



***Appendix C***  
***Product Package D***

***Ownership Acquisition***

***For***

***2011 Western Region***  
***Request For Proposals***  
***For***  
***Long-Term Supply-Side Resources***

Entergy Services, Inc.  
December 9, 2011

**Term Sheet for “Ownership Acquisition Product”**

This Term Sheet describes certain key terms and conditions of a potential agreement between Entergy Texas, Inc. (“Entergy Texas” or “Buyer”) and the seller of the generating unit(s) proposed by Bidder in its proposal (“Seller” and, together with Buyer, the “Parties” and each individually a “Party”) for the acquisition by Buyer of existing or proposed combined-cycle gas turbine (“CCGT”) generating units to provide incremental supply resources for the Western Region. Any proposal offering a Developmental Resource as the resource to be acquired under the Ownership Acquisition Product will be non-conforming unless the proposal also includes a conforming proposal for Product A, B, or C that is based upon the same Developmental Resource. Please refer to Section 2.2, including footnote 2, and Section 6.1, including footnote 6, of the Main Body for important information about the Ownership Acquisition Product. This Term Sheet also includes certain terms applicable exclusively to the purchase of a solid fuel resource or interest therein. (Such terms are expressly noted in this Term Sheet.) The terms and conditions set forth in this Term Sheet will be binding on Bidder (but not ESI or Buyer) and establish the basis for the negotiation and execution of an agreement between Buyer and each Seller whose proposal is selected by Buyer (the “Definitive Agreement”), with necessary changes to accurately reflect any exceptions set forth in Bidder’s proposal that are accepted by Buyer. If Bidder is unable or unwilling to accept one or more of the terms and conditions set forth in this Term Sheet or wishes to propose any alternate or additional terms or conditions, Bidder should indicate in the “Special Considerations” section of its proposal (i) the terms and conditions to which Bidder takes exception, describing with specificity any terms and conditions that Bidder proposes to offer in substitution therefor, or (ii) the new terms and conditions that Bidder proposes as a supplement to the terms and conditions herein. Additional information pertaining to Special Considerations can be found in Section 2.2 of the Main Body.

ID	Proposal Term	Description of Proposal Term
1	<b>Product Description:</b>	The Product described in this Term Sheet is designated as the “ <b>Ownership Acquisition Product.</b> ” This Product provides for the asset acquisition of a Baseload or Load-following electric generating facility capable of meeting the requirements of this Product set forth in this RFP (the “Facility”). <sup>1</sup> For purposes of this Term Sheet:

<sup>1</sup> This Term Sheet is generally based upon the acquisition of CCGT resource. If a resource selected for negotiation of a Definitive Agreement under Product Package D is based upon a technology other than a CCGT resource, the terms of this Term Sheet applicable to the selected proposal (and resulting Definitive Agreement) will be adjusted

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		<ul style="list-style-type: none"> <li>• “Baseload” means the Facility is suited to provide Capacity and deliver energy on a 7 x 24, around-the-clock basis, subject to generating unit availability and applicable balancing area authority or regional transmission organization policies in effect</li> <li>• “Load-following” means the Facility:             <ul style="list-style-type: none"> <li>i) has scheduling or operational flexibility to respond to changing load requirements;</li> <li>ii) is capable of cycling (<i>i.e.</i>, start-up and shut-down) on a day-ahead and intra-day basis;</li> <li>iii) is able to operate across a range of utilization and output levels;</li> <li>iv) may be dispatched between the unit minimum and unit maximum in a timely manner on short notice (with the notice period to be specified in the Definitive Agreement), including hourly swings, start-ups and shutdowns; and</li> <li>v) generally has the characteristics provided in the list of Plant &amp; Equipment and Fuel Supply preferences for Load-Following (also referred to as Flexible Capacity) resources set forth in the Main Body.</li> </ul> </li> </ul> <p>Buyer will consider proposals for the acquisition of one or more generating units comprising part of the Facility, provided the generating units are capable of meeting the requirements of this product, and the purchase of undivided ownership interests in solid fuel resources.</p>
<b>2</b>	<b>Buyer:</b>	<p>Entergy Texas, Inc. (“Entergy Texas” or “Buyer”) or its designee(s) in connection with any financing of the Transaction by Entergy Texas.<sup>2</sup> For purposes of this RFP and the Definitive Agreement, Buyer will be considered an entity entirely separate and distinct from the Entergy transmission organization.</p>
<b>3</b>	<b>Seller:</b>	<p>The “Seller” will be as specified by Bidder in the applicable proposal.</p>

and revised as necessary to reflect, in a manner consistent with the approach taken in this Term Sheet when possible and appropriate, the differences attributable to or arising out of the selection of a technology other than CCGT.

<sup>2</sup> See footnote 5 in the Main Body.

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<b>4</b>	<b>Facility:</b>	The Facility will be as specified by Bidder in the applicable proposal.
<b>5</b>	<b>Capacity:</b>	<p>Subject to the other terms of this Term Sheet and the Definitive Agreement, the capacity of the Facility to be purchased by Buyer (expressed in MW and based on a summer reference conditions (97°F, 56% relative humidity, 14.52 psia)) will be as specified by Bidder in the applicable proposal.</p> <p>Subject to the other terms of this Term Sheet and the Definitive Agreement, the capacity of the Facility (expressed in MW) (i) for the summer season (April – September) at 97°F, 56% relative humidity will be as specified by Bidder in the applicable proposal and (ii) for the winter season (October – March) at 68°F, 74% relative humidity will be as specified by Bidder in the applicable proposal.</p>
<b>6</b>	<b>Purchase Price:</b>	The purchase price for the Transaction will be based on the purchase price specified in the applicable proposal, subject to adjustment due to (i) changes in inventory value from an agreed baseline value (including, without limitation, balance of plant inventory and capital spares), (ii) the proration of specified proratable items ( <i>e.g.</i> , property taxes, prepayments under project contracts acquired by Buyer at the Closing), (iii) plant performance test results for net electrical output, heat rate, emissions, and any other plant performance metrics set forth in the Definitive Agreement, (iv) casualty events and material environmental conditions affecting the Facility or the Facility site, and (v) similar items (the “Purchase Price”). The Purchase Price will be Seller’s sole and exclusive compensation for the Transaction, other than Buyer’s reimbursement of Seller for certain costs associated with the Transaction ( <i>see, e.g.</i> , items 22 and 27 below).
<b>7</b>	<b>Electric Interconnection and Transmission Service:</b>	The Electrical Interconnection Point will be as specified by Bidder in the proposal. Seller will be responsible for the interconnection of the Facility to the electrical transmission system of the host utility. Without limiting the foregoing, all costs assigned to the interconnection customer under the generation interconnection agreement for the Facility required for the interconnection of the Facility (collectively, the “Interconnection Costs”)

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		<p>and, as between Buyer (in its capacity as such) and Seller, all risks arising out of such interconnection will be borne by and remain with Seller.</p> <p>Seller will be responsible for the compliance of all generating unit(s) currently interconnected, or proposed to become interconnected, directly with the Entergy Transmission System and offered in Bidder’s proposal with Entergy’s OATT (administered pursuant to FERC Order No. 2003-A’s Standard Large Generator Interconnection Agreement and Standard Large Generator Interconnection Procedures) or any successor requirements in effect.</p> <p>If the Facility is an Off-System Resource, Seller will be responsible for the transmission of power to the Delivery Point specified by Bidder in the applicable proposal. In this regard, Seller will be responsible for the costs of transmission service and transmission system additions and/or modifications beyond the Electrical Interconnection Point to the Delivery Point that are required to obtain firm transmission or transfer of such power beyond the Electrical Interconnection Point to the Delivery Point.</p> <p>Buyer will be responsible for the transmission of power from the Delivery Point. In this regard, upon the Closing, Buyer will be responsible for the costs of transmission service and transmission system additions and/or modifications beyond the Delivery Point that are required solely to obtain firm transmission or transfer of such power beyond the Delivery Point, subject to Buyer’s conditions to Closing (set forth in item 19 below).</p>
<b>8</b>	<b>Fuel Supply:</b>	<p>Buyer may wish to assume fuel supply and transportation contracts or to pre-arrange with Seller the transfer at or shortly after the Closing of Seller’s fuel arrangements with respect to the Facility. If Buyer does not agree to assume or to pre-arrange the transfer of Seller’s fuel supply or transportation contracts as provided above, Seller may condition the Closing on the termination, cancellation, transfer or assignment of such contracts without a material termination, cancellation, or transfer fee, charge or similar payment.</p>
<b>9</b>	<b>Purchased</b>	<p>Buyer will acquire the Purchased Assets at the closing of the Transaction</p>

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<p><b>Assets:</b></p>	<p>(the “Closing”). The “Purchased Assets” will include all right, title and interest of Seller in the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof) and all related real and personal property assets, properties and rights, of every kind and nature, whether real, personal, or mixed, whether tangible or intangible, primarily relating to, used at, or held for use at the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof), including, without limitation, all inventory (including capital and non-capital spares and fuel inventory), permits, books, records, documents, drawings (including AutoCAD), reports, logs, operating data, operating safety and maintenance manuals, inspection reports, engineering design plans, blueprints, specifications and procedures and similar items, intellectual property rights, rights (if applicable) to off-system firm service to the Entergy Transmission System and the associated transmission-based financial rights (e.g., transmission rights or credits), generation interconnection-based financial rights (e.g., interconnection/transmission rights or credits), emissions allowances, environmental attributes, licenses and contracts (including the long-term services agreement for the generating units) and unexpired warranties, indemnities or guarantees related to the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof) that Buyer chooses to have assigned to it.</p> <p>Assuming occurrence of the Closing, Buyer will acquire the Purchased Assets free and clear of all encumbrances other than Permitted Encumbrances. “Permitted Encumbrances” means (i) liens for property taxes and other governmental charges and assessments (x) that are not yet due and payable or (y) to the extent applicable, the validity of which is being contested in good faith by appropriate proceedings as described in a schedule that will be attached to the Definitive Agreement, (ii) mechanics’, materialmens’, laborers’, carriers’, workers’, repairers’ and other similar liens arising in the ordinary course of business by operation of law for sums not yet due and payable, so long as the amount of any</p>
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		such sum in respect of which any such lien shall have arisen does not exceed \$100,000, individually, and all such sums do not exceed \$250,000 in the aggregate, provided that, with respect to Developmental Resources, the foregoing dollar limitations shall not apply during the period prior to Completion of the Facility (as defined in item 21 below), (iii) specific encumbrances, if any, described in a schedule that will be attached to the Definitive Agreement and will be and are discharged or released either prior to, or simultaneously with, the Closing, (iv) all matters revealed on the title commitment to which Buyer does not object in accordance with the requirements of the Definitive Agreement, and (v) encumbrances with respect to any of the Purchased Assets and created by or resulting from the acts or omissions of Buyer or the Definitive Agreement. The assets that Buyer does not agree in the Definitive Agreement to purchase at the Closing are “Excluded Assets” and will be excluded from the Transaction.
<b>10</b>	<b>Assumed Liabilities:</b>	Buyer will assume certain liabilities of Seller upon the Closing (“Assumed Liabilities”). The Assumed Liabilities will include only specified liabilities in respect of the Purchased Assets or the conduct of the business that relate solely to the period after the Closing and are not the result of any act or omission of Seller, any predecessor of Seller, or any third party occurring or accruing at or prior to the Closing. Seller will retain and have exclusive responsibility for all liabilities and obligations relating to the Purchased Assets or the conduct of business other than the Assumed Liabilities assumed by Buyer upon the Closing (such liabilities and obligations, the “Excluded Liabilities”).
<b>11</b>	<b>Closing Date:</b>	{ <i>For existing resources</i> } The Closing will occur on the last Business Day of the month in which the conditions to the Closing (see items 19 and 20 below), other than those conditions that by their nature are to be satisfied at the Closing, have been either satisfied or waived by the Party for whose benefit such conditions exist; provided, however, that if notice that the last outstanding condition to the Closing, other than those conditions that by their nature are to be satisfied at the Closing, has been either satisfied or waived as provided above is given on or before seven (7) Business Days prior to the end of such month, the Parties will use commercially

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		<p>reasonable efforts to cause the Closing to occur on the last Business Day of the following month (the “Closing Date”).</p> <p><i>{For Developmental Resources}</i> The Closing will occur ten (10) days after the date on which notice that the last outstanding condition to the Closing (see items 19 and 20 below), other than those conditions that by their nature are to be satisfied at the Closing, have been either satisfied or waived by the Party for whose benefit such conditions exist is delivered (the “Closing Date”).</p> <p>The Closing will be deemed to occur at 11:59:59 p.m. Central Prevailing Time on the Closing Date.</p>
<b>12</b>	<b>Efforts to Close:</b>	<p>Each Party generally will cooperate with the other and use commercially reasonable efforts to consummate the Transaction. The foregoing is not intended to and will not vary the terms of any discretion or judgment (however expressed) granted to a Party in the Definitive Agreement or any related agreement (“Ancillary Agreement”).</p>
<b>13</b>	<b>Seller Representations and Warranties:</b>	<p>Representations and warranties made by Seller in the Definitive Agreement will be customary for asset acquisitions of this type by Entergy Operating Companies, and will include, without limitation, representations and warranties covering:</p> <ul style="list-style-type: none"> <li>• Organization, existence and good standing of Seller</li> <li>• Execution, delivery and enforceability of the Definitive Agreement</li> <li>• No violation of law, Seller's organizational documents, or other contracts</li> <li>• Compliance with laws</li> <li>• Solvency and financial condition</li> <li>• Litigation</li> <li>• Owned real property and easements</li> <li>• Leased real property</li> <li>• Personal property</li> <li>• Contracts</li> <li>• Permits</li> <li>• Warranties</li> </ul>

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		<ul style="list-style-type: none"> <li>• Intellectual property</li> <li>• Seller’s regulatory approvals and consents</li> <li>• Condition and sufficiency of assets</li> <li>• For load-following resources, load-following capabilities of the Facility</li> <li>• Environmental matters</li> <li>• Tax matters</li> <li>• Employee matters</li> <li>• Employee benefits</li> <li>• Insurance</li> <li>• Regulatory status</li> <li>• Pipeline status</li> <li>• NERC compliance</li> <li>• Brokers</li> <li>• Absence of certain changes to the purchased assets</li> <li>• Diligence-related matters.</li> </ul> <p>Seller’s representations and warranties in the Definitive Agreement, other than Seller’s “fundamental” and environmental representations and warranties, will survive the Closing for a period of twenty-four (24) months. Seller’s “fundamental” representations and warranties are those representations and warranties of Seller relating to its organization and existence; execution, delivery and enforceability; certain no violation representations and warranties, solvency and financial condition; certain owned real property and easements representations and warranties, including title; tangible personal property representations and warranties, including title; tax, employee and employee benefits matters; pipeline status, brokers, and, potentially, certain diligence-related matters (if any). Seller’s fundamental representations and warranties will survive the Closing for the applicable statute of limitations plus thirty (30) days thereafter. Seller’s environmental representations and warranties are those representations and warranties of Seller relating to the Facility, or real property interests relating to the Facility site, and the environment.</p>
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		Seller’s environmental representations and warranties will survive the Closing for a period of thirty-six (36) months.
<b>14</b>	<b>Buyer Representations and Warranties:</b>	<p>Buyer’s representations and warranties under the Definitive Agreement will be customary for asset acquisitions of this type by Entergy Operating Companies and limited to the following:</p> <ul style="list-style-type: none"> <li>• Organization, existence and good standing of Buyer</li> <li>• Execution, delivery and enforceability of the Definitive Agreement</li> <li>• No violation of law, Buyer’s organizational documents, or other contracts</li> <li>• Litigation</li> <li>• Buyer’s regulatory approvals and consents</li> <li>• Brokers.</li> </ul> <p>Buyer’s “fundamental” representations and warranties are those representations and warranties of Buyer relating to Buyer’s organization and existence; execution, delivery and enforceability; certain “no violation” representations and warranties; and brokers. Buyer’s fundamental representations and warranties will survive the Closing for the applicable statute of limitations plus thirty (30) days thereafter. Buyer’s other representations and warranties will survive the Closing for a period of twenty-four (24) months.</p>
<b>15</b>	<b>Knowledge:</b>	In the Definitive Agreement, “Knowledge” will mean the extent of the knowledge, as of the applicable time, of the individuals listed in separate schedules, one with respect to Seller, the other with respect to Buyer, after the due inquiry by such individuals (or their replacements or successors) or other individuals employed by the applicable Party or any of its Affiliates who would reasonably be expected to have knowledge of the applicable event, fact, circumstance, condition or other matter.
<b>16</b>	<b>Material Adverse Effect:</b>	“Material Adverse Effect” means (a) with respect to a Party, any condition materially impairing such Party’s ability to perform its material obligations under the Definitive Agreement or any related agreement to which it is a party or to consummate the Transaction or (b) with respect to

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		<p>Seller, any change (or changes taken together) in, or effect on, the Purchased Assets that is materially adverse to the operations or physical condition of the Purchased Assets taken as a whole, or the business, assets, properties, financial condition, results of operations, or prospects of the business taken as a whole. An adverse change or effect due to the following will be excluded from clause (b): (i) a change in the economic conditions of the national or regional electric industry generally affecting such industry as a whole and not having a materially disproportionate effect on the Purchased Assets relative to other, similar generation facilities run on the same type of fuel and located in the same region as the Facility; (ii) a change in the price of the fuel supply for the Purchased Assets; (iii) a change in market prices for real estate; (iv) a change in market prices for the sale and purchase of electric generating facilities or Capacity, electric energy, or Other Electric Products therefrom; (v) general United States or global economic conditions generally affecting capital or financial markets; (vi) the ability to obtain credit or other financing; (vii) the taking of routine planned maintenance at the Facility (excluding any extension of a planned outage or additional work performed as a result of a planned outage); and (viii) the Transaction and actions taken pursuant to and in accordance with the Definitive Agreement.</p>
<p><b>17</b></p>	<p><b>Covenants:</b></p>	<p>Covenants in the Definitive Agreement will be customary for asset acquisitions of this type by Entergy Operating Companies, and will include, without limitation, covenants covering the following:</p> <ul style="list-style-type: none"> <li>• Seller’s conduct and actions taken by Seller with respect to the Purchased Assets pending the Closing</li> <li>• Seller’s compliance with contracts</li> <li>• Transfers of permits, emission allowances and contracts</li> <li>• Title to real and personal property</li> <li>• Risk of loss, casualty events, and material environmental conditions</li> </ul>

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		<ul style="list-style-type: none"> <li>• Insurance</li> <li>• Taxes</li> <li>• Employees and benefits</li> <li>• Seller’s non-solicitation obligations</li> <li>• Notice and reporting obligations</li> <li>• Maintenance of books/records</li> <li>• Confidentiality and public announcements</li> <li>• Removal of Excluded Assets</li> <li>• Removal of liens, if any</li> <li>• Developmental obligations (for Developmental Resources)</li> <li>• Buyer’s access to Seller’s books and records and periodic inspection rights</li> <li>• Transmission to the Delivery Point</li> <li>• Technical or diligence-related matters.</li> </ul>
<p><b>18</b></p>	<p><b>Plant Performance Testing:</b></p>	<p>The Definitive Agreement will provide that a test of the performance of the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof) conducted in accordance with good industry practices, certain defined protocols and procedures, and the requirements of the Definitive Agreement and based on American Society of Mechanical Engineers (ASME) standards be performed, at Seller’s expense, by General Physics Corporation or, in the alternative, another independent, experienced and reputable contractor designated by Buyer and reasonably acceptable to Seller to determine, in connection with the Closing, (i) the Facility’s Capacity (or, in the event Bidder proposes to sell to Buyer a portion of the Facility, the Capacity of such portion), (ii) the Facility’s heat rate (HHV) (or, in the event Bidder proposes to sell to Buyer a portion of the Facility, the heat rate (HHV) of such portion), (iii) the amount of and rates of specified emissions from the Facility (or, in the event Bidder proposes to sell to Buyer a portion of the</p>

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		<p>Facility, the emissions from such portion), and (iv) any other plant performance metrics set forth in the Definitive Agreement. The amounts in items (i) through (iv) will be as specified by Bidder in Bidder’s proposal (and may not differ from the amounts proposed by Bidder for such criteria elsewhere in its proposal). The test generally will be required to be conducted within 120 days of the target Closing Date. Buyer may require that a subsequent test be performed if after the performance of the initial test the Closing is delayed by a period of three (3) or more months from the target Closing Date or if the emissions rate for a pollutant from the Facility determined in a performance test exceeds the maximum emissions rate for such pollutant as set forth in the Agreement.</p> <p>If the final test results establish that the applicable Capacity of the Facility is below the contract capacity set forth in the Definitive Agreement, then for each kW of such deficit, the Purchase Price will be reduced by \$[ ]<sup>3</sup> per kW. Buyer will have the right to terminate the Definitive Agreement, without liability or obligation to Seller, in the event the Purchase Price reduction due to a contract capacity shortfall exceeds six and one-half percent (6.5%) of the Purchase Price.</p> <p>If the final test results establish that the applicable heat rate exceeds the contract heat rate set forth in the Definitive Agreement, the purchase price will be reduced by [\$70,000]<sup>4</sup> for each Btu/kWh by which the test heat rate exceeds the contract heat rate. Buyer will have the right to terminate the Definitive Agreement, without liability or obligation to Seller, in the event the purchase price reduction due to an increase in the contract heat</p>
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<sup>3</sup> The capacity buy-down variable will be the \$/kW value of the Facility (at the full nameplate capacity as proposed by Bidder) established by the Purchase Price, prior to any adjustments, plus a \$/kW premium based upon an estimated incremental cost for Buyer to obtain the capacity not provided by Seller from a comparable new build resource (subject to pro rata adjustment if the proposed Delivery Term is less than 30 years).

<sup>4</sup> This figure is indicative only and subject to change. The footnote value expressed is based on recent transactions in the electric generation resource procurement, construction and acquisitions markets and includes variables that fluctuate over time and/or with contract term.

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		<p>rate exceeds six and one-half percent (6.5%) of the Purchase Price.</p> <p>If the final test results establish that an emission rate for a pollutant exceeds the applicable contract emission rate, Seller will, at its expense, use commercially reasonable efforts to correct such failure to achieve the contract emission rate as soon as reasonably possible, subject to the other terms of the Definitive Agreement.</p> <p>Buyer will have the right to terminate the Definitive Agreement, without liability or obligation to Seller, in the event the aggregate Purchase Price reduction due to a combination of a contract capacity shortfall and an increase in the contract heat rate exceeds six and one-half percent (6.5%) of the Purchase Price.</p> <p>Seller will not be entitled to any increase in the Purchase Price or any other compensation from Buyer if the test results confirm that the (i) tested capacity equals or exceeds the contract capacity, (ii) a tested heat rate equals or is less than the contract heat rate, (iii) a tested emission rate equals or is less than the applicable contract emission rate, or (iv) any other tested metric that is better than the applicable requirement as set forth in the Definitive Agreement.</p> <p>Other terms and conditions applicable to the performance test will be specified in the Definitive Agreement.</p>
19	<b>Buyer’s Closing Conditions:</b>	<p>Buyer’s obligation to Close the Transaction will be subject to the satisfaction or express waiver, by Buyer, of certain conditions to be specified in the Definitive Agreement, including, among others:</p> <ul style="list-style-type: none"> <li>• The applicable waiting periods (including any extensions) for the Transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”), have expired or terminated</li> <li>• Buyer has obtained from FERC and/or each of the regulatory authorities having jurisdiction over Buyer or Buyer’s operations (i) regulatory approval of the Definitive Agreement and the Transaction,</li> </ul>

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		<p>including, without limitation, approval of the full recovery of all Buyer costs associated with the Definitive Agreement and the Transaction (through base rates, fuel adjustment charges, and/or such other rates or charges as may be applied pursuant to a rider or otherwise) pursuant to a finding that the Transaction is prudent and in the public interest, and (ii) any other regulatory treatment in connection with the Definitive Agreement or the Transaction required by Buyer, including, without limitation, with respect to timing, scope, and means of recovery, which approvals are, in each case, final and non-appealable and on terms and conditions acceptable to Buyer in its sole and absolute discretion</p> <ul style="list-style-type: none"><li>• Buyer has obtained all required Buyer consents and other governmental approvals on terms and conditions satisfactory to Buyer in its sole and absolute discretion</li><li>• Seller’s representations and warranties in the Definitive Agreement and Ancillary Agreements that are qualified with respect to materiality are true and correct in all respects, and the representations and warranties of Seller that are not so qualified are true and correct in all material respects, in each case on and as of the execution of the Definitive Agreement and the Closing Date (except representations and warranties that by their terms speak as of a date earlier than the Closing Date, in which event they must be true and correct as of such date)</li><li>• Seller (and, if applicable, each Affiliate party thereto) has performed or complied in all material respects with all covenants, obligations and agreements in the Definitive Agreement or Ancillary Agreements and/or required to be performed or complied with by Seller (and, if applicable, each Affiliate party thereto) on or before the Closing</li><li>• Buyer has received a certificate from Seller, executed on its behalf by a duly authorized officer, dated as of the Closing Date, to the effect that the previous two conditions (immediately above) have been satisfied</li></ul>
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		<ul style="list-style-type: none"><li>• Buyer has received from Seller customary closing certificates (<i>e.g.</i>, good standing of Seller, copies of organizational documents and resolutions, incumbency, FIRPTA, etc.) and other specified documents (<i>e.g.</i>, closing inventory report, environmental assessment, etc.) and items (<i>e.g.</i>, specified Seller consents, encumbrance removal materials, etc.)</li><li>• since the date of Bidder’s submission of its proposal, there has been no uncured Material Adverse Effect with respect to Seller</li><li>• title to the insurable real property included in the Purchased Assets has been evidenced by issuance of, or the willingness of a title insurer reasonably acceptable to Buyer (the “Title Insurer”) to issue, an owner’s policy of title insurance (i) on the ALTA 1992 form owner’s title insurance policy [(or the ALTA 2006 form if adopted by the state in which such property is located)], (ii) insuring Buyer’s ownership of such property, subject only to the Permitted Encumbrances, (iii) in Buyer’s name, (iv) in the amount specified by Buyer, and (v) including specified endorsements and such other endorsements as Buyer reasonably requires (at Buyer’s sole cost and expense) [Seller is required to use only commercially reasonable efforts to deliver to the Title Insurer any additional deliverables requested in connection with such endorsements (the “Title Policy”); the willingness of the Title Insurer to issue the Title Policy will be evidenced by either the issuance thereof at the Closing or the Title Insurer’s delivery of written commitments or binders, dated as of the Closing Date (but insuring title as of the date title conveyance documents are recorded), to issue the Title Policy within a reasonable time after the Closing Date, subject to actual transfer of the subject real property; and Seller will be required to execute and deliver to the Title Insurer an affidavit and gap indemnity agreement and any other documents and instruments required by the Title Insurer]</li><li>• the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof) has qualified as a firm network resource with deliverability on a firm</li></ul>
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**Term Sheet for “Ownership Acquisition Product”**

		<p>network resource basis to Buyer’s load served from the Entergy Transmission System and specifically from the Western Region, and/or Buyer has otherwise obtained transmission service from the Electrical Interconnection Point in respect of the Capacity and Capacity-related benefits, electric energy and Other Electric Products to be provided under the Definitive Agreement on terms and conditions acceptable to Buyer in its sole and absolute discretion, including terms and conditions (i) concerning the timing, installation, location, cost, or cost recovery of transmission upgrades or other transmission improvements, (ii) relating to deliverability, re-dispatch or outages of any generation resource of any of the Entergy Operating Companies (including any resource under contract), or (iii) that may, if accepted or given effect, adversely affect reliability or operation of the Entergy Transmission System or resources therein</p> <ul style="list-style-type: none"> <li>• <i>{if the Facility is an Off-System Resource}</i> Seller has obtained for the life of the Facility (or, in the event Bidder proposes to sell to Buyer a portion of the Facility, the portion to be sold) firm transmission service from the Electrical Interconnection Point to the Delivery Point for (i) at least the amount of the firm transmission service sought by Buyer in its application for firm transmission service beyond the Delivery Point plus (ii) the aggregate amount of line losses from the Electrical Interconnection Point to the Delivery Point, on terms and conditions acceptable to Buyer in its sole and absolute discretion</li> <li>• none of the Purchased Assets (in whole or part) has become subject to or threatened in writing with condemnation or eminent domain</li> <li>• <i>{If Seller is assigning the LTSA to Buyer}</i> Seller has assigned, effective upon the Closing, its long-term service agreement or similar maintenance agreement in respect of the Purchased Assets (the “LTSA”) to Buyer (or an Affiliate designated by Buyer)</li> <li>• <i>{If Buyer is entering into a new LTSA the following will apply in lieu of the above}</i> Buyer (or an Affiliate designated by Buyer) and the service provider under the LTSA have entered into a new or an</li> </ul>
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**Term Sheet for “Ownership Acquisition Product”**

		<p>amended and restated LTSA with respect to the Facility (or, in the event Bidder proposes to sell to Buyer a portion of the Facility, the corresponding portion thereof) on terms and conditions satisfactory to Buyer in its sole and absolute discretion</p> <ul style="list-style-type: none"> <li>• the final results of the plant performance test performed and completed in accordance with the Definitive Agreement have established that the emission rates and any other tested factors not giving rise to a Purchase Price adjustment meet their respective performance requirements</li> <li>• Seller has posted, or caused to be posted, or otherwise made available to Buyer credit support meeting the requirements of the Definitive Agreement and any Ancillary Agreement</li> <li>• <i>{if the Facility is a Developmental Resource}</i> the Commercial Operation Date (as defined in item 21 below) has occurred and Seller has paid to Buyer any and all delay damages, buy-down amounts and other amounts due Buyer in connection with achievement of the Commercial Operation Date</li> <li>• <i>{if the Facility is a Developmental Resource}</i> the Definitive Agreement with respect to Product A, B, or C (as applicable) is in full force and effect</li> <li>• <i>{if Seller or an Affiliate of Seller has an operation and maintenance agreement with respect to the Facility, subject to certain exceptions (e.g., when the Facility is a solid fuel resource, when Buyer agrees to assume the O&amp;M Agreement, etc.)}</i> [Seller has terminated the operation and maintenance agreement with respect to the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof, effective as of the Closing at no cost or expense to Buyer]</li> <li>• such other conditions that Buyer may require as a result of due diligence with respect to the Facility or other events or circumstances with respect to the Facility, its own facilities, the Entergy Operating</li> </ul>
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**Term Sheet for “Ownership Acquisition Product”**

		<p>Companies’ proposed move to MISO, or the electric industry.</p> <p><i>{For existing resources}</i> Buyer will have at least 38 months from the effective date of the Definitive Agreement to satisfy its closing conditions.</p> <p><i>{For Developmental Resources}</i> Buyer will use commercially reasonable efforts to satisfy its conditions prior to the Guaranteed Commercial Operation Date. Nothing herein is intended to or will vary the terms of any discretion or judgment (however expressed) reserved or granted to Buyer herein or in the Definitive Agreement.</p> <p>For the avoidance of doubt, Buyer will have no obligation to Close the Transaction over any failure of a representation or warranty of Seller in the Definitive Agreement or any Ancillary Agreement to be true and correct (or any breach of a covenant, agreement or obligation in the Definitive Agreement or any Ancillary Agreement) even though such failure (or breach) would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.</p>
20	<p><b>Seller’s Closing Conditions:</b></p>	<p>Seller’s obligation to Close the Transaction will be subject to the satisfaction or express waiver, by Seller, of certain conditions to be specified in the Definitive Agreement, including, among others:</p> <ul style="list-style-type: none"> <li>• The applicable waiting periods (including any extensions) for the Transaction under the HSR Act have expired or terminated</li> <li>• Seller has obtained Seller’s regulatory approvals on terms reasonably acceptable to Seller and such approvals are in full force and effect and not subject to appeal or otherwise subject to challenge or modification</li> <li>• Seller has obtained all required Seller consents and other governmental approvals on terms and conditions reasonably satisfactory to Seller</li> <li>• Buyer’s representations and warranties in the Definitive Agreement and Ancillary Agreements that are qualified with respect to materiality are true and correct in all respects, and the representations and warranties of Buyer that are not so qualified are true and correct</li> </ul>

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**Term Sheet for “Ownership Acquisition Product”**

		<p>in all material respects, in each case on and as of the execution of the Definitive Agreement and the Closing Date (except representations and warranties that by their terms speak as of a date earlier than the Closing Date, in which event they must be true and correct as of such date)</p> <ul style="list-style-type: none"> <li>• Buyer has performed or complied in all material respects with all covenants, obligations and agreements in the Definitive Agreement and Ancillary Agreements and/or required to be performed or complied with by Buyer on or before the Closing</li> <li>• Seller has received a certificate from Buyer, executed on its behalf by a duly authorized officer, dated as of the Closing Date, to the effect that the previous two conditions (immediately above) have been satisfied</li> <li>• Seller has received from Buyer customary closing certificates (<i>e.g.</i>, good standing of Buyer, copies of organizational documents and resolutions, incumbency, etc.) and other specified documents (<i>e.g.</i>, specified ancillary agreements) and items (<i>e.g.</i>, copies of consents and regulatory approvals obtained by Buyer)</li> <li>• <i>{if the Facility is a Developmental Resource}</i> the Commercial Operation Date (as defined in item 21 below) has occurred.</li> </ul> <p>Buyer will reject as non-conforming any proposal(s) submitted and conditioned on a change in or transition of the Entergy Operating Companies’ transmission systems to an alternative arrangement for central planning and coordinated dispatch, including, without limitation, a Regional Transmission Organization.</p>
<p><b>21</b></p>	<p><b>Completion:</b></p>	<p><i>{This item 21 applies only to Developmental Resources.}</i> The “Guaranteed Commercial Operation Date” will be as specified by Bidder in the applicable proposal.</p> <p>The “Commercial Operation Date” will be the date all of the following conditions have been satisfied or expressly waived by Buyer:</p> <p>(a) the Facility has achieved “Substantial Completion” (or equivalent</p>

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**Term Sheet for “Ownership Acquisition Product”**

		<p>term meaning completion in all material respects, except punch list items that do not materially adversely affect the ability of the Facility to operate as intended) under its engineering, procurement and construction contract (or, if the Facility does not have a single engineering, procurement and construction contract, under each of the subcontracts that together aggregate the scope of an engineering, procurement and construction contract) at the full nameplate capacity specified by Bidder in the applicable proposal and any testing of the Facility required pursuant to its interconnection agreement(s), financing documents or permits and other authorizations for the commencement of commercial operation will have been successfully completed;</p> <p>(b) the Facility (i) has successfully completed its capacity demonstration test at a capacity equal to at least 95% of the full nameplate capacity of the Facility specified by Bidder in the applicable proposal, (ii) has successfully completed its heat rate demonstration test at a heat rate for each generating unit or mode of operation equal to no more than 103% of the “Guaranteed Test Heat Rate” for such generating unit or mode of operation specified by Bidder in the applicable proposal, (iii) has successfully completed its emission demonstration test for CO, CO<sub>2</sub>, NO<sub>x</sub>, SO<sub>2</sub>, PM and any other emission regulated by the air permit(s) for the Facility or applicable laws at emissions levels and rates at or below the levels and rates specified by Bidder in the applicable proposal (which must be below the levels and rates allowed under the air permit(s) for the Facility and applicable laws and not adversely affect operation of the Facility, including, without limitation, Buyer’s dispatch of the Facility), (iv) has achieved initial synchronization with the grid, (v) is available for normal and continuous operation and fully capable of reliably producing the energy and other products to be provided to Buyer and delivering such products to Buyer at the Electrical Interconnection Point at the full nameplate capacity specified by Bidder in the applicable proposal and (vi) is in compliance with the electrical interconnection agreement and applicable laws, including, without limitation, all</p>
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**Term Sheet for "Ownership Acquisition Product"**

		<p>permits and other authorizations;</p> <p>(c) the interconnection upgrades required by the interconnection agreement(s) for the Facility (i) have been completed, (ii) have been tested in accordance with the applicable interconnection agreement(s), (iii) are available for normal and continuous operation and fully capable of reliably transmitting and delivering to the Electrical Interconnection Point at the full contract capacity to be purchased by Buyer and (iv) are in compliance with the applicable interconnection agreement(s) and applicable laws;</p> <p>(d) the communications and telemetry equipment required by the Definitive Agreement or any Ancillary Agreement has been programmed, installed, commissioned and tested and has demonstrated that it is fully capable of reliably transmitting real-time data to Buyer according to the Definitive Agreement or Ancillary Agreement, as applicable;</p> <p>(e) Seller is in compliance in all material respects with the Definitive Agreement and Ancillary Agreements, and there are no defaults (or events or circumstances that with the passage of time or the giving of notice or both would constitute a default) of Seller thereunder that have occurred and are continuing;</p> <p>(f) Seller has obtained all material permits and other authorizations, entered into all agreements and made all other arrangements and acquired all other tangible and intangible rights required to construct the Facility and produce the energy and other products to be provided to Buyer, deliver such products to the point of interconnection between the Facility and the host utility and otherwise perform its obligations according to the Definitive Agreement; such permits and authorizations, agreements, arrangement and other rights are in full force and effect and not subject to conditions precedent; and no party thereto is in default thereunder, and no event or circumstance will have occurred and be continuing that with the passage of time or the giving of notice or</p>
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**Term Sheet for "Ownership Acquisition Product"**

		<p>both would constitute a default by a party thereunder;</p> <p>(g) the Facility is qualified for, and has all necessary accounts to obtain and transfer to Buyer, any environmental attributes for which the Facility becomes eligible prior to the Commercial Operation Date;</p> <p>(h) any additional credit support required at the Commercial Operation Date pursuant to the Definitive Agreement or any Ancillary Agreement has been posted by Seller in accordance with the requirements of the Definitive Agreement or such Ancillary Agreement;<sup>5</sup></p> <p>(i) certificates of insurance evidencing the coverages required by the Definitive Agreement or any Ancillary Agreement at the Commercial Operation Date have been obtained and submitted to Buyer;</p> <p>(j) without limiting clause (f) above, all arrangements for the supply of required electric services to the Facility, including the supply of turbine unit start-up and shutdown power, house power and maintenance power, have been completed by Seller separately from the Definitive Agreement, are in effect, and are available for the supply of such electric services to the Facility; and</p> <p>(k) staffing and required training of Seller's personnel for the operation, maintenance and asset management of the Facility has been completed.</p> <p>Seller will be required to notify Buyer immediately when the Commercial Operation Date has occurred, which notice will include reasonable evidence of the satisfaction of all of the conditions set forth above and a certification to that effect by an officer of Seller familiar with the Facility after due inquiry of Seller. In addition, the Definitive Agreement will</p>
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<sup>5</sup> This condition will be deleted if Seller is not required to provide a step-up in credit support at Commercial Operation (*i.e.*, Seller has the same level of credit support during the construction and operating phases or a greater level of credit support during the construction phase).

**Term Sheet for "Ownership Acquisition Product"**

		<p>require Seller to provide periodic progress reports and grant to Buyer inspection and other rights during development of the Developmental Resource.</p> <p>If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date specified by Bidder (as such date may be extended on a day-for-day basis to the extent that the Commercial Operation Date is delayed as a result of Force Majeure, up to a maximum of 180 days in the aggregate), Seller will pay to Buyer liquidated damages, for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, in an amount equal to (A) the number of MW equal to the full capacity allocated to Buyer multiplied by (B) \$300/MW. Seller's aggregate liability for liquidated damages pursuant to this paragraph will be limited to (1) the number of MW equal to the full capacity allocated to Buyer multiplied by (2) \$54,000/MW.</p> <p>If the Commercial Operation Date does not occur on or before six (6) months after the Guaranteed Commercial Operation Date, <u>then</u>:</p> <ul style="list-style-type: none"><li>(i) Buyer will have the right, at any time thereafter until the Commercial Operation Date occurs, to (a) terminate the Definitive Agreement upon notice to Seller (and to receive termination damages arising out of any such termination) or (b) if Seller has satisfied all of the conditions to the Commercial Operation Date other than condition (b)(i), require Seller to (1) re-size the capacity to the then-tested capacity allocated to Buyer and/or (2) revise the Guaranteed Test Heat Rate for each generating unit or mode of operation to the then-tested heat rate for such generating unit or mode of operation specified by Bidder in the applicable proposal, as applicable; and</li><li>(ii) If (a) Buyer's right to terminate set forth in clause (i) above applies and Buyer has not elected to terminate within seven (7) months after the Guaranteed Commercial Operation Date, (b) Seller has satisfied all of the conditions to the Commercial Operation Date other than condition (b)(i) and (c) Seller demonstrates to Buyer's reasonable satisfaction that it is not possible to (1) achieve a tested capacity</li></ul>
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**Term Sheet for "Ownership Acquisition Product"**

		<p>equal to at least 95% of the full nameplate capacity specified by Bidder in the applicable proposal or (2) achieve a tested heat rate for each generating unit or mode of operation equal to no more than 103% of the Guaranteed Test Heat Rate for such generating unit or mode of operation specified by Bidder in the applicable proposal, as applicable, Seller will have the right, at any time thereafter, with respect to clause 1, to re-size the capacity to the then-tested capacity allocated to Buyer and, with respect to clause 2, to revise the Guaranteed Test Heat Rate for each generating unit or mode of operation to the then-tested heat rate for such generating unit or mode of operation specified by Bidder in the applicable proposal.</p> <p>If Buyer requires Seller to, or Seller elects to, re-size the capacity according to clause (i) or (ii) above, Seller will pay to Buyer an amount equal to (i) \$[ ]/kW<sup>6</sup> multiplied by (ii) the number of MW by which (A) the then-tested capacity allocated to Buyer is <u>below</u> (B) the full expected capacity allocated to Buyer as specified by Bidder in item 10 above. If Buyer requires Seller to, or Seller elects to, revise the Guaranteed Test Heat Rate according to clause (i) or (ii) above, Seller will pay to Buyer an amount equal to (x) \$[70,000]<sup>7</sup> Btu/kWh multiplied by (y) the number of Btu/kWh by which (1) the then-tested heat rate is <u>above</u> (2) the Guaranteed Test Heat Rate for such generating unit or mode of operation specified by Bidder in the applicable proposal. Upon such payment, or, if both such payments are made, both such payments, condition (b)(i) to the Commercial Operation Date will be deemed achieved; provided, however, that thereafter, in no event will the capacity allocated to Buyer be increased (by further capacity testing or otherwise) above the then-tested Dependable Capacity allocated to Buyer referenced</p>
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<sup>6</sup> The capacity buy-down variable will be the \$/kW value of the Facility (at the full nameplate capacity as proposed by Bidder) established by the Purchase Price, prior to any adjustments, plus a \$/kW premium based upon an estimated incremental cost for Buyer to obtain the capacity not provided by Seller from a comparable new build resource.

<sup>7</sup> This figure is indicative only and subject to change. The footnote value expressed is based on recent transactions in the electric generation resource procurement, construction and acquisitions markets and includes variables that fluctuate over time and/or with contract term.

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**Term Sheet for “Ownership Acquisition Product”**

		<p>in clause (ii)(A) above or the Guaranteed Test Heat Rate be decreased (by further testing or otherwise) below the then-tested heat rate referenced in clause (y)(1) above.</p>
<p><b>22</b></p>	<p><b>Indemnification:</b></p>	<p>The Definitive Agreement will contain indemnification provisions customary for acquisitions of this type by Entergy Operating Companies, including, without limitation, (i) a cap on the liabilities of Seller or Buyer for the inaccuracy or breach of any representations or warranties of Seller or Buyer (other than fundamental representations or warranties, as described in items 13 and 14 above) of twenty percent (20%) of the Purchase Price, (ii) a requirement that the aggregate losses with respect to all indemnity claims of a Party as a result of the inaccuracy or breach of any representation or warranty of the other Party must equal or exceed one-half of one percent (0.5%) of the Purchase Price before the indemnified Party will be entitled to recover, commencing with the first dollar thereof, any losses under the indemnity as a result of such inaccuracies or breaches, (iii) full indemnity protection (<i>i.e.</i>, the threshold and cap do not apply) for any and all liabilities and obligations retained by Seller or for covenant, agreement or obligations breaches by either Party, (iv) a provision to the effect of (a) a Party’s indemnification rights (and any other remedy available to such Party) that are based upon the representations, warranties, covenants, obligations and/or agreements in the Definitive Agreement (or any ancillary agreement) will not be affected by any information made available or furnished to, or any investigation or audit conducted (or that could have been conducted) by or for the other Party, or any knowledge of any Party acquired at any time with respect to the Transaction or the accuracy or inaccuracy of, or compliance or non-compliance with, any such representation, warranty, covenant, obligation or agreement, and (b) each Party will be entitled to rely upon the representations, warranties, covenants, obligations and agreements of the other Party notwithstanding any investigation or audit conducted (or that could have been conducted) or any information received or the decision of any Party to complete the Closing, and (v) any qualification or limitation set forth in a representation, warranty, covenant or agreement as to materiality or Material Adverse Effect (or words of</p>

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**Term Sheet for “Ownership Acquisition Product”**

		<p>similar effect) contained therein will be disregarded for purposes of the indemnity.</p>
<p><b>23</b></p>	<p><b>Termination Rights:</b></p>	<p>The Definitive Agreement will include termination rights customary for a transaction of this type, including, without limitation:</p> <ul style="list-style-type: none"> <li>• termination by either Party upon notice if any governmental authority with jurisdiction (i) issues a final, non-appealable order declaring the Definitive Agreement invalid or unenforceable, restraining or otherwise prohibiting the consummation of the Transaction, denying a required regulatory approval of Buyer or Seller or (ii) takes any action, or enacts any law that prohibits the consummation of the Transaction, provided that a Party will not have the termination right under clause (i) if it or any of its Affiliates has sought, or has failed to use commercially reasonable efforts to oppose, such order</li> <li>• by a Party, if there has been a breach by the other Party of any representation, warranty, covenant, agreement or obligation in the Definitive Agreement that (i) would result in a failure of a condition to the Closing and (ii) in such Party’s reasonable judgment, cannot be cured by the expiration date of the</li> <li>• by one Party, upon written notice to the other Party, if such other Party is or becomes bankrupt</li> <li>• termination by Buyer with respect to certain results of a plant performance test</li> <li>• termination by Buyer if certain events relating to damage or destruction of the Purchased Assets or environmental matters occur.</li> </ul> <p><i>{For Developmental Resources only}</i> Except to the extent the parties otherwise agree in writing, the Definitive Agreement relating to Product D will terminate immediately upon any termination of the Definitive Agreement relating to Product A, B, or C (unless such termination is due to the occurrence of the Closing of the transaction under the Definitive Agreement relating to Product D, in which case the Definitive Agreement relating to Product D will remain in full force and effect).</p> <p><i>{For Developmental Resources only}</i> The Definitive Agreement may</p>

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**Term Sheet for “Ownership Acquisition Product”**

		<p>include rights in favor of Buyer to terminate the Definitive Agreement for convenience, in its sole and absolute discretion, after the satisfaction or waiver of the conditions set forth in item 19 above. If Buyer terminates the Definitive Agreement pursuant to such rights, as Seller’s sole remedy arising out of such termination, Buyer will be required to pay to Seller a pre-agreed amount to be set forth in a schedule to the Definitive Agreement to be negotiated between Buyer and Seller. The amounts set forth in such schedule will vary according to when such termination occurs and will not exceed the actual, direct out-of-pocket costs reasonably incurred by Seller to terminate construction (or, if lesser, to complete construction and make alternate use) of the Facility (or portion thereof allocated to Buyer) at such time. Seller will be required to use commercially reasonable efforts to minimize any such reasonable actual, direct out-of-pocket costs.</p> <p>Buyer will have other termination rights as indicated elsewhere in this Term Sheet and as negotiated by the Parties.</p>
<b>24</b>	<b>Credit:</b>	<p>Seller will be expected to meet the Credit requirements detailed in the RFP and Appendix F, all of which will be more fully developed in the Definitive Agreement.</p>
<b>25</b>	<b>Long-Term Service Agreement:</b>	<p>Buyer reserves the right to reject or renegotiate any existing LTSA or other applicable long-term maintenance agreement for major turbine/generator equipment under warranty with the original equipment manufacturer and associated with the proposed Facility. Although Buyer may evaluate any such existing LTSA, Buyer will be under no obligation to assume any existing LTSA (in whole or in part) at the Closing, except if, as and to the extent provided in the Definitive Agreement.</p>
<b>26</b>	<b>Operation &amp; Maintenance Preparedness:</b>	<p>If Buyer will be assuming or will have operational and maintenance responsibility for the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof) at the Closing, Seller shall cooperate, and shall cause its Affiliates and third party operators, contractors and representatives to cooperate, with Buyer in order to enable Buyer to become reasonably familiar with the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the</p>

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**Term Sheet for “Ownership Acquisition Product”**

		<p>Facility, the corresponding portion thereof) as of the Closing and be in a reasonable position to operate and maintain the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof) immediately upon the Closing as a reasonable prudent operator of the Facility (or, in the event Bidder proposes that Buyer purchase a portion of the Facility, the corresponding portion thereof). Seller’s obligation of cooperation shall include, without limitation, the obligation to permit operating and maintenance personnel of Buyer or its Affiliates to “shadow” the operating and maintenance personnel of Seller, its Affiliates or third party operators, contractors and representatives at reasonable times and for reasonable periods, subject to the applicable confidentiality agreement between Seller (or an Affiliate of Seller) and Buyer (or an Affiliate thereof), in furtherance of the foregoing.</p>
<p><b>27</b></p>	<p><b>Certain Transaction Expenses:</b></p>	<p>Except as otherwise provided in the Definitive Agreement or a related agreement between the Parties, the Party incurring costs in connection with the Definitive Agreement, any Ancillary Agreement or the Transaction will be responsible for paying them. The Definitive Agreement will allocate certain costs to a Party or the Parties. Transaction costs expressly allocated to Seller will include, without limitation, (i) transfer or similar taxes, (ii) contract (including license) or document transfer, consent, or conveyance or assignment fees or similar charges or costs, if any, including taxes, and (iii) filing and/or recording costs, fees or similar charges with respect to the transfer of real property from Seller to Buyer. Transaction costs expressly allocated to Buyer will include, without limitation, (a) costs of preliminary title reports and/or commitments concerning the Purchased Assets, the title policy and specified endorsements (except that if a supplemental survey of the Facility site (or a portion or portions thereof) is performed on behalf of Buyer in order to update any prior survey performed on behalf of Buyer after the effective date of the Definitive Agreement, the costs of such supplemental survey shall be borne one-half by Buyer and one-half by Seller) and (b) permit transfer or assignment fees or similar Permit conveyance charges or costs, if any, including taxes. Seller and Buyer will each bear one-half of the amounts charged by the environmental</p>

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**Term Sheet for “Ownership Acquisition Product”**

		consultant retained at Buyer’s direction in connection with the environmental assessment of the real property interests to be conveyed to Buyer at the Closing and the filing fee payable in connection with the notifications required to be filed under the HSR Act with respect to the Transactions.
<b>28</b>	<b>Board and Management Approval:</b>	The Definitive Agreement is subject to review and approval by the Entergy Operating Committee, the Entergy Corporate Risk office, the Board of Directors and other governing bodies. Buyer will not execute or deliver the Definitive Agreement without such review and approval, and such approval may be granted or denied in such bodies’ sole and absolute discretion.
<b>29</b>	<b>Letter of Intent:</b>	The Definitive Agreement will be preceded by the LOI. The LOI will terminate upon the execution of the Definitive Agreement. The letter of credit posted for the LOI will be returned to the counterparty as provided therein.
<b>30</b>	<b>Confidentiality:</b>	Each Party will be required to keep the terms and provisions of the Definitive Agreement confidential and will be prohibited from disclosing such terms to any third party, subject to certain limited exceptions specified in the Definitive Agreement.

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