

# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This Master Power Purchase and Sale Agreement (“Master Agreement”) is made as of the following date: [ ] (“Effective Date”). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this Master Agreement are the following:

Name: Entergy Services, Inc. (“ESI”), as agent for the Entergy Operating Companies specified in the applicable Confirmation (such Entergy Operating Companies being hereinafter collectively referred to as “Buyer” or “Party A”).

Name: [ ]

(“Seller” or “Party B”)

All Notices:

All Notices:

Street: 10055 Grogan's Mill Road, Suite 300

Street:

City: The Woodlands, TX Zip: 77380

City: Zip:

Attn: Contract Administration

Attn:

Phone: (281) 297-3637

Phone:

Facsimile: (281) 297-3937

Facsimile:

Duns: 052524212

Duns:

Federal Tax ID Number: 72-0570912

Federal Tax ID Number:

### **Invoices:**

Attn: Energy Analysis and Reporting

### **Invoices:**

Attn:

Phone: (281) 297-3545

Phone:

Facsimile: (281) 297-3735

Facsimile:

### **Scheduling (Current Day):**

Attn: Current Day Scheduling Desk

### **Scheduling (Current Day):**

Attn:

Phone: (281) 297-3503

Phone:

Facsimile: (281) 297-3730

Facsimile:

### **Scheduling (Day-ahead and Month-ahead):**

Attn: Next Day Scheduling Desk

### **Scheduling (Day-ahead and Month-ahead):**

Attn:

Phone: (281) 297-3769

Phone:

Facsimile: (281) 297-3733

Facsimile:

### **Payments:**

Attn: Energy Analysis and Reporting

### **Payments:**

Attn:

Phone: (281) 297-3545

Phone:

Facsimile: (281) 297-3735

Facsimile:

### **Wire Transfer:**

BNK:

### **Wire Transfer:**

BNK:

ABA:

ABA:

ACCT:

ACCT:

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**Credit and Collections:**

Attn: Vice President, Credit Risk Management

Phone: (832) 681-3416

Facsimile: (832) 681-3218

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

Attn: Contract Administration

Phone: (281) 297-3637

Facsimile: (281) 297- 3937

**Credit and Collections:**

Attn:

Phone:

Facsimile:

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

Attn:

Phone:

Facsimile:

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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: \_\_\_\_\_

(e) Guarantor for Party B: [ \_\_\_\_\_ ]

Guarantee Amount: \$ \_\_\_\_\_

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: \_\_\_\_\_

Option C Specify: Party A shall deliver within 120 days following the end of each fiscal year, a copy of the Entergy Corporation audited consolidated financial statement for such fiscal year, if such financial statement is not available on "EDGAR".

(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: \$ \_\_\_\_\_

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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: N/A

Guarantee Amount: \_\_\_\_\_

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### Article 10

Confidentiality

Confidentiality Applicable

If not checked, inapplicable.

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### Schedule M

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

Add Section 3.6. If not checked, inapplicable

Add Section 8.6. If not checked, inapplicable

### Other Changes

Specify, if any:

1. Section 1.12 "Credit Rating" definition. Section 1.12 is amended by deleting the word "issues" in the fourth line thereof and inserting the word "issuer" in lieu thereof.
2. Section 1.50 "Recording" definition. Section 1.50 is amended by deleting the reference to "Section 2.4" and inserting a reference to "Section 2.5" in lieu thereof.
3. Section 5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. Section 5.2 is amended by reversing the placement of "(i)" and the word "to" appearing immediately thereafter.
4. Section 10.5 Assignment. Section 10.5 is amended by deleting each reference to "affiliate" and inserting "Affiliate" in lieu thereof.
5. Section 10.6 Governing Law. Section 10.6 is amended by adding the parenthetical phrase "(OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW)" at the end of the first sentence of said Section.
6. The following provisions shall be added to Schedule P: Products and Related Definitions:

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1. Index Transactions.

Market Disruption. If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined pursuant to the index specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined with each party obtaining in good faith a quote from a leading dealer in the relevant market and averaging the two quotes.

"Determination Period" means each calendar month during the term of the relevant Transaction; provided that if the term of the Transaction is less than one calendar month the Determination Period shall be the term of the Transaction.

"Floating Price" means the price specified in the Transaction as being based upon a specified index.

"Market Disruption Event" means, with respect to an index, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

"Trading Day" means a day in respect of which the relevant price source published the relevant price.

Corrections to Published Prices. For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within thirty (30) days after the date of the initial announcement or publication, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but

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excluding the day of payment of the refund or payment resulting from that correction. This provision shall apply until the expiration of two (2) years from the date of the applicable invoice.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Entergy Services, Inc., as agent for the Entergy Operating Companies specified in the applicable Confirmation

[Company Name]

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

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

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

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

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

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

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**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION**

This Confirmation shall confirm the Transaction agreed to on \_\_\_\_\_, 200\_\_\_\_, between Entergy Services, Inc., as agent for the Entergy Operating Companies specified herein (such Entergy Operating Companies being hereinafter collectively referred to as, “Buyer” or “Party A”), and [ \_\_\_\_\_ ] (“Seller” or “Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: \_\_\_\_\_ Party B

Buyer: \_\_\_\_\_ Party A

Product:

Into \_\_\_\_\_, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: \_\_\_\_\_)

Unit Firm

(Specify Unit(s): \_\_\_\_\_)

Other:

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency  Seller  Buyer

FT-Delivery Point Contingency  Seller  Buyer

Transmission Contingent  Seller  Buyer

Other transmission contingency: Seller agrees to cooperate and provide all necessary information required to facilitate Buyer's request to the Entergy Transmission Business Unit for transmission service.

Notwithstanding anything to the contrary contained in this Agreement, the performance by Buyer of its obligations hereunder shall be excused, and no damages shall be payable, including any amounts determined pursuant to Article Four of the Master Agreement (and Seller shall not suffer any Capacity Payment

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Discount for the periods of time associated with, but only to the extent associated with, such transmission unavailability, interruption or curtailment), to the extent Buyer's transmission shall be unavailable or interrupted or curtailed (including a direction to reduce or curtail energy deliveries) at any time at or from the Delivery Point by order or directive of the Transmission Operator, NERC security coordinator, ICT, or other entity having authority over the relevant Control Area.

Contract Quantity

of Capacity: [ ] MW

Delivery Point: *[For generating resources located within the Entergy Control Area, the Delivery Point shall be the ESI Interconnection Point, and for resources located outside the Entergy Control Area, the Delivery Point shall be the Designated ESI Interface.]*

Delivery Period: [as specified by Seller consistent with the applicable Product Package requirements].

Special Conditions: See attached Additional Provisions.

Scheduling: See attached Additional Provisions.

Option Buyer: Party A.

Option Seller: Party B.

Type of Option:

Day-ahead Call Option. [Low Heat Rate MUCCO, Peaking MUCCO, Hour-Ahead Peaking MUCCO, Three-Year Reserve Capacity MUCCO] Buyer shall have the ability to Schedule and Dispatch the Contract Quantity of Capacity and associated energy on a Day-ahead basis subject to and in accordance with the attached Additional Provisions.

Intra-Day Peaking Call Option. [Low Heat Rate MUCCO, Peaking MUCCO, Hour-Ahead Peaking MUCCO, Three-Year Reserve Capacity MUCCO] Buyer shall have the ability to Schedule and Dispatch the Contract Quantity of Capacity and associated energy on a Day-ahead or intra-Day basis subject to and in accordance with the attached Additional Provisions.

Applicable to each Option

Unit Contingent Capacity and Energy. The Contract Quantity of Capacity and associated energy is intended to be supplied from the Facilities and Seller's failure to deliver is excused to the extent the Facilities (including all 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 Contract Quantity of Capacity, associated energy or Other Associated Electric Products at the Delivery Point ("Unit Contingency"). The burden of establishing the existence and extent

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of any Unit Contingency shall be on Seller. The priority of the sale of Capacity or energy from the Facility shall be in accordance with Section [2.2] of the Additional Provisions attached hereto.

Contract Price: Monthly Energy Payment plus the Capacity Payment [plus Other Charges (if applicable)].

Monthly Energy Payment:

For energy Dispatched by Buyer in accordance with this Transaction (including Excess Energy), the Monthly Energy Payment shall be determined in accordance with the following formula:

$$\overline{\text{MEP}_m} = \sum_{i=1}^D \text{Daily Pricing Calculation}$$

Where:

MEP<sub>m</sub> = Monthly Energy Payment in respect of a Month in dollars

D = Number of Days in applicable Month

Daily Pricing Calculation:

$$\overline{\text{DPC}} = \sum_{j=1}^N \text{MWh}_j * \text{Strike Price}$$

Where:

DPC = Daily Pricing Calculation

N = Number of hours in applicable Day

MWh<sub>j</sub> = MWh of energy delivered to Buyer at the Delivery Point or an agreed alternate Delivery Point, expressed in MWh

Strike Price:

$$\underline{K} = \underline{(\text{HR}_j * \text{GDIP}_j) + \text{VOM}}$$

Where:

K = Strike Price as expressed in dollars per MWh

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HR<sub>i</sub> = Guaranteed Heat Rate

= [Low Heat Rate MUCCO] (i) 7.50 MMBtu/MWh for an 8, 9, 10 or 11 hour Dispatch; (ii) 7.30 MMBtu/MWh for a 12, 13, 14 or 15 hour Dispatch; and (iii) 7.20 MMBtu/MWh for a Dispatch of 16 or more hours

= [Peaking MUCCO] 10.50 MMBtu/MWh

= [Hour-Ahead Peaking MUCCO] 12.50 MMBtu/MWh

= [Three-Year Reserve Capacity MUCCO] 15.00 MMBtu/MWh

GDIP<sub>i</sub> = [Three-Year Reserve Capacity MUCCO] Gas Daily Index Price - the Gas price published in Platts *Gas Daily* in its “Daily Price Survey” under the column heading “Midpoint” for Gas to flow at “Henry Hub” for the applicable Day, expressed in \$/MMBtu

= [Low Heat Rate MUCCO, Peaking MUCCO, Hour-Ahead Peaking MUCCO,] Gas Daily Index Price – (i) To the extent Buyer Dispatches energy pursuant to a Day-ahead Schedule and Dispatch in accordance with Section [5] of the attached Additional Provisions, the Gas price published in Platts *Gas Daily* in its “Daily Price Survey” under the column heading “Midpoint” for Gas to flow at “Henry Hub” for the applicable Day, expressed in \$/MMBtu and (ii) to the extent Buyer Dispatches energy pursuant to an Intraday Schedule and Dispatch in accordance with Section [5] of the attached Additional Provisions, the lesser of (y) the Gas price published in Platts *Gas Daily* in its “Daily Price Survey” under the column heading “Midpoint” for Gas to flow at “Henry Hub” for the applicable Day, expressed in \$/MMBtu plus \$0.40 (the “Adder”) or (z) the Gas price actually paid by Seller for the applicable Day, expressed in \$/MMBtu

VOM = [Low Heat Rate MUCCO] \$1.00 per MWh

= [Peaking MUCCO, Hour-Ahead Peaking MUCCO, Three-Year Reserve Capacity MUCCO] \$2.00 per MWh

Capacity Payment: The Option Premium for the Contract Quantity of Capacity shall be \$\_\_\_\_\_ per kW/Year, allocated Monthly in accordance with the following schedule for the entire Delivery Period of this Transaction:

<u>Month</u>	<u>Allocation of Option Premium  (“Allocation Percentage”)</u>
<u>January</u>	<u>7%</u>
<u>February</u>	<u>7%</u>

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<u>March</u>	<u>4%</u>
<u>April</u>	<u>4%</u>
<u>May</u>	<u>9%</u>
<u>June</u>	<u>15%</u>
<u>July</u>	<u>15%</u>
<u>August</u>	<u>15%</u>
<u>September</u>	<u>9%</u>
<u>October</u>	<u>4%</u>
<u>November</u>	<u>4%</u>
<u>December</u>	<u>7%</u>

The monthly Capacity Payment for the Contract Quantity of Capacity payable by Buyer hereunder for a month in the Delivery Period shall be equal to the product of (a) the Contract Quantity of Capacity times (b) the product of (i) the Option Premium set forth above times (ii) the Allocation Percentage set forth above for such month.

The Capacity Payment includes all fixed cost charges any other costs as listed below that are to be included in the Capacity Payment, and is subject to the Capacity Payment Discount, as set forth in the Additional Provisions attached hereto.

Notwithstanding the provisions of Section 6.7 of the Master Agreement, the Capacity Payment will be paid in accordance with Section 6.1 of the Master Agreement.

Other Charges: Start-up Payments, payable monthly.

Start-up Payments: [Low Heat Rate MUCCO] \$50.00 per MW of Contract Quantity of Capacity per Start-up. If the Dispatch Period in respect of the Dispatch of energy associated with the Contract Quantity of Capacity shall be greater than 24 consecutive hours, one additional Start-up Payment shall be due for each additional period of 24 consecutive hours (or any part thereof) in which such energy is Dispatched.

[Peaking MUCCO, Three-Year Reserve Capacity MUCCO] \$75.00 per MW of Contract Quantity of Capacity per Start-up.

[Hour-Ahead Peaking MUCCO] None

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This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_, 200\_\_ (the “Master Agreement”) between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Entergy Services, Inc., \_\_\_\_\_ [Party B’s Name]  
as agent for the Entergy Operating Companies  
specified below (as may be amended from time  
to time pursuant to the provisions of Section 11.6  
of the Additional Provisions)

<u>Name:</u> _____	<u>Name:</u> _____
<u>Title:</u> _____	<u>Title:</u> _____
<u>Phone No:</u> _____	<u>Phone No:</u> _____
<u>Fax:</u> _____	<u>Fax:</u> _____

Names of Entergy Operating Companies

ADDITIONAL PROVISIONS

to

MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION

dated as of [\_\_\_\_\_, 200\_\_],

between

ENTERGY SERVICES, INC.,

as Agent for

THE ENTERGY OPERATING COMPANIES,

and

[\_\_\_\_\_]

## ADDITIONAL PROVISIONS

### 1.0 DEFINITIONS.

For purposes of this Transaction, the following definitions shall apply unless the context otherwise requires. All capitalized terms used in this Transaction that are not defined in this Section [1] shall have the definitions contained elsewhere herein, including the Schedules hereto, or in the Master Agreement.

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 Contract Quantity of Capacity that is unavailable or limited due to ~~a-Force Majeure event~~ or Planned Maintenance.

1.3 *Agreement and Master Agreement* shall have the meanings specified for such terms in that certain Cover Sheet to Master Power Purchase and Sale Agreement dated as of the Transaction Date by and between Buyer and Seller executed in connection with this Transaction.

1.4 *Allocation Cutoff Date* has the meaning specified in Section [11.6].

1.5 *Allocation Ratio* has the meaning specified in Section [11.6].

1.6 *Approval Entity* has the meaning specified in Section [5.1(c)(ii)(y)].

1.7 *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.

1.8 *Availability* means, in any hour and expressed as a percentage or decimal, as applicable, the Contract Quantity of Capacity that is actually available in such hour (not to exceed the lower of (i) the Contract Quantity of Capacity and (ii) the amount of available Contract Quantity of 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 Contract Quantity of Capacity minus the Affected Capacity.

1.9 *Availability Notice* means a Notice delivered in accordance with and meeting the requirements of Section [3.2].

1.10 *Availability Requirement* means, in respect of each Month, the Monthly Availability specified in Section [3.1], expressed as a percentage or decimal, as applicable.

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

1.12 *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.

1.13 *Business Day* means any day except a Saturday, Sunday or a holiday as defined by NERC or any successor organization thereto. For purposes of Section [11.3], a Business Day shall commence at 8:00 a.m. and end at 5:00 p.m. CPT.

1.14 *Buyer-Provided Capacity* has the meaning specified in Section [3.4(b)].

1.15 *Capacity* means the megawatt output level that the Facility or the components thereof, are 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.

1.16 *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 [3.3].

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

1.18 *Contract Quantity of Capacity* means, for any hour during the Delivery Period, the amount of Capacity, as specified in the Confirmation, Seller has agreed to make available to Buyer from the Facility during such hour on the terms of this Transaction.

1.19 *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 end on August 31, 2008. [for all MUCCO products except the Three Year Reserve Capacity *and Hourly Peaking MUCCO Products*][revise if one-year term] The initial Contract Year shall begin on January 1, 2008, and end on December 31, 2008. [for the Three Year Reserve Capacity *and Hourly Peaking MUCCO Product*]

1.20 *Control Area* means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (i) match, at all times, the power output of the generators within 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.



1.21 *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.

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

1.23 *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 Transaction shall be revised to correspond to the time established by FERC or such Governmental Authority, as the case may be.

1.24 *Day-ahead Schedule and Dispatch* has the meaning specified in Section [5.1(c)(i)(A)].

1.25 *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.

1.26 *Declared Capacity and Energy* has the meaning specified in Section [5.1(a)].

1.27 *Deliverability Evaluation* means the process performed by SPO personnel after the execution of this Transaction, 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.

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

1.29 *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.

1.30 *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 utilized in determining the amount of energy or Other Associated Electric Products delivered or provided by Seller at the Delivery Point.

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

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

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

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

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

1.36 *Equivalent Force Majeure Hours* means (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 Contract Quantity of Capacity.

1.37 *Equivalent Planned Maintenance Hours* means (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 Contract Quantity of Capacity.

1.38 *Equivalent Reliability Outage Hours* means (i) the product of (a) the amount of the Contract Quantity of Capacity unavailable or limited due to a Reliability Outage during any Reliability Outage Period, expressed in MW, and (b) the period for which such amount of Contract Quantity of Capacity is unavailable or limited, expressed in hours (or any portion thereof), (ii) divided by the Contract Quantity of Capacity.

1.39 *ESI* means Entergy Services, Inc. and its successors and permitted assigns.

1.40 *Excess Energy* has the meaning specified in Section [3.2].

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

1.42 *[Facility Requirements* means *[provide a summary description of the ~~priority of other sales and/or commitments~~, if any, relative to the Contract Quantity of Capacity, associated energy, and Other Associated Electric Products, ~~if any~~, and applicable internal Facility usage requirements, if any, that in each instance would have priority over the Transaction].*

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

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

1.45 *Firm Gas Supply and Firm Gas Transportation* shall each have the meaning set forth in the North American Energy Standard Board's General Terms and Conditions Base Contract for Sale and Purchase of Natural Gas in effect on the Transaction Date (the "NAESB Contract"); provided, however, that nothing contained in the NAESB Contract shall be deemed to alter, amend or change the allocations of Imbalance Charges between Seller and Buyer as set forth in this Transaction.

1.46 *Force Majeure* means an event or circumstance which prevents a Party (the "Claiming Party") from performing its obligations under this Transaction, which event or circumstance was not reasonably anticipated as of the Transaction Date, which is not within the reasonable control of or the result of the fault or negligence of the Claiming Party, and which, by the exercise of due diligence, the Claiming 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 Facility, including, without limitation, the increased cost of fuel supply, fuel transportation, or electric transmission to the Delivery Point, (b) Seller's ability to sell the Contract Quantity of Capacity or associated energy or Other Associated Electric Products at a price greater than the price provided for in the Transaction, (c) loss of Buyer's markets, (d) Buyer's ability to buy the Contract Quantity of Capacity or associated energy at a price less than the price provided for in the Transaction, (e) curtailment by a Transmission Provider or Transmission Operator, unless (i) the Claiming Party has contracted for firm transmission with a Transmission Provider for the Contract Quantity of Capacity to be delivered to or received at the Delivery 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 (f) failure or breakage of, or damage to, Seller's facilities, systems 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.<sup>1</sup>

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

1.48 *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, or regulatory or taxing authority or power; or any court or governmental tribunal.

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<sup>1</sup> For purposes of this Transaction, the definition of "Force Majeure" herein replaces and supersedes in its entirety the definition of "Force Majeure" set forth in Section 1.23 of the Master Agreement.

1.49 *Governmental Charges* means any federal, foreign, state, local, or municipal taxes, including, without limitation, 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 Transaction, other than Governmental Charges based on net income or net worth.<sup>2</sup>

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

1.51 *ICT* shall have the meaning specified in Section [6.1].

1.52 *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.

1.53 *Initial Allocation Ratio* has the meaning specified in Section [11.6].

1.54 *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, without limitation, electric transmission and/or distribution lines, transformation, switching, Electric Metering Equipment, any other metering equipment, communications, and safety equipment, including, without limitation, 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.

1.55 *Intra-day Schedule and Dispatch* has the meaning specified in Section [5.1(c)(i)(B)].

1.56 *kW* means kilowatt.

1.57 *kWh* means kilowatt-hour.

1.58 *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.

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<sup>2</sup> For purposes of this Transaction, the definition of "Governmental Charges" herein replaces and supersedes in its entirety the definition of "Governmental Charges" set forth in Section 9.2 of the Master Agreement.

1.59 *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.

1.60 *Low-Load Event* has the meaning set forth in Attachment P - Generator Imbalance Agreement filed by ESI at <http://oasis.e-terrasolutions.com/OASIS/EES>, as the same may be amended from time to time.

1.61 *MMBtu* means one million Btus.

1.62 *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.

1.63 *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*] 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*].

1.64 *MW* means megawatt.

1.65 *MWh* means megawatt-hour.

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

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

1.68 *Off-peak Hours* has the meaning specified in the Confirmation.

1.69 *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 Contract Quantity of Capacity and associated energy and Other Associated Electric Products, 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) Governmental Charges, (vi) costs of defending, prosecuting, or settling, and other costs or payments in respect of, any 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.

1.70 *Other Associated Electric Products* means all of the capabilities and products associated with the Contract Quantity of Capacity and energy which Buyer is entitled to hereunder, as it specifically relates to Buyer's ability to utilize the Contract Quantity of Capacity and/or energy in accordance with the Scheduling and Dispatch rights as detailed in Section [5] to provide load following, reserves or other similar products.

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

1.72 *Peak Hours* has the meaning specified in the Confirmation.

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

1.74 *Planned Maintenance* means the removal of the Facility from service (i) to perform work on specific components and (ii) that is scheduled in advance with Buyer in accordance with Section [6.3] and has a predetermined start date and duration (e.g., annual overhaul, inspections, testing).

1.75 *Point(s) of Delivery* means the point(s) on the Transmission Provider's transmission system where Capacity, associated energy, Other Associated Electric Products, and, if any, Excess Energy 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.

1.76 *Point(s) of Receipt* means the point(s) of interconnection on the Transmission Provider's transmission system where Capacity, associated energy, Other Associated Electric Products, and, if any, Excess Energy 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 Transaction, the Point(s) of Receipt shall be the same as the Delivery Point specified herein for Capacity, energy and Other Associated Electric Products.

1.77 *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.

1.78 *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.

1.79 *Protective Apparatus* means such equipment and apparatus, including, without limitation, 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.

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

1.81 *PURPA* means the Public Utility Regulatory Policies Act of 1978, as amended, including the rules and regulations promulgated thereunder.

1.82 *Qualifying Facility or QF* means a cogeneration or small power production facility that meets certain requirements under PURPA.

1.83 *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.

1.84 *Ratio Adjustment Event* has the meaning specified in Section [11.6].

1.85 *Reliability Outage* means an interruption or reduction by Buyer of any Scheduled Dispatch of Capacity and associated energy for operational or reliability reasons. For purposes of this Transaction, a Reliability Outage (i) includes, without limitation, any such interruption or reduction due to Low-Load Events, Transmission Line Loading (TLR) events or curtailments to the Schedule during periods in which Buyer was not able to obtain firm transmission service, or other similar issues requiring a reduction in resources to maintain the reliability of the Entergy System based on Accepted Electrical Practices, and (ii) excludes any such interruption or reduction due solely to Buyer's ability to buy the Contract Quantity of Capacity or associated energy at a price less than the price provided for in the Transaction.

1.86 *Reliability Outage Period* has the meaning specified in Section [5.1(f)].

1.87 *Remaining Term* has the meaning specified in Section [8.2(b)].

1.88 *Replacement Capacity* means any Capacity, associated energy and Other Associated Electric Products from a generation resource other than the Facility provided or delivered pursuant to Section [3.4], but specifically excludes Buyer-Provided Capacity.

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

1.90 *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 Period ending with such Month to and including such Month; provided, however, that the Availability during any Month not within the Delivery Period shall be 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 Period.

1.91 *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 Period ending with such Month to and including such Month; provided, however, that any Month not within the Delivery Period shall be disregarded, and for the first Contract Year such period shall be based on the actual number of Months elapsed during the Delivery Period.

1.92 *RTO* shall have the meaning specified in Section **[6.1]**.

1.93 *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 Capacity, associated energy, Other Associated Electric Products and Excess Energy to be delivered on any given day or days (or in any given hour or hours) during the Delivery Period at a specified Delivery Point.

1.94 *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 **[5.1(c)]**.

1.95 *Shutdown* means an event that occurs in the hour after the Ending Requested Dispatch Hour when Buyer has ~~scheduled~~Scheduled zero (0) MW of the Contract Quantity of Capacity pursuant to a Scheduling and Dispatch Notice and required Tag.

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

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

1.98 *Start-up or Start* means the ~~unconditional release~~ramping of one or more Unit(s) ~~for ramping~~ to (to the extent applicable), and the attainment of, the Scheduled Capacity level (which shall be considered a single occurrence for purposes of this Transaction regardless of the number of Units involved) after a Shutdown. ~~Start up pursuant to a Scheduling and Dispatch Notice and Tag. The Scheduled Capacity level shall be deemed to have occurred~~been attained after a Shutdown upon the initial sustained delivery of energy by Seller to Buyer hereunder in accordance of the full amount of energy associated with the applicable Scheduling and Dispatch Notice and required Tag~~Contract Quantity of Capacity required by the applicable Scheduling and Section 5.1[g].Dispatch Notice and Tag.~~



1.99 *Start-up Notification Lead Time* means the time period required by Seller to permit Start-up of the Facility as Scheduled for a Dispatch Period under normal equipment conditions as set forth on Schedule [5.1(f)].

1.100 *Summer Dependable Capacity* means capacity rating based on ambient conditions of 92 degrees Fahrenheit, 56% relative humidity.

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

1.102 *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.

1.103 *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~~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.

1.104 *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.

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

1.106 *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.

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

1.108 *Tag Author* has the meaning specified in Section [5.1(c)(ii)(y)].

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

1.110 *Transaction Date* means the date of the Confirmation to which these Additional Provisions are attached.

1.111 *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.

1.112 *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.

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

1.114 *Transmission Service Evaluation Deadline* has the meaning specified in Section [8.2(b)].

1.115 *Transmission Service Request Deadline* has the meaning specified in Section [8.2(b)].

1.116 *Transmission Service Study Results* has the meaning specified in Section [8.2(b)].

1.117 *Transporter* means any pipeline on which any Gas is transported under this Transaction to the Facility.

1.118 *Unit* means any of the generating units comprising part of the Facility described on Schedule [A].

1.119 *Unit Contingency* has the meaning specified in the Confirmation to this Transaction.

1.120 *Winter Season* means the Months of December, January and February.

## 2.0 TRANSACTION; SALE PRIORITY.

2.1 Transaction. Buyer shall have a Call Option to Schedule and Dispatch the Contract Quantity of Capacity and receive the Contract Quantity of Capacity, the associated energy and Other Associated Electric Products from the Facility as provided herein.

2.2 Priority of Transaction. The sale of the Contract Quantity of Capacity, associated energy and Other Associated Electric Products shall be (i) ~~be~~ subordinate to the Facility Requirements and (ii) ~~be~~ senior to and have priority over all other sales or uses of Capacity or energy or Other Associated Electric Products ~~by Seller from the Facility~~ that do not constitute Facility Requirements; provided, however, that if the Open Access Transmission Tariff of the Entergy System or any successor tariff or applicable Law requires that the sale of the Contract Quantity of Capacity, associated energy or any of the Other Associated Electric Products have priority over one or more of the Facility Requirements, then the sale of the Contract Quantity of Capacity and associated energy and Other Associated Electric Products shall have priority over ~~all such~~ Facility Requirements and all other sales of Capacity, energy or Other Associated Electric Products ~~from the~~ that do not constitute Facility Requirements. Seller agrees that, notwithstanding the Unit Contingent nature of the sale of the Contract Quantity of Capacity, the associated energy and Other Associated Electric Products under this Transaction, it will not curtail or otherwise reduce deliveries of the Contract Quantity of Capacity or associated energy or Other Associated Electric Products unless and until all other sales or uses of Capacity or energy from the Facility have been completely curtailed or reduced, except as provided above in respect of the Facility Requirements. Sales of Excess Energy to Buyer hereunder shall be subordinate to the Facility Requirements, sales of the Contract Quantity of Capacity, and all other sales of

Capacity or energy by Seller from the Facility that Seller has entered into prior to its receipt of Buyer's Scheduling and Dispatch Notice with respect to such Excess Energy.

### 3.0 AVAILABILITY; CAPACITY PAYMENT DISCOUNT; REPLACEMENT CAPACITY; OTHER ASSOCIATED ELECTRIC PRODUCTS.

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

(b) The Monthly Availability for any Month shall not be less than the Availability Requirement applicable ~~for~~to such Month.

(c) Notwithstanding anything to the contrary contained herein, the Rolling 12 Month Availability of the Contract Quantity of Capacity shall be at least \_\_\_\_%. *[as specified in the applicable Product Package]*

3.2 Availability Notice. Seller shall furnish to Buyer an Availability Notice substantially in the form of Schedule [3.2] setting forth, with respect to the period or periods to which the Availability Notice relates, (i) the Contract Quantity of Capacity per hour, (ii) the actual amount of the Contract Quantity of Capacity available per hour, not to exceed the Contract Quantity of Capacity for such hour, (iii) if the amount of Capacity available in an hour exceeds the Contract Quantity of Capacity for such hour ("Excess Capacity"), the amount of energy ("Excess Energy"), if any, associated with such Excess Capacity that Seller has elected to offer to sell to Buyer, on a non-firm basis, not to exceed [\_\_\_] MWh per hour in the aggregate, at a price equal to the Strike Price, and (iv) if the available Contract Quantity of Capacity in an hour is less than the Contract Quantity of 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 Contract Quantity of Capacity being less than the Contract Quantity of 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 [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")][*all except three-year MUCCO-reserve*] [at or before [8:00] a.m. CPT on the third Business Day immediately prior to the first Day of the Month to which the Availability Notice relates ("Availability Notice Initial Submission Deadline")][*three-year MUCCO-reserve*]. -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 Contract Quantity of Capacity, Seller

may not increase in an Availability Notice furnished after the Availability Notice Initial Submission Deadline the amount of Contract Quantity of 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 Schedule and Dispatch Notice delivered to the Tag Author. An Availability Notice shall be effective until delivery of a new, superseding Availability Notice. ~~Solely for the purpose of determining Availability hereunder,~~ ~~if~~ the actual availability of the Contract Quantity of Capacity is less than the Contract Quantity of 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 Contract Quantity of Capacity at such time.

3.3 Capacity Payment Discount. Notwithstanding that the Contract Quantity of Capacity, associated energy and Other Associated Electric Products supplied from the Facility by Seller ~~is~~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 [3.3]. If the Capacity Payment Discount in respect of any Month exceeds the Capacity Payment for such Month, there shall be no Capacity Payment in respect of such Month, and Buyer shall be entitled to no other adjustments as a result of such Availability shortfall.

3.4 Replacement Capacity. (a) In the event Seller submits an Availability Notice indicating that the availability of the Contract Quantity of Capacity is less than the Contract Quantity of Capacity, Seller may, but is not obligated to, offer, whether in such Availability Notice or otherwise, to obtain or to arrange the delivery of Replacement Capacity for Buyer, subject to the terms and conditions herein. Buyer will, in its sole and absolute discretion, have the right to accept or reject any such offer on a case-by-case basis. To the extent Buyer affirmatively accepts, through notice given to Seller, Seller's offer to obtain or to arrange the delivery of Replacement Capacity pursuant to this Section [3.4(a)], such Replacement Capacity, together with the amount of the Contract Quantity of Capacity to be made available to Buyer under this terms of the applicable Availability Notice, shall constitute the Contract Quantity of Capacity for all purposes hereunder and, except to the extent the Parties have agreed otherwise, Seller shall be obligated to provide such Replacement Capacity, energy associated therewith, and Other Associated Electric Products to Buyer in accordance with the terms of the applicable Scheduling and Dispatch Notice and this Transaction.

(b) Seller shall bear all risk associated with any decision not to procure Firm Gas Supply and Firm Gas Transportation to ensure its ability to deliver to Buyer the energy associated with the Contract Quantity of Capacity and Other Associated Electric Products. In the event Seller shall not ~~Dispatch-deliver~~ to Buyer any portion of the Contract Quantity of Capacity ~~or deliver any portion of the,~~ associated energy or Other Associated Electric Products in accordance with a Scheduling and Dispatch Notice as a result of Seller's failure to procure Firm Gas Supply or Firm Gas Transportation, Buyer shall have the right, but not the obligation, to obtain Replacement Capacity and/or to start-up or increase the output of any of the generating resources of any Entergy Operating Company ("*Buyer-Provided Capacity*") to replace any portion of the Contract Quantity of Capacity and associated energy or Other Associated Electric Products not

Scheduled and Dispatched and delivered by Seller. To the extent that Buyer shall procure any Replacement Capacity or provide any Buyer-Provided Capacity pursuant to this Section [3.4(b)] and Seller shall have paid Buyer the applicable amount pursuant to Section [3.4(c)], such Replacement Capacity and/or Buyer-Provided Capacity, as the case may be, shall, for all purposes of this Transaction, constitute Contract Quantity of Capacity that is actually available.

(c) In the event of Seller's failure to procure Firm Gas Supply or Firm Gas Transportation, Buyer shall promptly notify Seller if Buyer elects to obtain Replacement Capacity and/or Buyer-Provided Capacity to replace any portion of the Contract Quantity of Capacity and associated energy and Other Associated Electric Products not available to be Scheduled and ~~/or~~ Dispatched and/or not delivered by Seller: as required hereunder. Seller shall pay Buyer in accordance with Section 4.1 of the Master Agreement at a rate, (i) with respect to all applicable Replacement Capacity provided hereunder, equal to the positive difference, if any, obtained by subtracting the applicable Strike Price from the applicable Replacement Price and; (ii) with respect to all applicable Buyer-Provided Capacity provided hereunder, equal to the positive difference, if any, obtained by subtracting the applicable Strike Price from the \$/MWh rate based on the sum of all costs incurred by Buyer in connection with or relating to the provision of applicable Buyer-Provided Capacity.

3.5 Other Associated Electric Products. If at any time during the Delivery Period, there shall occur a change in market structure, including but not limited to 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 Contract Quantity of Capacity. The compensation to Seller for such sales 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.

#### 4.0 NO QF PUT.

*[The following language applies to all Fall 2006 RFP MUCCO Product Packages except the Hour-Ahead Peaking MUCCO Hourly Peaking Product]:*

Notwithstanding any other provision herein to the contrary, 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 Period an amount of energy from the Facility equal to the energy associated with the Contract Quantity of 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 from the Facility during any portion of the Delivery Period. Buyer acknowledges that after the termination of this Transaction, Seller shall have the

right to sell and deliver to Buyer (or such host Entergy Operating Company) energy from 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 [4] are fundamental to this Transaction and that Buyer's decisions to purchase the Contract Quantity of 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. Notwithstanding anything to the contrary herein, any Entergy Operating Company that is a host utility to Seller as described above is an intended beneficiary of this Article [4].

## 5.0 SCHEDULING AND DISPATCH.

5.1 Scheduling and Dispatch Rights. (a) Buyer shall have the right (i) at all times during the Delivery Period, to Schedule and Dispatch ~~(y)-x~~ all or any portion of the Contract Quantity of Capacity and associated energy and Other Associated Electric Products, ~~in whole or in part,~~ subject to the availability of the Contract Quantity of Capacity ~~and,~~ any applicable Minimum Dispatch Level ~~or,~~ and any other operational dispatch limitation set forth in this Section [5.1] or Schedule [5.1(f)], and (zy) to the extent Excess Energy has been declared available in the then-applicable Availability Notice, the amount of such Excess Energy (the sum of ~~(yx)~~ and (zy) being hereinafter referred to as the "*Declared Capacity and Energy*"), and (ii) to sell and/or transfer to any Person or to utilize for any purpose or both, as it deems appropriate in its sole and absolute discretion, the Capacity, associated energy and Other Associated Electric Products associated with the Declared Capacity and Energy. In the event of a Reliability Outage, Buyer shall not be required to meet the minimum Dispatch requirements set forth in Schedule [5.1(f)] for the duration of such Reliability Outage (the "*Reliability Outage Period*"), until the aggregate number of Equivalent Reliability Outage Hours in any Contract Year exceeds 360 *[600 Equivalent Reliability Outage Hours in any Contract Year][multi-contract year transactions]*. To the extent that Buyer does not Schedule and Dispatch the Contract Quantity of Capacity ~~and,~~ associated energy and Other Associated Electric Products to the full extent of ~~its~~their availability, Seller may sell the undischarged energy associated with the Contract Quantity of Capacity to a third party on a non-firm, interruptible basis, in all cases subject to the other terms of and Buyer's rights under this Transaction.

(b) During the Delivery Period, 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 Declared Capacity and Energy ~~by~~ *[only use for Three-Year Reserve Capacity MUCCO Product]* [(i) sending to Seller at least three (3) Business Days prior written notice of its intention to Schedule and Dispatch all or a portion of the Declared Capacity and Energy;] (i) by providing to Seller a Scheduling and Dispatch Notice, substantially in the form set forth in Schedule [5.1(c)],

(A) in respect of the Scheduling and Dispatch of all or a portion of the Declared Capacity and Energy 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 Declared Capacity and Energy for any subsequent hour other than with respect to a Day-ahead Schedule and Dispatch, at or before [\_\_\_\_\_] hours (including Start-up time) before such hour (“Intra-day Schedule and Dispatch”),

and (ii) in respect of the Scheduling and Dispatch of all or a portion of the Declared Capacity and Energy 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 [5.1(c)] or any other form designated by the Specified Tag Agent and correctly reflecting Day-ahead Schedule and Dispatch, or

- (y) with respect to any Intraday Schedule and Dispatch, by creating and submitting with the Tag Agent Service at or before [\_\_\_\_\_] hours in advance of the applicable hour, a Tag substantially in the form set forth in Schedule [5.1(c)] or any other form designated by the Specified Tag Agent (such Party submitting the Tag, the “Tag Author” and such other Party, the “Approval Entity”); and correctly reflecting Day-ahead Schedule and Dispatch.

(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~~

~~(d) A Tag shall be effective, and Seller shall operate the Facility or cause the Facility to be operated in accordance with the instructions therein, until the expiration of any discrepancies, the Approval Entity shall bear the risk of any errors associated with the Schedule and Dispatch of the Capacity and associated energy 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 Transaction.~~

~~(e) A Tag shall be effective, and Seller shall operate the Facility or cause the Facility to be operated 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 Contract Quantity of 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 [3.2]. Notwithstanding anything to the contrary contained herein, Buyer may in its Scheduling and Dispatch Notice specify the Schedule and Dispatch of any and all of the Contract Quantity of Capacity that is actually available for a specified Dispatch Period (without reference or regard to any Capacity level indicated in an Availability Notice).

(f) (1) To the extent of any change, adjustment or amendment initiated and made by Buyer to a previously submitted Scheduling and Dispatch Notice in which the Scheduled Capacity is decreased, Seller shall sell any Gas not burned and Buyer shall be entitled to any profit and be responsible for any loss in respect of such Gas not burned. Such profits and losses shall be calculated and determined by taking the difference between (i) the gas price published in *Platts Gas Daily* in its "Daily Price Survey" under the column heading "Midpoint" for Gas to flow at "Henry Hub" (the "Gas Daily Price") plus the Adder (as defined in the Confirmation) (the "Gas Price") for the Day Gas was Scheduled to be Dispatched and (ii) the actual sale price, inclusive of penalties imposed by the Pipeline Transporter exclusively on account of such decrease and Seller's reasonably incurred out-of-pocket transaction cover costs (expressed in \$/MMBtu); provided, however, that if the Business Day on which Buyer submits its Day-ahead Scheduling and Dispatch Notice is a Business Day on which the NYMEX market is closed, then the Gas price shall be based upon the pricing agreed to by Seller and Buyer for Gas for the applicable Day, expressed in \$/MMBtu. Seller shall use commercially reasonable efforts to maximize profit or minimize loss, and pursuant to Section 10.9 of the Master Agreement, Buyer shall be permitted to audit Seller's books with respect thereto. In the event Seller does not sell any Gas not burned, Buyer shall be entitled to any profit and be responsible for any loss in respect of such Gas based on the difference between (x) the Gas Daily Price for the Day Gas was Scheduled to be Dispatched and (y) the average of the Gas Daily Price for the two Days immediately following the Day Gas was Scheduled to be Dispatched.

(2) To the extent that Buyer fails, in an hour in which it has Scheduled and Dispatched energy from the Facility hereunder, to meet the minimum Dispatch requirements described in Schedule [5.1(f)], other than if such failure occurs during a Reliability Outage (provided the total number of Equivalent Reliability Outage Hours in the applicable Contract Year is less than the maximum allowed under Section [5.1(a)]) or is due to Force Majeure ~~or~~, Seller's breach or other conduct of or cause attributable to Seller or is otherwise excused hereunder, then Buyer shall pay to Seller, as Seller's exclusive remedy for such failure, an amount in respect of such hour equal to the difference between (a) the Strike Price times the amount of energy associated with the Contract Quantity of Capacity that would have been available for Dispatch in such hour had Buyer satisfied such minimum Dispatch requirements and (b) the Strike Price times the amount of energy actually Dispatched out of the available Contract Quantity of Capacity. The amount of energy Scheduled and available for Dispatch under clause (a) above shall be determined by reference to the applicable Schedule and Dispatch Notice and Availability Notice.



(g) The maximum number of Start-ups for the Facility per Day and per Contract Year that may be requested pursuant to a Scheduling and Dispatch Notice are set forth in Schedule [5.1(f)]. Seller shall receive a Start-up payment from Buyer in respect of each Start-up so requested, as set forth in the Confirmation, provided the Facility attains the Capacity level as required criteria for a Start-up (specified in the applicable Schedule and Dispatch Notice definition thereof) have been satisfied. All Start-ups not made pursuant to a Scheduling and Dispatch Notice and required Tag or in which the required Capacity level is criteria for a Start-up have not attained been satisfied shall be exclusively for Seller's account. 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 [5.1(f)]. When a Dispatch Period does not involve a Cold Start or Hot Start, Buyer shall provide Seller with a Scheduling and Dispatch Notice in accordance with the procedures and timing requirements therefor otherwise set forth in Section [5.1(c).]

(h) Schedule [5.1(f)] also sets forth (i) the minimum run time (in hours) for each Unit, including the time required for ramping, if any, (ii) the minimum amount of sustained generation output (in MW) for the Facility and each of the Units, excluding any ramping requirements, and (iii) the minimum downtime (in hours), if any, after a Shutdown before fa Unit or the Facility may be restarted. Buyer's Schedule and Dispatch of the Facility shall comply with the foregoing requirements.

5.2 Seller Dispatch. Seller shall have the right to Schedule and Dispatch the Facility or any portion thereof to the extent that Seller is required to do so by applicable Law, provided that to the extent such Schedule and Dispatch could reasonably be expected to affect Buyer's priority to Capacity, associated energy, or Other Associated Electric Products under Section [2.1] or Buyer's other rights under this Agreement, Seller shall give Buyer as much advance notice of any such Schedule and Dispatch as reasonably possible or, if such advance notice is impossible, as soon as possible thereafter.

5.3 Transmission/Transportation Costs and Imbalance Charges. Buyer shall be responsible for and bear all costs and expenses related to all transmission and other services required to move energy delivered by Seller hereunder at the Delivery Point from the 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 [8.3]. Seller shall be responsible for and bear all costs and expenses related to (a) Seller's supply and transportation of Gas, except as provided in Section [5.4], (b) the transmission and other services required to deliver energy and Other Associated Electric Products to the 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 [8.2(b)], and (c) any and all Imbalance Charges; provided, however, that, subject to the other terms hereof, any Imbalance Charges resulting directly from Buyer's unexcused failure to receive energy associated with the Contract Quantity of Capacity that is Scheduled and Dispatched by Buyer shall be the responsibility of Buyer.

5.4 Firm Gas Supply and/or Gas Transportation. If Buyer-Seller is not purchasing firm Gas supply for or firm Gas transportation to the Facility, then, upon a request by Buyer to Seller at or before [9:30] a.m. CPT on the Business Day immediately preceding the first Day of the Dispatch Period set forth in a Scheduling and Dispatch Notice, Seller shall use

commercially reasonable efforts to procure by the end of such Business Day, Firm Gas Supply and/or Firm Gas Transportation for any and all Gas required in connection with the Dispatch of energy set forth in such Scheduling and Dispatch Notice. Subject to the terms of any agreement (including verbal) between the Parties in connection with such request, Buyer shall reimburse Seller for any additional out-of-pocket costs reasonably incurred by Seller in procuring such Firm Gas Supply and/or Firm Gas Transportation to the extent that such costs exceed the Gas price paid by Buyer to Seller pursuant to the terms of this Transaction for such Gas. [This and other sections will be revised as appropriate if Seller elects the option to provide firm gas supply and/or transportation]

## 6.0 OPERATION AND MAINTENANCE.

6.1 Operation of Facility. Except to the extent the Facility 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 Facility or cause the Facility to be operated to provide the Contract Quantity of Capacity and associated energy and Other Associated Electric Products in all hours in which Scheduled accordance with the applicable Scheduling and Dispatched by Buyer Dispatch Notice and Tag.

6.2 Certain Operation and Maintenance Obligations. At all times, Seller shall install, construct, test, operate and maintain the Facility or cause the Facility to be constructed, tested, operated and maintained in accordance with Accepted Electric Practices, Seller’s obligations herein, including, without limitation, Section [6.1], and in the Project Documents and any requirements for capacity resource providers that may be promulgated by the Transmission Provider, the ICT, an RTO or FERC, and any applicable statutes, codes, regulations, standards, and guidelines adopted by Governmental Authorities, including without limitation, an RTO, NERC, and the Southeastern Electric Reliability Council (including any successor thereto) from time to time. Seller shall bear all costs and expenses of any kind associated with such installation, construction, testing, operation and maintenance, including without limitation, Operation and Maintenance Costs and applicable Governmental Charges. Subject to Buyer’s rights set forth in this Transaction, Seller shall have full and complete responsibility for and control over testing, operation and maintenance of the Facility.

6.3 Planned Maintenance. The schedule for Planned Maintenance, including the total number of Equivalent Planned Maintenance Hours for each Contract Year that the Facility will be unavailable due to Planned Maintenance, is set forth in Schedule [6.2]. Seller may adjust the schedule for Planned Maintenance during the Delivery Period 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 Period, Seller shall send to Buyer a proposed schedule for Planned 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. [*adjust for the Three Year Reserve Capacity MUCCO Product*] 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.

## 7.0 MEDIATION.

Any Claim, counterclaim, demand, cause of action, dispute or controversy arising out of or relating to this Transaction (or any agreement delivered in connection with this Transaction) or in any way relating to the subject matter of this Transaction 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 state, federal or foreign Law, shall be subject to non-binding mediation in accordance with this Article [7]. 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 thereafter, be designated to attempt to resolve the Dispute and the two senior executives or their respective designees shall meet at least once, and 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 Transaction and applicable Law.

## 8.0 ADDITIONAL REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

8.1 Certain Representations and Warranties of Seller. As of the Transaction Date and the date on which the Delivery Period 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 generator'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 [8.1].

(b) The Summer Dependable Capacity of the Facility is [\_\_\_\_\_] MW.

8.2 Certain Seller Approval Covenants; Transmission ~~Service~~ Studies and Evaluation-s.

(a) Seller covenants that, during the term of this Transaction, Seller shall obtain and maintain all Approvals as may be required with respect to the operations of 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~~ approvals of full rate recovery of all costs associated with the Transaction 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 Transaction, the Parties or the performance of their respective obligations hereunder. Subject to Section [8.5(a)] and Section [8.5(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 take any action or position in any such proceeding, case or action that is inconsistent with the foregoing.

(b) [Except to the extent waived by Buyer in its sole and absolute discretion, Buyer and Seller agree that this Transaction will become effective only if, no later than ~~the day~~ 30 days prior to the commencement of the Delivery Period (the "*Transmission Service Evaluation Deadline*"), the results of Buyer's transmission service request and associated System Impact Study, if required by the Entergy Transmission Business Unit (the "*Transmission Service Study Results*"), are received by Buyer and such results are acceptable to Buyer, in its sole and absolute discretion. If, on or prior to the Transmission Service Evaluation Deadline, either (i) the Transmission Service Study Results are not received by Buyer or (ii) the Transmission Service Study Results, if received by Buyer, are not acceptable to Buyer, in its sole and absolute discretion, the Parties agree that, on or prior to the Transmission Service Evaluation Deadline, Buyer may terminate this Transaction in its sole and absolute discretion and shall notify Seller of any election to do so. In the event that this Transaction is terminated pursuant to this Section [8.2(b)], neither Party shall have any obligation or liability to the other Party hereunder. Seller shall procure, at its sole cost and expense, all firm transmission service on any other interconnected, coordinated, electric utility system required for delivery of energy to the Delivery Point and cooperate and provide all necessary information required to facilitate Buyer's request to the Entergy Transmission Business Unit for transmission service.][*Three Year Reserve Capacity MUCCO Product and Hour-Ahead Peaking MUCCO Product*]

(b) [Subject to the other terms of this Transaction, Buyer and Seller agree that this Transaction ~~shall~~ will be effective for the initial Contract Year and whether this Transaction will continue in effect for the remaining Contract Years (the "*Remaining Term*") ~~shall~~ 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 Transaction 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 Transaction 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 Transaction shall continue for the Remaining Term 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 Transaction 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 Transaction is terminated pursuant to the provisions of this Section **[8.2(b)]**, neither Party shall have any obligation or liability to the other Party for the Remaining Term. In the event that no termination notice is provided to Seller from Buyer under this Section **[8.2(b)]** on or before the Transmission Service Evaluation Deadline, this Transaction shall continue in effect, subject to the other terms of the Agreement, for the Remaining Term without any further action from either Party. Seller shall procure, at its sole cost and expense, all firm transmission service on any other interconnected, coordinated, electric utility system required for delivery of energy to the Delivery Point and cooperate and provide all necessary information required to facilitate Buyer's request to the Entergy Transmission Business Unit for transmission service.] ~~[All other~~[Low Heat Rate MUCCO products except the Three Year Reserve Capacity and Peaking MUCCO Products]

8.3 Certain Covenants of Buyer. Buyer covenants that:

(a) Buyer shall be responsible for transmission service from the Delivery Point to other points. The Transmission Provider selected by Buyer may be an Affiliate of Buyer or a FERC-approved successor independent entity.

(b) 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 set forth in Section **[8.3(a)]**.

8.4 Approval Representations and Warranties of Each Party. As of the Transaction Date and the date on which the Delivery Period commences, each Party hereby represents and warrants that it has all Approvals necessary for it to perform its obligations under this Transaction, except as otherwise disclosed in Schedule **[8.4]**.<sup>3</sup>

8.5 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 Transaction, including 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 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 Transaction necessary to restore the positions of the

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<sup>3</sup> For purposes of this Transaction, this Section 8.4 herein replaces and supercedes in its entirety Section 10.2(ii) of the Master Agreement.

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 [8.5(b)]. Either Party may contest any such filing pursuant to applicable FERC procedures. For purposes of this Section [8.5], 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 [8.5(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 Transaction. 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 Contract Quantity of Capacity and/or associated energy that Seller has agreed to deliver to Buyer pursuant to this Transaction. 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).

8.6 Exemption Certificates. Either Party, upon commercially reasonable advance notice from the other Party, shall provide a certificate of exemption or other reasonable satisfactory evidence of exemption if either Party is exempt from Governmental Charges.

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

8.8 Further Assurance Covenants of Seller and Buyer. Commencing on the Transaction Date, on the terms and subject to the conditions of this Transaction, 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 [10.1] and [10.2].

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

8.10 Buyer Filings. Following the Transaction Date, Buyer may, among other things, submit such Transaction to one or more Governmental Authorities, including the FERC and/or the Governmental Authorities having jurisdiction over the retail operations of Buyer, together with an application for approval of such Transaction, and/or request rate recovery of the costs

associated with its participation in this Transaction based on a finding that such participation is prudent.

8.11 Confidentiality. The following supplements Section 10.11 of the Master Agreement. 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 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.

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

## 9.0 INDEMNITY.

Section 10.4 of the Master Agreement is hereby amended by deleting the phrase, “during the period when control and title to Product is vested in such Party as provided in Section 10.3”, in the first sentence of such Section 10.4 and replacing it with the phrase, “on such Party’s side of the Delivery Point”.

## 10.0 **CONDITIONS [FOR ALL MUCCO PRODUCTS EXCEPT THE THREE YEAR RESERVE CAPACITY MUC CO PRODUCT AND HOUR -AHEAD PEAKING MUCCO PRODUCT].**

10.1 Buyer’s and Seller’s Conditions. Subject to Section [8.8] and except to the extent waived in writing by Seller and Buyer, the obligations of Buyer and Seller to consummate the Transaction 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 Period commences:

(a) Seller ~~must~~ shall have obtained all Approvals it is required to obtain with respect to the operations of 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 Transaction, the Parties or the performance of their respective obligations hereunder.

10.2 Buyer's Conditions. Subject to Sections [8.8] and [10.3] 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 Transaction Date, and (ii) with respect to clause (c) below, 30 days prior to the date on which the Delivery Period 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 Period or the date referenced in clause (i) of Section [10.2], and Buyer waives this condition, then Buyer, notwithstanding such waiver, shall have the right to terminate this Transaction, 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 [10.2(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;

(b) Buyer ~~complies~~ shall be in 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.

10.3 Failure of Conditions Generally. This Transaction may be terminated by Seller in the event that the condition set forth in Section [10.1] 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 Sections [10.1] or [10.2] is not satisfied or waived by Buyer in accordance with such Sections; provided, however, that neither Party may terminate this Transaction pursuant to this Section [10.3] if such Party's failure to fulfill its obligations with respect to Section [8.8] 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 [10.2(a)] and [10.2(b)] are not satisfied on or before the date that is 120 days after the ~~execution of the Confirmation relating to this~~ Transaction Date, Buyer may terminate this Transaction only for the Remaining Term and the Parties (a) shall have no further obligations to each other with respect to the Remaining Term and (b) shall remain obligated to perform in accordance with the terms of this Transaction for the initial Contract Year regardless of the outcome of any event described in Section [10.2(a)] or Section [10.2(b)].



**10.0 CONDITIONS [FOR THE THREE YEAR RESERVE CAPACITY MU CCO PRODUCT AND HOUR -AHEAD PEAKING MUCCO PRODUCT].**

10.1 Buyer's and Seller's Conditions. Subject to Section [8.8] and except to the extent waived in writing by Seller and Buyer, the obligations of Buyer and Seller to consummate the Transaction 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 Period commences.

(c) Seller must have obtained all Approvals it is required to obtain with respect to the operations of 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 Transaction, the Parties or the performance of their respective obligations hereunder.

10.2 Buyer's Conditions. Subject to Sections [8.8] and [10.3] 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, the day prior to the date on which the Delivery Period commences, (ii) with respect to clause (c)(i) below, the date on which the Delivery Period commences, and (iii) with respect to clause (c)(ii) below, 30 days prior to the date on which the Delivery Period commences.

(a) Buyer obtains 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 Period or the date referenced in clause (i) of Section [10.2], and Buyer waives this condition, then Buyer, notwithstanding such waiver, shall have the right to terminate this Transaction, 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 [10.2(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 Buyer exercises its termination right under this Section [10.2(a)], except for obligations or duties that accrued prior to such termination or obligations that survive termination in accordance with Section [24.1]

(b) Buyer complies with any other applicable Laws, and obtains any other Approvals required by Buyer in form and substance satisfactory to Buyer in its sole and absolute discretion.

(c) (i) Subject to Section [8.2(b)], Buyer shall have received Transmission Service Study Results that are acceptable to Buyer in its sole and absolute discretion, and (ii) Seller shall

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

10.3 Failure of Conditions Generally. This Transaction may be terminated by Seller in the event that the condition set forth in Section [10.1] is not satisfied or waived by Seller in accordance with such Section or by Buyer in the event that the conditions set forth in Sections [10.1] or [10.2] are not satisfied or waived by Buyer in accordance with such Sections; provided, however, that neither Party may terminate this Transaction pursuant to this Section [10.5] if such Party's failure to fulfill its obligations with respect to Section [10.3] shall be the reason that such condition shall not have been satisfied.

## 11.0 MISCELLANEOUS PROVISIONS.

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

11.2 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 Unit's hourly Availability and deliveries of the Contract Quantity of Capacity, associated energy, Other Associated Electric Products, Excess Energy, Replacement Capacity and Buyer-Provided Capacity, including, without limitation, records relating to Start-ups, electric transmission, gas supply, storage and transportation. 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 [11.2], it shall give notice thereof to the other Party and the other Party may within thirty (30) days thereafter 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 [11.2] shall not respond within thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder.

11.3 Notices. Section 10.7 of the Master Agreement is hereby amended by inserting the phrase, ", electronic mail or other electronic transmission", after the word "service" in the second sentence of such Section 10.7 and after the word "facsimile" in the third sentence of such Section 10.7.

11.4 Counterparts. This Transaction 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.

11.5 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 Transaction, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the New York state 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 the Cover Sheet, 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 TRANSACTION.

11.6 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 Transaction strictly as agent for Buyer, and shall have no liability of any kind hereunder or in relation to this Transaction, except for any breach of its representation in Section [8.7]).

*[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 [8.7]); (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 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 Transaction Date and prior to the date that is ninety (90) days after the Transaction 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, execute a new Master Cover Sheet or amend the existing Master Cover Sheet ~~reflecting~~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.

11.7 Certain Interpretive Matters. All calculations and computations pursuant to this Transaction 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 Transaction, in which case all such calculations and computations shall be ~~revised~~carried and rounded to the nearest four (4) decimal places.

11.8 Operating Representatives. Prior to the Delivery Period, each Party shall designate a representative for purposes of administering this Transaction (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 Transaction 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 Transaction or bind their respective Parties.

11.9 Netting of Payments. Section 6.4 of the Master Agreement is hereby amended by deleting the phrases “on the same date” and “during the monthly billing period” from such Section 6.4.

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

11.11 Obligation to Serve Retail Load. Notwithstanding anything to the contrary set forth in Section 10.5 of the Master Agreement, in the event that Buyer’s obligation to serve retail load is assigned to another Person pursuant to a change in Law, Buyer may assign all of its rights and obligations under this Transaction and the Agreement to such Person if at the time of such assignment the creditworthiness of such Person is at least equal to the creditworthiness

of Buyer and such Person agrees in writing to be bound by all of the terms and conditions set forth in this Transaction and the Agreement.

11.12 Entire Agreement. This Agreement, including the Cover Sheet and Confirmation, 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 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.

## **Schedule A**

### **The Facility**

- Name of generating resource:
- Ownership:
- Type of generating resource:
- Summer Dependable Capacity (in MW):
- Control Area:
- Location (County or Parish, and State):
- Fuel type:
- Commercial Operation Date:

**Schedule 3.2**

**Form of Availability Notice**

**AVAILABILITY NOTICE (24-HOUR DAY)**

**Effective**  
**Date(s)** \_\_\_\_\_  
**Time** \_\_\_\_\_

<b>Hour</b>	<b>Contract Quantity of</b>	<b>Available Contract</b>	<b>Excess Energy</b>	<b>Reason(s) for Shortfall in Contract Quantity of Capacity or Change in</b>
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
<b>TOTAL</b>				

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

**Form of Availability Notice (25-Hour Day)**

Effective  
Date(s) \_\_\_\_\_  
Time \_\_\_\_\_

Hour	Contract Quantity of	Available Contract	Excess Energy	Reason(s) for Shortfall in Contract Quantity of Capacity or Change in
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				
<b>TOTAL</b>				

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



### Schedule 3.3

#### Capacity Payment Discount

$$\text{CPD} = \text{CP}_m * \left( \text{--- [as specified in the applicable Product Package]} \right) * (\text{AR}_m - \text{MA}_m)$$

Where:

CPD = Capacity Payment Discount, expressed in dollars.

CP<sub>m</sub> = Capacity Payment for the applicable Month, expressed in dollars.

AR<sub>m</sub> = Availability Requirement for the applicable Month, expressed as a decimal.

MA<sub>m</sub> = Monthly Availability for the applicable Month, expressed as a decimal.

**Schedule 5.1(c)**

**Form of Scheduling and Dispatch Notice; Form of Tag**

**Scheduling and Dispatch Notice (24-Hour Day)**

**Effective Date(s)** \_\_\_\_\_  
**Firm Transmission Service:**  
**Yes/No**

<b>Hour</b>	<b>Contract Quantity of Capacity</b>	<b>Available Contract Quantity of Capacity</b>	<b>Entergy Schedule of Contract Quantity of Capacity</b>	<b>Excess Energy Declared Available</b>	<b>Entergy Schedule of Excess Energy</b>	<b>Total Energy Scheduled</b>	<b>Comments</b>
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
<b>TOTAL</b>							

Buyer requests that Seller use commercially reasonable efforts to procure firm transportation for Gas. If not checked, inapplicable.

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

**Scheduling and Dispatch Notice (25-Hour Day)**

**Effective  
Date(s)** \_\_\_\_\_  
**Firm Transmission Service:**  
**Yes/No**

Hour	Contract Quantity	Available Contract	Entergy Schedule	Excess Energy	Entergy Schedule	Total Energy	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							
<b>TOTAL</b>							

Buyer requests that Seller use commercially reasonable efforts to procure firm transportation for Gas. If not checked, inapplicable.

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 CPT

## 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

**Schedule 5.1(f)**

**Start-up Procedures and Constraints for Units**

Maximum Start-ups with No Start-up Payments Assessed:

Day \_\_\_\_\_

Contract Year \_\_\_\_\_

Start-up Notification Lead Times:

Hot Start: \_\_\_\_\_ minutes

Cold Start: \_\_\_\_\_ minutes

Minimum Run Time: \_\_\_\_\_ hours

Minimum Dispatch Level: \_\_\_\_\_ MW

Minimum Downtime: \_\_\_\_\_ hours

~~-X-~~

*This Model Contract is not an offer or an agreement to purchase or to supply any product or service and is subject to the Reservation of Rights set forth in the Fall 2006 RFP and subject to the terms and acknowledgements set forth in the Proposal Submission Agreement.*

Schedule 6.2

Planned Maintenance

<b>Outage Season:</b>	<input type="text" value="Fall 07"/>		
<b>Outage 1: Outage Start Date:</b>	<input type="text"/>		
<b>Outage End Date:</b>	<input type="text"/>		
<b>MW in outage:</b>	<input type="text"/>	<input type="text"/>	<b>Available MW</b>
<hr/>			
<b>Outage Season:</b>	<input type="text" value="Spring 08"/>		
<b>Outage 2: Outage Start Date:</b>	<input type="text"/>		
<b>Outage End Date:</b>	<input type="text"/>		
<b>MW in outage:</b>	<input type="text"/>	<input type="text"/>	<b>Available MW</b>
<hr/>			
<b>Outage Season:</b>	<input type="text"/>		
<b>Outage 3: Outage Start Date:</b>	<input type="text"/>		
<b>Outage End Date:</b>	<input type="text"/>		
<b>MW in outage:</b>	<input type="text"/>	<input type="text"/>	<b>Available MW</b>
<hr/>			
<b>Outage Season:</b>	<input type="text"/>		
<b>Outage 4: Outage Start Date:</b>	<input type="text"/>		
<b>Outage End Date:</b>	<input type="text"/>		
<b>MW in outage:</b>	<input type="text"/>	<input type="text"/>	<b>Available MW</b>

## Schedule 8.1

### Guaranteed Ramp Rate



**Schedule 8.4**

**Outstanding Approvals**

As of the Transaction Date:

Buyer:

Seller: