

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: _____, 2003 ("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, by and among Entergy Services, Inc. and the Entergy Operating Companies, as amended.

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: _____

Phone: (281) 297-3503

Facsimile: (281) 297-3730

Scheduling (Day-ahead and Month-ahead):

Attn: _____

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: _____

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 ESI 2003 Supplemental RFP and subject to the terms and acknowledgements set forth in the Proposal Submission Agreement.

Credit and Collections:

Attn: Vice President, Credit Risk Management
Phone: (832) 681-3218
Facsimile: (832) 681-3416

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: _____

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 _____

Article Two

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

Article Four

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

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

[See Credit Elections Coversheet]

8.1 Party A 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

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If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

- ☐ Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
- ☐ Option B Specify: _____
- ☐ Option C Specify: _____

(b) Credit Assurances:

- ☐ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

☒ Confidentiality Applicable

If not checked, inapplicable.

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.

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: _____

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 ESI 2003 Supplemental RFP and subject to the terms and acknowledgements set forth in the Proposal Submission Agreement.

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)
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MASTER POWER PURCHASE AND SALES AGREEMENT

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GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

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

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the 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. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

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

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

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

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

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

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

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and 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) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

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

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

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

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

Option C: Party A may request from Party B the information specified in the Cover Sheet.

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

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

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

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

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

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

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

Option C: Party B may request from Party A the information specified in the Cover Sheet.

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

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

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

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

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

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

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including 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 Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

- A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION

This Confirmation shall confirm the Transaction agreed to on _____, 2003 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:

☐ Dispatchable CCGT or Cogeneration. Buyer has the ability to Schedule and Dispatch Energy from the Facilities on an hour-ahead basis, including the ability to Dispatch the Facilities in a manner requiring Start-up and Shutdown of the Facilities based on the capabilities of the Facilities, as set forth in the attached Additional Provisions. Buyer shall have no Minimum Capacity Factor requirements.

☐ Limited Dispatch CCGT or Cogeneration. Buyer has the ability to Schedule and Dispatch Energy from the Facilities on an hour-ahead basis, including the ability to Dispatch the Facilities in a manner requiring Start-up and Shutdown of the Facilities based on the capabilities of the Facilities, as set forth in the attached Additional Provisions. [Buyer shall have a certain Minimum Capacity Factor requirement as set forth in the attached Additional Provisions.]

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- ☐ Dispatchable CT/Quick Response. Buyer has the ability to Schedule and Dispatch Energy from the Facilities on an hour-ahead basis, including the ability to Dispatch the Facilities in a manner requiring Start-up and Shutdown of the Facilities based on the capabilities of the Facilities, as set forth in the attached Additional Provisions. Buyer shall have no Minimum Capacity Factor requirements.

Applicable to All Products.

Unit Contingent Capacity and Energy. The Contract Quantity of Capacity and associated Energy is intended to be supplied from the Facilities and Seller's failure to deliver is excused to the extent the Facilities (including all facilities on Seller's side of the Delivery Point) shall not, for any reason, be available to produce and deliver the Contract Quantity of Capacity or associated Energy at the Delivery Point ("Unit Contingency"). The burden of establishing the existence and extent of any Unit Contingency shall be on Seller. The priority of the sale of Capacity or Energy from the Facilities shall be in accordance with Section 2.1 of the Additional Provisions attached hereto.

- ☐ 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 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 such qualification as a Firm Network Resource.

Contract Quantity:
of 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: Capacity Payment plus Energy Payment, both payable monthly, plus Other Charges.

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Capacity Payment:

[A or B, as applicable]

[A] The Capacity Payment for the Contract Quantity of Capacity shall be \$____ per kW/Year, payable monthly in accordance with the following schedule for the one year Delivery Period:

<u>Month</u>	<u>Allocation</u>	<u>Capacity Payment</u> <u>(\$/ 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%	_____

[B] The Capacity Payment for the Contract Quantity of Capacity shall be \$____ per kW/Month, payable monthly for the three month Delivery Period.

The Capacity Payments constitute Seller's full compensation, including all fixed cost charges, other than the Energy Payment and Start-up Payments. Capacity Payments are subject to the Capacity Payment Discount, as set forth in the attached Additional Provisions.

Energy Payment: A. To the extent Buyer Dispatches Energy pursuant to a Month-ahead Schedule and Dispatch in accordance with Section [5] of the Additional Provisions, the Energy Payment for such Energy for such Month shall be determined in accordance with the following formula:

$$EP_M = \sum_{i=1}^N (MWh_N * HR * FOM)$$

Where:

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

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N	=	Number of hours in applicable Month
MWh _N	=	MWh of Energy delivered to Buyer at the Delivery Point in each hour, expressed in MWh, pursuant to a Month-ahead Schedule and Dispatch
HR	=	[A, B or C, as applicable]
	[A]	_____ MMBtu/MWh
	[B]	Dispatch Level of Contract Quantity
		Heat Rate
		0-30% _____ MMBtu/MWh
		31-40% _____ MMBtu/MWh
		41-60% _____ MMBtu/MWh
		61-80% _____ MMBtu/MWh
		81-100% _____ MMBtu/MWh
	[C]	[To be based on Guaranteed Heat Rate curve if Contract Capacity is the entire Capacity of a Unit.]
FOM	=	First of the Month Inside FERC Index Price - the first of the Month Gas price published in Platts <i>Inside FERC's Gas Market Report</i> in its "Market Center Spot-Gas Prices" under the column heading "Index" for Gas to flow at [<i>"Henry Hub" or "Houston Ship Channel" (select one)</i>] for the applicable Month, expressed in \$/MMBtu [plus or minus basis adjustment, if any] [plus actual applicable sales and use taxes]

- B. For all other Energy Dispatched by Buyer in accordance with this Transaction, the Energy Payment for such Energy for the applicable Month shall be determined in accordance with the following formula:

$$EP_M = \sum_{i=1}^N (MWh_N * HR * GDIP_N)$$

Where:

EP _M	=	Energy Payment in respect of a Month in dollars
N	=	Number of hours in applicable Month
MWh _N	=	MWh of Energy delivered to Buyer at the Delivery Point in each hour, expressed in MWh, other than pursuant to a Month-ahead Schedule and Dispatch

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HR = [A, B or C, as applicable]

[A] _____ MMBtu/MWh

[B] Dispatch Level of

Contract Quantity

Heat Rate

0-30% _____ MMBtu/MWh

31-40% _____ MMBtu/MWh

41-60% _____ MMBtu/MWh

61-80% _____ MMBtu/MWh

81-100% _____ MMBtu/MWh

[C] [To be based on Guaranteed Heat Rate curve if Contract Capacity is the entire Capacity of a Unit.]

GDIP_N = 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, expressed in \$/MMBtu [plus or minus basis adjustment, if any] [plus actual applicable sales and use taxes]

Other Charges: Start-up Payments, payable monthly.

Start-up Payments: In respect of each Cold Start and Hot Start of each Unit following a Shutdown required by a Scheduling and Dispatch Notice in excess of an aggregate of [104 for Dispatchable Products] [52 for Limited Dispatch Product] for the one year Delivery Period or [26 for Dispatchable Products] [13 for Limited Dispatch Products] for the three month Delivery Period, Buyer shall pay the applicable Start-up Payment set forth below. All costs in respect of any Cold Start or Hot Start not following a Shutdown shall be for the account of Seller.

A. Fuel

HSFP = (FHS * GDIP_D)

CSFP = (FCS * GDIP_D)

Where:

HSFP = Start-up Fuel Payment for a Hot Start

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CSFP = Start-up Fuel Payment for a Cold Start

FHS = _____ MMBtu (Fuel per Hot Start)

FCS = _____ MMBtu (Fuel per Cold Start)

GDIP_D = 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 Day [plus or minus basis adjustment, if any] [plus actual applicable sales and use taxes]

B. Non-Fuel

Hot Start: \$_____ per generating unit start

Cold Start: \$_____ per generating unit start

Delivery Period: [A, or B, as applicable]

[A] Hour ending 0100 CPT June 1, 2003 to and including hour ending 2400 CPT August 31, 2003.

[B] Hour ending 0100 CPT May 1, 2003 to and including hour ending 2400 CPT April 30, 2004.

Special Conditions: See attached Additional Provisions.

Scheduling: See attached Additional Provisions.

Option Buyer: N/A

Option Seller: N/A

Type of Option: N/A

Strike Price: N/A

Premium: N/A

Exercise Period: N/A

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This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____, 2003 (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 _____, 2003,

between

ENTERGY SERVICES, INC.,

as Agent for

THE ENTERGY OPERATING COMPANIES,

and

[SELLER]

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ADDITIONAL PROVISIONS

1.0 DEFINITIONS.

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

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

1.2 *[Actual Available Contract Quantity of Capacity]* means, in respect of the Delivery Period, an amount calculated in accordance with the following formula:

$$CQC_{AA} = \sum_{i=1}^N (MW_N)$$

Where:

CQC_{AA} = Aggregate Contract Quantity of Capacity that is actually available in the Delivery Period

N = Number of hours in the Delivery Period

MW_N = Contract Quantity of Capacity that is actually available in each hour of the Delivery Period]

[If applicable, and in such case only to Limited Dispatch STUCPA Product B]

1.3 *Affected Capacity* means any portion of the Contract Quantity of Capacity that is unavailable or limited due to a Force Majeure event [or Planned Maintenance]. *[Applicable only to one Year Delivery Period]*

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

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1.5 *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.

1.6 *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.

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

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

1.9 *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.

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

1.11 *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.

1.12 *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].

1.13 [*Capacity Shortfall Payment* means the payment to be made by Buyer to Seller in the event that Buyer shall fail to Schedule and Dispatch Energy sufficient to achieve a Minimum Capacity Factor of [____%].] [*If applicable, and in such case only to Limited Dispatch STUCPA Product B*]

1.14 [*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.]

1.15 *Cold Start* means starting a steam turbine when the first stage inner metal temperature is less than or equal to 500 degrees Fahrenheit. [*If the generating resource is a Gas turbine, definition may be modified as applicable for the specific generating resource.*]

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1.16 *Contract Year* means the twelve months beginning on May 1, 2003 and ending on April 30, 2004. [Applicable only to one year Delivery Period].

1.17 *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.

1.18 *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.

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

1.20 [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.]

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

1.22 *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.

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

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

1.25 *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.

1.26 *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.

1.27 *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.

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

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

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

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

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

1.33 *[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 the Delivery Period] *[Applicable only to one year Delivery Period]*.

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

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1.35 *[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.]]*

1.36 *Force Majeure* means an event or circumstance which prevents a 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, 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 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.¹

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

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

1.39 *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

¹ 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.

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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.²

1.40 *Hot Start* means starting a steam turbine when the first stage inner metal temperature is greater than 500 degrees Fahrenheit. *[If the generating resource is a Gas turbine, definition may be modified as applicable for the specific generating resource.]*

1.41 *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.

1.42 *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.

1.43 *kW* means kilowatt.

1.44 *kWh* means kilowatt-hour.

1.45 *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 *Minimum Capacity Factor* means, for the Delivery Period and expressed as a percentage or decimal, as applicable, the total Energy that is Scheduled and Dispatched by Buyer divided by the Actual Available Contract Quantity of Capacity; provided, however, that if, in any hour, the Energy that is actually Scheduled and Dispatched is less than the Contract Quantity of

² 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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Capacity specified in the Scheduling and Dispatch Notice and Seller is the Approval Entity, the Contract Quantity of Capacity specified in the Scheduling and Dispatch Notice shall be deemed to be the total Energy that is Scheduled and Dispatched by Buyer.] *[If applicable, and in such case only to Limited Dispatch STUCPA Product B]*

1.47 *MMBtu* means one million Btus.

1.48 *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.

1.49 *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 Delivery Period exceed [360] *[Applicable only to one year Delivery Period]* [90] *[Applicable only to three month Delivery Period]*.

1.50 *MW* means megawatt.

1.51 *MWh* means megawatt-hour.

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

1.53 *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, 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 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.

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

1.55 *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.

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

1.57 *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 the Delivery Period]. *[Clause (iii) applicable only to one year Delivery Period]*

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

1.59 *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.

1.60 *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.

1.61 *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.

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

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

1.64 *Rolling 12 Month Availability* means, as of the end of any Month, the average of the Monthly Availabilities from and including the first Month in the twelve (12) consecutive

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Months during the Delivery Period ending with such Month to and including the 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. *[Applicable only to one year Delivery Period]*.

1.65 *Schedule 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 *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 *Shutdown* means an actual shutdown of a Unit at the end of the Ending Requested Dispatch Hour of a Dispatch Period.

1.68 *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 *Start-up* means the action of actually bringing 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).

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

1.71 *Summer Season* means the Months of June, July and August.

1.72 *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.

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

1.74 *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.

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

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

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

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

1.79 *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.

1.80 *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.

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

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

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

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

2.0 SALE PRIORITY.

2.1 Priority of Transaction. Seller shall not offer, sell or make available any of the Contract Quantity of Capacity or associated Energy or Schedule and Dispatch any of the Contract Quantity of Capacity to or for any Person other than Buyer or its successors or permitted assigns, except as set forth in Section[5.1(a)]. 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 Entergy 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 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

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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 Operation of Facilities. Except to the extent the Facilities are unavailable 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.

3.3 Capacity Payment Discount. 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, the Capacity Payment payable by Buyer in respect of such Month shall be adjusted downward by the Capacity Payment Discount, as calculated in respect of such Month as set forth in Schedule [3.3]. If the Capacity Payment Discount in respect of any Month exceeds the Capacity Payment for such Month, there shall be no Capacity Payment in respect of such Month, and Buyer shall be entitled to no other adjustments as a result of such Availability shortfall.

3.4 Replacement Capacity. (a) In the event Seller is unable to Schedule and Dispatch to Buyer all or a portion of the Contract Quantity of Capacity and associated Energy in

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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) Seller shall bear all risk associated with any decision not to procure firm Gas supply and firm Gas transportation to ensure its ability to deliver to Buyer the Energy associated with the Contract Quantity of Capacity. 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 Gas supply or firm Gas 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) 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.

3.5 Other Associated Electric Products. If at any time during the Delivery Period there shall occur a change in market structure, including but not limited to the designation of an independent system operator or formation of 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 Capacity Payment and no further amount shall be payable.

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4.0 QF PUT.

Notwithstanding the Capacity Payments 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 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 (i) providing to Seller a Scheduling and Dispatch Notice, substantially in the form set forth in Schedule [5.1(c)],

- (A) in respect of the Scheduling and Dispatch of all or a portion of the Contract Quantity of Capacity for the immediately subsequent Month (subject to adjustment pursuant to clauses (B) and (C) below), 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”),
- (B) in respect of the Scheduling and Dispatch of all or a portion of the Contract Quantity of Capacity for the immediately subsequent Day

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(subject to adjustment pursuant to clause (C) below), at or before 9:30 a.m. CPT on the immediately preceding Business Day prior to such Day, or

- (C) in respect of the Scheduling and Dispatch of all or a portion of the Contract Quantity of Capacity for the immediately subsequent hour (subject to the operational capabilities of the Facilities, including the ramping capabilities and other limitations thereof), 10 minutes before the applicable deadline specified by the Control Area Operator or established by the Transaction Information System prior to such hour,

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

- (x) creating and submitting 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
- (y) providing, at least [_____] hours in advance of the Tag Deadline, written instructions to Seller to create and submit, 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”).

(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 [Minimum Capacity Factor] *[If applicable, and in such case only to Limited Dispatch STUCPA Product B]*, 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

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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 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) To the extent of any change, adjustment or amendment made by Buyer to a previously submitted Scheduling and Dispatch Notice (a "Schedule Change"), any actual additional out-of-pocket expenses and costs or actual savings attributable to the procurement of Gas by Seller directly in response to such initial Scheduling and Dispatch Notice or any resale of such Gas thereafter shall be for the account of Buyer. Seller shall use its best reasonable efforts to promptly notify Buyer of its estimate of such expenses, costs or savings.

(g) [In the event the Minimum Capacity Factor for the Delivery Period is less than [___%], Buyer shall pay Seller the applicable Capacity Shortfall Payment set forth in Schedule **[5.1(g)]**.] *[If applicable, and in such case only to Limited Dispatch STUCPA Product B]*

(h) 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.

(i) The maximum number of Start-ups per Day, per calendar week, per Month and for the Delivery Period that may be requested pursuant to a Scheduling and Dispatch Notice (provided that such Start-ups are attained) is set forth in Schedule **[5.1(i)]**. When a Dispatch Period will involve a Cold Start or Hot Start, Buyer shall provide Seller with advance notice of at least the applicable Start-up Notification Lead Time set forth in Schedule **[5.1(i)]**. When a Dispatch Period, including revisions to a previously Scheduled Dispatch Period, does not involve a Cold Start or Hot Start [or when a Unit shall be operating with automatic generating control], Buyer shall provide Seller with a Scheduling and Dispatch Notice in accordance with the procedures and timing requirements therefor otherwise set forth in Schedule **[5.1(i)]**.

(j) Set forth in Schedule **[5.1(i)]** are (i) the minimum run time (in hours), which shall include the time required for ramping, if any, if the Schedule and Dispatch of a Unit shall require a Start-up the cost of which is to be for Seller's account pursuant to the provision for Start-up

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Payments in the Confirmation, (ii) the minimum generation level (in MW), excluding any ramping requirements, and (iii) the minimum downtime (in hours), if any, after a Shutdown of a Unit before the Unit may be restarted. Buyer's Schedule and Dispatch of the Facilities shall comply with the foregoing requirements.

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, (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 [Metering. Energy delivered by Seller shall be metered at the Delivery Point. Buyer shall have the right to receive or retrieve such data in electronic form in real time on a continuous basis by telemetry. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment in connection with the foregoing.] *[Applicable if Contract Quantity of Capacity is the entire Capacity of a Unit]*

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, 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

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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 Equivalent Planned Maintenance Hours for the Delivery Period 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, 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] *[Applicable only to one year Delivery Period]* [No Planned Maintenance may be scheduled during the Delivery Period.] *[Applicable only to three month Delivery Period.]*

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 guaranteed rate of change (increase and decrease) in net electrical output per minute, measured over the period beginning at the time of an instruction to change the generator's net output or schedule and ending at the time that such net output or scheduled energy level is achieved (such rate of change, the "Ramp Rate," and such maximum 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 is set forth on Schedule [8.1].

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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 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, 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 Seller’s receipt of notice of such ETO Determination, Seller shall by written notice to Buyer either agree or decline to pay for such upgrades, costs and expenses. Thereafter, Buyer, in its sole and absolute discretion, may either (i) terminate this Transaction by written notice to Seller within ten (10) Business Days after Buyer’s receipt of Seller’s notice declining to pay for the upgrades, costs or expenses, or (ii) 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” 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) 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%. *[Applicable only to one year Delivery Period]*

(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

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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 [] and not less than [] thereafter (determined on a [] 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 Approvals necessary for it to legally perform its obligations under the Master Agreement and this Transaction, except as otherwise disclosed in Schedule [8.4].³

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, 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

³ 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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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) Except as provided in Section 8.5(a) or as Seller and Buyer may otherwise agree in writing, neither Party shall file with FERC any proposed change in any rate, term or condition set forth in this Transaction. Notwithstanding the foregoing, either Party may file an application with FERC pursuant to Section 206 of the Federal Power Act seeking a change in the price to be paid by Buyer for the Contract Quantity of Capacity and/or associated Energy that Seller has agreed to deliver to Buyer pursuant to this Transaction. The standard of review that shall apply to any such application for a price change, whether proposed by either Party or FERC acting *sua sponte*, shall be the “public interest” standard of review delineated in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and in *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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] 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.

(a) Seller must have obtained all Approvals required with respect to the operations of Facilities and the performance of its obligations hereunder, except to the extent the failure to do so would have an immaterial effect on this Transaction, the Parties or the performance of their respective obligations hereunder.

10.2 Buyer’s Conditions. Subject to Section [10.3] and except to the extent waived in writing by Buyer in its sole and absolute discretion, the obligations 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.

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(a) 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; provided, however, that the date for satisfying the condition set forth in this Section **[10.2(a)]** may be extended by Buyer to any date prior to the date on which the Delivery Period commences.

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 written notice thereof to Seller.

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.

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.

10.7 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.

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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 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

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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 percentages that can also be expressed as 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 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.

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Schedule A

The Facilities[; Response Rates]

The Facilities

[Provide brief description of Facilities.]

Response Rates

[To come]

Schedule 3.2
Form of Availability Notice
AVAILABILITY NOTICE (24-HOUR DAY)

Effective
Date _____

Time _____

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

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

AVAILABILITY NOTICE (25-HOUR DAY)

Effective

Date _____

Time _____

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

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

Schedule 3.3

Capacity Payment Discount

$$\text{CPD} = \text{CP}_m * (2 * (\text{AR}_m - \text{MA}_m))$$

Where:

CPD = Capacity Payment Discount, expressed in dollars.

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

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

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

Schedule 5.1(c)

Form of Scheduling and Dispatch Notice; Form of Tag

Scheduling and Dispatch Notice (24-Hour Day)

Effective
Date_____

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				
TOTAL				

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

Scheduling and Dispatch Notice (25-Hour Day)

Effective
Date _____

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

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

Form of Tag

Tag Information			
GCA	PSE	Tag Code	LCA

Start Date:
Stop Date:
Time Zone:
Transaction

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

Requests				
	Req	Type	Time	Status

Market Path			
PSE	Product	Contract	Misc (Token/Value)

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

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

Transmission Allocation			
TP	Owner	Product	OASIS

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

Schedule 5.1(g)

[Capacity Shortfall Payments]

Buyer shall pay a Capacity Shortfall Payment in respect of the Delivery Period pursuant to Section [5.1(g)], calculated as follows:

$$CS = MWh * HR * AFOM$$

Where:

CS = Capacity Shortfall Payment in respect of the Delivery Period, in dollars

MWh = MWh of Energy that would have been Scheduled and Dispatched to Buyer if the Minimum Capacity Factor in the Delivery Period were []%, less the total MWh of Energy that is Scheduled and Dispatched by Buyer in the Delivery Period (but not less than zero)

HR = [] MMBtu/MWh

AFOM = Average First of the Month Inside FERC Index Price - the average first of the Month Gas prices published in Platts *Inside FERC's Gas Market Report* in its "Market Center Spot-Gas Prices" under the column heading "Index" for Gas to flow at [Henry Hub] [Houston Ship Channel] for the Delivery Period, expressed in \$/MMBtu]

[If applicable, and in such case only to Limited Dispatch STUCPA Product B]

Schedule 5.1(i)

Start-up Procedures and Constraints

Start-ups with no Start-up Payments assessed:

Delivery Period _____

Maximum Start-ups:

Day _____

Week _____

Month _____

Delivery Period _____

Start-up Notification Lead Times:

Hot Start: _____ minutes

Cold Start: _____ minutes

Other Procedures and Timing Requirements:

Minimum Run Time: _____ hours

Minimum Dispatch Level: _____ MW

Minimum Downtime: _____ hours

Schedule 6.2
Planned Maintenance

Schedule 8.1

Guaranteed Ramp Rate; Unplanned Outage Rate

Schedule 8.4

Approvals

**PARAGRAPH 10
TO THE
COLLATERAL ANNEX
TO THE**

EEI MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

I. Collateral Threshold.

A. Party A Collateral Threshold.

- ☐ \$_____ (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A

Collateral Threshold

Credit Rating

\$ _____
\$ _____
\$ _____
\$ _____
\$ _____

_____ (or above)

Below _____

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- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, and if [Party A’s][Party A’s Guarantor’s] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A		
<u>Collateral Threshold</u>	<u>Credit Rating</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)	_____ (or above)
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	Below _____	Below _____

- ☐ The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party A’s Collateral Threshold be greater than \$_____.
☐ Other – see attached threshold terms

B. Party B Collateral Threshold.

- ☐ \$_____ (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party B Collateral Threshold” opposite the Credit Rating for [Party B][Party B’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post

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Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party B

Collateral Threshold

Credit Rating

\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- ☐ (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, and if [Party B's][Party B's Guarantor's] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party B

Collateral Threshold

Credit Rating

Credit Rating

\$ _____	_____ (or above)	_____ (or above)
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	Below _____	Below _____

- ☐ The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than \$_____.
- ☐ Other – see attached threshold terms

II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:

	<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A) Cash	[]	[]	100%
(B) Letters of Credit	[]	[]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii)

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twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).

(C) Other [] [] _____%

III. Independent Amount.

A. Party A Independent Amount.

- ☐ Party A shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- ☐ Party A shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- ☐ Party A shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

B. Party B Independent Amount.

- ☐ Party B shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any

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outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

- ☐ Party B shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- ☐ Party B shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

IV. Minimum Transfer Amount.

- A. **Party A Minimum Transfer Amount:** \$_____
- B. **Party B Minimum Transfer Amount:** \$_____

V. Rounding Amount.

- A. **Party A Rounding Amount:** \$_____
- B. **Party B Rounding Amount:** \$_____

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

- ☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- ☐ Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party A] [Party A's Guarantor] has a Credit Rating from _____ and the lowest Credit Rating for [Party A] [Party A's Guarantor] is _____ or higher from _____; (3) Cash shall be held only in any

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jurisdiction within the United States; and (4) [other, if any]. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- ☐ Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☐ Other - _____

B. Party B Eligibility to Hold Cash.

- ☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- ☐ Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party B] [Party B's Guarantor] has a Credit Rating from _____ and the lowest Credit Rating for [Party B] [Party B's Guarantor] is _____ or higher from _____; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- ☐ Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☐ Other - _____

VII. Notification Time.

- ☐ Other - _____

VIII. General.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

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COLLATERAL ANNEX

This Collateral Annex, together with the Paragraph 10 Elections, (the “Collateral Annex”) supplements, forms a part of, and is subject to, the EEI Master Power Purchase and Sale Agreement, dated _____, including the Cover Sheet and any other annexes thereto between Entergy Services, Inc., as agent for the Entergy Operating Companies (“Party A”) and _____ (“Party B”). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.

The obligations of each Party under the Agreement shall be secured in accordance with the provisions of this Collateral Annex, which, except as provided below, sets forth the exclusive conditions under which a Party will be required to Transfer Performance Assurance in the form of Cash, a Letter of Credit or other property as agreed to by the Parties, as well as the exclusive conditions under which a Party will release such Performance Assurance. This Collateral Annex supercedes and replaces in its entirety Sections 8.1(c), 8.2(c) and 8.3 of the Agreement and the defined terms used therein to the extent that such terms are otherwise defined and used in this Collateral Annex. In addition, to the extent that the Parties have specified on the Cover Sheet that Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement are applicable, then the definition of Performance Assurance as used in this Collateral Annex shall apply and Paragraphs 2, 6, 7 and 9 of this Collateral Annex shall apply to any such Performance Assurance posted under such provisions, it being understood that nothing contained in this Collateral Annex shall change any election that the Parties have specified on the Cover Sheet with respect to Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement, which provisions require a Party to Transfer Performance Assurance under certain circumstances not contemplated by this Collateral Annex.

Paragraph 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below:

“Calculation Date” means any Local Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraphs 3, 4, 5 or 8 of this Collateral Annex.

“Cash” means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

“Collateral Account” shall have the meaning attributed to it in Paragraph 6(a)(ii)(B).

“Paragraph 10 Cover Sheet” means the Cover Sheet attached to this Collateral Annex setting forth certain elections governing this Collateral Annex.

“Collateral Requirement” shall have the meaning attributed to it in Paragraph 3(b).

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“Collateral Threshold” means, with respect to a Party, the collateral threshold, if any, set forth in the Paragraph 10 Cover Sheet for a Party.

“Collateral Value” means (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the Valuation Percentage multiplied by the stated amount then available under the Letter of Credit to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the Valuation Percentage multiplied by the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, a Party pursuant to this Collateral Annex as determined by such Party in a commercially reasonable manner.

“Credit Rating” means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its “corporate credit rating” by S&P.

“Credit Rating Event” shall have the meaning attributed to it in Paragraph 6(a)(iii).

“Current Mark-to-Market Value” of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction.

“Custodian” shall have the meaning attributed to it in Paragraph 6(a)(i).

“Downgraded Party” shall have the meaning attributed to it in Paragraph 6(a)(i).

“Eligible Collateral” means, with respect to a Party, the Performance Assurance specified for such Party on the Paragraph 10 Cover Sheet.

“Exposure” of one Party (“Party X”) to the other Party (“Party Y”) for each Transaction means (without duplication) as of any Calculation Date the sum of the following:

(a) the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party X and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party Y and that remain unpaid as of such Calculation Date; plus

(b) the Current Mark-to-Market Value of such Transaction to Party X.

“Exposure Amount” shall have the meaning set forth in Paragraph 3(a).

“Independent Amount” means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party (which amount, if designated, shall either be a Fixed Independent Amount, a Full Floating Independent Amount or a Partial Floating Independent Amount, in each case, as designated on the Paragraph 10 Cover Sheet), or if no amount is specified, zero, or with respect to either Party, an additional or reduced amount agreed to as such for that Party in respect of a Transaction.

“Interest Amount” means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day; multiplied by (b) the Interest Rate for that day, divided by (c) 360.

“Interest Period” means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Local Business Day on which Cash was Transferred to such Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

“Interest Rate” means, in respect of a Party holding Cash, the rate specified for such Party in the Paragraph 10 Cover Sheet.

“Letter of Credit” means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) “A-” by S&P and “A3” by Moody's, if such entity is rated by both S&P and Moody's or (b) “A-” by S&P or “A3” by Moody's, if such entity is rated by either S&P or Moody's but not both, substantially in the form set forth in Schedule 1 attached hereto, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) “A-” by S&P or “A3” by Moody's, if such issuer is rated by both S&P and Moody's, (ii) “A-” by S&P, if such issuer is rated only by S&P, or (iii) “A3” by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex.

“Local Business Day” means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient.

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“Minimum Transfer Amount” means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

“Net Exposure” shall have the meaning attributed to it in Paragraph 3(a).

“Notification Time” means 11:00, New York time, on any Calculation Date or any different time specified in the Paragraph 10 Cover Sheet.

“Obligations” shall have the meaning attributed to it in Paragraph 2.

“Performance Assurance” means all Eligible Collateral, all other property acceptable to the Party to which it is Transferred, and all proceeds thereof, that has been Transferred to or received by a Party hereunder and not subsequently Transferred to the other Party pursuant to Paragraph 5 or otherwise received by the other Party. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(a)(iv) and any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash, until all or any portion of such Cash is applied against Obligations owing to such Party pursuant to the provisions of this Collateral Annex. Any guaranty agreement executed by a Guarantor of a Party shall not constitute Performance Assurance hereunder.

“Pledging Party” shall have the meaning attributed to it in Paragraph 3(b).

“Qualified Institution” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) “A-” by S&P and “A3” by Moody's, if such entity is rated by both S&P and Moody's or (b) “A-” by S&P or “A3” by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

“Reference Market-maker” means a leading dealer in the relevant market selected by a Party determining its Exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

“Rounding Amount” means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

“Secured Party” shall have the meaning attributed to it in Paragraph 3(b).

“Transfer” means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

(a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient;

(b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient; and

(c) in the case of any other type of Performance Assurance, delivery thereof as specified by the recipient.

“Valuation Percentage” means, with respect to any Performance Assurance designated as Eligible Collateral on the Paragraph 10 Cover Sheet, the Valuation Percentage specified for such Performance Assurance on the Paragraph 10 Cover Sheet.

Paragraph 2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the “Obligations”), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, the other Party and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

Paragraph 3. Calculations of Collateral Requirement.

(a) On any Calculation Date, the “Exposure Amount” for each Party shall be calculated for all Transactions for which there are any Obligations remaining unpaid or unperformed, by calculating each Party's Exposure to the other Party in respect of each such Transaction and determining the net aggregate sum of all Exposures for all Transactions for each Party. The Party having the greater Exposure Amount at any time (the “Secured Party”) shall be deemed to have a “Net Exposure” to the other Party equal to the Secured Party's Exposure Amount.

(b) The “Collateral Requirement” for a Party (the “Pledging Party”) means the Secured Party's Net Exposure minus the sum of:

- (1) the Pledging Party's Collateral Threshold; plus
- (2) the amount of Cash previously Transferred to the Secured Party, the amount of Cash held by the Secured Party as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to the Pledging Party; plus
- (3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party; provided, however, that, the Collateral Requirement of a

Party will be deemed to be zero (0) whenever the calculation of such Party's Collateral Requirement yields a number less than zero (0).

Paragraph 4. Delivery of Performance Assurance.

On any Calculation Date on which (a) no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, and (c) the Pledging Party's Collateral Requirement equals or exceeds its Minimum Transfer Amount, then the Secured Party may demand that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall, after receiving such notice from the Secured Party, Transfer, or cause to be Transferred to the Secured Party, Performance Assurance for the benefit of the Secured Party, having a Collateral Value at least equal to the Pledging Party's Collateral Requirement. The amount of Performance Assurance required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by the close of business on the next Local Business Day and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Paragraph 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be Transferred.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) On any Local Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Performance Assurance previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Performance Assurance, (i) the Pledging Party shall in fact have a Collateral Requirement of zero; (ii) no Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The amount of Performance Assurance required to be reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. The Pledging Party shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the Pledging Party. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Pledging

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Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, the Pledging Party may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon one (1) Local Business Day's written notice (provided such notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Local Business Days) to the Secured Party; provided, however, that if such substitute Performance Assurance is of a type not otherwise approved by this Collateral Annex, then the Secured Party must consent to such substitution. Upon the Transfer to the Secured Party and/or its Custodian of the substitute Performance Assurance, the Secured Party and/or its Custodian shall Transfer the relevant replaced Performance Assurance to the Pledging Party within two (2) Local Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to the Secured Party and/or its Custodian prior to the release of the Performance Assurance to be returned to the Pledging Party and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal the greater of the Pledging Party's Collateral Requirement or the Pledging Party's Minimum Transfer Amount. Each substitution of Performance Assurance shall constitute a representation and warranty by the Pledging Party that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by the Secured Party and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to a Party that is the Secured Party shall be subject to the following provisions.

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(i) If such Party is entitled to hold Cash, then it will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a “Custodian”) to hold Cash for it provided that the conditions for holding Cash that are set forth on the Paragraph 10 Cover Sheet for such Party are satisfied. If such Party is not entitled to hold Cash, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to such Party and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B). Upon notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. If the Secured Party or its Custodian fails to satisfy any conditions for holding Cash as set forth above or in the Paragraph 10 Cover Sheet or if the Secured Party is not entitled to hold Cash at any time, then the Secured Party will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(ii)(B), with the Party not eligible to hold Cash being considered the “Downgraded Party” (as defined below). Except as set forth in Paragraph 6(c), the Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to the Secured Party and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party; provided, however, that if a Party or its Custodian is not eligible to hold Cash pursuant to Paragraph 6(a) (such Party shall be the “Downgraded Party” and the event that caused it or its Custodian to be ineligible to hold Cash shall be a “Credit Rating Event”) then:

(A) the provisions of this Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business on the next Local Business Day following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution approved by the non-Downgraded Party (which approval shall not be unreasonably withheld), to a segregated, safekeeping or custody account (the “Collateral Account”) within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for the Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Collateral Annex and for the security interest of the Downgraded Party and execute such account control agreements as are necessary or applicable to perfect the security interest of the Non-Downgraded Party therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of the non-Downgraded Party. The Qualified Institution holding the Cash will

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invest and reinvest or procure the investment and reinvestment of the Cash in accordance with the written instructions of the Pledging Party, subject to the approval of such instructions by the Downgraded Party (which approval shall not be unreasonably withheld), provided that the Qualified Institution shall not be required to so invest or reinvest or procure such investment or reinvestment if an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing. The Downgraded Party shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with the Pledging Party's instructions.

(iii) Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Local Business Day of the first month after the last month to which such invoice relates or (B) the third Local Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within one (1) Local Business Day after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (A), (B), or (C) above, the Pledging Party's Collateral Requirement would be greater than zero.

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(ii) As one method of providing Performance Assurance, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Pledging Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

(c) Care of Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii) and beyond the exercise of reasonable care in the custody thereof, the Secured Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by the Secured Party in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence. Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of the Secured Party shall be deemed to be the holding and possession of such Performance Assurance by the Secured Party for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided in Paragraph 6(a)(ii), nothing in this Collateral Annex

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shall be construed as requiring the Secured Party to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, the Secured Party may exercise any one or more of the rights and remedies provided under the Agreement, in this Collateral Annex or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may, in its sole discretion, exercise any one or more of the following rights and remedies:

(i) all rights and remedies available to a secured party under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;

(ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations;

(iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or

(iv) the right to liquidate any Performance Assurance held by or for the benefit of the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledging Party, including any right of equity or redemption by the Pledging Party (with the Secured Party having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations in such order as the Secured Party may elect.

(b) The Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).

(c) Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

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(d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party, then:

(1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including any Letter of Credit) and the Interest Amount, if any, to the Pledging Party;

(2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (y) to the extent that the Performance Assurance or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and

(3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.

Paragraph 8. Disputed Calculations.

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 4. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 5(a). In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) The Pledging Party will execute and deliver to the Secured Party (and to the extent permitted by applicable law, the Pledging Party hereby authorizes the Secured Party to execute and deliver, in the name of the Pledging Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex, including any action the Secured Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Pledging Party shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by the Secured Party and/or its Custodian under the Agreement and this Collateral Annex, the Pledging Party hereby represents and warrants that:

(i) the Pledging Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under the Agreement and this Collateral Annex;

(ii) upon the Transfer of Performance Assurance by the Pledging Party to the Secured Party and/or its Custodian, the Secured Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens,

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security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) it is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Collateral Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(d) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Collateral Annex or the execution, delivery, performance or enforcement of the Agreement and this Collateral Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Collateral Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

SCHEDULE 1 to Collateral Annex

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$_____), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by a representative of the beneficiary:

1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit"; or

2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit".

This Letter of Credit shall expire on _____.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.

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With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an “Interruption Event”) and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]