) During the Delivery Term, Seller and Buyer shall each (i) be registered as a Purchasing-Selling Entity and (ii) subscribe for Tag Agent Service with the Specified Tag Agent.

(c) Buyer may from time to time Schedule and Dispatch all or a portion of the Purchased Capacity, associated energy and Other Associated Electric Products ~~by~~—(i) by providing to Seller a Scheduling and Dispatch Notice, substantially in the form set forth in Schedule [7.1(c)],

(A) in respect of the Scheduling and Dispatch of all or a portion of the Purchased Capacity for the immediately subsequent Day (subject to adjustment pursuant to clause (B) below), at or before [9:30 a.m.] CPT on the immediately preceding Business Day prior to such Day (“*Day-ahead Schedule and Dispatch*”); provided, however, that if Buyer desires to Schedule for a period longer than twenty-four (24) hours, Buyer shall submit an additional Scheduling and Dispatch Notice for all or any portion of each additional twenty-four (24) hour period, or

(B) in respect of the Scheduling and Dispatch of all or a portion of the Purchased Capacity for any subsequent hour other than with respect to a Day-ahead Schedule and Dispatch, at least ten (10) minutes before the applicable deadline specified by the Control Area Operator or established by the Transaction Information System prior to such hour (“*Intra-day Schedule and Dispatch*”),

and (ii) in respect of the Scheduling and Dispatch of all or a portion of the Purchased Capacity for such Dispatch Period,

(x) with respect to any Day-ahead Schedule and Dispatch, by providing at or before [2:00 p.m.] CPT on the Business Day immediately preceding the first Day of such Dispatch Period, written instructions to Seller to create and submit with the Tag Agent Service, in which case Seller shall create and submit in accordance with such instructions, a Tag substantially in the form set forth in Schedule [7.1(c)] or any other form designated by the Specified Tag Agent correctly reflecting the Day-ahead Schedule and Dispatch, or

(y) with respect to any Intra-day Schedule and Dispatch, by creating and submitting with the Tag Agent Service at or before [_____] hours in advance of

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the applicable hour, a Tag substantially in the form set forth in Schedule [7.1(c)] or any other form designated by the Specified Tag Agent correctly reflecting the Intra-day Schedule and Dispatch (such Party submitting the Tag, the “Tag Author” and such other Party, the “Approval Entity”).

(d) After the creation or submission of the Tag (including any adjustment thereof) with the Tag Agent Service, the Tag Author shall notify the Approval Entity telephonically that the Tag has been created or adjusted. The Approval Entity shall then promptly verify the information set forth in the Tag and promptly notify the Tag Author telephonically of any discrepancies between the Tag and Buyer’s Scheduling and Dispatch Notice so that the Tag Author can adjust the Tag in accordance with Buyer’s Scheduling and Dispatch Notice. ~~To the extent that the Approval Entity fails to timely notify the Tag Author of any discrepancies, the Approval Entity shall bear the risk of any errors associated with~~

~~(d) A Tag shall be effective, and Seller shall operate the Unit and the Facility in accordance with the instructions therein, until the Schedule and Dispatch expiration of the Purchased Capacity specified in the Tag and appropriate adjustments shall be made with respect to the determination of the Imbalance Charges and any other applicable provisions of this Agreement.~~

~~(e) A Tag shall be effective, and Seller shall operate the Unit and the Facility in accordance with the instructions therein, until its expiration thereof,~~ the creation and submission of an adjustment to the Tag or the creation and submission of a subsequent Tag. If after the creation of a Tag, Seller shall have delivered a new Availability Notice adjusting the availability of the Purchased Capacity, the Schedule and Dispatch set forth in the previously created and submitted Tag shall be promptly adjusted by the Tag Author to the Capacity level indicated in such subsequent Availability Notice, provided that, if such level is greater than the level specified in Buyer’s immediately preceding Scheduling and Dispatch Notice, the adjustment shall be made only if Seller is authorized to increase the Capacity to such level pursuant to Section [4.2]. Notwithstanding anything to the contrary contained herein, Buyer may in its Scheduling and Dispatch Notice specify the Schedule and Dispatch of any and all Purchased Capacity that is actually available for a specified Dispatch Period (without reference or regard to any Capacity level indicated in an Availability Notice).

(f) Buyer shall at all times during the Delivery Term, in connection with the exercise of its rights and performance of its obligations under this Agreement, Schedule and Dispatch the Unit and the performance of the Fuel Conversion Services and otherwise comply with its obligations under, and the directives of the Control Area Operator. Seller shall at all times during the Delivery Term, in connection with the exercise of its rights and performance of its obligations under this Agreement, operate and maintain the Facility and otherwise perform its

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obligations under, and the valid directives of the Control Area Operator and Governmental Authorities having jurisdiction.

(g) The maximum number of Start-ups for ~~each~~ the Unit per Day and per Contract Year that may be requested pursuant to a Scheduling and Dispatch Notice are set forth in Schedule [5.3]. When a Dispatch Period will involve a Cold Start or Hot Start, Buyer shall provide Seller with advance notice of at least the applicable Start-up Notification Lead Time set forth in Schedule [5.3]. When a Dispatch Period does not involve a Cold Start or Hot Start, or when a Unit shall be operating with AGC, Buyer shall provide Seller with a Scheduling and Dispatch Notice in accordance with the procedures and timing requirements therefor otherwise set forth in this Section [7.1]. Set forth in Schedule [5.3] are (i) the minimum run time for the Unit (in hours), which shall include the time required for ramping, if any, and (ii) the minimum downtime (in hours), if any, after a Shutdown before the Unit may be restarted. Buyer's Scheduling and Dispatch of the Unit shall comply with the foregoing requirements.

7.2 Gas and Fuel Oil. (a) If Buyer shall Schedule and Dispatch ~~a~~ the ~~Unit or Units~~, Buyer shall deliver or cause to be delivered to Seller at the relevant Delivery Point all quantities of Gas and fuel oil required by Seller (i) to generate energy during a Dispatch Period pursuant to the relevant Scheduling and Dispatch Notice and (ii) to perform Cold Start ~~ups~~ and Hot Start ~~ups~~ in response to the relevant Scheduling and Dispatch Notice following a Shutdown; provided, however, that any quantities of Gas or fuel oil delivered by Buyer to Seller at the relevant Delivery Point that are not consumed in accordance with, or are otherwise consumed in contravention of, the relevant Scheduling and Dispatch Notice shall be for the account and benefit of, and any necessary reimbursements shall be made by Seller to, Buyer. Buyer shall deliver, or cause to be delivered, Gas at the Delivery Point at the pressures in effect from time to time in the pipeline(s) of the respective Transporter(s) immediately upstream of the Delivery Point. In fulfilling its obligations to deliver Gas and fuel oil under this Section [7.2], Buyer shall have the right, but not the obligation, and Seller shall use its best efforts to ensure that Buyer has the right if Buyer so elects, without additional cost to Buyer and whether by assignment to Buyer or otherwise, to use any existing fuel and/or transportation contracts associated with or serving the Unit on the same terms and conditions as Seller during the Delivery Term. Further, Seller shall cause the assignment to Buyer of any and all point operator rights or operational balancing agreements in respect of the Unit or the execution of any and all consents or the taking of any and all other action necessary to enable Buyer to exercise any point operator rights of Seller or operational balancing agreements to which Seller is a party with respect to the Unit during the Delivery Term. At the transfer of such rights to Buyer under any operating balancing agreement, the balance shall be zero. Buyer shall at all times retain title to all quantities of Gas and fuel oil delivered to the Unit pursuant to this Section [7.2]. The unit of Gas and fuel oil quantity measurement for purposes of this Agreement shall be one MMBtu.

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7.3 Transmission and Scheduling. (a) Seller shall deliver all energy associated with the Purchased Capacity and all Other Associated Electric Products to Buyer at the applicable Delivery Point, and shall Schedule and Dispatch the delivery of the energy associated with the Purchased Capacity and the Other Associated Electric Products to such Delivery Point. Seller shall (i) procure, at its sole cost and expense, all firm transmission service on any other interconnected, coordinated, electric utility system required for delivery of energy and Other Associated Electric Products to the applicable Delivery Point and (ii) cooperate and provide all necessary information required to facilitate Buyer's request to the Entergy Transmission Business Unit for transmission service.

(b) Buyer shall be responsible for transmission service at and from the Delivery Point. The Transmission Provider selected by Buyer may be an Affiliate of Buyer or a FERC-approved successor independent entity. Buyer may request that Seller provide, and Seller shall promptly and timely provide, information to satisfy the Transmission Provider's scheduling requirements for the transmission service hereunder.

7.4 Transmission/Transportation Costs. Buyer shall be responsible for and bear all costs and expenses related to (i) all transmission and other services required to move energy and Other Associated Electric Products that are delivered by Seller at the applicable Delivery Point from such Delivery Point to other points, including but not limited to such costs and expenses related to any transmission service that Buyer obtains pursuant to Section [7.3(b)], and (ii) all transportation to the relevant Delivery Points of all Gas and fuel oil required to be supplied by Buyer on one or more Transporter(s) as determined in Buyer's sole and absolute discretion or by other means. Seller shall be responsible for and bear all costs and expenses related to (a) the supply and transportation of Gas and fuel oil not required to be supplied by Buyer to the relevant Delivery Points, including, without limitation, Gas and fuel oil for the units of the Facility that are not the Unit, (b) the transportation of Gas and fuel oil required to be supplied by Buyer from the relevant Delivery Points to other points, and the transmission of energy and Other Associated Electrical Products to the relevant Delivery Point, including but not limited to such costs and expenses related to Seller's obligations to obtain firm transmission service as set forth in Section [7.3(a)], and (c) any and all Imbalance Charges; provided, however, that any such Imbalance Charges resulting directly from Buyer's unexcused failure to receive energy associated with the Purchased Capacity that is Scheduled and Dispatched by Buyer or from Buyer's unexcused failure to deliver the scheduled quantities of Gas shall be the responsibility of Buyer.

7.5 Risk of Loss and Indemnity. As between the Parties, Buyer shall be deemed to be in exclusive possession and control (and responsible for any damages or injury, including death, resulting therefrom or caused thereby) of the Gas and fuel oil required to be supplied by Buyer prior to the Delivery Point therefor and the energy and Other Associated Electric Products associated with the Purchased Capacity after the Delivery Point therefor, and Seller

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shall be deemed to be in exclusive possession and control (and responsible for any damages or injury, including death, resulting therefrom or caused thereby) of such Gas and fuel oil at and from the Delivery Point therefor and such energy and Other Associated Electric Products prior to and at the Delivery Point therefor. Risk of loss related to such Gas and fuel oil shall transfer from Buyer to Seller at the Delivery Point therefor and risk of loss related to the energy and Other Associated Electric Products associated with the Purchased Capacity shall transfer from Seller to Buyer at the Delivery Point therefor. Buyer shall indemnify, defend and hold harmless Seller from and against any liabilities arising out of or in any way relating to Buyer's possession or control of the Gas and fuel oil up to the Delivery Point therefor or its possession and control of such energy and Other Associated Electric Products after the Delivery Point therefor, and Seller shall indemnify, defend and hold harmless Buyer from and against any liabilities arising out of or in any way relating to Seller's possession or control of the Gas and fuel oil at and from the Delivery Point therefor or its possession and control of such energy and Other Associated Electric Products prior to and at the Delivery Point therefor.

ARTICLE VIII NO QF PUT

Notwithstanding anything to the contrary herein, Seller shall not be entitled, and hereby expressly disclaims and knowingly, voluntarily and irrevocably waives for all purposes any and all rights under applicable Law-Laws (including, without limitation, PURPA and applicable state avoided cost determinations, orders, rules and Laws implementing PURPA) or otherwise existing, to sell or deliver as QF Put Energy to Buyer (or if the host utility to Seller is not Buyer, but is another Entergy Operating Company, to such host Entergy Operating Company) during any moment in the Delivery Term an amount of energy equal to the energy associated with the Purchased Capacity (without regard to availability) at such moment ("*Prohibited QF Put Energy*"), and Buyer (or such host Entergy Operating Company) shall have no obligation, and may freely refuse, with or without notice to Seller, to receive, accept, purchase or pay for any Prohibited QF Put Energy delivered or attempted to be delivered to it by Seller during any portion of the Delivery Term. Buyer acknowledges that after the termination of this Agreement, Seller shall have the right to sell and deliver to Buyer (or such host Entergy Operating Company) energy from the Unit and the Facility as QF Put Energy to the extent (and only to the extent) such sale and delivery is authorized by, and made strictly in accordance with its then-existing rights and obligations (if any) under, PURPA and applicable state avoided cost determinations, orders, rules and Laws implementing PURPA. Seller acknowledges and agrees that the obligations, disclaimers and waivers of this Article [VIII] are fundamental to this Transaction and that Buyer's decisions to purchase the Purchased Capacity on the terms set forth herein and enter into and perform this Transaction are made in express reliance on such obligations, disclaimers, and waivers. Any Entergy Operating Company that is a host utility to Seller as described above is an intended beneficiary of this Article [VIII].

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ARTICLE IX
METERING

9.1 Electricity. (a) Energy delivered by Seller shall be metered at the Delivery Point on a continuous real-time basis. If the Control Area Operator shall require, the Control Area Operator's electric revenue meter shall be used to determine conclusively the amount of energy delivered by Seller at the Delivery Point.

(b) Seller shall be responsible for the procurement, installation, maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including, without limitation, any transmission equipment and related facilities, necessary to interconnect the Unit or the Facility to or at the relevant Delivery Point to the Entergy System. Buyer shall have the right to receive data in electronic form in real time on a continuous basis by telemetry, and, if necessary, Seller shall install one electric meter which is capable of providing such data to Buyer's reasonable satisfaction. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

9.2 Gas. (a) Gas delivered by Buyer to Seller shall be metered at the relevant Delivery Point, as consumed on a continuous real time basis. The transporting pipeline immediately upstream of the Delivery Point's revenue meters shall be used to determine conclusively the quantity of Gas delivered at the Delivery Point. The Gas chromatograph of the transporting pipeline immediately upstream of the Delivery Point shall be used to determine conclusively the Btu content of all Gas delivered at the Delivery Point.

(b) Seller shall be responsible for the procurement, installation, maintenance, testing and calibration of the Gas Metering Equipment (to the extent not otherwise procured, installed, maintained, tested and calibrated by the transporter or supplier of Gas to the Facility). Buyer shall have the right to receive data in electronic form in real time on a continuous basis by telemetry from the Delivery Point and, if necessary, Seller undertakes to install one Gas meter which is capable of providing such data, to Buyer's reasonable satisfaction. Seller shall bear all costs and expenses of installing, maintaining and testing all Gas Metering Equipment.

9.3 Fuel Oil. To the extent that the Unit operates or is capable of operating on fuel oil, Buyer shall procure and deliver or cause to be delivered to the relevant Delivery Point all required quantities of fuel oil. Seller shall be responsible for the procurement, installation, maintenance, testing and calibration of the Oil Metering Equipment and all facilities, equipment and systems necessary in connection with the receipt, storage and use of fuel oil.

9.4 Check Meters. Buyer may, at its option and expense, install and operate one or more check meters to check Seller's meters. Such check meters shall be for check purposes and

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shall not be used for the measurement of Gas, energy or fuel oil except as provided in Section [9.9]. The check meters shall be subject at all reasonable times to inspection and examination by Seller or its designee. The installation and operation thereof shall, however, be done entirely by Buyer in accordance with industry practices for check metering equipment. Seller shall grant to Buyer at no cost or expense the right to install, operate, maintain, clean, repair, remove, replace, test, calibrate and adjust such check meters and portions thereof at each Delivery Point and the right to access such check meters at reasonable times as requested by Buyer if such check meters are located on Seller's premises.

9.5 Change in Measurement Method. If, at any time during the Delivery Term a new method or technique is developed with respect to electricity, Gas or fuel oil measurement, or the determination of the factors used in electricity, Gas or fuel oil measurement, such new method or technique may be substituted for the method set forth in this Article [IX] when in the reasonable opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

9.6 Industry Standards. All Electric Metering Equipment, Gas Metering Equipment and Oil Metering Equipment, whether owned by Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Accepted Electrical Practices in the case of the Electric Metering Equipment, in accordance with AGA and ANSI standards in the case of the Gas Metering Equipment and in accordance with applicable industry standards in the case of the Oil Metering Equipment.

9.7 Access. Each Party shall have the right to receive reasonable advance Notice with respect to, and to be present at the time of, any installation, cleaning, changing, repair, inspection, testing, calibration or adjustment of the Electric Metering Equipment, Gas Metering Equipment or Oil Metering Equipment, irrespective of whether such Electric Metering Equipment, Gas Metering Equipment or Oil Metering Equipment is owned or operated by Seller or by a third party. The records from such Electric Metering Equipment, Gas Metering Equipment and Oil Metering Equipment shall be the property of Seller, but upon reasonable advance Notice, Seller shall make available to Buyer all data, records and charts relating to the Electric Metering Equipment, Gas Metering Equipment and/or Oil Metering Equipment, together with calculations therefrom, for inspection and verification.

9.8 Installations. Any ~~installations~~ installation of Electric Metering Equipment, Gas Metering Equipment or Oil Metering Equipment required pursuant to this Agreement shall be scheduled by Seller; provided, however, that no installation which shall or could affect deliveries of Gas, fuel oil, energy or Other Associated Electric Products shall be made without the prior written consent of Buyer, which shall not be unreasonably withheld. Any installations of check meters by Buyer shall be scheduled by Buyer; provided, however, that the installation

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shall not unreasonably interfere with the operation and maintenance of the Unit or the Facility by Seller.

9.9 Estimates. Seller, at its sole cost and expense, shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment, Gas Metering Equipment and Oil Metering Equipment periodically, but not less frequently than annually. When any test shall show a measurement error of more than (i) in the case of Gas Metering Equipment, two percent (2.00%) or such lower percentage as may be established by applicable tariff, (ii) in the case of Electric Metering Equipment, one-quarter percent (0.25%), or (iii) in the case of Oil Metering Equipment, two percent (2.00%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of Buyer's check meter, if installed; if the check meter is not installed, or if the period cannot be ascertained, correction shall be made for one-half (1/2) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

9.10 Records. The Parties shall, for five (5) years or such longer period as and to the extent required by any Transmission Operator, each keep and maintain accurate and detailed records relating to ~~each the~~ Unit's hourly Availability and deliveries of Purchased Capacity, associated energy and Other Associated Electric Products and Gas and fuel oil consumption. Such records shall be made available for inspection, directly or indirectly, by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable Notice. If either Party (the "Notifying Party") shall propose to discard any records theretofore required to be retained by this Section **[9.10]**, it shall give Notice thereof to the other Party and the other Party may within thirty (30) days elect to take possession of such records by Notice to the Notifying Party, and in such case the Notifying Party shall promptly deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section **[9.10]** shall not respond within thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder.

ARTICLE X OPERATION AND MAINTENANCE

10.1 Operation of the Facility. Except to the extent the Unit is unavailable or limited due to a Unit Contingency, Planned Maintenance or Force Majeure or curtailment required by the Transmission Provider, the Independent Coordinator of Transmission ("ICT"), Regional Transmission Organization ("RTO"), or any NERC Reliability Coordinator, Seller shall, regardless of whether the Availability shall be, for any period, at, above or below the Availability Requirement, operate the Unit and the Facility in order to provide the Purchased Capacity, associated energy and Other Associated Electric Products to Buyer and perform the Fuel Conversion Services in all hours in which Scheduled and Dispatched by Buyer.

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10.2 Operation and Maintenance Obligations. At all times during the Delivery Term, Seller shall install, construct, test, operate and maintain the Unit and the Facility or cause the Unit and the Facility to be installed, constructed, tested, operated and maintained in accordance with Seller's obligations herein and in the Project Documents, Accepted Electrical Practices, any requirements for capacity resource providers that may be promulgated by the Transmission Operator, the ICT, an RTO or FERC, and any applicable statutes, codes, regulations, standards and guidelines adopted by Governmental Authorities, NERC, and the Southeastern Electric Reliability Council (including any successor thereto) from time to time. Except as provided in Section [9.4], Seller shall bear all costs and expenses of such installation, construction, testing, operation and maintenance, including, without limitation, Operation and Maintenance Costs and applicable Taxes. Subject to Buyer's rights set forth in this Agreement, Seller shall have full and complete responsibility for and control over testing, operation and maintenance of the Unit and the Facility.

10.3 Operation. Seller shall operate the Unit and the Facility in parallel with the Entergy System with governor control and shall deliver energy at the Delivery Point in a form appropriate to such electrical system.

10.4 [Response Rates. Seller shall provide to Buyer response rates greater than those set forth in Schedule [A] for AGC when the relevant control systems of the Unit and/or the Facility are technically sufficient for such faster response rates, consistent with Accepted Electrical Practices.]

10.5 Disconnection. In the event that for any reason the Control Area Operator, Transmission Operator or any owner or operator of the electrical system to which the Unit and the Facility is connected requires that the Unit or the Facility or any portion thereof be disconnected from such electrical system (or requires that deliveries of energy otherwise be curtailed, reduced or interrupted), Seller shall be solely responsible for all costs and expenses incurred by Seller due to such disconnection or interruption.

10.6 Correction. Seller shall correct promptly any condition at the Unit or the Facility which necessitates the disconnection of the Unit or the Facility or the reduction, curtailment or interruption of electrical output of the Unit or the Facility.

10.7 Certificate of Compliance. Seller shall furnish to Buyer on each Delivery Anniversary Date a certificate, together with such supporting documentation as Buyer shall reasonably request, demonstrating that during the preceding Contract Year, Seller have performed or caused to be performed during such Contract Year all maintenance and testing of the Unit and the Facility required by this Article [X].

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10.8 Access. During the Delivery Term and all extensions thereof, Seller shall provide one office at the Facility (or one at each site if multiple sites) for use by an employee or representative of Buyer or its Affiliates and provide such employee or representative continuing and unrestricted accompanied access to the Facility and all appurtenant electrical equipment at all times and for any duration for the purpose of (i) verifying, reviewing, and/or monitoring the operation, testing, maintenance, and/or repair of the Facility and all appurtenant electrical equipment for the purpose of determining Seller's compliance with this Agreement; (ii) inspecting, examining and testing such equipment and facilities as authorized under this Agreement; (iii) designating an alternate or additional Delivery Points; and (iv) performing any other work or tasks required of Buyer by or reasonably incidental to this Agreement. In addition, Seller shall provide other employees and/or representatives of Buyer and its Affiliates accompanied access to the Facility as aforesaid, at reasonable times, subject to Seller's reasonable requirements with respect to safety and security. Employees and/or representatives of Buyer and its Affiliates shall conduct themselves so as to not hamper or impede the Facility's operations.

10.9 Maintenance of Certain Records. Without limiting its obligations under Section [9.10], Seller shall keep and maintain accurate and complete records for the Unit and the Facility in a manner consistent with Accepted Electrical Practices, applicable Laws, statutes, codes, regulations, standards and guidelines adopted by Governmental Authorities, NERC, the Southeastern Electric Reliability Council or the Control Area Operator from time to time, including, without limitation, such information relating to the operation and maintenance of the Unit and the Facility and all associated equipment as is appropriate. Seller shall make such records available to Buyer for inspection and copying from time to time as Buyer may reasonably request. If Seller shall propose to discard any records theretofore required to be retained by this Section [10.89], it shall give Notice to Buyer thereof and Buyer may, within thirty (30) days thereafter, elect to take possession of such records by Notice to Seller, and in such case Seller shall promptly deliver such records to Buyer at its expense. If after receiving a Notice pursuant to this Section [10.89] Buyer shall not respond within thirty (30) days thereafter, Seller may discard such records without any further obligation hereunder.

10.10 Planned Maintenance. The schedule for Planned Maintenance, including the total number of Equivalent Planned Maintenance Hours for each Contract Year that the Unit or the Facility will be unavailable due to Planned Maintenance, is set forth in Schedule [10.10]. Seller may adjust the schedule for Planned Maintenance during the Delivery Term pursuant to the terms set forth herein. Seller may schedule Planned Maintenance to take place only during the Months of March and April ("Spring Maintenance Period") and October and November ("Fall Maintenance Period"). Planned Maintenance schedules for the Spring Maintenance Period and the Fall Maintenance Period proposed by Seller shall be subject to Buyer's approval in its reasonable discretion. For each Spring Maintenance Period and Fall Maintenance Period during the Delivery Term, Seller shall send to Buyer a proposed schedule for Planned

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Maintenance (including the total number of Equivalent Planned Maintenance Hours that the Facility will be unavailable due to Planned Maintenance) on or before the first day of the September preceding such Spring Maintenance Period and on or before the first day of the February preceding such Fall Maintenance Period, respectively. For the initial Contract Year, Seller shall send to Buyer its proposed schedule for Planned Maintenance during the 2007 Fall Maintenance Period (including the total number of Equivalent Planned Maintenance Hours that the Facility will be unavailable due to Planned Maintenance) on or before June 1, 2007. Each proposed schedule for Planned Maintenance during any other Month shall be subject to the prior approval of Buyer in its sole and absolute discretion.

ARTICLE XI
BILLING AND PAYMENT

11.1 Invoices and Payments. On or before the tenth (10th) Day of each Month (or if the tenth (10th) Day is not a Business Day, then the next succeeding Business Day), Seller shall render to Buyer a monthly statement (by regular mail, facsimile or other acceptable means conforming to the provisions of Article [XXII]) in respect of the immediately preceding month. Such statement shall set forth on an individual Unit basis the amount of energy and Other Associated Electric Products delivered by Seller to Buyer in each hour, the quantities of Gas consumed in each hour, the number of Start-ups of each type requested and accomplished, a computation of the amounts due from Buyer to Seller and a computation of any other amounts as may then be due and payable by Buyer to Seller, or vice versa, in respect of such Month. Subject to the other terms hereof, Buyer shall make payment of the net amount shown to be due to Seller on the monthly statement by wire transfer to an account specified by Seller on or before the later of (i) the twentieth (20th) Day of the Month in which the statement is rendered to Buyer or (ii) the tenth (10th) Day after Buyer's receipt of the monthly statement, unless such Day is not a Business Day, in which case the deadline for Buyer to make payment shall be the next Business Day. If such monthly statement shall reflect a net amount due to Buyer from Seller, Seller shall make payment of the net amount shown to be due to Buyer on the monthly statement by wire transfer to an account specified by Buyer on or before the twentieth (20th) day of the Month in which such statement is rendered (or required to have been rendered) to Buyer, unless the twentieth (20th) day is not a Business Day, in which case the deadline for Seller to make payment shall be the next Business Day. All such payments shall be deemed to be made when said wire transfer is received by Seller or by Buyer, as the case may be. Overdue payments shall accrue interest from, and including, the due date to, but excluding, the date of payment at the Interest Rate.

11.2 Disputed Payments. If ~~either Party~~Buyer, in good faith, disputes a monthly statement, ~~such Party~~Buyer shall provide to ~~the other Party~~Seller a written explanation of the basis for the dispute and shall make payment of the portion of such monthly statement not

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disputed in good faith no later than the due date. To the extent any disputed amount is later determined to be properly due and payable, it shall be paid or refunded within ten (10) Days after such determination, together with interest accrued at the Interest Rate from the due date to the date payment is made, if made within ten (10) Days of such determination, and if not paid within ten (10) Days of such determination, together with interest accrued after such ten (10) Day period to the date payment is made at the Interest Rate plus two percent (2.00%).

11.3 Adjustments. In the event adjustments or corrections to monthly statements are required as a result of inaccurate Electric Metering Equipment, Gas Metering Equipment or Oil Metering Equipment or other errors in computation or billing, the Parties shall promptly recompute amounts due from or to each other hereunder during the period of inaccuracy and otherwise correct any errors in such monthly statement. If the total amount, as recomputed, due from a Party for the period of inaccuracy varies from the total amount due as previously computed, and payment of the previously computed amount has been made, the difference shall be paid to the Party entitled to it within ten (10) Days after correction of the erroneous invoice(s).

11.4 Audit. Each Party (and its representatives) has the right, at its sole expense, upon reasonable Notice and during normal working hours, to examine and copy the books and records and the other documentation, materials and items supporting (or not supporting) or claimed to support (or not support) a statement, charge or computation thereof of the other Party and to communicate with employees and personnel of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the amounts of energy or Other Associated Electric Products or the quantities of Gas or fuel oil delivered at the Delivery Point at any time or over any period during the Delivery Term. If any such examination reveals any inaccuracy in any statement hereunder, the necessary adjustments in such statement and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of two years from the rendition thereof; and provided, further, that this Section [11.4] will survive any termination of the Agreement for a period of two (2) years from the date of such termination for the purpose of such statement and payment objections.

11.5 Performance Assurance Not Netted. Unless the Party benefiting from [Performance Assurance] [or a Guaranty] notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article [XIX], all amounts netted pursuant to this Agreement shall not take into account or include any [Performance Assurance] [or Guaranty] which may be in effect to secure a Party's performance under this Agreement.

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ARTICLE XII
CREDIT AND COLLATERAL REQUIREMENTS
[TO BE DETERMINED]

12.1 Party A Credit Protection. For purposes of this Article [XII] and Schedule [12], “Party A” shall be Buyer and “Party B” shall be Seller. The applicable credit and collateral requirements shall be as specified on Schedule [12]. If no option in Section [12.1(a)] is specified on the Schedule [12], Section [12.1(a)], Option C shall apply exclusively. If Section [12.1(b)], [12.1(c)] or [12.1(d)] is not specified on Schedule [12], Section [12.1(b)] shall apply exclusively.

(a) Financial Information. *Option A*: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(ies) specified on Schedule [12] and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Schedule [12]. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Schedule [12].

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B’s creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party

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B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article [XIX] will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article [XIX].

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold as specified in Schedule [12] (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article [XII] within three (3) Business Days, then an Event of Default under Article [XIX] shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article [XIX]. For purposes of this Section [12.1(c)], the calculation of the Termination Payment shall be calculated pursuant to Section [19.2] by Party A as if the entire Transaction has been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to the Transaction.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event under Schedule [12] in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article [XIX].

(e) Guaranty. If specified on Schedule [12], Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Schedule [12] and in a form reasonably acceptable to Party A. [If applicable, may be consolidated with Art. XX or vice versa]

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12.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on Schedule [12]. If no option in Schedule [12] is specified on Schedule [12], Section [12.2(a)], Option C shall apply exclusively. If Section [12.2(b)], [12.2(c)] or [12.2(d)] is not specified on Schedule [12], Section [12.2(b)] shall apply exclusively.

(a) Financial Information. *Option A*: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B. If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on Schedule [12] and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on Schedule [12]. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in Schedule [12].

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article [XIX] will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article [XIX].

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(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article [XII] within three (3) Business Days, then an Event of Default under Article [XIX] shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article [XIX]. For purposes of this Section [12.2(c)], the calculation of the Termination Payment shall be calculated pursuant to Section [19.2] by Party B as if the entire Transaction had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to this Transaction.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article [XIX].

(e) Guaranty. If specified on Schedule [12], Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Agreement a guarantee in an amount not less than the Guarantee Amount specified on Schedule [12] and in a form reasonably acceptable to Party B.

12.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") 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 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, such

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Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party'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. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under applicable Law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including, without limitation, any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.]

ARTICLE XIII TAXES

13.1 General. Seller and Buyer shall each use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize Taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon commercially reasonable advance written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes or any other charges of any Governmental Authority. Each Party shall use reasonable efforts to obtain, and shall cooperate with the other in its efforts to obtain or maintain, any exemption from or reduction of Tax.

13.2 Buyer Taxes. Buyer shall be responsible for all Taxes imposed on or with respect to Gas and fuel oil, including the use, production or transportation thereof, prior to the relevant Delivery Point, and all Taxes imposed on or with respect to energy or the transmission thereof pursuant to this Agreement, at and after the relevant Delivery Point.

13.3 Seller Taxes. Seller shall be responsible for all Taxes which are not the responsibility of Buyer pursuant to Section [13.2].

13.4 Indemnity. Each Party (the "Tax Indemnifying Party") shall indemnify, release, defend and hold harmless the other Party (the "Tax Indemnified Party") from and against any

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and all liability for all Taxes imposed or assessed by any Government Authority that are the responsibility of such Party pursuant to this Article [XIII]. A Tax Indemnified Party shall, to the extent practicable, give a Tax Indemnifying Party written notice of any proposed or actual adjustment or assessment of Taxes within such time as will allow the Tax 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 a Tax Indemnified Party's rights hereunder except to the extent the Tax Indemnifying Party is prejudiced thereby. The Tax Indemnifying Party shall be entitled, at the Tax Indemnifying Party's expense, to participate in, and, to the extent that the Tax Indemnifying Party desires, assume and control, the defense of such Taxes, provided that the Tax Indemnifying Party shall have acknowledged in writing its obligation to fully indemnify such Tax Indemnified Party in respect of such Taxes. If the Tax Indemnifying Party has assumed and is controlling the defense of Taxes in accordance with the foregoing, the Tax Indemnified Party's involvement shall be limited to monitoring the progress of such defense, which shall include (i) receiving copies of all correspondence between the Tax Indemnifying Party and any Governmental Authority imposing or assessing the Taxes; and (ii) attending and observing meetings between the Tax Indemnifying Party and said Governmental Authority related to such defense; provided, however, that any costs associated with the Tax Indemnified Party's involvement shall be at the Tax Indemnified Party's own expense. The Tax Indemnified Party shall supply the Tax Indemnifying Party with such information and documents reasonably requested by the Tax Indemnifying Party as are necessary for the Tax Indemnifying Party in the defense of such Taxes. For purposes of this Section [13.4], the Tax Indemnifying Party's obligation to indemnify the Tax Indemnified Party for Taxes shall include any reasonable costs to defend such Taxes incurred or paid by the Tax Indemnified Party so long as such costs were incurred or paid prior to the time when the Tax Indemnifying Party has assumed control of the defense of such Taxes.

ARTICLE XIV MEDIATION

Any claim, counterclaim, demand, cause of action, dispute or controversy arising out of or relating to this Agreement (or any agreement delivered in connection with this Agreement) or in any way relating to the subject matter of this Agreement involving any of the Parties or their representatives (each, a "Dispute") even if such Dispute may be allegedly extra-contractual in nature, sound in contract, tort or otherwise, or arise under Law, shall be subject to non-binding mediation in accordance with this Article [XIV]. The Parties agree that, upon Notice from Seller to Buyer or vice versa, a senior executive of Seller or his or her designee and a senior executive of Buyer or his or her designee, representing Seller on the one hand and Buyer on the other hand, shall, within three (3) Business Days, be designated to attempt to resolve the Dispute and the two senior executives or their respective designees shall meet at least once, and

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shall negotiate in good faith for a period of fifteen (15) Days in an effort to resolve the Dispute. To the extent that the two senior executives or their respective designees shall not resolve any Dispute, the Parties shall have their respective rights and remedies under this Agreement and applicable Law.

ARTICLE XV
REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Representations and Warranties by Each Party. As of the Effective Date and as of the date on which the Delivery Term commences, each Party hereby represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all Approvals necessary for it to legally perform its obligations under this Agreement, except as otherwise disclosed in Schedule **[15.1(b)]**;

(c) the execution, delivery and performance of this Agreement and the transactions contemplated hereunder are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, including, without limitation, any binding order, applicable to it;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;

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

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under 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;

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(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, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and

(j) it has entered into this Agreement in connection with the conduct of its business.

15.2 Certain Additional Representations and Warranties of Seller. As of the Effective Date and ~~as of~~ the date on which the Delivery Term commences, Seller hereby represents and warrants as follows:

(a) The minimum guaranteed rate of change (increase and decrease) in net electrical output per minute, measured over the period beginning at the time of an instruction to change the Unit’s net output or schedule and ending at the time that such net output or scheduled energy level is achieved (such rate of change, the “Ramp Rate,” and such minimum guaranteed Ramp Rate, the “Guaranteed Ramp Rate”), is set forth in Schedule [15.2(a)].

(b) The Summer Dependable Capacity ~~for~~of the Unit is [_____] MW.

(c) The Winter Dependable Capacity ~~for~~of the Unit is [_____] MW.

15.3 Certain Seller Approval Covenants; Transmission Service Studies and Deliverability Evaluations.

(a) Seller covenants that, during the term of this Agreement, Seller shall obtain and maintain all Approvals as may be required with respect to the operations of the Unit and the Facility and for the performance of its obligations hereunder and shall cooperate and assist Buyer in obtaining and maintaining all Approvals as may be deemed necessary or appropriate by Buyer in connection with this Transaction, including but not limited to approvals of full rate recovery of all costs associated with this Agreement or such other regulatory treatment as shall be acceptable to Buyer in its sole and absolute discretion, except to the extent the failure to do so would have an immaterial effect on this Agreement, the Parties or the performance of their respective obligations hereunder. Subject to Section [8.515.4(a)] and Section [8.515.4(b)], Seller’s obligation to cooperate and assist Buyer as provided above shall include, without limitation, the obligation (i) to support the Transaction and the terms hereof in any regulatory or similar proceeding, case or action, including, without limitation, in any hearing, discovery or filing, involving an Approval of or relating to the Transaction or any of the terms hereof and (ii) not to

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take any action or position in any such proceeding, case or action that is inconsistent with the foregoing.

(b) Subject to the other terms of this Agreement, Buyer and Seller agree that this Agreement will be effective for the initial Contract Year of the Delivery Term and whether this Agreement will continue in effect for the remaining Contract Years of the Delivery Term (the “*Remaining Term*”) will be contingent on the results of (i) Buyer’s transmission service request and associated System Impact Study, if required by the Entergy Transmission Business Unit (“*Transmission Service Study Results*”) and received from the Entergy Transmission Business Unit within 255 days after the ~~execution of this Agreement~~ Effective Date (the “*Transmission Service Request Deadline*”), or (ii) a Deliverability Evaluation completed on or prior to the Transmission Service Request Deadline. If, on or prior to the date that is 270 days after the Effective Date (the “*Transmission Service Evaluation Deadline*”), the results of the Deliverability Evaluation or Transmission Service Study Results, if received from the Entergy Transmission Business Unit on or before the Transmission Service Request Deadline, are acceptable to Buyer, in its sole and absolute discretion, Buyer and Seller agree that this Agreement shall continue for the Remaining Term ~~pursuant to~~ on the terms and conditions set forth in this Agreement; provided, however, that, in the event that on or before the Transmission Service Evaluation Deadline, the results of both the Deliverability Evaluation and the Transmission Service Study Results, if received from the Entergy Transmission Business Unit on or before the Transmission Service Request Deadline, are not acceptable to Buyer, in its sole and absolute discretion, then on or prior to the Transmission Service Evaluation Deadline, Buyer may terminate this Agreement for the Remaining Term in its sole and absolute discretion and shall notify Seller of any election to do so. In the event that all or any portion of this Agreement is terminated pursuant to the provisions of this Section [15.3(b)], neither Party shall have any obligation or liability to the other Party for the ~~portion of the Agreement that has been terminated~~ Remaining Term. In the event that no termination notice is provided to Seller from Buyer under this Section [15.3(b)] on or before the Transmission Service Evaluation Deadline, this Agreement shall continue in effect, subject to the other terms of the Agreement, ~~with respect to~~ for the Remaining Term without any further action from either Party.

15.4 Covenants of Each Party Regarding Certain Regulatory Matters. Each Party hereby further covenants as follows:

(a) If Governmental Authorities, the Transmission Provider, the ICT, an RTO or other independent system operator shall implement any change in Law, rule, regulation, tariff or practice that is binding on Seller or Buyer and materially adversely affects such Party’s ability to perform its obligations hereunder, the Parties shall negotiate in good faith an amendment to this Agreement or take other appropriate action the effect of which is to restore each Party, as closely as possible, to its same position as prior to such change. If, within sixty (60) days, the Parties are unable to agree on such amendment or such other appropriate action, (i) each Party will continue

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to perform its obligations hereunder to the maximum extent possible, taking all reasonable steps to mitigate the effect of such change on each other, and (ii) either Party shall also have the right to file with FERC pursuant to Section 205 or 206 of the Federal Power Act proposed revisions to this Agreement necessary to restore the positions of the Parties prior to such change. The standard of review that shall apply to any such filing shall be the “just and reasonable” standard and not the “public interest” standard of review described in Section [15.4(b)]. Either Party may contest any such filing pursuant to applicable FERC procedures. For purposes of this Section [15.4], the Parties stipulate and acknowledge that the creation of an RTO or independent systems operator encompassing in whole or in part the service territory of the Entergy System shall not, in and of itself, be deemed to materially adversely affect either Party’s ability to perform its obligations hereunder.

(b) Except as provided in Section [15.4(a)] or as Seller and Buyer may otherwise agree in writing, neither Party shall file with FERC any proposed change in any rate, term or condition set forth in this Agreement. Notwithstanding the foregoing, either Party may file an application with FERC pursuant to Section 206 of the Federal Power Act seeking a change in the price to be paid by Buyer for the Purchased Capacity and/or associated energy and Fuel Conversion Services that Seller has agreed to deliver or provide to Buyer pursuant to this Agreement. The standard of review that shall apply to any such application for a price change, whether proposed by either Party or FERC acting *sua sponte*, shall be the “public interest” standard of review delineated in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and in *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

15.5 Capacity Testing. Buyer shall have the right to request a re-determination of the Summer Dependable Capacity and the Winter Dependable Capacity through a Capacity Demonstration Test, at Buyer’s expense, ~~up to four (4) times during the Delivery Term~~twice each Contract Year at any time upon three (3) Business Days’ prior written notice to Seller. Buyer shall use reasonable efforts to schedule Capacity Demonstration Tests during periods when Buyer has Dispatched the Unit. Notwithstanding the foregoing, Capacity Demonstration Tests shall not be conducted during a period of forced Outage, a Force Majeure event or Scheduled Planned Maintenance without the consent of Seller, which shall not be unreasonably withheld. The Summer Dependable Capacity and the Winter Dependable Capacity determined pursuant to a Capacity Demonstration Test shall become the new Summer Dependable Capacity and the Winter Dependable Capacity following such testing.

15.6 Representation of ESI. ESI represents to Seller that as of the Effective Date -it is acting as agent for Buyer and has full power and authority to execute and deliver this Agreement as agent for Buyer.

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15.7 Further Assurance Covenants of Seller and Buyer. Commencing on the Effective Date, on the terms and subject to the conditions of this Agreement, each Party shall use its reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, and assist and cooperate with the other Party in taking or doing, all things necessary, proper or advisable to consummate the transactions contemplated hereby, including, without limitation, the satisfaction of the respective conditions set forth in Sections [23.1] and [23.2].

15.8 Seller Regulatory Approval Filings. Promptly after the Transaction Date, Seller, if required to obtain ~~approval~~Approval for the ~~transactions contemplated hereby~~Transaction from one or more Governmental Authorities (e.g., the FERC), shall file the Agreement with such Governmental Authority(ies) and shall request that such Governmental Authority(ies) accept such Agreement for filing without modification or conditions, and without suspension, and with service hereunder to be effective commencing as of the start of the Delivery Term.

15.9 Certain Buyer Filings. Following the Transaction Date, Buyer may, among other things, submit this Agreement to one or more Governmental Authorities, including the FERC and/or the Governmental Authority(ies) having jurisdiction over the retail operations of Buyer, together with an application for approval of such Agreement, and/or request rate recovery of the costs associated with its participation in this Agreement based on a finding that such participation is prudent.

15.10 Confidentiality. Neither Party shall disclose the terms or conditions of a Transaction under this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential), except in order to comply with any applicable Law or any exchange, control area or independent system operator or similar rule or in connection with any court, regulatory or other legal proceeding; provided, however, that each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Seller acknowledges that this Transaction will be subject to review by one or more of the Governmental Authorities having jurisdiction over Buyer, and may be subject to formal or informal discovery by such Governmental Authorities. Seller agrees that, notwithstanding anything to the contrary, Buyer ~~or~~and any of its employees or representatives may disclose the terms or conditions of this Transaction in testimony, evidence, or otherwise in any proceeding or any communication or discussion seeking or relating to any inquiry involving the review or approval by any such Governmental Authority of the actions taken or not taken in respect of this Transaction or the Fall 2006 RFP or any Entergy Operating Company, including, without limitation, any rates or charges charged by Buyer, or any other regulatory proceeding with respect to which the conduct or activities of Buyer, Seller or any Entergy Operating Company may be relevant, and in any such case, Buyer shall request from such Governmental

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Authority appropriate treatment for the non-public terms and conditions of this Transaction or other appropriate protection for such information. Buyer shall be entitled to disclose to any Governmental Authority as a matter of right, and without seeking any confidential treatment therefor, the name of Seller, the term of this Transaction, the type of Transaction, and amount of capacity under contract pursuant to the Transaction.

15.11 Transmission Service Request. Promptly following the Effective Date, Buyer shall submit a transmission service request to the Entergy Transmission Business Unit.

ARTICLE XVI LIABILITY

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY PURSUANT TO THE PROVISIONS OF SECTION [13.4] OR ARTICLE [XVII] HEREOF IS OBLIGATED TO INDEMNIFY AN INDEMNIFIED PARTY AGAINST THIRD PARTY CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES NOT ARISING OUT OF CONTRACTS WITH THE INDEMNIFIED PARTY). IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE

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REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS ARTICLE [XVI] SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

ARTICLE XVII INDEMNITY

17.1 General. (a) Each Party (the “*Indemnifying Party*”) shall indemnify, hold harmless and defend the other Party, its Affiliates, directors, officers, partners, agents and employees (the “*Indemnified Party*”) from and against any and all loss, liability, damage, cost or expense, including but not limited to, damage and liability for bodily injury to or death of third Persons or damage to property of third Persons (collectively, “*Damages*”), to the extent arising out of, in connection with or resulting from the Indemnifying Party’s breach of any of the representations or warranties made in, or the Indemnifying Party’s failure to perform any of its obligations under, this Agreement, or the Indemnifying Party’s design, installation, construction, ownership, use, operation, repair, relocation, replacement, removal or maintenance of, or the failure of, any of such Party’s equipment and/or facilities, including, but not limited to, the Unit and the Facility and any natural gas or oil transportation, storage or other facilities, and/or any appurtenances thereto, and any electric transmission facilities used in connection with this Agreement, and regardless whether arising under applicable Law or otherwise, or any event, circumstance, act or incident first occurring or existing on such Party’s side of the Delivery Point; provided, however, that neither Party shall have any indemnification obligations hereunder in respect of any Damages to the extent caused by such other Party’s gross negligence, bad faith or willful misconduct.

(b) Promptly after receipt by either Party of any claim or Notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section [17.1(a)] may apply, such Party shall notify the Indemnifying Party of such fact. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party or Parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of the action on behalf of such Indemnified Party or parties; provided, further, that if the claim is one that cannot by its nature be defended solely by the Indemnifying Party, the Indemnified Party shall make available all information and assistance as the Indemnifying Party may reasonably request at the expense of the Indemnifying

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Party. The Indemnified Party shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume and control the defense of any such action, suit or proceeding if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party or a material conflict of interest between the Indemnified Party and the Indemnifying Party, and in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party in such defense.

(c) Should any Indemnified Party be entitled to indemnification under this Article [XVII] as a result of a claim by a third party, and should the Indemnifying Party fail to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest (or, with the prior consent of the Indemnifying Party, which shall not be unreasonably withheld, 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 Indemnified Party under this Article [XVII]) if an Event of Default as to the Indemnifying Party exists or if, in the opinion of such Indemnified Party's counsel, such claim is meritorious or the defendant has no valid defense to such claim.

(d) In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article [XVII], the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Damages, net of any insurance or other recovery.

ARTICLE XVIII FORCE MAJEURE

18.1 Performance Excused. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement (other than an obligation to pay money), and such Party (the "Affected Party") gives Notice of the Force Majeure, including, without limitation, the basis and particulars of the claim of Force Majeure, its effect on the Affected Party's performance hereunder, and a good faith estimate of its schedule for overcoming the Force Majeure, to the other Party as soon as practicable, then the Affected Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance of its obligations prior to the Force Majeure). The Affected Party shall use all reasonable efforts to overcome the Force Majeure as soon as possible. The non-Affected Party shall not be required to perform or resume performance of its obligations (including payment obligations) to the

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Affected Party corresponding to the obligations of the Affected Party exc used by Force Majeure until such time and to the extent the Affected Party resumes its performance.

18.2 Termination. If and to the extent that an Affected Party ceases to use reasonable efforts to overcome or, despite the use of all reasonable efforts, an Affected Party shall not overcome a Force Majeure and resume performance of its obligations under this Agreement within twelve (12) months after such performance is interrupted, either Party may terminate this Agreement without any further obligation (other than the obligation to make payment in respect of performance rendered prior to such termination and any other obligation that survives in accordance with Section [24.1]).

18.3 Notice of Progress. The Affected Party shall keep the other Party reasonably informed of its progress in overcoming the Force Majeure. The Affected Party shall give the other Party prompt written notice when the Affected Party is reasonably certain it will be able to and when it has overcome its inability to perform any obligation suspended on account of Force Majeure and when it is able to resume full performance of its obligations hereunder.

ARTICLE XIX EVENTS OF DEFAULT; REMEDIES

19.1 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 required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written Notice delivered to the Party not in default (“Non-Defaulting Party”), provided and to the extent the payment is not subject of a good faith dispute as described in Section [11.2];

(b) any representation or warranty herein made by the Defaulting Party shall be false or misleading in any material respect as of the date made or deemed repeated;

(c) the failure by the Defaulting Party to perform any material covenant or obligation set forth in this Agreement (other than the failure of a Unit to Schedule and Dispatch in accordance with Article [VII] or the failure (other than as set forth in Section [4.1(c)]) to achieve the Availability Requirements set forth in Section [4.1(a)] and [4.1(b)] if the Non-Defaulting Party is able to recover fully all amounts due it pursuant to Section [5.5]);

(d) such Defaulting Party becomes Bankrupt;

(e) the failure by the Defaulting Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article [XII];

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(f) such Defaulting 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 Person fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(g) the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of the Defaulting Party [or any other specified party for such Party] under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the Cross Default Amount (to be defined), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by the Defaulting Party [or any other specified party for such Party] in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the Cross Default Amount (to be defined);

(h) [with respect to such Defaulting Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after Notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's Guaranty to be in full force and effect; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty;] or

(i) [there shall have occurred and be continuing any event of default under, and as defined in, the other material Project Documents or any Credit Agreement].

19.2 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 (i) to designate a day, no earlier than the day such Notice is effective and no later than 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

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

(b) The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Section [11.5] and Article [XII], plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

(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. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be payable within 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, within two (2) Business Days after receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party detailed written explanation of the basis for such dispute[; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.]

(e) After calculation of a Termination Payment in accordance with this Article [XIX], if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for hereunder shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

(f) In addition to the foregoing, upon the occurrence of any Event of Default and the expiration of any applicable cure period, the Non-Defaulting Party shall be entitled to (i) commence an action to require the Defaulting Party to remedy such default and specifically

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perform its duties and obligations hereunder in accordance with the terms and conditions hereof and (ii) exercise such other rights and remedies as it may have in equity or at law.

19.3 Suspension of Performance. Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, that in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and Notice thereof pursuant to Section [19.2] given, and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity.

19.4 [Seller Failure. If Seller fails to ~~schedule~~Schedule and/or deliver all or part of a Product hereunder, and such failure is not excused under the terms hereof or by Buyer's failure to perform, then, subject to the other terms of this Agreement, Seller shall pay Buyer within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. "Product" means Capacity, energy or other product(s) related thereto as specified in this Agreement. "Contract Price" means the price to be paid by Buyer to Seller for the purchase of a Product, as specified in this Agreement. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for a Product not delivered by Seller as required hereunder, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver a Product to another party at the Delivery Point.]

19.5 [Buyer Failure. If Buyer fails to ~~schedule~~Schedule and/or receive all or part of a Product (as defined in Section [19.4]) hereunder and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then, subject to the other terms of this Agreement, Buyer shall pay Seller within five (5) Business Days of invoice receipt, an amount for such deficiency equal to ~~the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price (as defined in Section [19.4]).~~ The invoice for Imbalance Charges incurred by Seller due to such ~~amount shall include a written statement explaining in~~

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~~reasonable detail the calculation of such amount. “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point a Product not received failure by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.]~~

ARTICLE XX
[GUARANTY

On or prior to the Effective Date, Seller shall deliver the Guaranty to Buyer.]

ARTICLE XXI
ASSIGNMENT

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, that (a) either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements entered into by or on behalf of (directly or indirectly) such Party, subject to the other terms hereof, (ii) transfer or assign this Agreement to an Affiliate of such Party if such Affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party and (b) in the event that Buyer’s obligation to serve retail load is transferred to another Person pursuant to a change in Law, Buyer may assign all of its rights and obligations under this Agreement to such Person if the creditworthiness of such Person is at least equal to the creditworthiness of Buyer; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

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ARTICLE XXII
NOTICES

All Notices, requests, statements or payments shall be made as specified below. Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, certified United States mail, return receipt requested, overnight courier service, electronic mail or other electronic transmission, or facsimile. Notice by facsimile, electronic mail or other electronic transmission or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by properly addressed overnight mail or courier shall be effective on the next Business Day after it was sent. Notice by properly addressed certified mail shall be effective on the second Business Day after it was sent. A Party may change its addresses by providing Notice of same in accordance herewith.

If to Seller to:

Attention:
Telephone:
Fax:

And

If to Buyer to:

Attention:
Fax:

with a copy to:

Attention:
Fax:

and

Scheduling and Dispatch Notices
and Availability Notices

or to such other Person at such other address as a Party shall designate by like Notice to the other Party.

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ARTICLE XXIII
CONDITIONS

23.1 Buyer's and Seller's Conditions. Subject to Section [15.7] and except to the extent waived in writing by Seller and Buyer, the obligations of Buyer and Seller to consummate the transactions contemplated hereunder shall be subject to fulfillment of the following condition prior to the date that is 30 days prior to the date on which the Delivery Term commences.

(a) Seller ~~must~~shall have obtained all Approvals it is required to obtain with respect to the operations of the Unit and the Facility and the performance of its obligations hereunder, including without limitation any required Approvals of FERC, except to the extent the failure to do so would have an immaterial effect on this Agreement, the Parties or the performance of their respective obligations hereunder.

23.2 Buyer's Conditions. Subject to Sections [15.7] and [23.3] and except to the extent waived in writing by Buyer in its sole and absolute discretion, the obligation of Buyer to consummate the transactions contemplated hereunder shall be subject to fulfillment of the following conditions prior to the date that is (i) with respect to clauses (a) and (b) below, 120 days after the Effective Date, and (ii) with respect to clause (c) below, 30 days prior to the date on which the Delivery Term commences:

(a) Buyer ~~obtains~~shall have obtained from the FERC and/or the state or local Governmental Authority(ies) having jurisdiction over the retail operations of Buyer either (i) regulatory approval of the purchase or the Transaction deemed acceptable to Buyer in its sole and absolute discretion, including, without limitation, approval of the full recovery (through base rates and/or the fuel adjustment charge) of all costs associated with this Agreement pursuant to a finding that the participation of Buyer in this Agreement is prudent and in the public interest, or (ii) such other regulatory treatment as is deemed acceptable by Buyer in its sole and absolute discretion; provided, however, that if this condition has not been fulfilled prior to the date for commencement of the Delivery Term or the date referenced in clause (i) of Section [23.2], and Buyer waives this condition, then Buyer, notwithstanding such waiver, shall have the right to terminate this Agreement, in the exercise of its sole and absolute discretion, at any time (x) on or before December 31, 2007, if Buyer has not obtained the regulatory approvals or rate recovery treatment described in clause (i) or (ii) of this Section [23.2(a)] on or before December 31, 2007, or (y) within 31 days after the denial of such approvals or treatment, if such approvals are or treatment is denied on or prior to November 30, 2007. ~~The Parties shall have no further obligations to each other if;~~

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~~(a) Buyer exercises its termination right under this Section [23.2(a)], except for obligations or duties that accrued prior to such termination or obligations that survive termination shall be in accordance with Section [24.1].~~

(b) ~~Buyer complies~~ compliance with any other applicable Laws; and ~~obtains shall have obtained~~ any Approvals required by Buyer in form and substance satisfactory to Buyer in its sole and absolute discretion; and

(c) Seller shall have obtained all firm transmission service on any other interconnected, coordinated, electric utility system required for delivery of energy to the Delivery Point.

23.3 Failure of Conditions Generally. This Agreement may be terminated by Seller in the event that the condition set forth in Section [23.1] is not satisfied or waived by Seller in accordance with such Section or by Buyer in the event that any of the conditions set forth in Section [23.1] or [23.2] is not satisfied or waived by Buyer in accordance with such Sections; provided, however, that neither Party may terminate this Agreement pursuant to this Section [23.3] if such Party's failure to fulfill its obligations with respect to Section [15.7] shall be the reason that such condition shall not have been satisfied; and provided, further, that in the event that any of the conditions precedent set forth in Sections [23.2-(a)] and [~~23.2(b)~~] are not satisfied on or before the date that is 270 days after the Effective Date, Buyer may terminate this Agreement only for the Remaining Term and ~~(a)-the Parties (a)~~ (a) shall have no further obligations to each other with respect to the Remaining Term and (b) ~~the Parties will shall~~ remain obligated to perform in accordance with the terms of this Agreement for the initial Contract Year regardless of the outcome of any event described in Sections [23.2(a)] and [23.2(b)].

ARTICLE XXIV MISCELLANEOUS PROVISIONS

24.1 Survival. The provision of Articles [XII], [XIII], [XIV], [XVI], [XVII], [XIX] and [XXIV] and Sections [7.4], [7.5], [9.10], [10.8], [10.9], [11.3], and [11.4], including the rights and obligations of the Parties therein provided, shall survive the termination or expiration of this Agreement and the performance by the Parties of their obligations hereunder.

24.2 Expenses. (a) Whether or not the transactions contemplated by this Agreement are consummated, each Party shall pay all of its own costs and expenses incurred in connection with the negotiation and execution of this Agreement.

(b) 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

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Party's agreement to review, execute and deliver any instruments, agreements or documents that may be necessary or appropriate in connection with any assignment requested by a Party or otherwise permitted hereunder.

24.3 No Third-Party Beneficiaries. Except for the rights and remedies specifically conferred upon indemnitees under the indemnity provisions hereof and except as provided in Article [VIII], this Agreement is not intended to, and does not, confer upon any Person other than the Parties hereto and the Entergy Operating Companies and their respective successors and permitted assigns, any rights or remedies hereunder.

24.4 Captions. 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.

24.5 Waiver. Without limiting Section [24.11], no waiver by a Party of any provision of this Agreement shall be effective unless in writing and designated as a waiver. Any waiver at any time by a Party of its rights, duties, and/or obligations with respect to any default under this Agreement, or with respect to any other matter arising out of or in connection with this Agreement, shall not be deemed a continuing waiver nor a waiver with respect to any prior or subsequent default or other matter.

24.6 Choice of Law. This Agreement shall be governed, by and construed and interpreted in accordance with the Laws of the State of New York, irrespective of the application of any conflict of laws provisions (other than Section 5-1401 of the New York General Obligations Law).

24.7 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.

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

24.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein and therein, and all prior agreements, promises, understandings and commitments, if any (including, without limitation, any agreements, promises, understandings or commitments 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 Buyer or any communication or correspondence of any kind in connection with the Fall 2006 RFP), with respect to the subject matter hereof are superseded by the terms

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hereof, and each Party confirms that it is not relying upon any representations or warranties of the other Party, except as specifically set forth herein or incorporated by reference hereto.

24.10 Severability. Should any provision of this Agreement be held to be invalid or unenforceable, 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.

24.11 Amendment. Subject to Section [15.4], this Agreement may not be amended or modified except by a written instrument signed by each of the Parties.

24.12 Submission to Jurisdiction; Waivers. 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 in respect thereof, to the exclusive general jurisdiction of the New York courts located in the borough of Manhattan, New York, New York, and the courts of the United States for the Southern District of New York, 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 court 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 set forth in Article [XXII], or at such other address of which the other Party shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Law; and

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

24.13 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

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kind hereunder or in relation to this Transaction except in respect of any breach of its representation in Section [15.6].

[only if multiple Buyers] Seller expressly acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement or elsewhere, (a) ESI is entering into, and is a party to, this Transaction strictly as agent for Buyers, and shall have no liability of any kind hereunder, except for any breach of its representation in Section [15.6]); (b) the liability of Buyers hereunder, whether in respect of a default or otherwise, shall be allocated among Buyers as provided below; and (c) in respect of any Buyers' liability hereunder, the liability of Buyers shall be several and not joint and neither Seller nor any indemnitee hereunder may seek or recover from any Buyer in excess of such Buyer's allocated share of liability. The allocation of liability among Buyers for all obligations of Buyers under this Transaction shall be made by ESI pursuant to either (i) [if all five Entergy Operating Companies are Buyers] the "Responsibility Ratio" (as defined ~~and set forth~~ in the System Agreement) calculated under the System Agreement [or (if Entergy New Orleans is not a Buyer and the four other Entergy Operating Companies are Buyers)] the load responsibility ratio calculated without considering the load share of Entergy New Orleans, Inc. or (ii) another allocation method determined by ESI in its sole and absolute discretion (such allocation methods being hereinafter referred to as the "Allocation Ratio"~~—~~). On the Effective Transaction Date, the Allocation Ratio for each Buyer shall be ~~the Responsibility Ratio for such Buyer as determined under the System Agreement, as calculated after excluding Entergy New Orleans, Inc. as one of the Entergy Operating Companies~~ [specify methodology] (the "Initial Allocation Ratio"). ESI shall be permitted to change the Initial Allocation Ratio for one or more Buyers at any time after the Effective Date and prior to the date that is ninety (90) days after the Effective Date (such date being the "Allocation Cutoff Date"). The Parties acknowledge that the Allocation Ratio may change after the Allocation Cutoff Date. If at any time after the Allocation Cutoff Date there is a cumulative change in the applicable Allocation Ratio allocated to any Buyer in an amount greater than three (3) percentage points ("Ratio Adjustment Event") from the Allocation Ratio in effect as of the Allocation Cutoff Date or, if applicable, from the Allocation Ratio in effect immediately after the last Ratio Adjustment Event, then ESI shall promptly notify Seller of such Ratio Adjustment Event and the Parties shall, if necessary, amend the Agreement to reflect such Ratio Adjustment Event, credit terms and such other terms and conditions therein satisfactory to each of the Parties in their respective commercially reasonable discretion. ESI shall notify Seller of any changes to the Allocation Ratio for any Buyer.

24.14 Certain Interpretive Matters. All calculations and computations pursuant to this Agreement shall be carried and rounded to the nearest two (2) decimal places, except in the case of percentages that can also be expressed as decimals in accordance with this Agreement, in which case all such calculations and computations shall be carried and rounded to the nearest four (4) decimal places.

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24.15 Operating Representatives. Prior to the Delivery Term, each Party shall designate a representative for purposes of administering this Agreement (each such representative, an “Operating Representative”), by Notice to the other Party specifying the designee’s name, telephone and fax numbers and e-mail address. A Party may change its Operating Representative upon similar Notice to the other Party. The duties and responsibilities of the Operating Representatives shall include serving as the primary contacts for the administration of the Agreement and for establishing and maintaining procedures for such administration and for coordinating the schedule for Planned Maintenance. The Operating Representatives shall have no authority to amend or otherwise modify this Agreement or bind their respective Parties.

24.16 No Obligation to Renew. The Parties shall have no obligation at any time to renew or extend this Agreement or to enter into any new transaction with the other Party upon the termination of this Agreement at the expiration of the Delivery Term or otherwise.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

ENTERGY SERVICES, INC., as agent for
[the Entergy Operating Companies specified
below]

By: _____
Name:
Title:

[SELLER]

By: _____
Name:
Title:

[ENTERGY OPERATING COMPANIES AND ALLOCATION RATIOS:]

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Schedule A

Facility[; Response Rates]

The Facility

[Provide brief description of Facility, including, without limitation, the name, ownership, type of generation resource, generation equipment, control area, location, fuel inputs, and commercial operation date]

The Unit

[Provide brief description of Unit, including, without limitation, the manufacturer, type, serial no., location, fuel inputs, commercial operation date and other relevant information]

[Response Rates]

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Schedule B

Delivery Points

Energy

Gas

[Fuel Oil]

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Schedule 4.2

Form of Availability Notice

AVAILABILITY NOTICE (24-HOUR DAY)

Effective
Date(s) _____
Time _____

Hour	Purchased Capacity	Available Purchased	Reason(s) for Shortfall in Purchased Capacity or Change in
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
TOTAL			

Buyer
Next Day Scheduling (M-F 8 a.m. - 5 p.m. CPT)
Phone 281-297-3769
Fax 281-297-3733

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Current Day Scheduling

Phone

281-297-3503

Fax

281-297-3730

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AVAILABILITY NOTICE (25-HOUR DAY)

Effective
Date(s) _____
Time _____

Hour	Purchased Capacity	Available Purchased	Reason(s) for Shortfall in Purchased Capacity or Change in Available
1			
2			
2*			Change to CST
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
TOTAL			

Buyer
 Next Day Scheduling (M-F 8 a.m. - 5 p.m. CPT)
 Phone 281-297-3769
 Fax 281-297-3733

Current Day Scheduling
 Phone 281-297-3503
 Fax 281-297-3730

*Change from CDST to CST

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Schedule 5.1

Capacity Payments

The Option Premium for Purchased Capacity shall be \$[_____] per kW/Year, based on the Summer Dependable Capacity for the Summer Capacity Season or the Winter Dependable Capacity for the Winter Capacity Season, as the case may be. The Option Premium shall be allocated in accordance with the following schedule for the entire Delivery Term of the Agreement:

<u>Month</u>	<u>Allocation Percentage</u>
January	7%
February	7%
March	4%
April	4%
May	9%
June	15%
July	15%
August	15%
September	9%
October	4%
November	4%
December	7%

The monthly Capacity Payment for Purchased Capacity payable by Buyer hereunder shall be equal to (i) for the Summer Capacity Season, the product of (a) the Summer Dependable Capacity) times (b) the product of (a1) the Option Premium set forth above ~~and (b) times (2)~~ the Allocation Percentage set forth above for such month); and (ii) for the Winter Capacity Season, the product of (a) the Winter Dependable Capacity) times (b) the product of (a1) the Option Premium set forth above ~~and (b) times (2)~~ the Allocation Percentage set forth above for such month).

The Capacity Payments constitute Seller's full compensation (including all fixed cost charges and any costs associated with any Starts and/or any fuel associated therewith that Seller will provide at "no cost" to Buyer) hereunder, other than the Variable Payments and Start-up Payments. Capacity Payments are subject to the Capacity Payment Discount.

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Schedule 5.2

Variable Payments

\$1\$.00 per MWh *[as specified in applicable MUCPA Product Package]*

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Schedule 5.3

Start-Up Procedures and Constraints for each Unit

Start-up Payment: \$12,500.00 per Unit per Start-up

Maximum Start-ups:

Day ±[] per Unit [as specified in applicable MUCPA Product Package]

Contract Year 250 per Unit

Start-up Notification Lead Times:

Hot Start: minutes

Cold Start: minutes

Minimum Run Time: 8 hours [as specified in applicable MUCPA Product Package]

Minimum Downtime: 4 hours [as specified in applicable MUCPA Product Package]

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Schedule 5.5

Capacity Payment Discount

$$CPD = CP_m * (2 \text{ [Dispatchable MUCPA]} * (AR_m - MA_m))$$

or

$$\underline{CPD} = \underline{CP_m} * \underline{(20 \text{ [Peaking MUCPA]} * (AR_m - MA_m))}$$

Where:

CPD = Capacity Payment Discount, expressed in Dollars.

CP_m = Capacity Payment for the applicable Month, expressed in Dollars.

AR_m = Availability Requirement for the applicable Month, expressed as a decimal.

MA_m = Monthly Availability for the applicable Month, expressed as a decimal.

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Schedule 6

Guaranteed Heat Rate Curve

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Schedule 7.1(c)

Form of Scheduling and Dispatch Notice; Form of Tag

Scheduling and Dispatch Notice (24 Hour Day)

Effective
Date(s) _____

Hour	Purchased Quantity	Available Purchased	Entergy Schedule of	Comments
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
TOTAL				

Buyer

Next Day Scheduling (M-F 8 a.m. - 5 p.m. CPT)
 Phone 281-297-3769
 Fax 281-297-3733

Current Day Scheduling

Phone 281-297-3503
 Fax 281-297-3730

*Change from CDST to CST

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Scheduling and Dispatch Notice(25 Hour Day)

Effective
Date(s) _____

Hour	Purchased Capacity	Available Purchased	Entergy Schedule of	Comments
1				
2				
2*				Change to CST
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
TOTAL				

Buyer

Next Day Scheduling (M-F 8 a.m. - 5 p.m.)

Phone 281-297-3769

Fax 281-297-3733

Current Day Scheduling

Phone 281-297-3503

Fax 281-297-3730

*Change from CDST to CST

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Form of Tag

Tag Information			
GCA	PSE	Tag Code	LCA

Contact Information	
PSE Code	
PSE Contact	
PSE Phone	
PSE Fax	
Gen Contact	
Gen Phone	
Gen Fax	
Loan Contact	
Load Phone	
Load Fax	
Comment	

Start Date:
Stop Date:
Time Zone:
Transaction

Requests				
	Req	Type	Time	Status

Market Path			
PSE	Product	Contract	Misc (Token/Value)

Physical Path							
CA	TP	PSE	POR	POD	Sched Entities	Contract	Misc (Token/Value)

Energy and Transmission Profiles								
MW (out of)								
Date	Start	Stop	Gen	EES			Ramp Dur.	
			MW	Trans		MW	Start	Stop

Transmission Allocation			
TP	Owner	Product	OASIS

Loss Accounting					
TP	Start Time	Stop Time	Type	Contract Number	Tag ID

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Schedule 10.10

Planned Maintenance

Outage Season:	<input type="text"/>		
Outage 1: Outage Start Date:	<input type="text"/>		
Outage End Date:	<input type="text"/>		
MW in outage:	<input type="text"/>	<input type="text"/>	Available MW
<hr/>			
Outage Season:	<input type="text"/>		
Outage 2: Outage Start Date:	<input type="text"/>		
Outage End Date:	<input type="text"/>		
MW in outage:	<input type="text"/>	<input type="text"/>	Available MW
<hr/>			
Outage Season:	<input type="text"/>		
Outage 3: Outage Start Date:	<input type="text"/>		
Outage End Date:	<input type="text"/>		
MW in outage:	<input type="text"/>	<input type="text"/>	Available MW
<hr/>			
Outage Season:	<input type="text"/>		
Outage 4: Outage Start Date:	<input type="text"/>		
Outage End Date:	<input type="text"/>		
MW in outage:	<input type="text"/>	<input type="text"/>	Available MW

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Schedule 12

Credit Protection

Party A Tariff Tariff [Not Applicable] Dated _____ Docket Number _____
Party B Tariff Tariff [Not Applicable] Dated _____ Docket Number _____

Sections 19.4 and 19.5

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article XII

Credit and Collateral Requirements

12.1 Party A Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: None

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

- Other:
Specify: _____

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(e) Guarantor for Party B: Not Applicable

Guarantee Amount: _____

12.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: None

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

- Other:
Specify: _____

(e) Guarantor for Party A: Not Applicable

Guarantee Amount: _____

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Schedule 15.1(b)

Approvals to be Obtained

As of the Effective Date

Buyer

Seller

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Schedule 15.2(a)

Guaranteed Ramp Rate

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Schedule 20

[Form of Guaranty]

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