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## 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., as agent for the Entergy Operating Companies (“Buyer” or “Party A”), pursuant to that certain System Agreement, dated as of January 1, ~~2000~~, 1994, by and among Entergy Services, Inc. and the Entergy Operating Companies, as amended from time to time.

All Notices:

Street: 10055 Grogan's Mill Road, Suite 300

City: The Woodlands, TX      Zip: 77380

Attn: Contract Administration

Phone: (281) 297-3582

Facsimile: (281) 297-3882

Duns: 006947717

Federal Tax ID Number: 72-0245590

**Invoices:**

Attn: Energy Analysis and Reporting

Phone: (281) 297-3554

Facsimile: (281) 297-3735

**Scheduling (Current Day):**

Attn: Current Day Scheduling Desk

Phone: (281) 297-3503

Facsimile: (281) 297-3730

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

Attn: Next Day Scheduling Desk

Phone: (800) 461-4918

Facsimile: (281) 297-3733

**Payments:**

Attn: Energy Analysis and Reporting

Phone: (281) 297-3545

Facsimile: (281) 297-3735

**Wire Transfer:**

BNK: Hibernia Bank of New Orleans

ABA: 065000090

ACCT: 812073753

Name: \_\_\_\_\_ (“Seller” or “Party B”)

All Notices:

Street: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Attn: Contract Administration

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Duns: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Scheduling (Current Day):**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Payments:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Wire Transfer:**

BNK: \_\_\_\_\_

ABA: \_\_\_\_\_

ACCT: \_\_\_\_\_

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**Credit and Collections:**

Attn: Vice President, Credit Risk Management  
Phone: (281~~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) 297-3582  
Facsimile: (281) 297-3882

**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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The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

Party B Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

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**Article Two**

Transaction Terms and Conditions       Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

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

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**Article Five**

Events of Default; Remedies       Cross Default for Party A:  
 Party A: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_  
 Other Entity: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_  
 Cross Default for Party B:  
 Party B: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_  
 Other Entity: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
  - Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_  
\_\_\_\_\_
  - Option C (No Setoff)
- 

**Article 8**

Credit and Collateral Requirements      8.1 Party A Credit Protection:  
**[See Credit Elections Coversheet]**      (a) Financial Information:  
 Option A  
 Option B Specify: \_\_\_\_\_  
 Option C Specify: \_\_\_\_\_  
  
(b) Credit Assurances:  
 Not Applicable  
 Applicable  
  
(c) Collateral Threshold:  
 Not Applicable  
 Applicable

If applicable, complete the following:

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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: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

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

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.**

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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.

\_\_\_\_\_

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

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

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

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

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

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

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**[No redlined changes to the Master Agreement.  
Document intentionally excluded from redlined package.]**

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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 (“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: Firm Network Resource. This Transaction is contingent upon the Contract Quantity of Capacity from the ~~Facility~~Facilities qualifying as a “Firm Network Resource” for Buyer for the entire Delivery Period, as determined by the Entergy Transmission Organization, **in accordance with the terms and conditions set forth in the attached Additional Provisions.** Seller agrees to cooperate and provide all necessary information required to facilitate Buyer’s request to the Entergy Transmission Organization for ~~network transmission services~~**such qualification as a Firm Network Resource.**

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Contract Quantity

**Capacity:** \_\_\_\_\_ MW

Delivery Point: *[For generating resources located within the Entergy Control Area, the Delivery Point shall be the generator bus, and for resources located outside the Entergy Control Area, the Delivery Point shall be specified interface on the Entergy System.]*

Contract Price:

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**Strike Price plus Option Premium, below.**

Other Charges: None

Delivery Period: Hour ending 0100 \_\_\_\_\_, 200\_ to and including hour ending 2400 \_\_\_\_\_, 200\_.

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 on CCGT. 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. To the extent that Buyer does not exercise its Option, Seller may sell the Energy associated with the Contract Quantity of Capacity to a third party, in all cases, however, subject to the Buyer's rights hereunder.

[ ] Day-ahead Call Option on CT. 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. To the extent that Buyer does not exercise its Option, Seller may sell the Energy associated with the Contract Quantity of Capacity to a third party, in all cases, however, subject to the Buyer's rights hereunder.

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 ~~specified components of the Facilities~~ (including all facilities on Seller's side of the Delivery Point) shall not, for any reason, be available to produce and deliver the Contract Quantity of Capacity or associated Energy at the Delivery Point ~~(in any case not attributable to Seller's fault or negligence or failure to perform maintenance in accordance with Accepted Electrical Practices or not otherwise avoidable by Seller's exercise of due diligence)~~ ("Unit Contingency"). The burden of establishing the existence

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and extent of any Unit Contingency shall be on Seller. ~~*[Provide a summary description of the*~~ **The** priority of the ~~*product sale relative to all other sales and/or commitments, if any (the “Facility Requirements”).]*~~ [Except the foregoing,] if Buyer exercises its Option, any other Capacity and **of Capacity or** Energy sales from the Facilities shall be curtailed prior to the curtailment of Capacity and Energy deliveries under this Transaction, in accordance with Section **[22.1]** of the attached Additional Provisions ~~;~~ **provided, however, that if under the Open Access Transmission Tariff of the Energy System or any applicable successor tariff,, the sale of the Contract Quantity of Capacity and associated Energy shall be entitled to priority over the Facility Requirements, then the sale of the Contract Quantity of Capacity and associated Energy shall have priority over all Facility Requirements and all other sales of Capacity or Energy from the Facilities]** **attached hereto.**

Strike Price:

For Energy Dispatched by Buyer in accordance with this Transaction, the Energy Payment for the applicable Month shall be determined in accordance with the following formula:

$$EP_M = \sum_{i=1}^D \sum_{j=1}^N (MWh_{N,i} * HR * GDIP_N) \underline{GDIP}_i$$

Where:

$EP_M$  = Energy Payment in respect of a Month in dollars

**D** = **Number of Days in applicable Month**

$N$  = Number of hours in applicable **Month****Day**

~~$MWh_{N,i}$~~  **MWh<sub>i</sub>** = MWh of Energy delivered to Buyer at the Delivery Point in each hour, expressed in MWh

$HR$  = \_\_\_\_\_ MMBtu/MWh *[to be based on Guaranteed Heat Rate curve if Contract Capacity is the entire Capacity of a Unit]*

~~$GDIP_N$~~  **GDIP<sub>i</sub>** = 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” or “Houston Ship Channel” (select one)*] for the applicable ~~hour~~ **Day**, expressed in \$/MMBtu, *[plus or minus basis adjustment, if any] [plus actual applicable sales and use taxes]*

Premium:

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

<u>Month</u>	<u>Allocation</u>	<u>Option Premium (\$/ kW Month)</u>
January	7%	_____
February	7%	_____
March	4%	_____
April	4%	_____
May	9%	_____
June	15%	_____
July	15%	_____
August	15%	_____
September	9%	_____
October	4%	_____
November	4%	_____
December	7%	_____

The Option Premium constitutes Seller's full compensation, (including all fixed cost charges, and Start-up costs) other than the Strike Price. The Option Premium payments are subject to the Capacity Payment Discount, as set forth in the attached Additional Provisions.

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

Exercise Period: Commencing on the last Business Day prior to May 1, ~~2003~~2004 and terminating on the last Business Day prior to April 30, 200\_.

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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.,  
as agent for the Entergy Operating Companies

\_\_\_\_\_

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

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

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

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

Phone No: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

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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

[SELLER]

ADDITIONAL PROVISIONS

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## 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 ~~{(which shall not exceed \_\_\_ hours in a Contract Year)}~~ or Planned Maintenance ~~{(which shall not exceed \_\_\_ hours in a Contract Year)}~~.

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

1.4 *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.

1.5 *Availability* means, in any hour and expressed as a percentage or decimal, as applicable, the Contract Quantity of Capacity that is actually available (not to exceed the Contract Quantity of Capacity) regardless of whether or not Scheduled and Dispatched by Buyer, divided by the Contract Quantity of Capacity minus the Affected Capacity.

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

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

1.8 *Beginning Requested Dispatch Hour* means the first clock hour, or portion of a clock hour, during which the Facilities are Scheduled to deliver Energy to Buyer during a Dispatch Period.

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

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1.10 *Capacity* means the megawatt output level that the Facilities, or the components of equipment 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.

1.11 *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].

1.12 [*Cash Flow Available for Debt Service* means for any period, calculated on a cash basis, all Project Revenues received or projected to be received, as the case may be, by Seller during the relevant period, minus all Operation and Maintenance Costs paid or projected to be paid during such period.]

1.13 *Contract Year* means, as applicable, each period of twelve months beginning on May 1, 2003,~~2004~~, May 1, 2004,~~2005~~, and May 1, 2005,~~2006~~, and ending on April 30, 2004,~~2005~~, April 30, 2005,~~2006~~, and April 30, 2006,~~2007~~, respectively.

1.14 *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: (1) match, at all times, the power output of the generators within the electric power system(s) and Capacity and Energy purchased from entities outside the electric power system(s), with the load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Acceptable Electrical Practices; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Acceptable Electrical Practices; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Acceptable Electrical Practices.

1.15 *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.

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

1.17 [*Credit Agreement* means any credit agreement and all related collateral security documentation, if any, relating to (a) any indebtedness of Seller or (b) any indebtedness of any Affiliate of Seller secured by the assets of Seller or by which the assets of Seller may be encumbered, in either case the proceeds of which, directly or indirectly, are used to finance the acquisition or construction of the Facilities.]

1.18 *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; provided, however, 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

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

1.19 *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 Governmental Charges and breakage costs and (d) fees required to be paid to the Lenders pursuant to such financing documents.

1.20 [*Debt Service Coverage Ratio* means for any period, the ratio of (a) Cash Flow Available for Debt Service to (b) Debt Service.]

1.21 [*Delivery Anniversary Date* means May 1, ~~2004~~, 2005, and each anniversary thereafter.]

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

1.23 *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.

1.24 *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 delivered or provided by Seller at the Delivery Point.

1.25 *Ending Requested Dispatch Hour* means the last clock hour, or portion of a clock hour, during which the Facilities are Scheduled to deliver Energy to Buyer during a Dispatch Period.

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

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

1.28 *Entergy Transmission Organization* means the Entergy Services, Inc. organization that plans, constructs, and operates the Entergy Transmission System, or any successor organization.

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

**1.30 Equivalent Force Majeure Hours means, for any hour, (i) the product of (a) the Affected Capacity unavailable or limited due to a Force Majeure event, expressed in MW,**

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**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.**

**1.31 Equivalent Planned Maintenance Hours means, for any hour, 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, not to exceed a total of [ ] hours for each Contract Year [as specified in Product Package, not to exceed 360, 480 or 600 per year for the one, two and three year MUCCO products, respectively].**

**1.32** ~~1.30~~ *Facilities* means the electric generating facilities described on Schedule [A] hereto, including all associated Interconnection Facilities and Protective Apparatus.

**1.33 [Facility Requirements means [provide a summary description of the priority of other sales and/or commitments relative to the Contract Quantity of Capacity and associated Energy, if any.]]**

**1.34 Firm Gas Supply shall 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 (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.**

**1.35 Firm Gas Transportation shall have the meaning as set forth in the applicable Transporter's then effective FERC Gas Tariff.**

**1.36** ~~1.31~~ *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 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 Facilities, (b) Seller's ability to sell the Contract Quantity of Capacity or associated Energy at a price greater than the price provided for in the Transaction, (c) 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 (d) failure or breakage of, or damage to, Seller's facilities or equipment not the direct **or proximate** result of acts of God, ~~including~~ **which acts of God shall include** but not **be** limited to flood, drought, earthquake, storm, 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

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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 hereof has occurred.<sup>1</sup>

**1.37** ~~1.32~~ *Gas* or *gas* means natural gas that meets or exceeds the specifications set forth in the relevant Transporter's tariff.

**1.38** ~~1.33~~ *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~~ authority or power; or any court or governmental tribunal.

**1.39** ~~1.34~~ *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>

**1.40** ~~1.35~~ *Imbalance Charges* shall mean 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 Facilities, or (ii) a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

**1.41** ~~1.36~~ *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 Facilities 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 Facilities are connected and its customers from faults occurring at the Facilities, and (ii) the Facilities from faults occurring on the electrical system to which the Facilities are connected or on other electrical systems to which such electrical system is directly or indirectly connected.

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

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

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**1.42** ~~1.37~~-kW means kilowatt.

**1.43** ~~1.38~~-kWh means kilowatt-hour.

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

**1.45** ~~1.39~~-Lender means any Person which provides debt or equity capital, loans, credit or credit support, acts as counterparty on any interest rate or currency hedging arrangements, or provides other financing, to Seller in respect of the acquisition or construction, of the Facilities; such term also includes any such Person which acts in the capacity of Lender in connection with any refinancing by Seller of such financing.

**1.46** ~~1.40~~-MMBtu means one million Btus.

**1.47** ~~1.41~~-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.

**1.48** ~~1.42~~-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 Force Majeure shall not be disregarded to the extent that Equivalent Force Majeure Hours in the Rolling 12 Month Period exceed [ \_\_\_\_\_ ] [not to exceed 360, 480 or 600 per year for the one, two and three year MUCCO products, respectively].**

**1.49** ~~1.43~~-MW means megawatt.

**1.50** ~~1.44~~-MWh means megawatt-hour.

**1.51** ~~1.45~~-NERC means the North American Electric Reliability Council, or its successor agency.

**1.52** ~~1.46~~-Operation and Maintenance Costs means, for any period, all costs and expenses incurred to own, operate or maintain the Facilities 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, (v) Governmental Charges, (vi) costs of settlement of pending or threatened claims or any related fines, judgments or other costs (including legal fees) associated with such claims, (vii) maintenance, operation and repair costs, (viii) capital expenditures, including all costs of major inspections, unscheduled or scheduled major maintenance of the Facilities and all work on account of extraordinary equipment failures and contingencies (including overhaul costs (other than overhaul costs paid from deposits to any *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 Spring 2003 RFP and subject to the terms and acknowledgements set forth in the Proposal Submission Agreement*

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major maintenance reserve account)), in each case to the extent such costs are not paid for by proceeds from insurance, (ix) payments under operating leases, (x) legal, accounting and other professional fees, (xi) costs and fees incurred to obtain and maintain all Approvals, (xii) insurance costs, (xiii) payments with respect to Debt Service and (xiv) amounts deposited in any reserve account in respect of the foregoing. Operation and Maintenance Costs do not include non-cash charges, including depreciation or non-cash obsolescence charges or reserves therefor, amortization of intangibles or other similar bookkeeping entries.

**1.53** ~~1.47~~ *Other Associated Electric Products* means all of the ~~services~~**capabilities** and products associated with ~~capabilities or operational attributes or regulatory treatment~~**the Contract Quantity of a generating unit Capacity and Energy which Buyer is entitled to hereunder, including but not limited as it specifically relates to Buyer's ability to utilize the capability Contract Quantity of Capacity and/or Energy in accordance with the Scheduling and Dispatch rights as detailed in Section [5]** to provide ancillary ~~load~~ **services following**, reserves, ~~operational functions (e.g., black start capability), receipt or allocation of emissions allowances and other services and~~**similar** products.

**1.54** ~~1.48~~ *Outages* means interruption or reduction in the operation of the Facilities, whether due to maintenance, the curtailment of transmission service, any order or directive of the Transmission Operator or otherwise.

**1.55** ~~1.49~~ *Person* means any individual, Governmental Authority, corporation, limited liability company, partnership, limited partnership, trust, association or other entity.

**1.56** ~~1.50~~ *Planned Maintenance* means the removal of the Facilities from service **(i)** to perform work on specific components, **(ii)** that is scheduled in advance and has a predetermined start date and duration (e.g., annual overhaul, inspections, testing), **and (iii) the duration of which, when aggregated with all other Planned Maintenance, does not exceed [ ] Equivalent Planned Maintenance Hours for each Contract Year [as specified in Product Package, not to exceed 360, 480 or 600 per year for the one, two and three year MUCCO products, respectively].**

**1.57** ~~1.51~~ *Project Documents* means all agreements and documents to which Seller is a party relating to the ownership, operation ~~or~~, maintenance **and financing** of the Facilities.

**1.58** ~~1.52~~ *Project Revenues* means, for any period, the sum of all amounts received by Seller pursuant to or in connection with (a) the Project Documents or (b) the ownership, use or operation of the Facilities, including any interest income, but not including amounts received from insurance proceeds (other than proceeds from business interruption insurance which shall constitute Project Revenues), condemnation proceeds or indemnities.]

**1.59** ~~1.53~~ *Protective Apparatus* means such equipment and apparatus, including, without limitation, protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facilities from the electrical system to which they are connected consistent with Accepted Electrical Practices.

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**1.60** ~~1.54~~ *Purchasing-Selling Entity* means an entity that is eligible to purchase or sell Capacity or Energy and reserve transmission services under the Transaction Information System.

**1.61** **PURPA means the Public Utility Regulatory Policies Act of 1978, as amended.**

**1.62** ~~1.55~~ *Replacement Capacity* means any Capacity and associated Energy from a generation resource other than the Facilities provided or delivered pursuant to Section [3.4].

**1.63** ~~1.56~~ *Rolling 12 Month Availability* means, as of the end of any Month, the average of the ~~hourly~~ **Monthly** Availabilities from and including the first ~~hour~~ **Month** in the twelve (12) consecutive Months during the Delivery Period ending with such Month to and including ~~the last hour of~~ 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.

**1.64** **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.**

**1.65** ~~1.57~~ *Schedule or* **or the correlative terms Scheduled or Scheduling** means the actions of the 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 and associated Energy or Other Associated Electric Products to be delivered on any given day or days (or in any given hour or hours) during the Delivery Period at a specified Delivery Point.

**1.66** ~~1.58~~ *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)].

**1.67** ~~1.59~~ *Shutdown* means an actual shutdown of a Unit at the end of the Ending Requested Dispatch Hour of a Dispatch Period.

**1.68** ~~1.60~~ *Specified Tag Agent* means Open Access Technology International, Inc. or any other Tag Agent, as designated by Buyer in its sole and absolute discretion.

**1.69** ~~1.61~~ *Start-up* means the action of **actually** bringing a ~~Unit~~ **any one or more Units** from a Shutdown to synchronization at its minimum load and the unconditional release of such Unit(s) for ramping to, **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).**

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**1.70** ~~1.62~~ *Summer Season* means the Months of June, July and August.

**1.71** ~~1.63~~ *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.

**1.72** ~~1.64~~ *Tag Agent* means a provider of Tag Agent Service authorized under the Transaction Information System.

**1.73** ~~1.65~~ *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.

**1.74** ~~1.66~~ *Tag Approval Service* means the software component used to indicate individual path approvals by the Approval Entity when requested by the Tag Authority Service.

**1.75** ~~1.67~~ *Tag Author* has the meaning specified in Section [5.1(c)].

**1.76** ~~1.68~~ *Tag Authority Service* means the software component of Tag processing that receives Tag Agent submissions and forwards them to the appropriate Tag Approval Services.

**1.77** ~~1.69~~ *Transaction Date* means the date of the Confirmation to which these Additional Provisions are attached.

**1.78** ~~1.70~~ *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.

**1.79** ~~1.71~~ *Transmission Operator* means any transmission owner, independent system operator, regional transmission operator, or other transmission operator or any successor entity from time to time having authority to control the transmission Control Area to which the Facilities are interconnected or any other relevant Control Area.

**1.80** ~~1.72~~ *Transmission Provider* means any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

**1.81** ~~1.73~~ *Transporter* means any pipeline on which any Gas is transported under this Transaction to the applicable Delivery Point.

**1.82** ~~1.74~~ *Unit* means any of the generating units comprising part of the Facilities described on Schedule [A] hereto.

**1.83** ~~1.75~~ *Winter Season* means the Months of December, January and February.

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## 2.0 SALE PRIORITY.

2.1 Priority of Transaction. Buyer shall have a Call Option to Schedule and Dispatch the Contract Quantity of Capacity and receive the associated Energy from the Facilities. To the extent Buyer does not exercise its Call Option to Schedule and Dispatch any portion of the Contract Quantity of Capacity on any given Day, Seller may sell to a third party the undischarged portion of the Energy associated with the Contract Quantity of Capacity. ~~Seller's obligations with respect to the~~ **The** sale of the Contract Quantity of Capacity and of the associated Energy shall have priority over all other sales of Capacity or Energy by Seller from the Facilities [with the exception of the use by Seller of the Facility Requirements; provided, however, that if under the Open Access Transmission Tariff of the Energy System, or any successor tariff, the sale of the Contract Quantity of Capacity and associated Energy shall be entitled to priority over the Facility Requirements, then the sale of the Contract Quantity of Capacity and associated Energy shall have priority over all Facility Requirements and all other sales of Capacity or Energy from the Facilities]. Seller agrees that, notwithstanding the Unit Contingent nature of the sale of the Contract Quantity of Capacity and the associated Energy under this Transaction, it will not curtail or otherwise reduce deliveries of the Contract Quantity of Capacity or associated Energy unless and until all other sales of Capacity or Energy from the Facilities have been completely curtailed[, except as provided above in respect of the Facility Requirements.]

2.2 ~~Firm Obligation to Operate.~~ **Operation of Facilities. Except to the extent the Facilities are unavailable or limited due to a Unit Contingency, Planned Maintenance or Force Majeure.** Seller shall, regardless of whether the Availability shall be, for any period, at, above or below the Availability Requirement, operate the Facilities to provide the Contract Quantity of Capacity and associated Energy in all hours in which Scheduled and Dispatched by Buyer.

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

3.1 Availability Requirement. The Availability Requirement during the Summer Season, Winter Season and other Months shall be 98.00%, 98.00% and 95.00%, respectively. The Monthly Availability for any Month shall not be less than the Availability Requirement applicable for such Month.

3.2 Availability Notice. Seller shall furnish to Buyer by electronic mail or other electronic transmission acceptable to Buyer in its reasonable discretion an Availability Notice substantially in the form set forth in Schedule [3.2], which shall set forth (i) the actual Availability per hour, expressed in MW, of the Contract Quantity of Capacity not to exceed the Contract Quantity of Capacity, and not to be less than the minimum load [on automatic generating control], and/or (ii) any Outages, Force Majeure events, deratings or other events that would reduce or interrupt any Schedule and Dispatch of Energy to Buyer or cause the controlling Availability Notice to be inaccurate in any material respect and a description of the circumstances thereof, in the case of clause (i) at or before [8:00] a.m. CPT on the Business Day immediately prior to the first Day to which such Availability Notice shall relate, and in the case of clause (ii) promptly after the occurrence of the events described therein. Such Availability Notice shall be effective until delivery of a subsequent Availability Notice.

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3.3 Capacity Payment Discount. ~~If~~ **Notwithstanding that the Contract Quantity of Capacity and associated Energy supplied from the Facilities by Seller is subject to Unit Contingency, if** the Monthly Availability shall have been, in any Month, less than the Availability Requirement **for such Month**, the Option Premium 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 Option Premium for such Month, there shall be no Option Premium 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)~~ **(a)** In the event Seller is unable to Schedule and Dispatch to Buyer all or a portion of the Contract Quantity of Capacity and associated Energy in accordance with a Scheduling and Dispatch Notice, Seller may, but is not obligated to, offer to obtain 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 Seller's offer to obtain Replacement Capacity, on a case-by-case basis. To the extent Buyer accepts Seller's offer to obtain Replacement Capacity, such Replacement Capacity shall, for all purposes of this Transaction, constitute Contract Quantity of Capacity that is actually available.

**(b)** ~~(a)~~ Seller shall bear all risk associated with any decision not to procure ~~firm~~ **Firm** Gas supply **Supply** and ~~firm~~ **Firm** Gas transportation **Transportation** to ensure its ability to deliver to Buyer the Energy associated with the Contract Quantity of Capacity. In the event Seller shall not Dispatch to Buyer any portion of the Contract Quantity of Capacity or deliver any portion of the associated Energy in accordance with a Scheduling and Dispatch Notice as a result of Seller's failure to procure ~~firm~~ **Firm** Gas supply **Supply** or ~~firm~~ **Firm** Gas transportation **Transportation**, Buyer shall have the right, but not the obligation, to obtain Replacement Capacity subject to the terms and conditions herein or to Start-up or increase the output of generating resources of any Entergy Operating Company ("Buyer Provided Capacity") to replace any portion of the Contract Quantity of Capacity and associated Energy not Scheduled and Dispatched and delivered by Seller. To the extent that Buyer shall procure any Replacement Capacity, including 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 or Buyer Provided Capacity shall, for all purposes of this Transaction, constitute Contract Quantity of Capacity that is actually available.

**(c)** ~~(b)~~ Buyer shall promptly notify Seller if Buyer elects to obtain Replacement Capacity, including any Buyer Provided Capacity, to replace any portion of the Contract Quantity of Capacity and associated Energy not Scheduled and Dispatched and delivered by Seller. Seller shall pay Buyer in accordance with Section 4.1 of the Master Agreement (i) an amount for such Replacement Capacity equal to the positive difference, if any, obtained by subtracting the Energy Payment from the Replacement Price and (ii) an amount for such Buyer Provided Capacity equal to the positive difference, if any, obtained by subtracting the Energy Payment from the sum of all costs incurred by Buyer in connection with or relating to the provision of Buyer Provided Capacity.

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3.5 Other Associated Electric Products. If at any time during the Delivery Period, ~~Buyer or any Affiliate of Buyer shall elect or be required~~ **there shall occur a change in market structure, including but not limited to purchase the designation of an independent system operator or formation of a regional transmission organization, 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 sale of Other Associated Electric Products, if elected or required by Buyer, is included in the Option Premium and no further amount shall be payable.

#### 4.0 QF PUT.

Notwithstanding the ~~Capacity Payments~~ **Option Premiums** and Energy Payments to be made by Buyer or any other provision of this Transaction, in those hours during which Buyer does not Schedule and Dispatch all Energy associated with the Contract Quantity of Capacity, Seller shall be entitled to deliver to Buyer, and Buyer shall accept, Energy associated with the undischarged portion of the Contract Quantity of Capacity, on a “when, as, and if available” basis, so long as Buyer is obligated to accept such Energy pursuant to applicable law, **including but not limited to PURPA and the regulations promulgated thereunder,** and Seller shall be reimbursed by Buyer for such “when, as, and if available” Energy ~~solely~~ at the Entergy System avoided cost for the particular hour during which such Energy is Scheduled and Dispatched to Buyer **or, if applicable, at such other rate as shall be required to be paid at the relevant time by applicable law.** *[This provision applicable only to Entergy Control Area QFs which have a power purchase agreement in place with Buyer or one of the Entergy Operating Companies.]*

#### 5.0 SCHEDULING AND DISPATCH.

5.1 Scheduling and Dispatch Rights. (a) Consistent with the operational limits of the Facilities and the Availability of the Contract Quantity of Capacity, Buyer shall at all times during the Delivery Period have the right (i) to Schedule and Dispatch all or a portion of the Contract Quantity of Capacity and associated Energy or Other Associated Electric Products, (ii) to utilize the Energy or Other Associated Electric Products associated with the Contract Quantity of Capacity and (iii) to use or resell the Contract Quantity of Capacity and the associated Energy, in each case subject to the terms and conditions specified herein. To the extent that Buyer does not fully Schedule and Dispatch the Contract Quantity of Capacity and associated Energy, Seller may sell the undischarged Energy associated with the Contract Quantity of Capacity to a third party, in all cases, however, subject to 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 Contract Quantity of Capacity by providing to Seller a Scheduling and Dispatch Notice, substantially in the form set forth in Schedule ~~[5.1(e)],~~ **[5.1(c)] at or before 9:30 a.m. CPT on the Business Day immediately preceding the first Day of a Dispatch Period and by (i)** creating and submitting a Tag

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with the Tag Agent Service, at or before 2:00 p.m. CPT on the Business Day immediately preceding the first Day of such Dispatch Period (the “Tag Deadline”) a Tag substantially in the form set forth in Schedule [5.1(c)] or any other form designated by the Specified Tag Agent, or (ii) providing, at least [~~\_\_\_~~ -[days<sup>2</sup>/ \_\_\_] hours<sup>2</sup>], in advance of the Tag Deadline, written instructions to Seller to create and submit, ~~and~~ in which case Seller shall create and submit in accordance with such instructions, a Tag with the Tag Agent Service (such Party submitting the Tag, the “Tag Author”, and such other Party, the “Approval Entity”) (i) in respect of the Scheduling and Dispatch of all or a portion of the Contract Quantity of Capacity for ~~the immediately subsequent Month, at or before 9:30 a.m. CPT on the third Business Day immediately prior to the first Day of such Month (the “Month ahead Schedule and Dispatch”)~~, subject to adjustment pursuant to clauses (ii) and (iii) below, (ii) in respect of the Scheduling and Dispatch of all or a portion of the Contract Quantity of Capacity for the immediately subsequent Day, at or before 9:30 a.m. CPT on the immediately preceding Business Day prior to such Day, subject to adjustment pursuant to clause (iii) below, or (iii) in respect of the Scheduling and Dispatch of all or a portion of the Contract Quantity of Capacity for the immediately subsequent hour, 10 minutes before the applicable deadline specified by the Control Area Operator or established by the Transaction Information System prior to such hour subject, in the case of clause (iii), to the operational capabilities of the Facilities, including the ramping capabilities and other limitations thereof Period.

(d) After the creation or submission of the Tag (including any adjustment thereof) with the Tag Agent Service, the Tag Author shall notify the Approval Entity telephonically that the Tag has been created or adjusted. The Approval Entity shall then promptly verify the information set forth in the Tag and promptly notify the Tag Author telephonically of any discrepancies between the Tag and Buyer’s Scheduling and Dispatch Notice so that the Tag Author can adjust the Tag in accordance with Buyer’s Scheduling and Dispatch Notice. To the extent that the Approval Entity fails to timely notify the Tag Author of any discrepancies, the Approval Entity shall bear the risk of any errors associated with 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 Facilities 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 prior to the creation and submission of an adjustment to a Tag or the creation and submission of a subsequent 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 (i) to the Capacity level indicated in such subsequent Availability Notice if Buyer’s immediately preceding Scheduling and Dispatch Notice specified the Schedule and Dispatch of the full Contract Quantity of Capacity declared available in such immediately preceding Availability Notice, or (ii) at the lesser of the Capacity level indicated in such subsequent Availability Notice or the Contract Quantity of Capacity indicated in Buyer’s immediately preceding Scheduling and Dispatch Notice if Buyer’s immediately preceding Scheduling and Dispatch Notice specified the Schedule and Dispatch of the Contract Quantity of Capacity at less than the full Capacity declared available in the immediately preceding Availability Notice. Notwithstanding anything to the contrary contained herein, Buyer may in

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its Scheduling and Dispatch Notice specify the Schedule and Dispatch of any and all 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) There shall be a minimum Dispatch Period of [\_\_\_\_] hours ~~–a minimum of four (4) and a maximum of twenty four (24) hours~~ and a minimum Dispatch level of [\_\_\_\_] MW.

(g) Seller shall at all times during the Delivery Period, in connection with the exercise of its rights and performance of its obligations under this Transaction, operate and maintain the Facilities and otherwise perform its obligations under the valid directives of the Control Area Operator.

5.2 Seller Dispatch. Seller shall have the right to Schedule and Dispatch the Facilities or any portion thereof to the extent that Seller is required to do so by applicable law, regulation or tariff, **provided that to the extent such Schedule and Dispatch affects Buyer’s priority under Section [2.1], Seller shall give Buyer notice of any such Schedule and Dispatch with as much advance notice 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 that is delivered by Seller at the Delivery Point from the Delivery Point to other points, including but not limited to such costs and expenses related to Buyer’s obligations to obtain network transmission service as set forth in Section [8.3]. Seller shall be responsible for all costs and expenses related to (a) Seller’s supply and transportation of fuel oil and Seller’s supply and transportation of Gas, **except as provided in Section [5.4],** (b) the transmission and other services required to deliver Energy to the Delivery Point, including but not limited to such costs and expenses related to Seller’s obligations to obtain “Firm Network Resource” and firm transmission service as set forth in Section [8.2(b)], and (c) any and all Imbalance Charges; provided, however, that any such Imbalance Charges assessed by third parties resulting directly from Buyer’s 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 Transportation. Upon 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, at Buyer’s expense, firm transportation for any and all Gas required in connection with the Dispatch of Energy set forth in such Scheduling and Dispatch Notice.**

## 6.0 OPERATION AND MAINTENANCE.

6.1 Operation and Maintenance Obligations. At all times, Seller shall install, construct, test, operate and maintain the Facilities and shall bear all costs and expenses of such installation, construction, testing, operation and maintenance, including without limitation, Operation and Maintenance Costs and applicable Governmental Charges. Such installation, construction, testing,

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operation and maintenance shall comply with Seller's obligations herein and in the Project Documents, including without limitation, Section [2.2] hereof, and shall be performed in accordance with Accepted Electrical Practices and any requirements for capacity resource providers that may be promulgated by the Transmission Operator or FERC, and any applicable statutes, codes, regulations, standards and guidelines adopted by Governmental Authorities, including without limitation, NERC, the Southeastern Electric Reliability Council or the Control Area Operator from time to time. 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 Facilities.

6.2 Planned Maintenance. The schedule for Planned Maintenance, including the total number of hours Equivalent Planned Maintenance Hours for each Contract Year that the Facilities will be unavailable due to Planned Maintenance, is set forth in Schedule [6.2]. Planned Maintenance may be scheduled only during the Months of March, April, October and November, ~~which~~ provided that such schedules shall be subject to the prior approval of Buyer in its reasonable discretion. Any request by Seller to schedule Planned Maintenance during any other Month shall be subject to the prior approval of Buyer in its sole and absolute discretion. The total ~~number~~ amount of ~~hours~~ time that the Facilities will be unavailable due to Planned Maintenance shall not exceed [ ] ~~hours~~ Equivalent Planned Maintenance Hours in any Contract Year [As specified in Product Package, not to exceed 360, 480 or 600 per year for the one, two and three year MUCCO products, respectively].

## 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 Section [7.0]. 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 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 ~~maximum~~ 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 *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 Spring 2003 RFP and subject to the terms and acknowledgements set forth in the Proposal Submission Agreement*

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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 charge, the "Ramp Rate," and such ~~maximum~~minimum guaranteed Ramp Rate, the "Guaranteed Ramp Rate"), is set forth in Schedule [8.1].

(b) ~~The equivalent unplanned Outage rate and specific computation for each Unit based on actual historical operation for the past three years~~summer dependable Capacity of the Facilities is set forth on Schedule [8.1] MW.

8.2 Covenants of Seller. Seller hereby further covenants as follows:

(a) During the term of this Transaction, Seller shall obtain and maintain all Approvals as may be required with respect to the operations of the Facilities ~~or~~and for the performance of its obligations hereunder and shall assist Buyer in obtaining and maintaining all Approvals as may be deemed necessary or appropriate by Buyer, including but not limited to 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.

(b) Except to the extent waived by Buyer in its sole and absolute discretion, Seller shall cause the Contract Quantity of Capacity from the Facilities to qualify at all times during the Delivery Period as a "Firm Network Resource" as determined by the Entergy Transmission Organization, without such qualification being subject to terms or conditions unacceptable to Buyer in its sole and absolute discretion; provided, however, that if the Entergy Transmission Organization determines that upgrades are needed to obtain or maintain such qualification (an "ETO Determination"), Seller shall have the sole and absolute discretion to determine whether to pay for any such upgrades, costs and expenses. No later than ten (10) Business Days after delivery of such notice of ETO Determination to Seller, Seller shall by delivery of notice to Buyer (i) agree to pay for such upgrades, costs and expenses, (ii) decline to pay for such upgrades, costs and expenses or, (iii) to the extent applicable, take steps to cause the Contract Quantity of Capacity to be delivered from the Facilities to qualify as a "Firm Network Resource," with such qualification not being subject to terms or conditions unacceptable to Buyer in its sole and absolute discretion, by releasing transmission rights held by Seller. Thereafter, Buyer, in its sole and absolute discretion, may (x) terminate this Transaction by delivery of notice to Seller within ten (10) Business Days after Seller's delivery of notice to Buyer declining to pay for the upgrades, costs or expenses, (y) in the event Seller has taken steps under clause (iii) above, terminate this Transaction by delivery of notice to Seller within five (5) Business Days after the date on which the Entergy Transmission Organization determines that Seller's proposed release of transmission rights will not be effective to allow the Contract Quantity of Capacity to qualify as a "Firm Network Resource" in accordance with the provisions hereunder, or (z) waive the requirement hereunder for the Contract Quantity of Capacity to qualify as a "Firm Network Resource." To the extent that the Contract Quantity of Capacity qualifies as a "Firm Network Resource"

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**in accordance with the provisions hereunder, Seller** shall procure firm transmission service on any other interconnected, coordinated, electric utility system required for delivery of Energy to the Delivery Point.

(c) [Seller shall provide to Buyer response rates greater than those set forth in Schedule [A] for automatic generation control, when the relevant control systems are technically sufficient for such faster response rates, consistent with Accepted Electrical Practices.]

(d) ~~During~~ **Notwithstanding anything to the contrary contained herein, during** the Delivery Period, the Rolling 12 Month Availability for the Contract Quantity of Capacity shall be at least 85.00%.

(e) [Seller shall cause the Credit Agreement to include a provision to the effect that if the financing parties or its agent shall exercise a remedy the effect of which causes the removal or replacement of Seller as operator of the Facilities, Buyer shall have the right to designate the replacement operator, subject to the financing parties' reasonable approval.]

(f) [Seller will not refinance the senior indebtedness incurred to finance the acquisition or construction of the Facilities (the "Existing Indebtedness") or incur additional indebtedness (as defined in the Credit Agreement) ("New Indebtedness"), except to the extent that the Debt Service Coverage Ratio reflected in the pro forma statements of income and cashflow prepared by the refinancing Lenders or the new Lenders, as the case may be, and upon which their lending commitments are based, shall not be less than [ ] prior to the [ ] Delivery Anniversary Date and not less than [ ] thereafter (determined on an average annual basis); provided, however, that, notwithstanding the foregoing, a refinancing of Existing Indebtedness or the incurrence of New Indebtedness shall be permitted: (i) to finance capital expenditures with respect to the Facilities required by any law, rule, tariff or regulation or change therein enacted and effective after the Transaction Date; and (ii) as reasonably approved by Buyer in connection with any transaction between Seller and Buyer.]

8.3 Covenants of Buyer. Buyer hereby further covenants as follows:

(a) Buyer shall procure from the Transmission Provider at all times during the Delivery Period network transmission service from the Delivery Point to other points; provided, however, that Buyer may determine and, from time to time during the Delivery Period, change the type and form of network transmission service that it procures in its sole and absolute discretion. 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 network transmission service set forth in Section **[8.3(a)]**.

8.4 [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

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Approvals necessary for it to legally perform its obligations under the Master Agreement and 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 an independent system operator or a regional transmission organization shall enact or implement any change in law, rule, regulation, tariff or practice binding on Seller or Buyer which materially adversely affects such Party's ability to perform its obligations hereunder, the Parties shall negotiate in good faith an amendment to this Transaction 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. Either, 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 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 a regional transmission organization 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) ~~Absent the written agreement of~~ Except as provided in Section 8.5(a) or as Seller and Buyer ~~there to~~ 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, ~~except that~~ 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 ~~in accordance with Section [8.5(a)]~~ 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.

<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.}

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## 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.

10.1 Buyer’s and Seller’s Conditions. Subject to Section ~~[10.3]~~ [10.3] **and except to the extent waived in writing by Seller and Buyer**, the obligations of Buyer and Seller to consummate the transactions contemplated hereunder shall be subject to fulfillment of the following ~~conditions at least 30 Days prior to the date on which the Delivery Period commences; provided, however, that subject to Section [10.4], the date for satisfying the condition set forth in Section [10.1(c)] may be extended by Buyer to any date thereafter prior to the date on which the Delivery Period commences, as determined by Buyer in its sole and absolute discretion.;~~

(a) ~~Seller obtains any necessary regulatory authorizations for providing the service from FERC if Seller is subject to the jurisdiction of FERC~~ **must have obtained all Approvals required with respect to the operations of the Facilities 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.**

~~(b) Buyer obtains any necessary regulatory authorizations for providing the service from FERC if Seller is not subject to the jurisdiction of FERC.~~

~~(c) The Entergy Transmission Organization shall have determined that the Contract Quantity of Capacity to be delivered from the Facilities qualifies as a “Firm Network Resource” and Seller shall have obtained firm transmission service on any other interconnected, coordinated, electric utility system required for delivery of Energy to the Delivery Point.~~

10.2 Buyer’s Conditions. Subject to Section ~~[10.3]~~ [10.3] **and except to the extent waived in writing by Buyer its sole and absolute discretion**, the ~~obligations~~ **obligation** of Buyer to consummate the transactions contemplated hereunder shall be subject to fulfillment of the following ~~conditions at least 30 Days prior to the date on which the Delivery Period commences, except to the extent waived in writing by Buyer.~~

(a) Buyer obtains from the state or local regulatory commission(s) having jurisdiction over the retail operations of the Entergy Operating Company(ies) participating in the purchase either (i) regulatory approval of the purchase including the approval of the full recovery (through base rates and/or fuel adjustment) of all costs associated with this Transaction pursuant to a finding that the

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participation of those Entergy Operating Companies in this Transaction is prudent or (ii) such other regulatory treatment as is deemed acceptable by such Entergy Operating Company(ies) in the exercise of their sole and absolute discretion.

(b) Buyer complies with any applicable federal ~~or~~, state or local legal requirements, and obtains any required Approvals ~~required by any applicable federal or state regulatory agency~~ in form and substance satisfactory to Buyer in its sole and absolute discretion.

(c) Subject to Sections [8.2(b)] and [10.4], the Entergy Transmission Organization shall have determined that the Contract Quantity of Capacity to be delivered from the Facilities qualifies as a “Firm Network Resource” without such qualification being subject to terms or conditions unacceptable to Buyer in its sole and absolute discretion, and 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 Obligations 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].

10.4 Failure to Obtain Firm Network Resource. If at any time prior to the date on which the Delivery Period commences, the Entergy Transmission Organization issues a final determination that the Contract Quantity of Capacity to be delivered from the Facilities will not qualify as a “Firm Network Resource,” in accordance with the provisions hereunder, Buyer may terminate this Transaction by delivering notice thereof to Seller; provided, however, that to the extent that Seller shall be taking steps to cause the Contract Quantity of Capacity to be delivered from the Facilities to qualify as a “Firm Network Resource” by releasing transmission rights held by Seller, Buyer shall not terminate this Transaction prior to the earlier of (a) the date on which the Entergy Transmission Organization determines that Seller’s proposed release of transmission rights will automatically terminate without any further obligation of the Parties not be effective to allow the Contract Quantity of Capacity to be delivered from the Facilities to qualify as a “Firm Network Resource” with such qualification not being subject to terms or conditions unacceptable to Buyer in its sole and absolute discretion, or (b) [fifteen (15) Business Days] immediately prior to the commencement of the Delivery Period.

10.5 Failure of Conditions Generally. This Transaction may be terminated by Seller in the event that the conditions set forth in Section [10.1] are 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 except as otherwise provided in Section [10.4]; provided, however, that neither Party may terminate this Transaction pursuant to this Section [10.5] if such Party’s failure to fulfill its

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**obligations with respect to Section [10.3] shall be the reason that such condition shall not have been satisfied.**

**10.6** ~~10.5~~ Regulatory Approvals. Promptly after execution of this Transaction, Seller, if required to obtain approval for the sale from one or more regulatory agencies (e.g., FERC), shall file this Transaction with such regulatory agency(ies) and shall request that the regulatory agency(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. ~~Buyer shall support this filing. If Seller is not subject to the jurisdiction of FERC, Buyer shall make such above described filing with FERC, and Seller will support such filing.~~

**10.7** ~~10.6~~ State and Local Filings. Following execution of this Transaction, the appropriate Entergy Operating Company(ies) may submit such Transaction to the state or local regulatory commission(s) having jurisdiction over the retail operations of the Entergy Operating Company(ies) participating in the purchase together with an application for approval of such Transaction, or request rate recovery of the costs associated with its participation in this Transaction based on a finding that such participation is prudent.

**10.8** ~~10.7~~ Confidentiality. Where a filing is made with any regulatory agency for approval of a purchase, the party responsible for the filing shall request that the regulatory agency approve a suitable confidentiality agreement or protective order that will provide appropriate protections for confidential information.

**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.

(b) Each Party shall reimburse the other for the reasonable 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 may be required by any Transmission Operator, each keep and maintain accurate and detailed records relating to each Unit's hourly deliveries of Energy. Such records shall be made available for inspection 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 to the other Party thereof 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

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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 hereto, 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 courts of the State of New York, 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; and

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

11.6 Buyer Liability. Entergy Services, Inc., is entering into, and is a party to, this Transaction as agent for the Entergy Operating Companies, and shall have no liability hereunder. The liability of the Entergy Operating Companies hereunder, whether in respect of a default or otherwise, shall be several and not joint.

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 ~~decimals~~percentages that can also be expressed as ~~percentages~~decimals in accordance with this Transaction, in which case all such calculations and computations shall be revised 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**

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**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.**

**11.11 Obligation to Serve Retail Load. In the event that Buyer’s obligation to serve retail load is assigned to another party pursuant to a change in Law (an “Assignee”), Buyer shall have the right to assign all of its rights and obligations under this Agreement to such Assignee.**

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## **Schedule A**

### **The Facilities[; Response Rates]**

#### The Facilities

*[Provide brief description of Facilities.]*

#### Response Rates

*[To come]*

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**Schedule 3.2  
Form of Availability Notice**

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

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

**Time** \_\_\_\_\_

<b>Hour</b>	<b>Contract Quantity</b>	<b>Available Capacity</b>	<b>Reason for Change in Capacity</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>			

Next Day Scheduling	(M-F 8 a.m. - 5 p.m.)
Phone	800-461-4918
Fax	281-297-3733
Current Day Scheduling	
Phone	281-297-3503
Fax	281-297-3730

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**AVAILABILITY NOTICE**

**Effective**  
**Date** \_\_\_\_\_

**Time** \_\_\_\_\_

**AVAILABILITY NOTICE (25-HOUR DAY)**

**Effective**  
**Date(s)**

**Time**

<b>Hour</b>	<b>Contract Quantity</b>	<b>Available Capacity</b>	<b>Reason for Change in Capacity</b>
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>			

Next Day Scheduling (M-F 8 a.m. - 5 p.m.)  
 Phone 800-461-4918  
 Fax 281-297-3733

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Current Day Scheduling

Phone 281-297-3503

Fax 281-297-3730

\*Change from CDST to CST



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### **Schedule 3.3 Capacity Payment Discount**

$$\text{CPD} = \frac{\text{CP}_m \text{O}}{\text{P}_w^{**}} (2*(\text{AR}_m - \text{MA}_m))$$

Where:

CPD = Capacity Payment Discount, expressed in dollars.

~~CP<sub>m</sub>~~ = ~~Capacity Payment~~ **Option Premium** for the applicable Month, expressed in dollars.  
**OP<sub>w</sub>**

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.

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**Schedule 5.1(c)  
Form of Scheduling and Dispatch Notice; Form of Tag**

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

**Effective  
Date** \_\_\_\_\_

**Effective  
Date(s)**

Hour	Contract Quantity	Available Capacity	Entergy Schedule	Comments
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
<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.)  
 Phone 800-461-4918  
 Fax 281-297-3733

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Current Day Scheduling

Phone 281-297-3503

Fax 281-297-3730

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

**Effective**

**Date(s) \_\_\_\_\_**

<u>Hour</u>	<u>Contract Quantity</u>	<u>Available Capacity</u>	<u>Entergy Schedule</u>	<u>Comments</u>
1				
2				
2*				<b>Change to CST</b>
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.

<u>Hour</u>	<u>Contract Quantity</u>	<u>Available Capacity</u>	<u>Entergy Schedule</u>	<u>Comments</u>
1				
2				
2*				Change to CST
3				
4				
5				
6				
7				
8				
9				
10				

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<b>11</b>				
<b>12</b>				
<b>13</b>				
<b>14</b>				
<b>15</b>				
<b>16</b>				
<b>17</b>				
<b>18</b>				
<b>19</b>				
<b>20</b>				
<b>21</b>				
<b>22</b>				
<b>23</b>				
<b>24</b>				
<b>TOTAL</b>				

Next Day Scheduling (M-F 8 a.m. - 5 p.m.)  
 Phone 800-461-4918  
 Fax 281-297-3733

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

\*Change from CDST to CST

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### Form of Tag

Tag Information			
GCA	PSE	Tag Code	LCA

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

Start Date:
Stop Date:
Time Zone:
Transaction

Requests				
	Req	Type	Time	Status

Market Path			
PSE	Product	Contract	Misc (Token/Value)

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

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

Transmission Allocation			
TP	Owner	Product	OASIS

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

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## **Schedule 6.2**

### **Planned Maintenance**

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## **Schedule 8.1**

### **Guaranteed Ramp Rate; ~~Unplanned Outage Rate~~**

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#### **Schedule 8.4**

#### **{Approvals} to be Obtained**

#### **As of the Transaction Date**

**Buyer**

**Seller**

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**[No redlined changes to the Credit Elections Cover Sheet.  
Document intentionally excluded from redlined package.]**

**[No redlined changes to Collateral Annex.  
Document intentionally excluded from redlined package.]**